

**RECEIVED**

**Jan 10 2022**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

The Honorable Bentley Price, Circuit Court Judge

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Appellate Case No. 2020-000129

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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,

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**RUBY TUESDAY’S UPDATE REGARDING  
THE STATUS OF THE BANKRUPTCY ACTION AND MOTION FOR LEAVE TO  
LIFT AUTOMATIC STAY TO FILE MOTION TO CLARIFY JANUARY 8, 2021 FORM  
4 ORDER IN UNDERLYING ACTION**

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On July 23, 2021, Ruby Tuesday filed a Suggestion of Bankruptcy and Notice of Stay in  
this court. In response to the filing, the court issued its order dated July 27, 2021 stating that the  
appeal was held in abeyance due to the bankruptcy and that Ruby Tuesday must provide updates  
regarding the status of the bankruptcy action every sixty (60) days or the appeal will be allowed  
to proceed. This filing serves to inform the court of the Order Approving Stipulation Providing  
Gregory Muxlow, Individually and as Personal Representative of the Estate of Jennifer Muxlow,

Relief from the Automatic Stay, attached as Exhibit A, that was entered by the United States Bankruptcy Court for the District of Delaware on December 10, 2021. This Order approves a stipulation that allows the above-referenced appeal to proceed. Therefore, Ruby Tuesday, Inc. respectfully requests that this Court lift the order holding this appeal in abeyance.

In the event this Court lifts the stay of the appeal, and in light of certain events that have arisen during its abeyance, Ruby Tuesday, Inc. also moves pursuant to Rule 241(c), SCACR for an order lifting the automatic stay of Rule 241(a), SCACR solely to grant Ruby Tuesday, Inc. leave under Rule 60, SCRCR to file the attached motion to correct or clarify the Honorable Bentley D. Price's January 8, 2021 Form 4 order. (Exhibit B). The January 8, 2021 Form 4 order is not the order that is the subject of this appeal. The order was issued by the lower court **after** Ruby Tuesday, Inc. was dismissed from the underlying suit pursuant to the Honorable Bentley D. Price's January 22, 2022 Amended Order Granting Ruby Tuesday Inc.'s Motion to Dismiss and Motion for Judgment on the Pleadings and this appeal was filed.

The January 8, 2021 Form 4 order relates to a judgment following a default damages hearing against another party, Defendant Arnold Harris. Appellant was granted leave to add the order to the Record on Appeal over Ruby Tuesday, Inc's objection by this Court's February 26, 2021 Order, which specifically stated: "The panel assigned to this appeal can determine the extent to which the documents included in the second supplemental record should be considered when reviewing the merits of the appeal."

Ruby Tuesday, Inc. believes that it is necessary to file a motion to correct or clarify the January 8, 2021 Form 4 Order because Appellant's counsel is misrepresenting the contents and effect of the Form 4 Order in a way that directly contradicts the holdings in the Honorable Bentley D. Price's prior January 22, 2020 Amended Order in an attempt to hold Ruby Tuesday,

Inc. vicariously liable for the judgment against Arnold Harris. These representations are made despite the lower court's specific finding in the January 22, 2020 order that Ruby Tuesday, Inc. was not vicariously liable for his actions. Appellant's counsel has represented to this Court that he believes the January 8, 2021 Form 4 order is inconsistent with the January 22, 2020 order in his Return to Ruby Tuesday's Response to the Second Motion to Amend the Record, stating:

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.

As detailed in the attached motion, while this appeal was held in abeyance Appellant's counsel also filed a declaratory judgment action in Greenville County containing additional misrepresentations regarding the January 8, 2021 Form 4 Order in an attempt to hold Ruby Tuesday, Inc. vicariously liable for Arnold Harris's actions. Given these repeated assertions by Appellant's counsel and in the interests of justice, Ruby Tuesday, Inc. believes that the lower court should be aware of how the January 8, 2021 Form 4 Order is being represented as inconsistent with the January 22, 2020 Amended Order and provided with the opportunity to correct and/or clarify the January 8, 2021 Form 4 Order. Therefore, Ruby Tuesday, Inc. respectfully requests leave to lift the automatic stay solely to file the attached Motion to Correct or Clarify Order in the underlying action.

**BAKER, RAVENEL & BENDER, LLP**

/s/ Catharine Garbee Griffin

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*Attorneys for Defendant Ruby Tuesday, Inc.*

January 10, 2022

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

RTI HOLDING COMPANY, LLC, *et al.*,<sup>1</sup>

Reorganized Debtors.

Chapter 11

Case No. 20-12456 (JTD)

(Jointly Administered)

**Re: D.I. 1917**

**ORDER APPROVING STIPULATION PROVIDING GREGORY MUXLOW,  
INDIVIDUALLY AND AS REPRESENTATIVE OF THE ESTATE OF JENNIFER  
MUXLOW, RELIEF FROM THE AUTOMATIC STAY AND THE PLAN INJUNCTION  
NUNC PRO TUNC EFFECTIVE OCTOBER 7, 2020**

Upon the *Certification of Counsel Requesting Entry of Order Approving Stipulation Providing Gregory Muxlow Individually and as Personal Representative of the Estate of Jennifer Muxlow, Relief from the Automatic Stay and the Plan Injunction Nunc Pro Tunc Effective October 7, 2020* (the “Certification of Counsel”) and the *Stipulation Providing Gregory Muxlow Relief from the Automatic Stay and the Plan Injunction* (the “Stipulation”) <sup>2</sup> by and between Ruby Tuesday Operations LLC (“RTO”), successor-in-interest to Ruby Tuesday, Inc. (“RTI”), pursuant to the *Debtors’ Second Amended Chapter 11 Plan, as Modified* [D.I. 1135] (the “Plan”) and one of the reorganized debtors (the “Debtors” or “Reorganized Debtors”), and Gregory Muxlow (“Muxlow” and, together with the Reorganized Debtors, the “Parties”) attached hereto as **Exhibit**

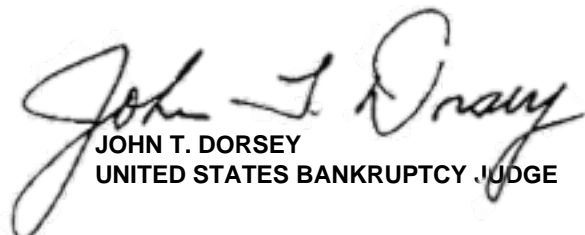
<sup>1</sup> The Reorganized Debtors in these chapter 11 cases and the last four digits of each Reorganized Debtor’s U.S. tax identification number are as follows: RTI Holding Company, LLC (4966) and Ruby Tuesday, Inc. (5239). On August 26, 2021, the Court entered an order closing certain chapter 11 cases of RTI Holding Company, LLC’s debtor affiliates, all of which were direct or indirect subsidiaries of RTI Holding Company, LLC (collectively, the “Subsidiary Debtors”). *See* D.I. 1667. A complete list of the Subsidiary Debtors, along with the last four digits of their federal tax identification numbers, can be found at the following web address: <https://dm.epiq11.com/case/rubytuesday>. The Reorganized Debtors’ mailing address is 216 East Church Avenue, Maryville, TN 37804.

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Stipulation.

