THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
COURT OF COMMON PLEAS

Honorable Bentley Price

APPELLATE CASE No. 2020-000551

RECEIVED
Nov 13 2020
SC Court of Appeals

Craig Chappell, on behalf of himself and others similarly situated, Appellant,

v.

Ladles Soups - James Island LLC; Ladlessoups, LLC; Ladles Soups at Cane Bay LLC; Ladles Soups at Citadel Mall LLP; Ladles Soups Calhoun LLC; Ladles Soups Cane Bay LLC; Ladles Soups Coosaw LLC; Ladles Soups Downtown Charleston, LLC; Ladlessoups Fresh Fields, LLC; Ladles Soups @ Freshfields Village, LLC; Ladlessoups Mainstreet, LLC; Ladles Soups Moncks Corner LLC; Ladlessoups Mount Pleasant, LLC; Ladles Franchise Development, LLC; Ladles Franchising Inc; Ladles Fort Mill, LLC; Ladles Knightsville LLC; Ladles West Ashley; Teri Owens; Sue Allen; Tray Allen; Steve Traeger; Erik Dyke; Julie Dyke; Stan Sutton; Carol Sutton; Jason Dalter; Kellie Henderson; Jane Doe 1-25 (Unknown Operating Company and Management Company Owners); John Doe 25-40 (Management Personnel), Defendants,

Of Which Ladles Soups Coosaw LLC, Ladles Soups Downtown Charleston, LLC, Traeger Unlimited d/b/a Ladlessoups Fresh Fields, LLC, Ladles Soups @ Freshfields Village, LLC, Ladles Soups Moncks Corner LLC, Ladles Franchise Development, LLC, Ladles Fort Mill, LLC, Ladles Knightsville LLC, Ladles West Ashley, Steve Traeger, Stan Sutton, Carol Sutton, and Kellie Henderson are the Respondents.

RESPONDENTS' INITIAL BRIEF

November 13, 2020

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II. THE TRIAL COURT CORRECTLY GRANTED SUMMARY JUDGMENT TO RESPONDENTS WHERE APPELLANT HAD THE OPPORTUNITY TO FULLY AND FAIRLY CONDUCT DISCOVERY.

III. APPELLANT'S DEATH RENDERS HIS ATTEMPT AT A CLASS ACTION MOOT.

STATEMENT OF CASE

Appellant filed suit as a class action on February 14, 2018 against Respondents Ladles Soups Downtown Charleston, LLC, Ladlessoups Fresh Fields, LLC, Ladles Soups @ Freshfields Village, LLC, Ladles Fort Mill, LLC, Ladles West Ashley, Steve Traeger, Stan Sutton and Carol Sutton and numerous other Respondents. The complaint alleges three causes of action: 1) violation of the South Carolina Payment of Wages Act, S.C. Code Annotated Section 41-10-10, et. Seq.; 2) breach of contract; and 3) conversion. (R. at ___) The Appellant has never worked for Respondents. (R. at ___)

Respondents filed and served their answer and counterclaim for frivolous civil proceedings on July 18, 2018. (R. at ____) On July 24, 2018, Respondents filed and served a motion to dismiss improper parties and motion to disallow class certification. (R. at ___). Plaintiff filed a response to motion to dismiss improper parties and motion to disallow class certification on November 27, 2018. (R. at ____) Judge McCoy issued an Order denying the motion to disallow class certification as moot for the following reasons: "Upon review of the court file, the Plaintiff, despite filing the present action as a "class action, never moved this court pursuant to S.C.R.C.P. 23 to certify the class. Therefore, Defendant's Motion to Disallow Class is DENIED as moot with leave to re-file." (R. at __)"

On May 24, 2019, Plaintiff served discovery requests to all Respondents' Counsel, by email only. (R. at ___). On August 23, 2019, Plaintiff again served, by email only, request for admissions. (R. at ___). Respondents' began answering the discovery on September 13, 2019 and concluded on December 31, 2019. (R. at __) On October 4, 2019, Plaintiff filed a motion to compel discovery responses against all Respondents. (R. at ___) On December 23, 2019, Appellant filed a motion to have requests for admissions deemed admitted, despite serving the

requests by email only to Respondents' Counsel and those email addresses were not correct email addresses. (R. at ____).

