THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Bentley D. Price, Circuit Court Judge

Appellate Case No. 2020-000399

Teri Chappell, as Personal Representative of the Estate of Craig Chappell, on behalf of himself and others similarly situated, Appellant,

v.

Ladles Soups – James Island, LLC; Ladlessoups, LLC; Ladles Soups at Can 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, Tracy 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),

Of which Ladles Franchising, Inc., Ladlessoups, LLC, Sue Allen and Tracy Allen, Respondents,

---

FINAL BRIEF OF RESPONDENTS

January 26, 2021

Kerry W. Koon
147 Wappoo Creek Drive, Ste. 203
Charleston, SC 29412
843.795.7000
Attorney for Respondents

TABLE OF CONTENTS

Table of Authorities..... ... ii

Statement of Issues on Appeal..... 1

Statement of the Case..... 1

Standard of review..... 4

Facts..... 5

Arguments

I. THERE WAS NO EVIDENCE BEFORE THE TRIAL JUDGE THAT ANY RESPONDENT WAS THE AGENT OF LADLES SOUP-JAMES ISLAND, LLC, THE APPELLANT'S EMPLOYER, NOR DID ANY RESPONDENT MEET THE STATUTORY DEFINITION OF EMPLOYER..... 6

II. THE TRIAL COURT WAS CORRECT IN GRANTING SUMMARY JUDGMENT TO RESPONDENTS WHERE APPELLANT FAILED TO MOVE TO CONTINUE THE SUMMARY JUDGMENT HEARING TO CONDUCT ADDITIONAL DISCOVERY AND FAILED TO SHOW WHY THE TIME FOR DISCOVERY WAS INSUFFICIENT..... 17

III. THERE IS NO EVIDENCE THAT LADLES FRANCHISING, INC. CONVERTED OR EVEN RECEIVED ANY PORTION OF CREDIT CARD TIPS CLAIMED BY THE APPELLANT..... 21

IV. THE TRIAL JUDGE PROPERLY DETERMINED THAT APPELLANT HAD NO STANDING TO SUE RESPONDENT..... 25

Conclusion..... 28

TABLE OF AUTHORITIES

CASES

Allen v. Greenville Hotel Partners, Inc.,
409 F. Supp. 2nd 672 (2006)..... 15, 17

Bank of America, N.A. v. Draper,
405 S.C. 214, 746 S.E. 2nd 478 (Ct. App. 2013)..... 26

Crane v. City Corp. National Services, Inc.,
313 S.C. 70, 437, S.E. 2nd 50, 52 (1993)..... 21-22

Degenhart v. Knights of Columbus,
309 S.C. 114, 420 S.E. 2nd 495 (1992)..... 19

Fernander v. Thigpen,
278 S.C. 140, 144, 293 S.E. 2nd 424 (1982)..... 9, 13, 14

Catawba Indian Tribe v. State,
372 S.C. 519, 524, 642 S.E. 2nd 751, 753 (2007)..... 7

Lennon v. South Carolina Coastal Council,
330 S.C. 414, 498 S.E. 2nd 906 (Ct. App. 1998)..... 25-26

Main v. Corley,
281 S.C. 525, 527, 316 S.E. 2nd 406 (1984)..... 4, 9

Pryor v. Northwest Apartments, LTD.,
321 S.C. 524, 529, 469 S.E. 2nd 630, 633 (Ct. App. 1996)..... 18-19

Regions Bank v. Schmauch,
354 S.C. 648, 582 S.E. 2nd 432 (Ct. App. 2003)..... 22

Russell v. Wachovia Bank, N.A.,
353 S.C. 206, 220, 578 S.E. 2nd 329 (2003)..... 4

SchlotzSky's Inc. v. Hyde,
243 Ga. App. 888, 536 S.E. 2nd 561, 563 (2000)..... 16

Sloan v. Friends of the Hunley,
369 S.C. 20, 630 S.E. 2nd 474 (2006)..... 25

Trejo v. Ryman Hospitality Props. Inc.,
795 F. 3rd 442 (4th Cir. 2015)..... 5

Turner v. Milliman,
392 S.C. 116, 122, 708 S.E. 2nd 766, 769 (2011)..... 4

Youngblood v. South Carolina Department of Social Services,
402 S.C. 311, 741 S.E. 2nd 515 (2013)..... 26, 27

RULES & STATUTES

Rule 56(c) S.C.R.C.P..... 4

Section 41-10-10(1),
South Carolina Payment of Wages Act, S.C. Code Annotated..... .... 1, 7, 8, 13

Section 41-10-80, et seq.,
South Carolina Payment of Wages Act, S.C. Code Annotated..... 7, 27

29 CFR Section 531.55..... 22

STATEMENT OF ISSUES ON APPEAL

I. THERE WAS NO EVIDENCE BEFORE THE TRIAL JUDGE THAT ANY RESPONDENT WAS THE AGENT OF LADLES SOUP-JAMES ISLAND, LLC, THE APPELLANT'S EMPLOYER, NOR DID ANY RESPONDENT MEET THE STATUTORY DEFINITION OF EMPLOYER

II. THE TRIAL COURT WAS CORRECT IN GRANTING SUMMARY JUDGMENT TO RESPONDENTS WHERE APPELLANT FAILED TO MOVE TO CONTINUE THE SUMMARY JUDGMENT HEARING TO CONDUCT ADDITIONAL DISCOVERY AND FAILED TO SHOW WHY THE TIME FOR DISCOVERY WAS INSUFFICIENT

III. THERE IS NO EVIDENCE THAT LADLES FRANCHISING, INC. CONVERTED OR EVEN RECEIVED ANY PORTION OF CREDIT CARD TIPS CLAIMED BY THE APPELLANT

IV. THE TRIAL JUDGE PROPERLY DETERMINED THAT APPELLANT HAD NO STANDING TO SUE RESPONDENT

STATEMENT OF THE CASE

Appellant commenced this action as a class action by the filing of his Summons and Complaint against Respondents and numerous other defendants on February 14, 2018. The complaint alleges three causes 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 (Complaint, R. pp. 27-44).

