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Jul 28 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

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

MuxlowAppellant,

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 theRespondents.

Appellate Case No. 2020-000129

**RETURN TO SUGGESTION OF BANKRUPTCY
OF DEFENDANT AND NOTICE OF STAY**

On January 27, 2020, Appellant Gregory Muxlow filed this appeal challenging Ruby Tuesday’s dismissal from the suit. The Appellant’s Initial Brief was filed on May 6, 2020. Ruby Tuesday filed their initial brief on June 3, 2020. While the appeal was pending, the action continued against Arnold Harris in the Charleston County Court of Common Pleas.

On January 8, 2021, based upon uncontroverted testimony that Arnold Harris was within the scope of his employment at Ruby Tuesday, the Court entered judgment against Harris for \$2,200,000.00. Neither Ruby Tuesday nor its insurer, Travelers Excess & Surplus Line Company, appeared at the hearing, despite the Court’s electronic notice of the hearing. On January 21, 2021,

the Appellant filed his Second Motion to Amend Record on Appeal and Supplement Designation of Matter to allow the transcript from the damages hearing to enter the appellate record since the dismissal of Ruby Tuesday and the judgment against Ruby Tuesday's employee are inconsistent. Ruby Tuesday filed a Return to Second Motion to Amend Record on January 29, 2021. Appellant replied to Ruby Tuesday's Return on February 8, 2021, and this Court granted the Motion on February 26, 2021. Unbeknownst to Appellant's counsel and to this Honorable Court, Ruby Tuesday was in the midst of bankruptcy proceedings. Neither Appellant nor this Court were aware of the bankruptcy proceeding because neither Ruby Tuesday nor Travelers ever communicated the fact that Ruby Tuesday was in bankruptcy.

On October 7, 2020, several months before the damages hearing and Ruby Tuesday's submission of its return to Appellant's motion, Ruby Tuesday filed for Voluntary Chapter 11 Bankruptcy in the United States Bankruptcy Court for the District of Delaware. On October 22, 2020, the United States the Delaware Bankruptcy Court issued an Order Setting Bar Date for filing proofs of claims. The Bar Date set forth in the Order was listed as April 5, 2021. The appellant did not learn of Ruby Tuesday's pending bankruptcy until March 30, 2021, when Ruby Tuesday's counsel sent Appellant's counsel a letter. On May 28, 2021, Appellant received an email from counsel in Delaware after the Bar Date had passed. This, of course, means that Ruby Tuesday participated in litigation and an appeal for months after it filed for bankruptcy.

Throughout the course of litigation, counsel for Ruby Tuesday refused to provide relevant information, including the pending bankruptcy and, despite multiple efforts, insurance information. After learning of Ruby Tuesday's Bankruptcy from its Delaware counsel, research by Appellant's counsel revealed several insurance policies that were required by the Bankruptcy Court to be produced to it. As a result of this learned information, Appellant's counsel filed an

Offer of Judgment as to Travelers, one of Ruby Tuesday's insurance carriers, for \$1,000,000.000 on July 9, 2021 (much less than both the policy, minus the self-insured amount, and the \$2,200,000.00 judgment entered against Ruby Tuesday's manager). So far, Travelers has made no effort to file an acceptance of the offer.

On July 23, 2021, *nine months after Ruby Tuesday voluntarily filed for bankruptcy*, Respondent's counsel for the appeal in South Carolina filed a Suggestion of Bankruptcy of Defendant and Notice of Stay in the South Carolina Court of Appeals. Despite the nine-month lapse from the time Ruby Tuesday filed for bankruptcy in October 2020, until its Suggestion of Bankruptcy filed in July 2021, the respondent vigorously defended subsequent appellate motions and willfully refused to alert appellant's counsel and this Court, despite its knowledge of bankruptcy. It was only after the Appellate Court granted a motion that indicated the dismissal of Ruby Tuesday may be affected that Ruby Tuesday mentioned bankruptcy. Additionally, to date, counsel for Ruby Tuesday has still refused to provide any insurance information.

On July 26, 2021, Appellant filed a Declaratory Judgment Action in Greenville County. This Action asks the Court to rule on whether, because of uncontroverted evidence from the damages hearing that Arnold Harris acted as a Ruby Tuesday employee and used his position when he contributed to Jennifer's death, Harris qualifies as an insured under the Travelers policy and if Travelers must pay the judgment entered against Harris since he likely qualifies as an insured under the Travelers policy. Ruby Tuesday is likely liable for its negligent hiring and supervision, and Appellant believes this appeal will also result in a reversal of the dismissal of Ruby Tuesday for that reason. Again, Appellant did not name Ruby Tuesday in order to comply with the Delaware Bankruptcy Court's Order.

The Appellate Court has entered a stay of this action during bankruptcy proceedings, and in the meantime, Appellant is making efforts to obtain local counsel and file an appropriate motion with the United States Bankruptcy Court for the District of Delaware. The appellant continues to work toward obtaining the transcript from the damages hearing and will submit that transcript to the Appellate Court. It is the appellant's understating that the court reporter formerly employed with the Charleston County Court absconded with several transcripts, including the one at issue, and the Court is in the process of retrieving those transcripts through the legal process.

July 28, 2021

Respectfully submitted,

s/Joshua T. Hawkins

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Jack G. Gresh,
Elizabeth Fulton Morrison
Hall Booth Smith, PC
Attorney for Respondent Carroll Management Group

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Of Whom Ruby Tuesday, KC Mulligan's, ARIUM St. Ives, and Carroll Management Group are theRespondents.

Appellate Case No. 2020-000129

PROOF OF SERVICE

I certify that I filed Appellant's Return to Suggestion of Bankruptcy Of Defendant and Notice of Stay, with the Clerk of Court of the South Carolina Court of Appeals, by electronic filing on July 19, 2021, to ctapfilings@sccourts.org. Additionally, all counsel of record has been served via electronic mail to the following electronic mailing addresses: cgriffin@brblegal.com, jgresh@hallboothsmith.com, emorrison@hallboothsmith.com, lizzilaw@aol.com, lizzilawfirm@aol.com.

July 28, 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 Suggestion of Bankruptcy of Defendant and Notice of Stay, along with a Proof of Service.

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:

Catharine Griffin
Baker Ravenel Bender
Attorney for Respondent Ruby Tuesday

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Lizzi Law Firm, PC
Attorney for Respondent KC Mulligan's

Jack G. Gresh,
Elizabeth Fulton Morrison
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