On August 21, 2019, Respondents filed a motion for summary judgment. (R. at ____) On September 11, 2019 Plaintiff first moved to file a motion for class certification. (R. at ____) A hearing on Respondents' motion for summary judgment and other motions, was held before the Honorable Bentley D. Price on January 6, 2020. (R. at ___). Judge Price denied Appellant's motion for class certification on January 7, 2020. (R. at ___). Judge Price granted summary judgment in favor of some Respondents on January 30, 2020 and the rest of the Respondents, excluding Ladles Soup-James Island, LLC and Teri Owens on February 11, 2020. (R. at ___). Plaintiff filed a motion to reconsider/alter or amend the Court's February 11, 2020 Order on February 21, 2020. (R. at ___). Judge Price denied this motion on February 25, 2020. (R. at ___) Plaintiff filed this appeal. Appellant died on September 27, 2020 in the state of Vermont. (R. at ____) No personal representative has been substituted as a party to this appeal.

STATEMENT OF FACTS

The undisputed facts which are established by the record are: Appellant worked at the Ladles Soups-James Island, LLC as a cook in the kitchen. (R. at__; Depo of Chappell Page 21) He never worked at any of the other Ladles restaurants. (R. at__; Depo of Chappell Page 21 L 6-8) Most, if not all, of the Ladles restaurants are owned by different entities/individuals. (R. at__; Depo of Sue Allen 21-22) The lack of an employer/employee relationship with any other Ladles restaurants, resulted in the grant of summary judgment to all defendants, except the owner of Ladles James-Island.

Appellant filed this action as a class action against various Defendants who own franchises of the Ladles restaurants in South Carolina, owned franchises of the Ladles restaurants in South Carolina, or are the franchisor of the Ladles restaurants in South Carolina. (R. at ____). However, no class has ever been certified, so this action is an individual action by Craig Chappell, or his personal representative, against the various Respondents. (R. at __).

Appellant alleges that he and other employees did not receive credit card tips and that there was some sort of corporate agreement to deny credit card tips to employees. (R. at ___). The James Island restaurant where Appellant worked retained credit card tips to subsidize a higher hourly wage for some of its employees. (R. at ___). However, Appellant does not allege that he was paid less than minimum wage, nor that Ladles James Island violated the wage or hour laws. (R. at ___).

STANDARD OF REVIEW

When reviewing summary judgment, the Appellate Court is to apply the same standard as the trial court under Rule 56(c), South Carolina Rules of Civil Procedure. Smith v. Jones (In re Estate of Smith), 419 S.C. 111, 116, 796 S.E.2d 158, 160 (Ct. App. 2017) citing Dawkins v. Fields, 354 S.C. 58, 69, 580 S.E.2d 433, 438-39 (2003). "Summary judgment is appropriate when the pleadings, depositions, affidavits and discovery on file shows there is no genuine issue of material fact such that the moving party must prevail as a matter of law." Turner v. Milliman, 392 S.C. 116, 122, 708 S.E. 2d 766, 769 (2011).

The evidence and reasonable inferences must be viewed in the light most favorable to the non-moving party and in cases involving the preponderance of evidence burden of proof, the non-moving is only required to submit a mere scintilla of evidence. Id. At 708 S.E. 2d 769.

"It is not sufficient that one create an inference which is not reasonable. Similarly, it is not sufficient that one create an issue of fact that is not genuine." Main v. Corley, 281 S.C. 525, 527, 316 S.E.2d 406 (1984). "When opposing a summary judgment motion, the non-moving party must do more than simply show that there is a metaphysical doubt as to the material facts but must come forward with specific facts showing that there is a genuine issue for trial." Russell v. Wachovia Bank, N.A., 353 S.C. 208, 220, 578 S.E. 2d 329 (2003). Further, the Court must not cherry pick language out of context, but view the entirety of the record. See Grimsley v. South Carolina Law Enforcement Division, 415 S.C. 33, 42, 780 S.E. 2d 897 (2015). Rule 56(c), SCRCP, provides summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." The substantive law identifies which facts are material, and "[o]nly disputes over facts that might affect the outcome of the suit under the governing law will properly preclude the entry of summary judgment." Anderson, 477 U.S. at 248. "Factual disputes that are irrelevant or unnecessary will not be counted." Id.