Respondents' counsel accepted service of the summons and complaint on June 18, 2018.

Respondents filed their Answer on August 1, 2018 (Answer of Respondents, R. pp. 45-55).

On July 24, 2018, a motion was filed by other defendants to disallow class certification (Motion of Certain Defendants to Disallow Class Certification, R. pp. 58-62).

On November 13, 2018, Respondents filed Defendants' Ladles Franchising, Inc., Ladlessoups, LLC, Sue Allen, Tracy Allen's Reply to Notice of Motion and Motion to Disallow Class Certification, joining in the other defendants' motion and asserting additional grounds for disallowance (Respondents Motion to Disallow Class Certification, R. pp. 65-71).

On January 2, 2019, Judge McCoy issued an order ruling on the motion to disallow class certification and determining the same to be 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." (Order of January 29, 2019, R. p. 3)

Motions to reconsider Judge McCoy's Order by other defendants were denied.

Appellant served Interrogatories and Request for Production on Respondents on May 24, 2019 (Appellant's Interrogatories and RFP, R. pp. 80-92, R. pp. 93-100), and a Request for Admissions on August 23, 2019 (Appellant's Request for Admissions, R. pp. 299-310). Respondents answered the request for admissions on September 19, 2019.

Respondents answered the remainder of written discovery on August 21, 2019 (R. pp. 101-124).

Respondents' served supplemental responses to interrogatories and request for production on December 31, 2019 (R. pp. 553-563), and second supplemental responses to request for production on January 16, 2020.

Defendant thereafter filed motions to compel against other defendants on August 22, 2019.

On August 20, 2019, the clerk of court notified the parties that the case was being placed on the August 26, 2019 trial roster.

Appellant filed a motion to continue the trial on August 22, 2019 (Motion for Continuance, R. pp. 155-160).

On August 26, 2019, Respondents filed a motion for summary judgment supported by deposition excerpts and affidavits (Respondents' Motion for Summary Judgement, R. pp. 161-237).

On September 11, 2019, Plaintiff first moved for class certification (Appellant's Motion for Class Certification and exhibits, R. pp. 238-298).

On October 4, 2019, Appellant filed an amended motion to compel to include Respondents (Amended Motion to Compel, R, pp. 311-389).

On October 25, 2019, Respondents filed a supplemental memorandum in support of their motion for summary judgment supported by additional deposition excerpts (Respondents' Supplemental Memo in Support of Motion for Summary Judgement, R. pp. 393-412).

On December 31, 2019, Appellants filed their opposition to Respondents' motion for summary judgment, supported by certain exhibits (Appellant's Memo in Opposition to Motion for Summary Judgment, R. pp. 442-552).

On January 3, 2020, Respondents filed their Response to Appellant's Memorandum in Opposition to Motion for Summary Judgment and responsive deposition excerpts (Respondents' Memo in Response to Opposition to Motion for Summary Judgment, R. pp. 564-580).

A hearing on Respondents' motion for summary judgment and other motions, was held before the Honorable Bentley D. Price on January 6, 2020.

By order dated January 7, 2020, Appellant's motion for class certification was denied (Order of January 7, 2020, R. pp. 4-6).

By order of January 30, 2020, Judge Price granted summary judgment in favor of the Respondents (Order of January 30, 2020, R. pp. 15-26).

All defendants except Ladles Soup-James Island, LLC and Teri Owens were also granted summary judgment in separate orders.

This appeal followed.

Appellant died on September 27, 2020. No personal representation has yet been substituted as a party to this appeal. 1.

STANDARD OF REVIEW

This Court reviews a grant of summary judgment upon the same standard applied by the trial court pursuant to Rule 56(c) S.C.R.C.P. "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. 2nd 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. 2nd 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. 2nd 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. 2nd 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. 2nd 897 (2015).

1. An Order Substituting Mr. Chappell's personal representative was issued by the court on January 7, 2021.

FACTS

This action was filed as a putative class action by Craig Chappell against the various defendants who are the franchisor and franchisees of various Ladles restaurants operating in South Carolina. The individual defendants are either principals of the franchisor or principals of the franchisees.

Since no class has ever been certified, this action is but an individual action by Appellant or his legal representative, alleging that credit card tips were improperly withheld by his employer, Ladles Soup-James Island, LLC.

The James Island restaurant and some other stores retain credit card tips to subsidize higher hourly wages for its employees (Teri Owens depo., R. p. 760, lines 10-22, Sue Allen depo., R. p. 804, lines 6-21).

Appellant does not allege that he was paid less than minimum wage, irrespective of tips. No violation of wage and hour laws is implicated by Appellant's allegations. See *Trejo v. Ryman Hospitality Props. Inc.*, 795 F. 3rd 442 (4th Cir. 2015).

The lack of an employer/employee relationship with any entity other than Ladles Soup-James Island, LLC, resulted in the grant of summary judgment to all other defendants except Ladles Soup-James Island, LLC's principal, Teri Owens.