**1**; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Stipulation in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found (i) the Reorganized Debtors are charged with the right and responsibility to object to Claims and Equity Interests and resolve any such objections subject to the oversight and reasonable consent rights of the Plan Administrator, (ii) that the Plan Administrator has consented to approval of the Stipulation, and (iii) that the Debtors' notice of the Stipulation and opportunity for hearing (if any) on the Stipulation were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Stipulation; and this Court having determined that the legal and factual bases set forth in the Stipulation establish cause for the relief granted herein; and upon all the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is **HEREBY ORDERED THAT**:

1. The Stipulation is **APPROVED** in its entirety.
2. The Stipulation shall be effective immediately upon entry of this Order.
3. The Parties are authorized to take all actions necessary to effectuate the relief granted in this Order and to consummate the Stipulation.
4. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order and the Stipulation.

**Dated: December 10th, 2021  
Wilmington, Delaware**

  
**JOHN T. DORSEY  
UNITED STATES BANKRUPTCY JUDGE**

**EXHIBIT 1**

**(Stipulation)**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

RTI HOLDING COMPANY, LLC, *et al.*,<sup>1</sup>

Reorganized Debtors.

Chapter 11

Case No. 20-12456 (JTD)

(Jointly Administered)

**STIPULATION PROVIDING GREGORY MUXLOW, INDIVIDUALLY AND AS  
PERSONAL REPRESENTATIVE OF THE ESTATE OF JENNIFER MUXLOW  
LIMITED RELIEF FROM THE AUTOMATIC STAY AND THE PLAN INJUNCTION  
NUNC PRO TUNC EFFECTIVE OCTOBER 7, 2020**

Ruby Tuesday Operations LLC (“RTO”), successor-in-interest to Ruby Tuesday, Inc. (“RTI”) pursuant to the *Debtors’ Second Amended Chapter 11 Plan, as Modified* [D.I. 1135] (the “Plan”) and one of the reorganized debtors herein (the “Debtors” or “Reorganized Debtors”), and Gregory Muxlow, individually and as the Personal Representative of the Estate of Muxlow, (“Muxlow” and, together with the Reorganized Debtors, the “Parties”) hereby stipulate and agree as follows:

**WHEREAS**, on October 7, 2020 (the “Petition Date”), the Debtors filed voluntary petitions for relief in the United States Bankruptcy Court for the District of Delaware (the “Court”) under Title 11 of the United States Code (the “Bankruptcy Code”).

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<sup>1</sup> The Reorganized Debtors in these chapter 11 cases and the last four digits of each Reorganized Debtor’s U.S. tax identification number are as follows: RTI Holding Company, LLC (4966) and Ruby Tuesday, Inc. (5239). On August 26, 2021, the Court entered an order closing certain chapter 11 cases of RTI Holding Company, LLC’s debtor affiliates, all of which were direct or indirect subsidiaries of RTI Holding Company, LLC (collectively, the “Subsidiary Debtors”). See D.I. 1667. A complete list of the Subsidiary Debtors, along with the last four digits of their federal tax identification numbers, can be found at the following web address: <https://dm.epiq11.com/case/rubytuesday>. The Reorganized Debtors’ mailing address is 216 East Church Avenue, Maryville, TN 37804.

**WHEREAS**, on February 17, 2021, the Court entered the *Findings of Fact, Conclusions of Law, and Order Confirming the Debtors' Second Amended Chapter 11 Plan, as Modified* [D.I. 1144] (the "Confirmation Order"), thereby confirming the *Debtors' Second Amended Chapter 11 Plan, as Modified* [D.I. 1135] (the "Plan");<sup>2</sup>

**WHEREAS**, on February 24, 2021, the Effective Date of the Plan occurred and the Debtors emerged from their chapter 11 cases. *See* D.I. 1163.

**WHEREAS**, under the Plan, the Reorganized Debtors are charged with the right and responsibility to object to Claims and Equity Interests and resolve any such objections subject to the oversight and reasonable consent rights of the Plan Administrator. *See* Plan Art. VII.C.1.

**WHEREAS**, on April 24, 2019, Gregory Muxlow initiated litigation against Ruby Tuesday, Inc., among others, in the State of South Carolina, Greenville County styled as *Gregory Muxlow, individually and as Personal Representative of the Estate of Jennifer Muxlow v. Ruby Tuesday, Inc., Natasha Anglin, Henrietta Benson, Donita Failey, Arnold Harris, Yokeema Harris, KC Mulligan's, ARIUM St. Ives, Carroll Management Group, South Carolina Department of Transportation, City of North Charleston, Charleston County* Case No. 2019-CP-10-04193 (the "State Court Action") on account of the wrongful death of Jennifer Muxlow. Venue of the State Court Action was later transferred to the Court of Common Pleas, Charleston Division (the "South Carolina CCP"). On January 22, 2020, the South Carolina CCP entered an Order and Amended Order dismissing RTI from the State Court Action, which decision Muxlow appealed to the State of South Carolina Court of Appeals (the "State Appeals Court") styled as *Gregory Muxlow, et al. v. Natasha Anglin, et al.*, Appellate Case No. 2020-000129) (the "Muxlow Appeal").

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<sup>2</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Plan.

**WHEREAS**, the Muxlow Appeal remains pending but has been stayed by the State Appeals Court on account of the Debtors' Chapter 11 cases.

**WHEREAS**, Muxlow did not receive the Bar Date Notice or other notice of the Bar Date Order and therefore did not file a timely proof of claim.

**WHEREAS**, on September 24, 2021, Muxlow filed a proof of claim asserting a general unsecured claim in the amount of \$500,000.00 [Claim No. 11163] (the "Muxlow Claim").

**WHEREAS**, the Parties have engaged in good faith negotiations to resolve this matter and the Muxlow Claim, and the Parties desire to memorialize their agreement with respect thereto; and

**WHEREAS**, the Reorganized Debtors have determined that the compromise set forth herein is fair, reasonable, and in the best interests of the Reorganized Debtors, the Reorganized Debtors' estates, and their creditors, and the terms and conditions set forth herein are fair, reasonable, and consistent with the Bankruptcy Code and Plan.

**WHEREAS**, the Reorganized Debtors have consulted with the Plan Administrator and obtained the Plan Administrator's consent to approval of this Stipulation.

**NOW, THEREFORE**, for good and valuable consideration, subject to the Court's approval, the Parties hereby stipulate and agree as follows:

1. The foregoing recitals are hereby incorporated by reference into this Stipulation.
2. The Parties acknowledge and agree that this Stipulation is subject to the approval of the Court. The Parties further acknowledge and agree that if this Stipulation is not approved in the form executed by the Parties: (a) the arrangement contemplated herein shall be null and void and of no effect; (b) nothing contained in this Stipulation shall be deemed an admission of liability or culpability on behalf of any Party; and (c) this Stipulation shall not be construed to support the validity of any claim, defense or contention made or asserted by or against any Party.

