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SC Court of Appeals

STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

The Honorable Bentley Price, Circuit Court Judge

Appellant Case No.: 2020-000129  
Charleston County Case No: 2019-CP-10-04193

Gregory Muxlow, individually and  
as Personal Representative for the  
Estate of Jennifer Muxlow .....Appellant,

v.

Natasha Anglin, Henrietta Benson, Donita Failey, Arnold Harris,  
Yokeema Harris, Ruby Tuesday, KC Mulligan's, ARIUM St. Ives,  
Carroll Management Group, South Carolina Department of Transportation,  
City of North Charleston, Charleston County, Defendants,

of whom Ruby Tuesday, KC Mulligan's, ARIUM St. Ives, and  
Carroll Management Group are the .....Respondents.

**FINAL BRIEF OF RESPONDENT KC MULLIGAN'S**

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## STATEMENT OF THE CASE

The Appellant initiated this action on April 24, 2019 in Greenville County. KC Mulligan's filed a Motion to Dismiss in response to the initial Complaint. Thereafter, the Appellant amended his Complaint and filed the Amended Complaint on July 18, 2019. Respondent, KC Mulligan's responded to the Amended Complaint by filing again its Motion to Dismiss. During the pendency of the initial Complaint and before the filing of the Amended Complaint, KC Mulligan's, the South Carolina Department of Transportation, the City of North Charleston, and Charleston County moved to transfer venue to Charleston County.

The Honorable Edward W. Miller held a hearing on July 23, 2019, granted the Motion to Transfer Venue from Greenville County to Charleston County and ruled that all of the pending motions, including the motions filed by Respondent, KC Mulligan's, would be considered by the Court in Charleston County. Thereafter, all of the pending motions were heard by the Charleston County Court on January 10, 2020. This Court granted KC Mulligan's Motion to Dismiss on the pleadings, granted Carroll Management's Motion to Dismiss, and granted ARIUM St. Ives's Motion to Dismiss in a Form 4 Order filed on January 13, 2020.

This Court issued a Form 4 Order on January 13, 2020 granting Respondent, KC Mulligan's motion. This Court also granted the motions filed by ARIUM St. Ives, Carroll Management Group and Ruby Tuesday. Ruby Tuesday filed a motion pursuant to Rule 59(e), SCRCPC seeking to amend the Form 4 Order to set forth the basis for the granting of the motions. On January 22, 2020 the Court granted Ruby Tuesday's motion to amend the judgment and issued the order that is the subject of this appeal.

## STATEMENT OF FACTS

Appellant, Gregory Muxlow filed this action in his individual capacity and as the Personal Representative of the Estate of Jennifer Muxlow (R. p. 31). The action arises out of an automobile accident which occurred on the night of November 20, 2018 when decedent, Ms. Muxlow was struck by a vehicle operated by the Respondent Anglin while crossing Highway 52 on foot in Charleston, South Carolina (R. p. 33, ¶15; p. 35, ¶29; p. 36, ¶33). Ms. Muxlow unfortunately died as a result of the injuries she sustained (R. p. 36, ¶37).

The Complaint alleges claims against a number of individuals and entities. This memorandum focuses on the allegations concerning Respondent, KC Mulligan's. Appellant alleges that on November 20, 2018 the decedent, Jennifer Muxlow called KC Mulligan's, a bar that decedent's boyfriend frequented. It further set forth that Mr. Harris was with another woman at KC Mulligan's at the time a telephone call was made to the Respondent's business. The Complaint alleged KC Mulligan's knew Mr. Harris was in the establishment when the call was made by decedent. The Appellant then claims that an employee of KC Mulligan's recklessly misled the decedent as to Mr. Harris's whereabouts, causing decedent to search frantically for her car and that it was foreseeable that decedent would continue to search frantically around and near roadways because she was searching for her car, and KC Mulligan's agent lead decedent to believe the operator of the car was not in the bar. (R. p. 35, ¶31; pp. 35-36, ¶32).

