

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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Feb 08 2021

SC Court of Appeals

APPEAL FROM CHARELSTON COUNTY
Court of Common Pleas

The Honorable Bentley Price, Circuit Court Judge

Gregory
Muxlow.....Appellant,

v.

Ruby Tuesday, KC Mulligan's, St. Ives and Carroll Management
Group.....Respondents.

Appellate Case No. 2020-000129

**RETURN TO RUBY TUESDAY'S RESPONSE TO APPELLANT'S SECOND MOTION
TO AMEND THE RECORD ON APPEAL
AND SUPPLEMENT DESIGNATION OF MATTER**

Ruby Tuesday's response attempts to distract the Court's attention from the obvious problems with the lower court's inconsistent rulings in this case. In short, there are two big problems with Ruby Tuesday's response. First, the lower court granted a 12(b)(6) motion where the appellant stated causes of action where a jury could return a verdict. Second, and more problematic for Ruby Tuesday, the lower court has since entered a judgment based on uncontroverted testimony that proves Ruby Tuesday's culpability. That means that right now, Ruby Tuesday has both been (erroneously) dismissed and vicariously liable for a \$2.2 million judgment against its employee. Ruby Tuesday received notices of the damages hearing where the testimony at issue was given in court, and Ruby Tuesday chose not to attend the hearing or cross-examine the witness.

Ruby Tuesday cannot now try to stretch procedural rules around its decision not to participate in proceedings where its liability was a point of issue. Even if SCACR 209 and 210 somehow prevented this Court from recognizing the problems with the lower court's rulings, this

Court still has “the inherent power to do all things reasonably necessary to insure that just results are reached to the fullest extent possible” pursuant to *Ex parte Dibble*, 310 SE 2d 440 (Ct.App. 1983).

Ruby Tuesday points to the damages hearing taking place several months after the Notice of Appeal was filed, but that does not change the fact that two inconsistent judgments have been entered by the Trial Court, or the fact that Ruby Tuesday chose not to participate in the damages hearing which led to there being inconsistent rulings. Ruby Tuesday did not appear, participate, or most importantly, object. Ruby Tuesday, therefore, waived any argument that Ruby Tuesday is not vicariously liable for its manager’s torts, at least as far as the damages hearing is concerned.

Ruby Tuesday’s reliance on SCACR 209 and 210 is misplaced, and it smacks of a fundamentally unfair endorsement of form over substance. Ruby Tuesday cannot genuinely argue that a judgment in the lower court that leaves it vicariously liable for the torts giving rise to the appeal are irrelevant. And the matter was presented to the lower court, but it was presented after the case was initially dismissed because the case was dismissed prematurely (which is the substance of the appeal already filed). Ruby Tuesday should not benefit from that, especially when it chose not to attend the damages hearing that proves the case should have never been dismissed.

February 8, 2021

Respectfully submitted,

s/ Joshua T. Hawkins
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Appellate Case No.: 2020-000129

PROOF OF SERVICE

I certify that I filed Appellant’s Return to Respondent’s Response to Appellant’s Second Motion to Amend Record on Appeal and Supplement Designation of Matter with the Clerk of Court of the South Carolina Court of Appeals, by electronic filing on February 8, 2021, to ctapfilings@sccourts.org, as well as via U.S. Mail. Additionally, all counsel of record has been served via electronica mail to the following electronic mailing addresses: cgriffin@brblegal.com, jgresh@hallboothsmith.com, emorrison@hallboothsmith.com, lizzilaw@aol.com, lizzilawfirm@aol.com.

February 8, 2021

s/Joshua T. Hawkins

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Jenny Abbot Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

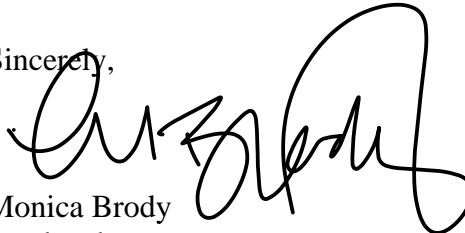
Re: *Gregory Muxlow v. Ruby Tuesday, KC Mulligan's, St. Ives and Carroll Management Group*
Appellate Case No.: 2020-000129

Dear Ms. Kitchings,

Enclosed for filing please find the appellant's Return to Respondent Ruby Tuesday's Response to Appellant's Second Motion to Amend the Record on Appeal and Supplement Designation of Matter.

Should the Court need anything further, please do not hesitate to reach out to our office.

Sincerely,



Monica Brody
Paralegal

Enclosures

CC: electronic mail only:

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