Ladles restaurants are small restaurants, specializing in soups and sandwiches. Some restaurants offer catering services. The first Ladles restaurant (the Bees Ferry Road location) was opened by Ladlessoups, LLC of which Sue Allen is the sole member. The Bees Ferry Road location was operated by Ladlessoups, LLC until September of 2017 (Sue Allen affidavit filed August 26, 2019, R. p. 183). The West Ashley location is now operated by CT Foods, LLC which is owned by Cory Paul and his wife (Corey Paul Depo., R. p. 784, lines 6-14 and R. p. 786, lines 22-25). Ladlessoups, LLC is no longer in business.

Ladles Franchising, Inc. is the franchising company for Ladles restaurants. Sue Allen is the CEO of Ladles Franchising, Inc. Tracy Allen, her husband, is the President of the corporation (Sue Allen affidavit filed August 26, 2019, R. p. 183).

The Appellant is a former employee of Ladles Soup-James Island, LLC. Appellant has never been employed by Ladles Franchising, Inc. (Sue Allen affidavit filed August 26, 2019, R. p. 183).

Ladles Franchising, Inc. does not employ tipped personnel. (Sue Allen affidavit filed November 13, 2018, R. p. 69).

Appellant was employed as a cook at the James Island location but may have performed occasional duties as a server and cashier.

Appellant does not allege that he ever worked for any Defendant other than Ladles-Soup-James Island, LLC. Appellant acknowledges that he never received a paycheck from Ladles Franchising, Inc. and that the only paycheck he ever received was from Ladles Soup-James Island, LLC (Chappell Depo., R. p. 753, lines 16-21).

ARGUMENTS

I. THERE WAS NO EVIDENCE BEFORE THE TRIAL JUDGE THAT ANY RESPONDENT WAS THE AGENT OF LADLES SOUP-JAMES ISLAND, LLC, THE APPELLANT'S EMPLOYER, NOR DID ANY RESPONDENT MEET THE STATUTORY DEFINITION OF EMPLOYER

Appellant is a former employee of Ladles Soup-James Island properly identified as Ladles Soup-James Island, LLC (Plaintiff's Memorandum in Opposition to Respondent's Motion for Summary Judgment, R. p. 444).

There was not a scintilla of evidence before the trial court of any employer/employee relationship between Appellant and any of the Respondents. He was never employed by Ladles Franchising, Inc. (Sue Allen affidavit filed August 26, 2019, R. p. 183). The only paycheck

Appellant ever received was from Ladles Soup-James Island, LLC. He never received a paycheck from Ladles Franchising, Inc. (Chappell depo., R, p. 753, lines 16-21).

Appellant argues, not that there was an employer/employee or contractual relationship between Appellant and any of the Respondents, but that liability under the South Carolina Failure to Pay Wages Act, S.C. Code Annotated, Section 41-10-80(C) is predicated upon the theory that Ladles Franchising, Inc. was the agent of Ladles Soup-James Island, LLC, Appellant's actual employer. Section 41-10-10(1) defines an "employer" as:

> "(1) "Employer" means every 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. 2nd 751, 753 (2007). Under any reasonable interpretation of Section 41-10-10(1), the Respondents do not fall within the definition of Appellant's employer, or agent of his employer.

Judge Price correctly interpreted the meaning of the statue to impose potential liability only on officers and agents of the actual employer:

> "In *Lewis [Dumas sic.] v. InfoSafe Corp.*, 320 S.C. 188, 463 S.E. 2nd 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 by *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, R. p. 19)

Lacking any scintilla of evidence of an actual employer/employee relationship with any of the Respondents, Appellant advances the attenuated theory that because the franchise agreement provides that the franchisees contribute to a marketing fund, a principal/agent relationship was established between Ladles Soup-James Island, LLC as principal and Ladles Franchising, Inc. as agent thereby supposedly bringing Ladles Franchising, Inc. within the phrase in Section 41-10-10(1) "...and any agent or officer of the above classes employing any person in this state." (Emphasis added).

The specific language from the Franchise Agreement upon which Appellant relies is as follows:

> "You agree that because of the value of advertising to the goodwill and public image of Ladlessoups' restaurants, we may maintain and administer a marketing fund (the "Marketing Fund") for the marketing program that we deem necessary or appropriate, in our sole discretion. You agree to contribute to the Marketing Fund three percent (3%) of Gross Sales of the Restaurant calculated in the same manner as, and payable monthly together with, the royalty fees due under this agreement.
>
> You agree that we will direct all marketing programs financed by the Marketing Fund, and we will have sole discretion over the creative concepts, materials and endorsements used in the programs, and geographic, market and media placement and allocation of the program..." (Franchise Agreement, R. p. 710)
>
> "...we assume no direct or indirect liability or obligation to you in respect to the maintenance, direction or administration of the Marketing Fund. You acknowledge that we have the right and you hereby authorize us, to settle or otherwise compromise all disputes with regard to The Marketing Fund." (Franchise Agreement, R. p. 711).

This argument ignores the paramount principal of agency law clearly stated in *Fernander v. Thigpen*, 278 S.C. 140, 144, 293 S.E. 2nd 424 (1982), the very case relied upon by the Appellant to attempt to reach the illogical result he propounds. That principal is:

> "The test to determine agency is whether or not the purported principal has the *right to control* the conduct of the alleged agent." id. at 278 S.C. 144.

The clear and unambiguous language of The Marketing Fund paragraph provides just the opposite. Rather than reserving the right of control to Ladles Soup-James Island, LLC, the purported principal, the paragraph cedes the right of control of The Marketing Fund to the sole discretion of Ladles Franchising, Inc., the purported agent and franchisees acknowledge that the Marketing Fund is operated without any obligation to franchisees:

> "You agree that we will direct all marketing programs financed by the Marketing Fund, and we will have sole discretion over the creative concepts, materials and endorsements used in the programs, and geographic, market and media placement and allocation of the programs..." (Franchise Agreement, R. p. 710) (emphasis added)

and

> "...you acknowledge that we have the right and you hereby authorize us, to settle or otherwise compromise all disputes with regard to the Marketing Fund." (Franchise Agreement, R. p. 711).