3. Muxlow, individually and as the personal representative of the Estate of Jennifer Muxlow, shall be granted relief from the automatic stay pursuant to section 362(d) of the Bankruptcy Code, to the extent applicable (the “Automatic Stay”), and the injunctions set forth in Article X.E. of the Plan and paragraph 21 of the Confirmation Order (the “Plan Injunction”), to the extent applicable, *nunc pro tunc* to the Petition Date, October 7, 2020,

- a. to proceed with the Appeal and, if necessary, the State Court Action for the sole purpose of liquidating to judgment by entry of a final nonappealable order (a “Final Judgment”) entered by the State CCP Court, the State Appeals Court or any other court of competent jurisdiction, which Final Judgment shall determine for all purposes the amount of any Claim held by Muxlow against the Debtors’ Estates;
- b. to collect any judgment from the proceeds of any applicable insurance coverage, provided that: (a) nothing contained herein shall be deemed a waiver of any rights or defenses to coverage of any insurer under any insurance policies issued to the Debtors and/or Reorganized Debtors that may be implicated by the Appeal and/or the State Court Action; (b) nothing herein shall be deemed or interpreted to expand the insurance coverage or applicability of such coverage that may be available with respect to the Appeal and/or State Court Action; and (c) any self-insured retention provisions of any such insurance policies shall remain in full force and effect, provided that the Reorganized Debtors’ estates shall have no obligation under any of the insurance policies to spend any money or incur any cost in defense of the Appeal and/or State Court Action.

4. The Muxlow Claim shall be treated as a Disputed Claim under the Plan unless and until entry of a Final Judgment.

5. Any Claim determined to be held by Muxlow pursuant to entry of a Final Judgment shall be treated as a Class 4 general unsecured claim under the Plan.

6. In the event (i) the dismissal of RTI from the State Court Action is affirmed by final nonappealable order, or (ii) upon entry of a Final Judgment determining the amount of any Claim held by Muxlow against any of the Debtors is \$0.00, then the Muxlow Claim shall be deemed disallowed in full.

7. Within 10 days of this Stipulation being approved by the Court, the Reorganized Debtors shall establish an appropriate reserve for the potential payment of the Muxlow Claim in accordance with Article VII.B.3. of the Plan.

8. Other than as set forth herein, the Automatic Stay and the Plan Injunction each shall remain in full force and shall not be modified. Without limitation of the foregoing, the Automatic Stay and the Plan Injunction each shall remain in full force with respect to any third party actions that may be or that might otherwise have been asserted against any Reorganized Debtors in connection with the State Court Action and/or Appeal.

9. Muxlow shall not directly or indirectly seek to compel any of the Reorganized Debtors to pay any deductible, any retainage, or any other amount for or on account of any insurance carrier, provider, broker, or policy.

10. Nothing herein (i) alters, amends or otherwise modifies the terms and conditions of any insurance policies issued to the Debtors and/or Reorganized Debtors or of any related agreements; (ii) relieves the Debtors and/or Reorganized Debtors of any obligations to pay any retentions or to pay (or reimburse an insurer for) any deductibles; (iii) relieves the Debtors and/or

Reorganized Debtors of any of their other obligations under the insurance policies and related agreements; (iv) creates or permits a direct right of action by Muxlow against any of the Debtors and/or Reorganized Debtors' insurers; (v) precludes or limits, in any way, the rights of any insurer to contest and/or litigate the existence, primacy and/or scope of available coverage under any allegedly applicable policy or to otherwise assert any defenses to coverage; (vi) constitutes a determination or admission that coverage exists with respect to Muxlow's claims; (vii) relieves Muxlow from his obligation, if any, to file a proof of claim or (viii) alters, amends, modifies or limits any obligation of any insurer under any insurance policy issued to the Debtors and/or Reorganized Debtors.

11. Except as otherwise expressly set forth herein, nothing contained herein shall alter, expand or in any way affect the parties' respective rights under the Bankruptcy Code and other applicable law.

12. Except for claims and obligations arising from or preserved under this Stipulation, upon approval of this Stipulation by the Bankruptcy Court, the Parties and their successors and assigns, hereby mutually release each other, including each other's agents, servants, officers, directors, employees, shareholders, parents, subsidiaries, affiliates, attorneys, insurers, successors and assigns, from any and all matters, claims, complaints, charges, demands, damages, causes of action, debts, liabilities, controversies, judgments and suits of every kind and nature related to the Muxlow Claim, the Appeal and the State Court Action, and the Parties respectively agree to immediately release any and all such claims and take any and all further actions to release such claims and fully and finally settle such debts. Notwithstanding the release contained herein, this Stipulation is without prejudice to the rights, claims and defenses, if any, of the entities that are party to the action styled as *Gregory Muxlow, as Personal Representative of the Estate of Jennifer*

*Muxlow vs. Safety National Insurance and Arnold Harris*, Cast No. 2021-CP-23-03524 pending in the Court of Common Pleas for the State of South Carolina, County of Greenville.

13. Epiq Corporate Restructuring, LLC is hereby authorized and directed to update the official claims register to reflect the relief granted by this Stipulation and the Order.

14. This Stipulation contains the entire agreement between the Parties and represents the Parties' mutual understandings. This Stipulation supersedes all prior arrangements, whether in oral or written form, related to the Muxlow Claim, the Appeal and the State Court Action.

15. This Stipulation shall be binding on and inure to the benefit of the Parties and their respective heirs, executors, administrators, successors, and permitted assigns.

16. The Parties are authorized to take all actions necessary to effectuate the relief set forth in this Stipulation.

17. Each Party agrees to bear its own costs, expenses, and attorneys' fees incurred in connection with the negotiations related to and preparation of this Stipulation and to not seek from each other reimbursement of any such costs, expenses, or attorneys' fees.

18. The Court shall have exclusive jurisdiction to resolve any and all disputes arising from or related to this Stipulation. Each of the Parties irrevocably consents for all purposes of this Stipulation to the jurisdiction of the Court and agrees that venue is proper in the Court.

19. This Stipulation shall be effective and enforceable for all purposes immediately upon the Court's entry of the Order.

20. The Parties do each represent to the other that they have taken all actions necessary and have full authority to enter into this Stipulation.

**WHEREFORE** and in agreement herewith, by and through their undersigned counsel, the Parties have executed this Stipulation as of the date set forth below.

Dated: December 10, 2021  
Wilmington, Delaware

**ASHBY & GEDDES, P.A.**

*/s/ Gregory A. Taylor*

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Gregory A. Taylor (DE Bar No. 4008)  
Katharina Earle (DE Bar No. 6348)  
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*Counsel for the Post-Confirmation  
Reorganized Debtors*

**SCHNADER HARRISON SEGAL & LEWIS,  
LLP**

*/s/ Kristi J. Doughty*

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And

**HAWKINS & JEDZINIAK, LLC**

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*Counsel for Gregory Muxlow, Individually and as  
Representative of the Estate of Jennifer Muxlow*

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	CASE No.: 2019-CP-10-04193
	)	
Gregory Muxlow, individually and as	)	
Personal Representative of the Estate of	)	
Jennifer Muxlow,	)	
	)	
	)	<b>DEFENDANT RUBY TUESDAY, INC.’s</b>
Plaintiff,	)	<b>MOTION</b>
	)	<b>TO CORRECT OR CLARIFY ORDER</b>
v.	)	
	)	
Natasha Anglin, the Personal	)	
Representative of the Estate of 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, and Charleston	)	
County,	)	
	)	
Defendants.	)	

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Defendant, Ruby Tuesday, Inc., by and through its undersigned attorney, hereby moves pursuant to Rule 60(b)(3), SCRCF for an order clarifying or correcting the Honorable Bentley D. Price’s January 8, 2021 Form 4 order granting Plaintiff’s Motion for Damages against Arnold Harris, attached as Exhibit A. As evidenced by filings made by Plaintiff’s counsel in the South Carolina Court of Appeals and the Greenville County Court of Common Pleas, Plaintiff’s counsel is making misrepresentations regarding the effect of this Form 4 order that are inconsistent with the Honorable Bentley D. Price’s prior January 22, 2020 Amended Order Granting Ruby Tuesday Inc.’s Motion to Dismiss and Motion for Judgment on the Pleadings, attached as Exhibit B.

