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Jan 29 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Bentley Price, Circuit Court Judge

Appellate Case No. 2020-000129

Gregory Muxlow, individually and as Personal Representative of 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,

**RESPONDENT RUBY TUESDAY INC’S RESPONSE TO APPELLANT’S SECOND
MOTION TO AMEND THE RECORD ON APPEAL AND SUPPLEMENT
DESIGNATION OF MATTER**

Respondent, Ruby Tuesday, Inc. (“Ruby Tuesday”), opposes Appellant’s January 21, 2021
motion to amend and supplement the Designation of Matter and Record on Appeal in this matter
with the transcript and judgment from a default judgment hearing recently held against the
defendant Arnold Harris. The appellant’s motion seeks to include matters that are clearly
prohibited from inclusion in the Record on Appeal under Rules 209 and 210 of the South Carolina
Appellate Court Rules and South Carolina case law.

Appellant Gregory Muxlow, as the personal representative of the Estate of Jennifer
Muxlow, initiated the underlying action on April 24, 2019 against a number of defendants,

including Ruby Tuesday. Ruby Tuesday filed a Motion to Dismiss and a Motion for Judgment on the Pleadings on May 28, 2019. Thereafter, the plaintiff amended his Complaint and filed an Amended Complaint on July 18, 2019. Ruby Tuesday responded by refiling its Motions to Dismiss and for Judgment on the Pleadings on July 19, 2019. The pending motions were heard on January 10, 2019 before the Honorable Bentley Price. Judge Price granted Ruby Tuesday's Motion to Dismiss and Motion for Judgment on the Pleadings on January 13, 2020. Muxlow filed this appeal on January 24, 2020. The issues were briefed, matters were designated, a record was prepared and final briefs were filed several months ago. Almost a year after the notice of appeal was filed, Muxlow allegedly attended a hearing in the circuit court and was granted a default judgment against the defendant Arnold Harris, the boyfriend of Jennifer Muxlow. Appellant now seeks this Court's leave to "amend the Designation of Matter and the Record on Appeal" in this matter with the transcript of the hearing and a January 8, 2021 judgement against Arnold Harris. Respondent Ruby Tuesday requests that the court deny the Appellant's motion on the grounds that the motion seeks to include matters that were not presented to the lower court and, therefore, violates the South Carolina Appellate Court Rules.

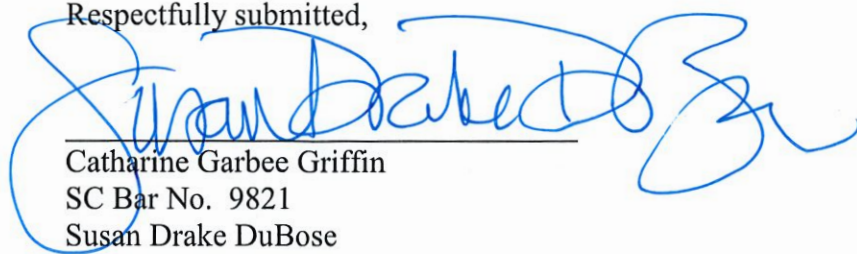
Rule 212, SCACR provides the procedure for supplementing a record on appeal. The rule specifically provides that "the appellate court may require copies of all or any part of the transcript of proceedings or other matter which was before the lower court or administrative tribunal to be sent up for its inspection and consideration." Rule 212(a), SCACR. Rule 212(b), SCACR addresses the supplementation of the record by a party. However, "Rule 212(b), SCACR, must, of course, be read in conjunction with Rules 209(c) and 210(c), SCACR, which states that the record cannot include matter that was not presented to the lower court or tribunal or which is irrelevant to the appeal." Jean H. Toal, *et al.*, *Appellate Practice in South Carolina* 130 (3d ed. 2016). Rule

210(c), SCACR addresses the contents of the Record on Appeal and specifically states: **“The Record shall not, however, include matter which was not presented to the lower court or tribunal.”** Rule 210(c), SCACR (emphasis added). *See also*, Jean H. Toal, *et al.*, *Appellate Practice in South Carolina* 418 (3d ed. 2016), stating that “[b]ecause any supplemental material becomes part of the record, a party may not seek to include material not previously presented to the lower court or administrative tribunal.” South Carolina courts have upheld these rules, finding that matters not presented to the lower court for consideration cannot be part of the Record on Appeal. *See Williamsburg Rural Water & Sewer Co. v. Williamsburg Cty. Water & Sewer Auth.*, 367 S.C. 566, 571, 627 S.E.2d 690, 693 (2006) (stating that “[n]othing in the appellate court rules permits a party to unilaterally add after-created evidence to the record” and holding that only the evidence presented to the lower court for determination is proper for considering when reviewing a lower court’s order). *See also Norris v. Ferre*, 315 S.C. 179, 183, 432 S.E.2d 491, 493 (Ct. App. 1993) (applying Rule 209(c) to deny a motion to supplement record on appeal where the matters sought to be included “were not presented to the trial judge”).

The appellate court rules specifically prohibit the Appellant from supplementing a record on appeal with matters that were not presented to the lower court and matters that are irrelevant. *See* Rules 209(c) and 210(c), SCACR. Appellant’s motion seeks to do both. Therefore, Respondent Ruby Tuesday respectfully requests that the Appellate Court deny Appellant’s Second Motion to Amend the Record on Appeal and Supplement Designation of Matter on the grounds that it seeks to include matters prohibited from inclusion in the Record on Appeal pursuant to the South Carolina Appellate Court Rules.

(signature on following page)

Respectfully submitted,

A large, stylized handwritten signature in blue ink, appearing to read "Susan Drake DuBose", is written over a horizontal line.

Catharine Garbee Griffin

SC Bar No. 9821

Susan Drake DuBose

SC Bar No. 11543

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Attorneys for Respondent Ruby Tuesday, Inc.

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APPEAL FROM CHARLESTON COUNTY
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The Honorable Bentley Price, Circuit Court Judge

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Gregory Muxlow, individually and as Personal Representative of 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,

PROOF OF SERVICE

I, Catharine Garbee Griffin, Ravenel & Bender, LLC, Attorneys for Respondent Ruby
Tuesday, Inc., hereby certify that, on this 29th day of January 2021, I have served the following with
the foregoing Respondent Ruby Tuesday Inc.'s Response to Appellant's Second Motion to Amend
the Record on Appeal and Supplement Designation of Matter via electronic mail of same to counsel
of record at the e-mail addresses shown below:

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(Signature on following page)

Catharine Garbee Griffin
by *Susan DeBor*

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January 29, 2021



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SC Court of Appeals

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January 29, 2021

E-mail: ctappfilings@sccourts.org
The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

RE: Gregory Muxlow, individually and as Personal Representative of the Estate of Jennifer Muxlow, Appellant v. Ruby Tuesday, Inc., KC Mulligan's, St. Ives and Carroll Management Group, Respondents
Appellate Case No. 2020-000129
Our File No.: 9903.40

Dear Ms. Kitchings:

Attached for filing please find Respondent Ruby Tuesday, Inc.'s Response to Appellant's Second Motion to Amend the Record on Appeal and Supplemental Designation of Matter and Proof of Service thereof.

By copy of this letter, the same is being served upon all counsel of record. Should you have any questions, please do not hesitate to contact me.

Yours truly,


Catharine Garbee Griffin

CGG:sr

Enclosure

cc w/encl.: Joshua T. Hawkins, Esquire E-Mail josh@hjlsc.com
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