The "Marketing Fund" argument is nothing but an attempt to "...create an inference which is not reasonable..."or "...create an issue of fact that is not genuine." See *Main v. Corley*, supra at 261 S.C. 527. Reliance on this argument does not demonstrate a scintilla of evidence to avoid summary judgment as a matter of law.

Judge Price's order properly relied upon paragraph 5(a) of the Franchise Agreement which provides in pertinent part:

"A. Independent Contractors.

It is understood and agreed that this Agreement does not create a fiduciary relationship between you and us, that we and you are and shall be independent contractors, and that **nothing in this Agreement is intended to make either you or us a general or special agent, legal representative, joint venturor, partner or employee of the other for any purpose or to grant either you or us the right to direct or supervise the daily affairs of the other…"** (Franchise Agreement, R. p. 697) (emphasis added)

Paragraph 5(a) of the Franchise Agreement further amplifies the independent contractor relationship, stating:

"You acknowledge that no agreement that we make with any third party is for your benefit. Neither we nor you will interfere with each other's contractual relations." (Franchise Agreement, R. p. 697)

These provisions are directly inconsistent with the assertion that the franchisor acts as the general agent, or as a fiduciary of the franchisees either as to the Marketing Fund, or as to contractual relations, including employee compensation agreements.

The Franchise Agreement is completely devoid of any reference to the franchisee's compensation policies (Sue Allen depo., R. p. 812, lines 22-25).

Teri Owens, one of the owners of Ladles Soup-James Island, LLC, testified that her company actually operates as an independent contractor separate and apart from Ladles Franchising, Inc.:

"Q: Alright. And do you - - does Ladles James Island, Inc. - - excuse me James Island, LLC operate as an independent contractor separate and apart from Ladles Franchising, Inc.?

A: Yes."

(Owens depo. R. p. 766 – p. 767, line 7).

Teri Owens' testimony continued:

"Q: Does Ladles Franchising, Inc. through the Franchise Agreement have any authority to set Ladles James Island, LLC's compensation policies?

A: No.

Q: There's nothing in the employee handbook about tipping, is there?

A: No.

Q: Does Ladles Franchising, Inc., Suzie Allen or Tracy Allen, have they established any policies that require you to follow concerning tipping and payment of either credit card or cash tips to employees?

A: No.

Q: To your knowledge, have you ever heard of any, let's use the phase Ladles–wide policy as far as handling credit card and cash tips?

A: No."

(Owens depo., R. p. 766, line 16 – p. 767, line 7).

Corey Paul, a principal of CT Foods, LLC and CP Foods, LLC, two of the franchisees, testified similarly:

"Q: Does that paragraph 5A of the sample Franchise Agreement specify that both CT Foods, LLC and CP Foods, LLC are independent contractors?

A: It does.

Q: And they are separate entities, separate and apart from Ladlessoups, LLC, correct? And they are not under the control of either Ladles - - excuse me. They're not under - - separate and independent from Ladles Franchising, Inc., is that correct?

A: That is correct.

Q: Alright their management is not under control of Ladles Franchising, Inc.; is that correct?

A: Correct.

Q: And neither CP Foods, LLC nor CT Foods, LLC is under the control of either Suzie Allen or Tracy Allen, is that correct?

A: Correct.

Q: And since you purchased Ladlessoups - - Ladles Soups West Ashley restaurant from Ladlessoups, LLC, has Ladlessales, LLC (Sic. Ladlessoups LLC) exercised any supervisory or management authority over the West Ashley restaurant.

A: No."

"Q: All right. Now is it also correct that the Ladles Franchise Agreement does not direct you to - - in any way how to compensate your employee; is that correct?

A: That is correct.

Q: It does not direct you to handle either cash or credit card tips in any particular fashion; is that correct?

A: That is correct.

Q: There is no Ladles-wide policy imposed by Ladlessoups – excuse me, Ladles Franchising, Incorporated, Suzie Allen, or Tracy Allen concerning the handling of credit card or cash tips; is that correct?

A: Correct."

(Paul depo., R. p. 785, line 21 – p. 787, line 15).

Julie Dyke, the only other franchisee to be deposed, testified consistently as well:

"Q: Has Ladles Franchising, Inc., Sue Allen or Tracy Allen ever attempted to require you to handle credit card tips in any particular fashion?

A: No.

Q: Has Ladles Franchising, Inc., Sue Allen or Tracy Allen ever suggested that the method that you use in handling credit card tips was either right or wrong?

A: No.

Q: Is there any Ladles wide policy about handling credit card tips?

A: Not that I am aware of."

(Dyke depo., R. p. 801, lines 7-19).

Ladles Franchising, Inc. has no policy concerning the handling of tips by the franchisees (Sue Allen affidavit filed August 26, 2019, R. p. 183 and Sue Allen depo., R. p. 812, lines 8-21).

By his reliance on *Fernander*, supra, Appellant conflates the issue now before the court with that which was decided in *Fernander*.