Judge Price’s January 22, 2020 Amended Order specifically held that the “Amended Complaint contains absolutely no allegations that Defendant Harris was acting in the course and

scope of his employment with Ruby Tuesday or that he was even still employed at Ruby Tuesday when he committed the alleged acts on November 20, 2018.” Furthermore, South Carolina considers intentional torts outside the course and scope of employment.” (Exhibit B, p. 9). The January 22, 2020 order also specifically states: “This Court finds that there is no factual allegation to support the vicarious liability claim against Ruby Tuesday. The plaintiff’s allegations wholly support that this was a private relationship between two consenting adults and the actions alleged to have been done by Harris were not within the course and scope of his employment with Ruby Tuesday.” (Exhibit B, p. 8) The order dismissed the Amended Complaint against Ruby Tuesday, Inc. with prejudice.

Plaintiff appealed the January 22, 2020 order on January 24, 2020.<sup>1</sup> On January 21, 2021, almost a year after the appeal was filed and months after final briefs were submitted, Plaintiff’s counsel filed a Second Motion to Amend Record on Appeal and Supplement Designation of Matter. In this motion, attached as Exhibit C, Plaintiff’s counsel sought to add the January 8, 2021 Form 4 Order to the record on appeal. This order was entered nearly a year after Ruby Tuesday, Inc. was dismissed from the lawsuit after a damages hearing was held following the default of Defendant Arnold Harris. Plaintiff’s counsel represented to the Court of Appeals that:

On January 8, 2021, the lower court entered judgment against Ruby Tuesday employee Arnold Harris in the amount of \$2,200,000. Because uncontroverted evidence was presented to the Court that Harris acted in the scope and course of his Ruby Tuesday employment when he contributed to the death of Jennifer Muxlow, Ruby Tuesday’s liability has been conclusively established. Since Ruby Tuesday’s liability has now

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<sup>1</sup> The appeal is currently pending in the South Carolina Court of Appeals but has been held in abeyance given the bankruptcy of Ruby Tuesday, Inc. The United States Bankruptcy Court for the District of Delaware issued an order allowing Plaintiff to proceed with the appeal in December and Defendant has requested that the Court of Appeals lift the abeyance order and for leave to file this motion, to the extent it is required by Rule 60(b), SCRPC, by motion on January 10, 2021.

been legally established in the lower court, Ruby Tuesday should not have been dismissed, and this appeal should not have become necessary.

(Exhibit C). This motion also describes the January 8, 2021 Form 4 order as “the judgment against the Ruby Tuesday employee who acted in the scope and course of his employment when he caused the damage giving rise to the underlying action.” (Exhibit C). Ruby Tuesday’s response to this motion is attached as Exhibit D.

On February 8, 2021 Plaintiff’s counsel filed a Return to Ruby Tuesday’s Response with the Court of Appeals, attached as Exhibit E. In this filing, Plaintiff’s counsel states:

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.

(Exhibit E). These misrepresentations regarding Judge Price’s January 8, 2021 Form 4 order, an order that was entered after a default damages hearing and includes no factual findings regarding Mr. Harris’s employment, directly contradict Judge Price’s January 22, 2021 Amended Order dismissing the Amended Complaint and finding no factual allegations to support the vicarious liability of Ruby Tuesday, Inc. The January 22, 2021 Amended Order specifically found that Defendant Harris was not acting within the course and scope of his employment at the time of the accident and that Ruby Tuesday was not vicariously liable for his actions. (Exhibit B, p. 8)

On October 12, 2021 counsel for Plaintiff also filed an Amended Summons and Complaint in Greenville County in a declaratory judgment action containing additional misrepresentations regarding the January 8, 2021 Form 4 Order. A copy of this complaint is attached as Exhibit F and includes the following allegation: “On January 8, 2021, based upon

uncontroverted testimony that Arnold Harris acted as a Ruby Tuesday employee and used his position with Ruby Tuesday when he contributed to Jennifer's death, the Charleston County Court of Common Pleas entered judgment against Arnold Harris and another defendant for \$2,200,000.00."

In light of the continued representations by Plaintiff's counsel to various courts regarding the basis for and effect of the January 8, 2021 Form 4 order that contradict the specific rulings in this court's prior January 22, 2020 Amended Order, Defendant respectfully requests that this Court issue an order to correct or clarify the January 8, 2021 Form 4 order to reflect that the order only determines the liability of Defendant Arnold Harris for damages and does not include any finding that Defendant Arnold Harris was acting within the course and scope of employment with Ruby Tuesday, Inc. or that Ruby Tuesday, Inc. was vicariously liable for his actions.

I hereby certify that consultation for the purpose of attempting to resolve the matter contained in this motion would serve no useful purpose.

s/Catharine Garbee Griffin  
Catharine Garbee Griffin  
SC Bar No.: 9821  
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Phone (803) 799-9091; Fax: (803) 779-3423  
E-Mail: [cgriffin@brblegal.com](mailto:cgriffin@brblegal.com)  
*Attorneys for Defendant Ruby Tuesday, Inc.*

January 10, 2022

Gregory Muxlow et al  
PLAINTIFF(S)

Arnold Harris et al  
DEFENDANT(S)

**DISPOSITION TYPE (CHECK ONE)**

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (*CHECK REASON*):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  
 Other
- ACTION STRICKEN (*CHECK REASON*):**  Rule 40(j), SCRPC;  Bankruptcy;  
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (*CHECK APPLICABLE BOX*):**  
 Affirmed;  Reversed;  Remanded;  
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**IT IS ORDERED AND ADJUDGED:**  See attached order (formal order to follow)  Statement of Judgment by the Court:

Plaintiff's Motion for Damages is granted against Arnold Harris and Yokeema Harris in the following amounts: \$1 Million as to wrongful death, \$1 Million as to the survival action and \$200,000 in punitive damages. A Form 4C will be issued along with this Form 4 to enforce the judgment amounts.

**ORDER INFORMATION**

This order  ends  does not end the case.  See Page 2 for additional information.

**For Clerk of Court Office Use Only**

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 01/08/2021 .

Arnold Harris for Arnold Harris  
Yokeema Harris for Yokeema Harris  
Arnold Harris for Arnold Harris  
Benson, Henrietta Estate of  
Anglin, Natasha Personal Representative  
Yokeema Harris for Yokeema Harris

**NAMES OF TRADITIONAL FILERS SERVED BY MAIL**

**Court Reporter:**

**E-Filing Note:** The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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Charleston Common Pleas

**Case Caption:** Gregory Muxlow , plaintiff, et al VS Natasha Anglin , defendant, et al

**Case Number:** 2019CP1004193

**Type:** Order/Electronic Form 4

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766



the personal representative of the Estate of Jennifer Muxlow. Based on the pleadings, the memorandum filed by Ruby Tuesday's in support of its Motion to Dismiss and Motion for Judgment on the Pleadings, the responses filed by Plaintiff in opposition to the motion to dismiss, and the arguments presented at the hearing, this Court hereby amends its Form 4 Order and sets forth its reasoning for granting Ruby Tuesday's Motion to Dismiss and Motion for Judgment on the Pleadings.