ARGUMENT

I. THE TRIAL COURT CORRECTLY GRANTED RESPONDENTS' SUMMARY JUDGMENT MOTION WHEN APPELLANT COULD NOT ESTABLISH AS A MATTER OF LAW AN INJURY-IN-FACT PURSUANT TO S.C. CODE ANN. 41-10-10 AS TO THE RESPONDENTS.

It is clear that the Appellant must have standing or an injury-in fact to be able to maintain an action against a party. "Standing to sue is a fundamental requirement in instituting an action." Bodman v. State, 403 S.C. 60, 66, 742 S.E.2d 363, 366 (2013) (quoting Joytime Distribs. & Amusement Co. v. State, 338 S.C. 634, 639, 528 S.E.2d 647, 649 (1999)). The party seeking to establish standing has the burden of proving it. Town of Arcadia Lakes v. S.C. Dep't of Health &

Envtl. Control, 404 S.C. 515, 529, 745 S.E.2d 385, 392 (Ct. App. 2013). Further, standing must be proven "with the manner and degree of evidence required at the successive stage of the litigation." Id.; see also Beaufort County v. Trask, 349 S.C. 522, 563 S.E.2d 660 (Ct. App. 2002) (affirmed trial court's determination that County's failure to prove allegations supporting standing at the merits hearing ultimately defeated County's claim to standing).

In South Carolina standing may be acquired by any one of the three methods: (1) by statute; (2) establishing a case-or-controversy under the Lujan factors (See Lujan v. Defenders of Wildlife, 504 U.S. 555 (1992)); or (3) under the public importance exception. See Bodman, 403 S.C. at 66- 65. Importantly, unlike the federal law of standing, which is rooted in the Constitution's 'case or controversy' requirement, standing in our South Carolina state courts is not normally viewed as a constitutional doctrine. See ATC South, Inc. v. Charleston County, 380 S.C. 191, 669 S.E.2d 337 (2008).

Additionally, it is important to note that if a statutory standing exists, the Lujan factors are inapplicable. See Freemantle v. Preston, 398 S.C. 186, 194 (2012). However, when no statute confers standing, the elements of constitutional standing must be met by the Plaintiff and it is his burden to establish his right to maintain action.

In this case, S.C. Code 41 Ann. 41-10-10 et. seq. sets the prerequisites in order for Appellant to bring forth a claim. S.C. Code Ann 41-10-80 (c) requires that a person must have an employer employee relationship prior to bringing a claim under the act. Here, there is no factual dispute that Appellant only worked for Ladles James Island, LLC. (R. at __) S.C. Code 41-10-80 (c) requires an employer employee relationship. As such, Appellant only has statutory standing against Ladles James Island, LLC pursuant to the Wages Act. Given the above, the Appellant only has standing, or an injury-in-fact, to assert his claims against Ladles James

Island, LLC. Additionally, although briefed by Appellant on page 29 of the initial brief, statutory standing of the class is legally impossible given the death of Craig Chappell's death as stated below.