Here, the issue is the statutory construction of Section 41-10-10(1) and whether or not franchisor (or the other Respondents) could be liable as the agent of Ladles Soup-James Island, LLC, Appellant's actual employer. By contrast, in *Fernander* the issue was the vicarious tort liability of the franchisor for injuries caused by a franchisee's employee, who allegedly caused an automobile accident. There, in a three to two decision, the Supreme Court determined that there was vicarious tort liability because of the extraordinary degree of control maintained by the franchisor over the franchisee "...most importantly, the daily operating policies of the restaurant including management of the employees." and the requirement of all personnel "...to comply with all reasonable requirements." id. at 278 S.C. 144.

Here, there is no similar provision in the Franchise Agreement. The only arguable analogous language is contained in Paragraph 14(A)(4) by which the franchisees are required to

> "...use your reasonable efforts employ (sic) on a full time basis qualified Restaurant Managers with qualifications and experience acceptable to us." (Franchise Agreement, R. p. 720)

The Franchise Agreement does not grant day-to-day operational control to the franchisor, but reserves such to the restaurant manager who "...shall have principal operational responsibility for the restaurant..." (Franchise Agreement, R. pp. 707-708).

The Franchise Agreement simply requires that the franchisees employ qualified managers. The franchisees are free to supervise their own managers and employees and also set their own compensation policies.

Julie Dyke (Ladles Mt. Pleasant) testified that the Mt. Pleasant location distributes credit card tips among the hourly employees on a monthly basis (Dyke depo. R. p. 796, line 24 – p. 797, line 20).

Her testimony demonstrates that the franchisees are free to determine differing compensation policies regarding credit card tips, without control of the franchisor, and negates the suggestion that the franchisor sets, requires, or influences the franchisees to handle credit card tips in the manner alleged by Appellant.

Fernander, supra does not control this case because the issues are entirely distinct, however, there is substantial authority that even if the issues were similar, the evidence here does not show a sufficient degree of control by the franchisor to justify the same result. Here, the relationship between franchisor and franchisees is more like that described in *Murphy v. Holiday Inns, Inc.*, 216 V.A. 490, 219 S.E. 2nd 874 (1975) cited by the *Fernander* dissent, where the requirements of the franchise agreement were to protect the business "system". In return for a fee, and "With respect to the manner in which defendant's trademarked and other assets were to be used...both parties agreed to a certain regulatory rules of operation." *Fernander*, supra 278 S.C. 144-145 (Dissent of Justices Littlejohn and Gregory).

The supposed indications of control which Appellant touts as evidence in the Franchise Agreement are in reality nothing but reasonable requirements of the franchisor to protect the Ladles' system.

While the franchisor may require training and minimum level of qualifications and experience of a manager, each manager is granted the responsibility to carry out the work of the franchisee restaurant under his own authority, supervision and control. In *Allen v. Greenville Hotel Partners, Inc.*, 409 F. Supp. 2nd 672 (2006), Judge Herlong granted summary judgment to a franchisor in a case involving breach of an alleged duty owed to the Plaintiff by failing to require the franchisee to retrofit a hotel facility with a sprinkler system before opening a hotel branded as a Comfort Inn. The Court observed that the franchise agreement "...merely guarded its trademark by assuring uniform appearance and operations of hotels operating under the Comfort Inn mark. (citation omitted) (These mandatory procedures are intended to assure uniformity in operation and appearance, and to protect the...trademark and the goodwill associated with it.)" id. at 409 F. Supp. 677.

This perfectly describes the relationship between franchisor and franchisee here, where the Franchise Agreement prescribes training of franchise's managers (Franchise Agreement, R. p. 692); guidance in preparation, specification standards and operating procedures, equipment, advertising and promotional programs (Franchise Agreement, R. p. 693); protection of trademarks (Franchise Agreement, R. p. 695), protection of confidential methods, techniques and procedures including secret recipes (Franchise Agreement, R. p. 699); minimum operating standards concerning condition, appearance, operation and safety of the restaurant in a standardized fashion (Franchise Agreement, R. pp. 703-704); and standards for preparing and serving proprietary soups and other food products (Franchise Agreement, R. pp. 704-705).

As observed by Judge Herlong and citing, *Schlotzsky's Inc. v. Hyde*, 243 Ga. App. 888, 536 S.E. 2nd 561, 563 (2000) ["A franchisor's reserving the right to inspect, monitor, or evaluate the franchisee's compliance with its standards and to terminate the franchise for non-compliance is *not* the equivalent of retaining day to day supervisory control of the franchisee's business operations as a matter of law."] id. at 409 F. Supp. 679-680.

Paragraph 1(a) of the Franchise Agreement outlines the Ladles', "system" stating in pertinent parts:

> "Through expenditure of considerable time, skill, effort and money, we have developed a system for establishing, operating and franchising distinctive, high quality restaurants ("Ladlessoups Restaurants") serving the public under the name "Ladlessoups." A Ladlessoups' Restaurant consists of all structures, facilities, appurtenances, grounds, landscaping, signs, furniture, fixtures, equipment and entry, exit, parking and other areas commonly associated with such a restaurant. The approved food, beverage and other products served and sold by Ladlessoup's Restaurants (the "Products") for consumer consumption and not for resale are prepared in accordance with our standards, specifications and secret recipes. Ladlessoup's Restaurants are established pursuant to our plans and specifications for construction, conversion, remodeling, decorating, equipment and layout, and are operated in accordance with our distinctive business formats, construction plans, inspection and consultation programs, signs, equipment, layouts, methods, specifications, standards, recipes (including soup recipes), confidential information, trade secrets, operating procedures, training programs and materials, guidance, policy statements and related materials, designs, advertising, publicity, and marketing programs and other materials (which we may modify from time to time) (collectively, the "System")." (Franchise Agreement, R. p. 690).

and

> "We may change, modify or improve the System from time to time to enhance the operations of Ladlessoups' Restaurants. All improvements and additions, you, we or anyone else makes to the System, whatever made or used in connection with the system, will inure to us and become our sole property. We grant, to qualified persons, franchises to own and operate Ladlessoups Restaurants

> pursuant to the System selling the Products and services we authorize and approve." (Franchise Agreement, R, p. 691).