### **PROCEDURAL HISTORY**

The plaintiff initiated this action on April 24, 2019 in Greenville County. Ruby Tuesday filed a Motion to Dismiss and a Motion for Judgment on the Pleadings in response to the initial Complaint. Thereafter, the plaintiff amended his Complaint and filed the Amended Complaint on July 18, 2019. Ruby Tuesday responded to the Amended Complaint by filing again its Motion to Dismiss and Motion for Judgment on the Pleadings. During the pendency of the initial Complaint and before the filing of the Amended Complaint, K.C. Mulligans, the South Carolina Department of Transportation, the City of North Charleston, and Charleston County moved to transfer venue to Charleston County.

The Honorable Edward W. Miller held a hearing on July 23, 2019, granted the Motion to Transfer Venue to Charleston County, and ruled that all of the pending motions, including the motions filed by Ruby Tuesday, would be considered by the court in Charleston County. Thereafter, all of the pending motions were heard by this Court on January 10, 2020. This Court granted Ruby Tuesday's Motion to Dismiss and Motion for Judgment on the Pleadings, granted ARIUM and Carroll Management's Motion to Dismiss, and granted K.C. Mulligan's Motion to Dismiss in a Form 4 Order filed on January 13, 2020.

## FACTS

Plaintiff Gregory Muxlow filed this action in his individual capacity and as the Personal Representative of the Estate of Jennifer Muxlow. The action arises out of an automobile accident which occurred on the night of November 20, 2018 when Ms. Muxlow was struck by a vehicle operated by the Defendant Anglin while crossing Highway 52 on foot in Charleston, South Carolina. Ms. Muxlow died as a result of the injuries she sustained in the car accident.

The complaint alleges claims against a number of individuals and entities, including Ruby Tuesday. Plaintiff alleges that Jennifer Muxlow was a server at the Ruby Tuesday location on Northside Drive in Charleston beginning in August of 2016. Plaintiff also alleges that during all times of her employment, Ruby Tuesday had a company policy against managers dating subordinates and prohibiting “verbal abuse”, “offensive or abusive physical contact ... unwelcome touches or other unwelcome physical contact, whether on or off company property, whether on or off duty, or in conjunction with work in any way.” Despite this policy, Plaintiff alleges that Defendant Harris, the manager of the Northside Drive Ruby Tuesday location, pursued a “romantic relationship” with Ms. Muxlow. Plaintiff further alleges that Defendant Harris became “verbally, psychologically, and physically” abusive to Ms. Muxlow. Defendant Harris also allegedly took her car without permission and used the car to meet other women for sexual relations and to buy and sell illegal drugs.

Plaintiff alleges that the father of Ms. Muxlow, Billy Muxlow, reported the relationship between Defendant Harris and his daughter to Ruby Tuesday’s district manager and corporate office and expressed his concerns regarding the relationship. Plaintiff alleges that, upon information and belief, Ruby Tuesday’s did not terminate, suspend, or otherwise discipline Mr. Harris, ignoring the company policy violation, and allowed Mr. Harris to continue dating Ms.

Muxlow. Once Mr. Muxlow learned of Defendant Harris's alleged abusive behavior to his daughter, he allegedly informed two Ruby Tuesday employees and the corporate office, whose representative indicated that the report would be investigated. Plaintiff alleges that Ms. Muxlow's hours were reduced in retaliation for Mr. Muxlow's report of Defendant Harris's misconduct. Ruby Tuesday alleged in their Answer that Ms. Muxlow no longer was employed with Ruby Tuesday as of April 27, 2017.

The Amended Complaint then alleges that Ms. Muxlow and Defendant Harris moved into an apartment together in August of 2018. On the night of November 20, 2018, Defendant Harris allegedly stole Ms. Muxlow's car and wallet with the intent to have sexual relations with another individual and buy cocaine. The Amended Complaint alleges that "Harris was able to do all of this because his improper abusive relationship with Jennifer was allowed to go unchecked by Ruby Tuesday, even though Ruby Tuesday was repeatedly put on notice of the policy violations that endangered its employee, Jennifer." (Am. Complaint, ¶ 29). Ms. Muxlow allegedly became distressed and started a frantic search on foot for Defendant Harris and her property. During this search, Ms. Muxlow walked across Rivers Avenue, Highway 52, in North Charleston, and was hit by a vehicle driven by Defendant Anglin, who was allegedly distracted, driving at a high rate of speed and in a grossly negligent manner. Ms. Muxlow subsequently died from her injuries caused by the collision with the car.

The Plaintiff asserts causes of action for recklessness and negligence against Ruby Tuesday for causing the car accident between Anglin and Muxlow and specifically alleges that

52. Defendant Ruby Tuesday, through its policies and procedures, undertook certain duties to the plaintiff and other employees. By creating, implementing, and enforcing duties to prohibit employees from dating their subordinates and from engaging in physical or verbal abuse, even when such abuse occurs off company property and is unrelated to work, Ruby Tuesday

undertook duties to prevent its employees from being subjected to such conduct, to prohibit employees from forming relationships with their subordinates, to prohibit employees from engaging in abusive language or actions either in the workplace or outside of work, and to properly discipline and terminate employees who violate these policies.

(Am. Complaint, ¶ 52). Plaintiff also alleges that the corporate defendants (presumably including Ruby Tuesday) are liable for their own actions “and vicariously liable through the doctrine of *respondeat superior* for the actions of their agents and/or employees”. (Am. Complaint, ¶ 48). In addition, Plaintiff alleges causes of action for negligent hiring, supervision, and retention. (Am. Complaint, ¶ 64-68). Plaintiff includes causes of action for survival and wrongful death. (Am. Complaint, ¶ 69-79). Plaintiff also alleges that Ruby Tuesday’s “failure to enforce company policies designed for the protection of both employees and the general public” violates South Carolina Unfair Trade Practices Act. (Am. Complaint, ¶ 80-86).

### **STANDARDS FOR MOTIONS**

Under Rule 12(b)(6), SCRCP, a defendant may make a motion to dismiss based on a failure to state facts sufficient to constitute a cause of action. When ruling on a Rule 12(b)(6) motion to dismiss for failure to state a claim, the motion must be granted if, viewing the evidence in the plaintiff’s favor, the “facts alleged in the complaint and inferences reasonably deducible therefrom do not entitle the plaintiff to relief on any theory of the case.” Brown v. Theos, 338 S.C. 305, 526 S.E.2d 232 (Ct. App. 1999) *aff’d*, 345 S.C. 626, 550 S.E.2d 304 (2001). When the dispute is not to the underlying facts but involves the interpretation of the law, it is proper to decide issues on a 12(b)(6) motion. Id.

A motion for judgment on the pleadings pursuant to Rule 12(c), SCRC P, will be sustained where the pleadings are so defective that, taking all the facts alleged in the pleadings as admitted, no cause of action is stated. Rosenthal v. Unarco Indus., Inc., 278 S.C. 420, 297 S.E.2d 638 (1982).

While a Rule 12(c) motion admits the well pleaded facts in the complaint, it does not admit the inferences drawn by the plaintiff from such facts, nor does it admit conclusions of law. Fireman's Ins. Co. v. Cincinnati Ins. Co., 302 S.C. 234, 235, 394 S.E.2d 855, 856 (Ct. App. 1990). A motion for judgment on the pleadings considers the allegations in the defendant's answer and other pleadings in the case also. Brown v. United Ins. Co. of America, 268 S.C. 254, 233 S.E. 2d 298 (1977).