The Appellant further alleges employees of KC Mulligan's knowingly disseminated misleading information when they knew or should have known that it would put decedent in

danger while continuing to look for Mr. Harris, and that the employees did this in order to avoid a scene that might affect the profits to keep business of Mr. Harris, his paramour, friends and others involved in the sale and purchase of drugs to and from Mr. Harris.

Thereafter, the Appellant filed an Amended Complaint against numerous Respondents alleging the following causes of action: (a) common law recklessness and negligence, claiming that the KC Mulligan's disseminated false information to the decedent and decedent's family, claiming the Respondent, KC Mulligan's owed the following duties of care to decedent, Jennifer Muxlow (R. pp. 38-39, ¶51), avoiding the dissemination of false information to decedent and decedent's family and follow internal policies and procedures, and alleges a breach of this alleged duty in the dissemination of false information to decedent's family and making misrepresentation to decedent's family and others; (b) Appellant further alleges a negligent hiring cause of action against Respondent, KC Mulligan's, alleging they had a duty to hire competent and fit employees (R. p. 41, ¶65-66), and that they breached such duties in the manner in which they train, supervise and retain employee; (c) Appellant further set forth a survival action naming all the Respondents, claiming they owed one or more duties of care to decedent, as set forth in the Complaint; (d) a wrongful death action, and (e) a South Carolina unfair trade action, claiming that Respondent, KC Mulligan's gave false information causing decedent to panic and search for her vehicle.

### **STATEMENT OF REVIEW**

The Appellant Court applies to same standard of review as a Trial Court when reviewing

the dismissal of an action pursuant to Rule 12(b)(6) SCRCF. In considering a Motion to Dismiss of a Complaint based on the failure to state facts sufficient to constitute a cause of action, the trial court must base its ruling solely on the allegations set forth in the complaint. Id.

The question is whether in the light most favorable to the Appellant, and with every doubt resolved in his behalf, the Complaint states any valid claims for relief. See Plyler v Burns, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007).

Dismissal under Rule 12(b)(6) is improper if the facts alleged and inferences reasonably deductible from them, viewed in light most favorable to Plaintiff, would entitle the Plaintiff the relief on any theory. See Doe v Marion, 373 S.C. 390, 645 S.E.2d 245 (2007).

### ARGUMENTS

Applying the above standard of review, the facts alleged in the Amended Complaint fall extremely short of any basis for relief to the Appellant. That on the night of the decedent's death, she was neither a patron, or an expected patron, or any other type person that the Respondent, KC Mulligan's would or could have anticipated of owing a duty. Even if all the allegations as alleged in the Complaints were looked at in light and favorable to the Appellant, they have failed to establish any factual basis that would reasonably continue any type of duty by the Respondent, KC Mulligan's to decedent on the night in question. Furthermore, it is far founded and preposterous that one could try to impose a duty upon an establishment for providing them with information that no reasonable person could ever anticipate would result in the factual basis of the Complaints. If any person would have been owed a duty by the factual claims established in

the Amended Complaint, it would have been that of the Respondent, KC Mulligan's to Mr. Harris, who by their claims, if all facts are assumed true, would have been a paying customer of the Respondent, KC Mulligan's, such a duty would be superior of that of a random caller on the telephone for that being a duty to privacy to their patrons.

The Appellant failed to establish any factual basis that can be remotely conceived to assert any type of legal duty owed by the Respondent, KC Mulligan's to decedent that would establish any of her causes of actions.

Therefore, the trial court was accurate in its granting of the Dismissal pursuant to Rule 12(b)(6) SCRPC.

### CONCLUSION

The Appellant failed to establish even a scintilla of evidence in their Complaints and the factual basis to establish a duty owed by Respondent, KC Mulligan's to the decedent. The Appellant set forth no basis that would establish a duty in law that would allow this matter to be submitted to a jury. Therefore, this appeal should be dismissed and the ruling of the lower court should be affirmed.

Respectfully submitted  
LIZZI LAW FIRM, P.C.

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August 31, 2020  
North Charleston, South Carolina

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Carroll Management Group are the .....Respondents.

**CERTIFICATE OF COUNSEL**

The undersigned hereby certifies that this Final Brief complies with Rule 211(b), SCACR.

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August 31, 2020  
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