This is the essence of the Ladles Franchise Agreement and, as observed in *Allen*, "...the relationship was not unlike typical franchisor/franchisee relationships." supra, 409 F. Supp. 2nd at 676.

Further, similar to *Allen*, the purpose of the rules and regulations..."was to ensure a similar experience at all Comfort Inn franchise locations" and "maintain...uniform service within, and public goodwill toward the ["Choice"] system." *Allen*, supra, 409 F. Supp. 2nd 677.

The lack of either a right to control under the Franchise Agreement or actual control by the franchisor of day-to-day franchisee operations means that Appellant's arguments that franchisor had knowledge of franchisee's credit card tip policies, or that it failed to stop some perceived wrong, also fail.

Having been presented with no evidence that any of the Respondents were officers or agents of Appellant's employer defined by Section 40-10-10(1), Judge Price was entirely correct in granting summary judgment to Respondents, as a matter of law.

II. THE TRIAL COURT WAS CORRECT IN GRANTING SUMMARY JUDGMENT TO RESPONDENTS WHERE APPELLANT FAILED TO MOVE TO CONTINUE THE SUMMARY JUDGMENT HEARING TO CONDUCT ADDITIONAL DISCOVERY AND FAILED TO SHOW WHY THE TIME FOR DISCOVERY WAS INSUFFICIENT

Respondents answered the Complaint on August 1, 2018. Appellant failed to serve any written discovery upon Respondents until May 24, 2019, nine (9) months and twenty-four (24) days after the pleadings were closed.

Respondents answered interrogatories and requests for production on August 21, 2019 (Respondent's Answers to Interrogatories and Request for Production, R. p. 101-124). On October 4, 2019, Appellant amended its motion to compel originally directed to other

defendants, to allege deficiencies in Respondents' discovery responses (Appellant's Amended Motion to Compel, R. pp. 311-389).

The motions to compel were heard on January 6, 2020, before Judge Price along with Respondents' motion for summary judgment.

In the colloquy between the court, Appellant's counsel and Respondents' counsel (Transcript, R. p. 856, line 1 – p. 859, line 23), it was developed that the only deficiency alleged against the Respondents was their objection to request for production number 11 which reads as follows:

> "11. Produce a complete, itemized accounting, financial summary of all amounts paid and/or owed to you by any other party to this action for the period January 1, 2015 to present." (Appellant's Request for Production No. 11, R. p. 97)

The Court responded saying "You will get it." (Transcript, R. p. 859, line 23).

Respondents' served their second supplemental responses to request for production on January 16, 2020 (not January 30, 2020, as mistakenly referenced on page 35 of Appellant's Initial Brief), fourteen (14) days prior to Judge Price's order granting summary judgment (Respondent's Second Supplemental Response to Request for Production, R. pp. 676-684). This gave Appellant sufficient time to call to the court's attention any further alleged deficiencies or any other discovery issue that Appellant believed would be relevant before the court's action on the summary judgment motion. At the motion hearing, the court had invited a proposed order from Respondent's counsel, putting Appellant on notice to bring any such matters to the court's attention without delay (Transcript, R. p. 878, lines 12-17).

This is an issue that 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.

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 contends that request for production number 11 would shed light on whether or not a percentage of credit card tips was paid to the franchisor as part of the franchisee's royalties, however, this is not the issue posed in request for production number 11. The request for production asks for documents showing the amounts paid by the other defendants to the franchisor but does not mention documentation regarding credit card tips. Further, the issue of whether credit card tips were included in the calculation of royalties was specifically answered in the negative by Sue Allen in her 30(b)(6) deposition on behalf of Ladles Franchising, Inc.:

> "Q. And so how does the -- so can you tell me about how the individual stores, they pay --it's a royalty fee to you?
>
> A. Yes.
>
> Q. Okay. And how is that determined?
>
> A. It's based -- it's based on the individual store.
>
> Q. Right. The percentage that they pay is based on the individual store.
>
> A. Correct.
>
> Q. But how do you come up with percentage of what is being -- that they pay?

A. Percent of what?

Q. Right. I understand that each store might have a different percentage, but what are they paying a percentage of?

A. They pay on their sales of their product, less any discounts that they wouldn't have received money for, less taxes, and less tips."

(Sue Allen depo., R. p. 809, line 10 – p. 810, line 3).

Appellant had the opportunity to explore the same issue at Teri Owens' deposition, testifying on behalf of Ladles Soup-James Island, LLC. She also answered in the negative (Teri Owens depo., R. p. 762, lines 7-20).

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, the only two (2) witnesses who would have information about the handling of tips allegedly belonging to the Appellant. On page 36 of his brief, Appellant implies that other franchisees were not made available for depositions, however, this issue was never raised before the circuit court and is not a matter over which these Respondents had control.

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 that Appellant advanced no sufficient reason why further discovery might create a genuine issue for trial.

In summary, having failed to even serve written discovery for over nine (9) months after the pleadings were closed, in failing to move the court to continue the summary judgment hearing or invite the court's attention to any supposed deficiencies in Respondents' second supplemental responses prior to the January 30, 2020 order, and 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.