Appellant has asserted claims of breach of contract and conversion. As such, standing should be evaluated under the Lujan factors as to those claims. Although, a review of Appellant's brief appears that the he has abandoned review of any claim that he has standing to assert a breach of contract against theses Respondents. (See Appellant's brief at pages 29-37) The U.S. Supreme Court, as established in Lujan, has held that the "irreducible constitutional minimum of standing" consists of three elements: First, the plaintiff must have suffered an "injury in fact"—an invasion of a legally protected interest which is (a) concrete and particularized and (b) "actual or imminent, not 'conjectural' or 'hypothetical.'" Second, there must be a causal connection between the injury and the conduct complained of—the injury has to be "fairly . . . trace[able] to the challenged action of the defendant, and not . . . th[e] result [of] the independent action of some third party not before the court." Third, it must be "likely," as opposed to merely "speculative," that the injury will be "redressed by a favorable decision." Lujan, 504 U.S. at 560-561 (citations omitted). It is critical that a party meet all three elements to establish that the party's case is a justiciable case or controversy. The South Carolina Supreme Court adopted the three-part test of Lujan in Sea Pines Ass'n for Protection of Wildlife, Inc. v. S.C. Department of Natural Resources, 345 S.C. 594, 550 S.E.2d 287 (2001) and since 2001 has generally analyzed standing by applying various tests, including the Lujan test, often referring to it as the "constitutional standing" test. See, e.g., Smiley v. S.C. Dep't of Health & Envtl. Control, 374 S.C. 326, 649 S.E.2d 31 (2007) (held Smiley sufficiently alleged standing under the elements of the Lujan test); Charleston Trident Home Builders, Inc. v. Town Council of

Summerville, 369 S.C. 498, 632 S.E.2d 864 (2006) (held Trident had standing under the elements articulated in Sea Pines); see also St. Andrews Pub. Serv. Dist. v. City Council of Charleston, 349 S.C. 602, 564 S.E.2d 647 (2002) (held special purpose district lacked statutory standing to challenge annexation); Powell ex rel. Kelley v. Bank of America, 379 S.C. 437, 665 S.E.2d 237 (Ct. App. 2008) (held Bank lacked standing according to the Lujan test); Commander Health Care Facilities, Inc. v. S.C. Dep't of Health & Envtl. Control, 370 S.C. 296, 634 S.E.2d 664 (Ct. App. 2006) (held Commander lacked standing according to the Lujan test); Sloan v. Greenville County, 356 S.C. 531, 590 S.E.2d 338 (Ct. App. 2003) (held Sloan, as a taxpayer, had standing under the Lujan test and also because the issue was of sufficient public importance).

Appellant does not have standing to assert his claims of breach of contract, nor conversion, against any of the Respondents in this appeal. A breach of contract requires a meeting of the minds. It is undisputed that Respondent never had a meeting of the minds with the Respondents. (R. at__; deposition of Craig Chappell, page 24) Moreover, as this court is aware, a party seeking a claim for conversion must have some claim of right to the item being converted. The Supreme Court has defined conversion "as the unauthorized assumption in the exercise of the right of ownership over goods or personal chattels belonging to another to the exclusion of the owner's rights." Am. Credit of Sumter, Inc. v. Nationwide Mut. Ins. Co., 378 S.C. 623, 629, 663 S.E.2d 492, 495 (2008); accord Moseley v. Oswald, 376 S.C. 251, 254, 656 S.E.2d 380, 382 (2008); SSI Med. Servs., Inc. v. Cox, 301 S.C. 493, 498, 392 S.E.2d 789, 792 (1990). "To establish the tort of conversion, the plaintiff must establish either title to or right to the possession of the personal property." Moseley, 376 S.C. at 254, 656 S.E.2d at 382.

Again, Appellant never worked for any other Ladles other than James Island, LLC and as such he cannot legally assert a right or interest in alleged unpaid tips. As such, it is clear that

Mr. Chappell only has standing against Ladles James Island, LLC. Standing under Lujan factors are inapplicable to all other Defendants. Moreover, the record does not contain a basis for the public importance exception to establish standing in this action.

A review of the record established that Appellant alleges, in his complaint, that he did not receive credit card tips from Ladles James Island, LLC. Importantly, the trial court did not extinguish Appellant rights to pursue that claim. However, Appellant has provided undisputed deposition testimony that he was not aware of whether any other Ladles restaurants did anything improper relating to credit card tips. (See deposition of Craig Chappell Page 24).