### **DISCUSSION**

“To recover for negligence, a plaintiff must show: (1) a duty of care owed by the defendant to the plaintiff; (2) a breach of that duty by a negligent act or omission; and (3) damage proximately resulting from the breach.” Washington v. Lexington Cty. Jail, 337 S.C. 400, 405, 523 S.E.2d 204, 207 (Ct. App. 1999). “The absence of any one of these elements renders the cause of action insufficient.” Id. This Court dismisses the causes of action against Ruby Tuesday because, as a matter of law, Ruby Tuesday did not owe the Plaintiff a duty. In the event a duty was owed, any breach of that duty was not the proximate cause of Ms. Muxlow's death. Furthermore, this Court finds that the Amended Complaint fails to state claims upon which relief can be granted against Ruby Tuesday for vicarious liability, negligent hiring, negligent supervision, negligent retention, and for violation of the South Carolina Unfair Trade Practices Act.

#### **1. RUBY TUESDAY OWED NO DUTY TO PLAINTIFF**

“In any negligence action, the threshold issue is whether the defendant owed a duty of care to the plaintiff.” Bass v. Gopal, Inc., 395 S.C. 129, 134, 716 S.E.2d 910, 913 (2011). The issue of whether a duty is owed to the plaintiff is a question of law to be decided by the court. See id. “At common law, there was no duty imposed on a person to act.” Burns v. S. Carolina Comm'n for Blind, 323 S.C. 77, 79, 448 S.E.2d 589, 590 (Ct. App. 1994). “A person generally incurs no

liability for failure to take steps to benefit others or to protect others from harm not created by his own wrongful act.” Id. Pursuant to South Carolina law, “[a]n affirmative legal duty to act exists only if created by statute, contract, relationship, status, property interest, or some other special circumstance.” Carson v. Adgar, 326 S.C. 212, 217, 486 S.E.2d 3, 5 (1997). “There is no general duty to control the conduct of another or to warn a third person or potential victim of danger.” Faile v. S. Carolina Dep't of Juvenile Justice, 350 S.C. 315, 334, 566 S.E.2d 536, 546 (2002). The South Carolina appellate courts have fashioned five exceptions to this rule: 1) where the defendant has a special relationship to the victim; 2) where the defendant has a special relationship to the injurer; 3) where the defendant voluntarily undertakes a duty; 4) where the defendant negligently or intentionally creates the risk and 5) where a statute imposes a duty on the defendant. Id.

The plaintiff bases his allegations establishing Ruby Tuesday’s duty to the plaintiff on the theory that the employee handbook containing company policies against dating subordinates and verbal and physical abuse was a voluntary undertaking, stating “Defendant Ruby Tuesday, through its policies and procedures, **undertook** certain duties to the plaintiff and other employees” (Am. Complaint, ¶52) (emphasis added). Assuming for the purposes of this motion that the allegations regarding the contents of the policy are true, this Court concludes that the policies of Ruby Tuesday do not create a duty. The adoption of a company policy is not a voluntary undertaking and is not sufficient to create a legal duty in South Carolina. Doe 2 v. Citadel, 421 S.C. 140, 805 S.E.2d 578 (Ct. App. 2017). A company policy can be evidence of a standard of care if a duty is already established. Id. However, if no duty has been established evidence of the standard of care is not relevant. Id. Courts have rejected the argument that company policies constitute voluntary undertakings that create a duty, holding that doing so would “discourage, indeed penalize, voluntary assumption or self-imposition of safety standards by commercial

enterprises, thereby increasing the risk of danger.” Hall v. Toreos, II, Inc., 626 S.E.2d 861,867 (N.C. Ct. App. 2006) and Mynhard v. Elon University, 725 S.E.2d 632 (N.C. Ct. App. 2012). To hold that an employee handbook against dating subordinate employees creates a duty to protect a consenting adult who no longer works for Ruby Tuesday from her live-in boyfriend’s actions at their apartment and his behavior in seeking other women and drugs is beyond reason. The Amended Complaint does not allege that Ms. Muxlow was still employed by Ruby Tuesday at the time of the accident because she was not. Counsel for Muxlow agreed at the hearing that Ms. Muxlow was not working at Ruby Tuesday at the time of her death. The answer of Ruby Tuesday furthermore alleges that the date of Muxlow’s termination was April 20, 2017, almost eighteen months before the car accident.

This court concludes that Ruby Tuesday’s policies and procedures did not create a duty to protect Plaintiff’s decedent. Therefore, all of the claims against Ruby Tuesday, whether brought by the Estate of Jennifer Muxlow or individually by Gregory Muxlow, are dismissed as a matter of law pursuant to Ruby Tuesday’s Motion for Judgment on the Pleadings. Furthermore, this court also dismisses any claim brought individually by Gregory Muxlow as Ruby Tuesday also owed him no duty. “If there is no duty, then the defendant in a negligence action is entitled to a judgment as a matter of law.” Madison ex rel. Bryant v. Babcock Center, Inc., 371 S.C. 123 at 135-36, 638 S.E.2d 650 at 656 (2006).

2. **RUBY TUESDAY IS NOT VICARIOUSLY LIABLE FOR THE ACTS OF DEFENDANT HARRIS**

The Amended Complaint contains an allegation that the corporate defendants are liable for their own actions “and vicariously liable through the doctrine of *respondeat superior* for the actions of their agents and/or employees.” (Am. Complaint, ¶ 48). To the extent that Plaintiff is alleging that Ruby Tuesday is responsible for the actions of Defendant Harris, this court finds no

support in the allegations in the Complaint to hold that Ruby Tuesday would be vicariously liable for the private actions of Harris who allegedly took Muxlow's car and debit card to meet another woman and buy cocaine, and, thus, dismisses the plaintiff's claims for vicarious liability to the extent they are pled against Ruby Tuesday.

“A plaintiff seeking recovery from the master for injuries [caused by a servant] must establish that the relationship existed at the time of the injuries, and also that the servant was then about his master's business and acting within the scope of his employment.” Lane v. Modern Music, Inc., 244 S.C. 299, 304-05, 136 S.E.2d 713, 716 (1964) (emphasis added). “An act is within the scope of a servant's employment where reasonably necessary to accomplish the purpose of his employment and is in furtherance of the master's business.” Gathers v. Harris Teeter Supermarket, Inc., 282 S.C. 220, 227, 317 S.E.2d 748, 753 (Ct. App. 1984).

The Amended Complaint contains absolutely no allegations that Defendant Harris was acting in the course and scope of his employment with Ruby Tuesday or that he was even still employed at Ruby Tuesday when he committed the alleged acts on November 20, 2018. Furthermore, South Carolina considers intentional torts outside the course and scope of employment. *See* Hamilton v. Davis, 300 S.C. 411, 389 S.E.2d 297 (Ct. App. 1990) (affirming summary judgment on vicarious liability claim where employee committed assault). *See, e.g.* Rabon v. Guardsmark, Inc., 571 F.2d 1277 (4th Cir. 1978) (holding as matter of South Carolina law that security guard's assault was not in furtherance of employer's business or within scope of employment but affected an independent purpose despite occurring at time he should have been about business of employer and at place of employment.); Park v. Southeast Service Corp., 771 F.Supp.2d 588 (D.S.C. 2011) (dismissing claim against employer under respondeat superior argument applying South Carolina law because plaintiff did not submit a plausible argument

regarding how employee's decision to videotape plaintiff in restroom was committed in furtherance of employment and holding that employee's acts were a "temporary suspension of master-servant relationship"). This Court finds that there is no factual allegation to support the vicarious liability claim against Ruby Tuesday. The plaintiff's allegations wholly support that this was a private relationship between two consenting adults and the actions alleged to have been done by Harris were not within the course and scope of his employment with Ruby Tuesday.