III. THERE IS NO EVIDENCE THAT LADLES FRANCHISING, INC. CONVERTED OR EVEN RECEIVED ANY PORTION OF CREDIT CARD TIPS CLAIMED BY THE APPELLANT

Since Appellant did not work for any Respondent, they had no opportunity to possess credit card tips allegedly intended for him. Of course, Respondents could not convert that which they never possessed.

Appellant therefore cobbles together a disingenuous argument that the Respondents received and converted tips claimed by the Respondent, by arguing a tortured reading of the definition of gross sales in the Franchise Agreement and a confusing misreading of the deposition testimony of Corey Paul. He claims that Ladles Franchising, Inc. came into possession of, and then converted a percentage of credit card tips intended for him equivalent to the royalty fee percentage.

In *Crane v. City Corp. National Services, Inc.*, 313 S.C. 70, 437, S.E. 2nd 50, 52 (1993), the Supreme Court defined conversion as:

> "Conversion is the unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to

> another, to the alteration of the condition or the exclusion of the owner's rights." id. at 437 S.E. 2nd 52.

In *Regions Bank v. Schmauch*, 354 S.C. 648, 582 S.E. 2nd 432 (Ct. App. 2003), the Court of Appeals stated:

> "Conversion may arise by some illegal use or misuse, or by illegal detention of another's personal property. (citation omitted) Conversion is a wrongful act which emanates by either a wrongful taking or wrongful detention." id. at 354 S.C. 667.

Under the Franchise Agreement royalty fees are four percent (4%) of gross sales, although the percentage was negotiable and some franchisees paid less. Gross sales are defined in the Franchise Agreement as:

> "C. Definition of Gross Sales
>
> As used in this Agreement, the term "Gross Sales" shall mean gross sales of all food, beverage, other menu items, merchandise, and goods and other services sold or performed by or for you or the Restaurant, in, upon, or from the Premises, or through or by means of the business conducted at the Restaurant or the Premises whether for cash or credit. Sales and service taxes collected from customers and paid to the appropriate taxing authority, all management or employee meals, and sale of cigars, cigarettes and newspapers as well as income from pay telephones shall not be included in Gross Sales. The discounted portion of menu prices whether by way of coupons, promotions or otherwise shall not be included in Gross Sales." (Franchise Agreement, R. p. 702)

Tips and gratuities are not mentioned in the definition of Gross Dales. No fair reading of the definition of "Gross Sales" can be argued to include tips whether credit card or cash. While Appellant focuses on the phrase "services sold or performed" for the restaurant, this does not include tips. There are many services for which a restaurant may charge a fee that are not tips, such as catering charges, large dining party automatic service charges, and banquet event fees.

Under federal law, restaurant service charges are not considered tips. See 29 CFR Section 531.55. Respondents are unaware of any contrary South Carolina Authority.

In order for even a percentage of tips claimed by the Appellant to have come into Respondent's possession, they would have to have been first collected by his employer, Ladles Soup-James Island, LLC and a portion paid over to Ladles Franchising, Inc. This never happened. Teri Owens, owner of Ladles Soup-James Island, LLC testified referring to her "Square" gross and net, point of sale reports, and directly stated:

> "Q: Ok, when you say that it is in that report, what report are you referring?
>
> A: My Square report. My Square summary report. There is a gross number. There is a net number.
>
> Q: Right and tips are not included in either of those?
>
> A: Tips are included in - - I think they are included in gross, but I am not sure. They are not included in net. Taxes are not included in net because they go directly back out.
>
> Q: So.
>
> A: So no I do not pay the franchise a percentage of the tips."
>
> (Owens depo. R. p. 762, lines 7-20).

In her 30(b)(6) deposition on behalf of Ladles Franchising, Inc., Sue Allen testified consistently.

> "Q: Right, I understand that each store might have a different percentage, but what are they paying a percentage of?
>
> A: They pay on their sales of their product, less any discounts that they wouldn't have received money for, less taxes and less tips."
>
> (Sue Allen depo. R. p. 809, line 23 – p. 810, line 3).

Julie Dyke (Ladles Mt. Pleasant) testified similarly:

> "A: Gross would be we don't pay royalties on our sales tax, which is included in the gross.
>
> Q: Right.

A: So, to me, in my mind that is net. We don't pay royalties to her on tax.

Q: Right and that is actually –

A: So we have our sales and then minus our tax, you know, tips are not included in that. I would not pay her royalties on tips I took in. So that is – to me, is net. So –

Q: And how do you know that tips aren't included in gross sales?

A: Because they're not.

Q: You know it it's not because you don't pay it?

A: Right because I have a report that shows me total sales, discounts tax."

(Julie Dyke depo. R. p. 800, lines 1-17).

In his brief, Appellant chooses not to cite the above referenced deposition testimony, but rather the somewhat confusing testimony of Corey Paul (Appellant's Initial Brief p. 27 and 28). Mr. Paul's confusion was certainly in part induced by the questioner and a double negative question concerning the definition of gross sales in the Franchise Agreement (Corey Paul depo., R. p. 780, line 25 – p. 781, lines 1-3), however, after reviewing his records Paul clarified his testimony as follows:

"Q: Corey, my name is Kerry Koon. I represent Ladles Franchising, Inc., Suzie Allen, Tracy Allen, and Ladlessoups, LLC. My first question is, at least in the case of the West Ashley restaurant under your ownership and the Fort Mill restaurant under your ownership, Ladles Franchising, Inc. does not collect royalties based upon credit cards tips; is that correct?

A: That is correct.

Q: Alright. So that would not be included in the definition of "Gross Sales" as it applies to franchising fees for West

> Ashley under your ownership or Fort Mill under your ownership; is that correct?
>
> A: That is correct."

(Corey Paul depo. R. p. 782, line 19 – p. 783, line 8).