Appellant argues that liability imputes to all Respondents under the South Carolina Failure to Pay Wages Act, S.C. Code Annotated, Section 41-10-80 (c) as the "Respondents are employers under the SCPWA and engage in a common scheme that damaged Appellant." (See initial brief of Appellant.) However, Section 41-10-10(1) defines an "employer" as:

> (1) "Employer" means every other person, firm, partnership, association, corporation, receiver, or other officer of a court of this state, the state or any political subdivision thereof, and any agent or officer of the above classes employing any person in this state."

The issue of interpretation of the statute is a question of law for the Court." Catawba Indian Tribe v. State, 372 S.C. 519, 524, 642 S.E. 2d 751, 753 (2007). Judge Price correctly interpreted the meaning of this statute to impose potential liability only on officers and agents of the actual employer, Ladles Soup-James Island, LLC. Judge Price, in his Order, dated January 30, 2020, correctly states:

> "In Lewis [Dumas sic.] v. InfoSafe Corp., 320 S.C. 188, 43 S.E. 2d 641 (Ct. App. 1995), the Court of Appeals interpreted the wage statute to impose liability on individual officers and agents who "knowingly permit their corporation" to violate the act. Id. At 463 S.E. 2nd 644

(Emphasis added). It is obvious that only officers and agents of the actual employer entity may be held liable under Section 40-10-10, et. seq. None of the moving Defendants fit within the purview of officers and agents of "their corporation" as contemplated as Dumas. Any claims of officer and agent liability under the statute as interpreted by Dumas are necessarily limited to officers and agents of Ladles Soup-James Island, LLC, Plaintiff's employer (Order of January 30, 2020, Page 5)

Here, Judge Price correctly ruled that the Appellant only had standing to pursue claims against Ladles James Island, LLC. Any other reading of the statute is not what the legislature intended and violates the "golden rule."

Clearly, given the above, Judge Price correctly held that Appellant only had an actual injury or standing to pursue his claims as to Ladles James Island, LLC and no other party. Judge Price did not commit an error of law, nor abuse his judicial discretion. His decision should be affirmed.

II. THE TRIAL COURT CORRECTLY GRANTED SUMMARY JUDGMENT TO RESPONDENTS WHERE APPELLANT HAD THE OPPORTUNITY TO FULLY AND FAIRLY CONDUCT DISCOVERY.

Respondents answered the Complaint on July 18, 2018. Appellant failed to serve any written discovery upon Respondents until May 24, 2019. This was over ten (10) months after the complaint was filed. Respondents answered interrogatories and requests for production on September 13, 2019 (Ladles West Ashley), August 15, 2019 (Ladles Fort Mill), November 1, 2019 (Ladles Coosaw, LLC), and December 31, 2019 (Ladles Moncks Corner, LLC/ Ladles Knightsville, LLC/ Ladles Freshfields Village, LLC/ Ladlessoups Freshfields, LLC Ladles Franchise Development, LLC).

Prior to the hearings on January 3, 2020, Respondents answered all written discovery that Appellant properly served on Respondents. The depositions of Teri Owens (Ladles James Island), Sue E. Allen (Ladlessoups, LLC) and Cory Paul (Ladles West Ashley/Fort Mill, LLC) had all taken place and were completed, without court intervention prior to the motion

to compel and summary judgment hearings. The motions to compel were heard on January 6, 2020, before Judge Price, along with Respondents' motion for summary judgment. Judge Price granted the motion to compel only concerning the total financial sales records of Ladles James Island, LLC which were requested from square and franchise payments to Ladlesssoups, LLC. (See R. at __; hearing transcript p. 32, LL 19-23). There was no additional information compelled concerning any other Ladles restaurants.

Here, it is clear that the trial court afforded the Appellant his right to discovery as evidenced by the order granting Appellant's motion to compel. Importantly, as summary judgment was not granted as to Ladles James Island, LLC, it is not relevant that square receipts of James Island were not produced prior to the grant of summary judgment as to all other Ladles restaurants. There has been no request for judicial review by this court of the trial court's order to compel of January 7, 2020. Appellants have thrown every argument to overturn the summary judgment grant of February 11, 2020 as to all Ladles except James Island; however, the January 7, 2020 order to compel is not being challenged. This discovery issue cannot be raised for the first time on appeal. See Pryor v. Northwest Apartments. LTD., 321 S.C. 524, 529, 469 S.E. 2nd 630, 633 (Ct. App. 1996), wherein the Court held that Appellant's failure to request a continuance of a summary judgment hearing while discovery was pending does not preserve that issue for appeal.