Plaintiff also makes a claim for negligent hiring, supervision, and retention. (Am. Complaint, ¶ 64-68). In Degenhart v. Knights of Columbus, the South Carolina Supreme Court recognized a duty of an employer "to exercise reasonable care to control an employee acting outside the scope of his employment" under the circumstances described in Restatement (Second) of Torts § 317 (1965). Degenhart, 309 S.C. 114, 116-17, 420 S.E.2d 495, 496 (1992). The court adopted § 317, "Duty of Master to Control Conduct of Servant", which states:

A master is under a duty to exercise reasonable care so to control his servant while acting outside the scope of his employment as to prevent him from intentionally harming others or from so conducting himself as to create an unreasonable risk of bodily harm to them, if

- (a) the servant
  - (i) is upon the premises in possession of the master or upon which the servant is privileged to enter only as his servant, or
  - (ii) is using a chattel of the master, **and**
- (b) the master
  - (i) knows or has reason to know that he has the ability to control his servant, and
  - (ii) knows or should know of the necessity and opportunity for exercising such control.

Restatement (Second) of Torts § 317 (1965) (emphasis added). The Supreme Court found both that the plaintiff in Degenhart had presented no evidence that the employee harmed the third party while utilizing the premises or chattel of the employer and found that no facts existed tending to

show the employer knew or should have known that it should exercise control over the employee. Therefore, the lower court's grant of summary judgment for the employer on the negligent supervision claim was affirmed.

Negligent hiring, supervising, and retention are based on section 317 of the Restatement (Second) of Torts. Consequently, for the Plaintiff be able to proceed with causes of action against Ruby Tuesday for negligent hiring, supervising, or retention, the plaintiff must prove that plaintiff's decedent was intentionally harmed by Ruby Tuesday's employee on Ruby Tuesday's premises (or premises on which they were privileged to enter only as Ruby Tuesday's employees) or while the employee was using a chattel of Ruby Tuesday and Ruby Tuesday (1) knew or had reason to know it had the ability to control his employees and (2) knew or should know of the necessity and opportunity for exercising such control. This Court finds that the Amended Complaint does not contain allegations meeting these requirements. Because the required elements for these claims are not present, this Court also dismisses these causes of action.

3. **PLAINTIFF'S CLAIM UNDER THE SOUTH CAROLINA UNFAIR TRADE PRACTICES ACT FAILS AS A MATTER OF LAW**

Plaintiff's sixth cause of action attempts to make a claim under the South Carolina Unfair Trade Practices Act (hereinafter "SCUTPA") on behalf of the Estate. However, SCUTPA prohibits claims brought in a representative capacity. The statute states: "Any person who suffers any ascertainable loss of money or property . . . may bring an action individually, but not in a representative capacity, to recover actual damages." S.C. Code Ann. § 39-5-140(a). The South Carolina Court of Appeals upheld a circuit court's grant of summary judgment on a SCUTPA claim brought by the personal representative of an estate, holding that an action for losses incurred by the decedent under SCUTPA could not be maintained. Wogan v. Kunze, 366 S.C. 583, 609, 623 S.E.2d 107, 121 (Ct. App. 2005), *aff'd as modified*, 379 S.C. 581, 666 S.E.2d 901 (2008).

“SCUTPA prohibits the survival of a cause of action after a plaintiff’s death.” Williams v. Preiss-Wal Pat III, LLC, 17 F.Supp.3d 528, 538 (D.S.C. 2014) (granting defendants’ motion to dismiss SCUTPA claims brought by personal representatives of estate of decedent). Because plaintiff’s SCUTPA claim was only brought in a representative capacity, this court dismisses the South Carolina Unfair Trade Practice claims pursuant to S.C. Code Ann. § 39-5-140(a).

Additionally, the SCUTPA claim fails as a matter of law against Ruby Tuesday because South Carolina holds that employer-employee relationships fall outside the scope of unfair trade practices statutes. Miller v. Fairfield Communities, Inc., 299 S.C. 23, 28, 382 S.E.2d 16, 20 (Ct. App. 1989). In Miller, the Court of Appeals sustained the trial court’s grant of summary judgment to the defendant against claims brought by two recently terminated employees alleging violations of SCUTPA, holding that claims arising out of an employment relationship are private matters which fall outside of SCUTPA’s scope for insufficient public interest. *Id.* See also Davenport v. Island Ford, Lincoln, Mercury, Inc., 320 S.C. 424, 465 S.E.2d 737 (Ct. App. 1995) (holding “the employer-employee relationship does not fall within the intended scope of the UTPA). Because the plaintiff’s claim against Ruby Tuesday for SCUTPA violations arises allegedly as a result of the employment relationship between decedent and Ruby Tuesday, it falls outside of the scope of the South Carolina Unfair Trade Practice Act and is also dismissed on this ground.

**4. EVEN IF RUBY TUESDAY OWED PLAINTIFF A DUTY, THE BREACH OF THAT DUTY WAS NOT THE PROXIMATE CAUSE OF PLAINTIFF’S INJURIES AS A MATTER OF LAW**

This court has concluded that Plaintiff has failed to establish that Ruby Tuesday owed a duty to Plaintiff or Plaintiff’s decedent. Assuming arguendo that such a duty was owed, this Court further finds that any breach of that duty was not the proximate cause of the Plaintiff’s injuries as a matter of law. In a negligence action, “[a] plaintiff may only recover for

injuries proximately caused by the defendant's negligence.” Hurd v. Williamsburg County, 353 S.C. 596, 611, 579 S.E.2d 136, 144 (Ct. App. 2003). The Plaintiff must prove proximate cause, which “requires proof of both causation in fact and legal cause.” Id. “Causation in fact is proved by establishing the plaintiff's injury would not have occurred ‘but for’ the defendant's negligence.” Id. Legal cause is proved by establishing foreseeability. Id. “A plaintiff therefore proves legal cause by establishing the injury in question occurred as a natural and probable consequence of the defendant's negligence.” McNair v. Rainsford, 330 S.C. 332, 349, 499 S.E.2d 488, 497 (Ct. App. 1998). “Where the injury complained of is not reasonably foreseeable, there is no liability.” Hurd, 353 S.C. at 612, 579 S.E.2d at 144. “Negligence is deemed to be the proximate cause of an injury when, without such negligence, the injury would not have occurred or could have been avoided.” Vinson v. Hartley, 324 S.C. 389, 401, 477 S.E.2d 715, 721 (Ct.App. 1996). When the evidence is only susceptible to one reasonable inference, proximate cause may be decided as a matter of law by the court. Id.

An intervening independent negligent act of a third-party implicates the issue of proximate cause. Matthews v. Porter, 239 S.C. 620, 124 S.E.2d 321 (1962). “To exculpate a negligent defendant, the intervening cause must be one which breaks the sequence or causal connection between the defendant’s negligence and the injury alleged. The superseding act must so intervene as to exclude the negligence of the defendant as one of the proximate causes of the injury.” Id. at 239 S.C. 628, 124 S.E.2d at 325. “It is a superseding cause if it so entirely supersedes the operation of the defendant’s negligence that it alone, without his negligence contributing thereto in the slightest degree, produces the injury.” Id.