Of course, even if Corey Paul had paid royalties on credit card tips, that would have no relevance to the motion for summary judgment nor provide a scintilla of evidence of conversion. Appellant never worked in Corey Paul's restaurant, so Corey Paul could not have come into possession of tips allegedly intended for Appellant.

IV. THE TRIAL JUDGE PROPERLY DETERMINED THAT APPELLANT HAD NO STANDING TO SUE RESPONDENTS

Pervading all of Appellant's arguments is the undeniable fact that Appellant has no standing to sue parties for whom he has never worked, has not contracted with and who have never collected or possessed tips he claims were intended for him.

The general rule of standing is set out in *Sloan v. Friends of the Hunley*, 369 S.C. 20, 630 S.E. 2nd 474 (2006):

> "Generally, a party must be a real party in interest to the litigation to have standing."

and, a real party in interest is:

> "A party with a real, material or substantial interest in the outcome of the litigation." id. at 369 S.C. 28.

Standing requires a justiciable case or controversy and if not, the court lacks subject matter jurisdiction. See *Lennon v. South Carolina Coastal Council*, 330 S.C. 414, 498 S.E. 2nd 906 (Ct. App. 1998), wherein the Court stated:

> "Another point of departure is that standing acts as an element of the constitutional requirement that there be a 'case or controversy'; when thus applied, it acts as a limitation on the subject matter jurisdiction of the federal courts. In this context, objections to standing, unlike 17(a) objections, cannot be waived and may be

> raised by a federal court." "*sua sponte*" id. at 330 S.C. 417 (citation omitted)
>
> and
>
> "South Carolina courts, like the federal courts, require a justiciable case or controversy before any decision on the merits can be reached." id. at 330 S.C. 417-418.

Two cases directly bear on the facts of this case and foreclose any notion that Appellant has standing to sue anyone other than his actual employer.

In *Bank of America, N.A. v. Draper*, 405 S.C. 214, 746 S.E. 2nd 478 (Ct. App. 2013), the Court of Appeals, quoting from S.C. Jur. Action Section 23 (1991) stated:

> "Rule 17(a) of the South Carolina Rules of Civil Procedure requires that every action be prosecuted 'in the name of the real party in interest'...the South Carolina Rule with respect to the real party in interest requirement is patterned after the comparable Federal Rule, which has been regarded as embodying the concept that an action shall be prosecuted 'in the name of the party who, by the substantive law, has the right sought to be enforced.' " id. at 405 S.C. 220.

and;

> "It is the ownership of the right sought to be enforced which qualifies one as a real party in interest, rather than absolute ownership of specific property." id.

Here, the right Appellant seeks to enforce is the allegation that Ladles Soup-James Island, LLC did not properly handle credit card tips. The lack of employer/employee relationship, or other connection to Respondents means that he owns no right which may be enforced against any party other than his own employer.

The other case directly negating Appellant's standing to sue the Respondents is *Youngblood v. South Carolina Department of Social Services*, 402 S.C. 311, 741 S.E. 2nd 515 (2013).

In *Youngblood*, the Supreme Court recognized two (2) types of standing:

> "Statutory standing exists, as the name implies, when a statute confers a right to sue on a party, and determining whether a statute confers standing is an exercise in statutory interpretation. See id. at 194-95, 728 S.E. 2nd at 44-45; *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 97 In. 2, 118 S. Ct. 1003, 140 Lawyer's Addition L. Ed. 2nd 210 (1996)(stating the issue of statutory standing as 'whether this Plaintiff has the cause of action under the statute')." id. at 402 S.C. 317.

and, as to the second type, or constitutional standing:

> "When no statute confers standing, the elements of constitutional standing must be met. To possess constitutional standing, first, a party must have suffered an injury which is a concrete, particularized, and actual or eminent invasion of a legally protected right." (citations omitted)
>
> "Second, a causal connection must exist between the injury and the challenged conduct. Id. Finally, it must be likely that a favorable decision will redress the injury." id. at 402 S.C. 317-318.

Since Appellant has no statutory standing to sue anyone but his actual employer under Section 41-10-80(C), he must meet all three (3) elements of constitutional standing in order to sue the Respondents.

Even if Appellant could satisfy the first and third elements, the lack of an employer/employee relationship, and the resulting lack of even the opportunity for Respondents to obtain possession of the credit card tips, breaks the chain of causal connection between the alleged wrong and the remedy, as the Respondents could not have directly and proximately caused his tips to be mishandled or converted.

A "casual connection" cannot simply be shifted from Appellant's actual employer onto other parties with whom he had no legal relationship.

Judge Price did not err in determining that Appellant had no standing to sue these Respondents.

CONCLUSION

For the above reasons, Respondents respectfully suggest that Judge Price's Order of January 3, 2020 should be affirmed in its entirety.

Jan 16, 2021

Kerry W. Koon
147 Wappoo Creek Drive, Ste. 203
Charleston, SC 29412
(843) 795-7000
Attorney for Respondents

RECEIVED
Jan 26 2021
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Bentley D. Price, Circuit Court Judge

Appellate Case No. 2020-000399

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

v.

Ladles Soups – James Island, LLC; Ladlessoups, LLC; Ladles Soups at Can 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, Tracy 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),

Of which Ladles Franchising, Inc., Ladlessoups, LLC, Sue Allen and Tracy Allen, Respondents,

---

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that this Final Brief complies with Rule 211(b), S.C.A.C.R.

January 26, 2021

Kerry W. Koon
147 Wappoo Creek Drive, Ste. 203
Charleston, SC 29412
(843) 795-7000
Attorney for Respondents