This Court should not reverse the trial court's grant of summary judgment based upon lack of discovery for two reasons: 1) Appellant was afforded ample time to discovery and judicial assistance with a motion to compel and; 2) Appellant failed to move for a continuance based upon claims of inadequate discovery and as such, this matter is not preserved for review.

In this case, Appellant did not move for a continuance or stay of the summary judgment hearing nor request that the court hold its decision in abeyance. In failing to do

so the Appellant " ... took no steps to protect their interests... " See Degenhart v. Knights of Columbus, 309 S.C. 114, 420 S.E. 2nd 495 (1992). The failure to move for a continuance before the trial court means that this issue is not properly before the Appellate Court. Id. at 309 S.C. 118.

Appellant now asserts that his rights to full and fair discovery have been abridged. However, the written discovery and depositions of Teri Owens, Sue Allen, and Cory Paul had afforded the opportunity of Appellant to establish material facts of his claim, albeit still impossible considering the lack of standing as stated above. The record and law of the case establish that Appellant only has an individual or direct claim against Ladles James Island, LLC and no other restaurant. (See R. at __; deposition of Craig Chappell) Further, Appellant had a full and fair opportunity to explore this subject in as much detail as he wished in the 30(b)(6) depositions of Ladles Franchising, Inc. and Ladles Soup-James Island, LLC. Teri Owens and Sue Allen are the only two (2) witnesses who would have information about the handling of tips allegedly belonging to the Appellant. Both of those depositions had taken place and concluded prior to the grant of summary judgment. On page 16 of his brief, Appellant implies that other franchisees were not made available for depositions, however, this issue was never raised before the circuit court at the summary judgment hearing and no motion to compel was ever filed concerning the same.

In Guinan v. Tenet Health Systems of Hilton Head. Inc., 383 S.C. 48, 54-55, 677 S.E. 2nd 32 (Ct. App. 2009), relied upon by Judge Price in his January 30, 2020 Order, the Court of Appeals stated:

> "In Dawkins v. Fields, 354 S.C. 58, 580 S.E. 2nd 433, 439-40 (2003) our Supreme Court rejected Dawkins 'argument' that summary judgment was premature because they did not have a full and fair opportunity for

> discovery." "A party claiming summary judgment is premature because they have not been provided a full and fair opportunity to conduct discovery must advance a good reason why the time was insufficient under the facts of the case, and why further discovery would uncover additional relevant evidence and create a genuine issue of material fact." id. at 354 S.C. 71, 580 S.E. 2nd 439-40.

Judge Price was correct in concluding as a result of the January 9, 2020 hearing that Appellant advanced no sufficient reason why further discovery might create a genuine issue for trial as to the Respondents for whom he granted summary judgment.

Appellant asserted in his second argument, on page 25 of the initial brief, that the trial court should not have denied his request to have emailed requests to admit deemed admitted. The trial court issued an order on January 7, 2020 and that order is not being reviewed for that issue. The review of the orders being appealed in all of Chappell's appeal cases does not reveal that the January 7, 2020 order of Judge Price is being reviewed by this Court. Appellant's failure to appeal the January 7, 2020 order prohibits review by this court and the issue concerning the denial of Appellant to deem the request to admit the law of the case. Watkins v. Hodge, 232 S.C. 245, 247, 101 S.E.2d 657, 658 (1958). This Court has unequivocally held that "a determination from an unappealed order becomes "the law of the case." Simpson v. Simpson, 404 S.C. 563, 746 S.E.2d 54 (Ct.App. 2013). Appellant cannot now object to an appealable order from which no appeal was taken. This matter is unpreserved for appeal and should not be reviewed.

In summary, having failed to even serve written discovery for over ten (10) months after the pleadings were served, in failing to move the court to continue the summary judgment hearing and in having had the full opportunity to depose not only his own employer but also the

franchisor's representative, Appellant can neither show that he was disadvantaged in the discovery process, nor that he has preserved this issue for appeal.

The undisputed fact is that Appellant has conducted ample discovery in this matter. Judge Price was correct in determining that there had been ample discovery completed and no amount of discovery was going to overcome the absence of standing and injury-in-fact as asserted above.

III. APPELLANT'S DEATH RENDERS HIS ATTEMPT AT A CLASS ACTION MOOT.

In this case, Appellant asserts, in his third argument briefed, that the trial court erred by granting summary judgment prior to hearing a motion for class certification. This is incorrect as a matter of law. Craig Chappell passed away on September 27, 2020 (R. at ___) and no other person intervened prior to his death. The death of a named plaintiff renders the class claims moot unless intervenors can be substituted as named plaintiffs. See Swan v. Stoneman, 635 F.2d 97 (2d Cir.1980) (class action not rendered moot by named plaintiffs death where other plaintiffs had intervened before death of fellow plaintiff); see also Baxter v. Palmigiano, 425 U.S. 308, 96 S.Ct. 1551, 47 L.Ed.2d 810 (1976) (suggesting that, but for the intervention of a third inmate, prisoner class action in which one named plaintiff died and other was paroled before class certification would have been moot). See Ferguson v. Charleston Lincoln Mercury, 564 S.E.2d 94, 349 S.C. 558 (S.C. 2002).

Here, there has been no intervention of another person alleged harmed prior to Mr. Chappell's passing. It is clear that the essential elements required of S.C.R.C.P. Rule 23 cannot be met where the death of a single named class member dies prior to class certification. Our Supreme Court has held " . . . [W]here a single named plaintiff in a class action suit dies before class certification, the named plaintiff no longer adequately represents the class and the suit

becomes moot, unless a suitable plaintiff intervenes and satisfies the requirements of Rule 23, SCRCP.3..." Ferguson at 94; 349 S.C. 558 (S.C. 2002).

Throughout the course of this entire litigation, the Appellant attempted to boot strap a class action claim using his own personal suit as the basis. However, the class action will never be as the only class member passed away. The death of Craig Chappell is also the end of the class action efforts against all Ladies restaurants for whom Mr. Chappell was not employed and had not relationship with whatsoever.

CONCLUSION

For the foregoing reasons, Respondents respectfully request that Judge Price's Order of February 11, 2020 should be affirmed in its entirety.

November 13, 2020

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THE STATE OF SOUTH CAROLINA
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Honorable Bentley Price

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Of Which Ladles Soups Coosaw LLC, Ladles Soups Downtown Charleston, LLC, Traeger Unlimited d/b/a Ladlessoups Fresh Fields, LLC, Ladles Soups @ Freshfields Village, LLC, Ladles Soups Moncks Corner LLC, Ladles Franchise Development, LLC, Ladles Fort Mill, LLC, Ladles Knightsville LLC, Ladles West Ashley, Steve Traeger, Stan Sutton, Carol Sutton, and Kellie Henderson are the Respondents.

PROOF OF SERVICE

I certify that I have served a copy of the initial brief of respondents and designation of matter by depositing a copy of it in the United States Mail, postage prepaid, on November 13, 2020, addressed to:

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*Paul B. Ferrara, III**
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**(also Admitted in N.C.)*

November 13, 2020

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: Craig Chappell v. Ladles Soups
Appellate Case No.: 2020-000551
Our File No.: 20-532

Dear Ms. Kitchings:

Please find enclosed Respondents' Initial Brief and Designation of Matter to be Included in the Record on Appeal for filing. I have also enclosed a Proof of Service of the same for filing.

Please file the originals and return a clocked copy to our office in the self-addressed, stamped envelope which is enclosed.

Sincerely,

FERRARA LAW FIRM, PLLC

Paul B. Ferrara, III

Enclosures

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