Plaintiff simply cannot demonstrate that the injuries suffered would not have occurred “but for” Ruby Tuesday’s alleged failure to enforce its company policies. The plaintiff’s decedent had

not been an employee at Ruby Tuesday for over eighteen months when the sequence of events which led to her death occurred. This court finds that there is no reasonable inference adduced from the allegations in the complaint that the Plaintiff's decedent would not have suffered injuries but for the negligence of Ruby Tuesday.

Moreover, even if Plaintiff's claims could somehow survive the first prong required to establish causation, Plaintiff's Amended Complaint fails to demonstrate that the alleged damages are the reasonably foreseeable result of any acts or omissions of Ruby Tuesday. The Amended Complaint contains numerous intervening causes that Ruby Tuesday could not have anticipated as a result of its alleged negligence, including Plaintiff's decedent voluntarily moving into an apartment with her boyfriend, Defendant Harris, Defendant Harris allegedly stealing her vehicle and belongings to have sex with another woman and buy cocaine, Plaintiff's decedent deciding to walk across Rivers Avenue in North Charleston, a major road, at night, on foot, and Plaintiff's decedent being struck by a vehicle allegedly operated negligently by an individual. "One is not charged with foreseeing that which is unpredictable or which would not be expected to happen as a natural and probable consequence of the defendant's negligent act." *See Hurd*, 353 S.C. at 612-13, 579 S.E.2d at 144-45. Although this court recognizes that proximate cause is usually an issue for a jury, this court finds that the only reasonable inference that can be drawn from the allegations is that the alleged acts of Ruby Tuesday were not the proximate cause of any of the Plaintiff's injuries or damages. *See Tuten v. Joel*, 410 S.C. 104, 116, 763 S.E.2d 54, 61 (Ct. App. 2014) (holding a court may decide proximate cause as a matter of law "when the evidence is susceptible to only one inference"). Therefore, this court finds that Ruby Tuesday's alleged failure to follow its policies and procedures, assuming that created a duty, which this court previously ruled it did not, was not the proximate cause of the injuries alleged in the Amended Complaint.

**CONCLUSION**

For the reasons stated above, this Court amends its previously filed Form 4 Order and dismisses with prejudice the plaintiff's Amended Complaint against Ruby Tuesday.

AND IT IS SO ORDERED.

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The Honorable Bentley D. Price



Charleston Common Pleas

**Case Caption:** Gregory Muxlow , plaintiff, et al VS Natasha Anglin , defendant, et al  
**Case Number:** 2019CP1004193  
**Type:** Order/Other

IT IS SO ORDERED!

/s Hon. Bentley D. Price, Circuit Judge 2766

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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**RECEIVED**

**Jan 21 2021**

APPEAL FROM CHARELSTON COUNTY  
Court of Common Pleas

**SC Court of Appeals**

The Honorable Bentley Price, Circuit Court Judge

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Gregory  
Muxlow.....Appellant,

v.

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

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Appellate Case No. 2020-000129

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**SECOND MOTION TO AMEND THE RECORD ON APPEAL  
AND SUPPLEMENT DESIGNATION OF MATTER**

---

The appellant respectfully requests that the Appellate Court grant permission to the appellant to amend the Designation of Matter and the Record on Appeal. Respondent Ruby Tuesday was dismissed as a party to the underlying action and the appellant has appealed the dismissal. The appeal is currently pending in this Court.

On January 8, 2021, the lower court entered judgment against Ruby Tuesday employee Arnold Harris in the amount of \$2,200,000. Because uncontroverted evidence was presented to the Court that Harris acted in the scope and course of his Ruby Tuesday employment when he contributed to the death of Jennifer Muxlow, Ruby Tuesday's liability has been conclusively established. Since Ruby Tuesday's liability has now been legally established in the lower court, Ruby Tuesday should not have been dismissed, and this appeal should not have become necessary.

The appellant therefore respectfully requests that the Appellate Court grant permission to the appellant to amend the Designation of Matter and the Record on Appeal to include the pertinent hearing transcript and the judgment against the Ruby Tuesday employee who acted in the scope and course of his employment when he caused the damage giving rise to the underlying action. In

the alternative, the appellant requests that this case be remanded to the lower court with instructions to proceed in accordance with that court's recent judgment.

Jan 21, 2021

Respectfully submitted,

*s/ Joshua T. Hawkins*

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Jack G. Gresh,  
Elizabeth Fulton Morrison  
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**Attorney for Respondent Carroll Management Group**



THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

RECEIVED

Jan 21 2021

SC Court of Appeals

The Honorable Bentley Price, Circuit Court Judge

Gregory Muxlow.....Appellant,

v.

Ruby Tuesday, KC Mulligan’s St. Ive’s and Carroll Management  
.....Respondents.

Appellate Case No.: 2020-000129

**PROOF OF SERVICE**

I certify that I filed Appellant’s Second Motion to Supplement Designation of Matter and Amend Record on Appeal with the Clerk of Court of the South Carolina Court of Appeals, by electronic filing on January 21, 2021, to ctapfilings@sccourts.org, as well as via U.S. Mail. Additionally, all counsel of record have 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.

January 21, 2021

*s/ Joshua T. Hawkins*

Joshua T. Hawkins, S.C. Bar #78470

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**RECEIVED**  
**Jan 21 2021**  
SC Court of Appeals

January 21, 2021

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 second motion to amend the Record on Appeal and supplement Designation of Matter. Please also find enclosed the \$50.00 filing fee. Pursuant to the Order regarding Appellate Court Operations during the Coronavirus Pandemic still in effect, we have not enclosed additional copies for filing, but have notified all parties via electronic mail.

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  
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Hall Booth Smith, PC  
**Attorneys for Respondent Carroll Management Group**

**RECEIVED**

**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.

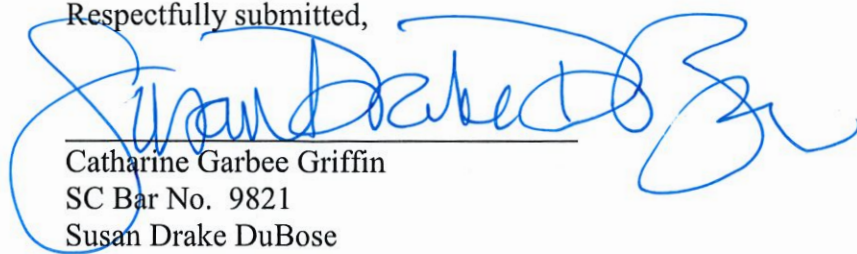
Rule 212, SCACR provides the procedure for supplementing a record on appeal. The rule specifically provides that "the appellate court may require copies of all or any part of the transcript of proceedings or other matter which was before the lower court or administrative tribunal to be sent up for its 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

BAKER, RAVENEL & BENDER, L.L.P.

3710 Landmark Drive, Suite 400 (29204)

Post Office Box 8057

Columbia, South Carolina 29202

(803) 799-9091

*Attorneys for Respondent Ruby Tuesday, Inc.*

January 29, 2021

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**Jan 29 2021**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

The Honorable Bentley Price, Circuit Court Judge

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Appellate Case No. 2020-000129

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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 29<sup>th</sup> 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:

Joshua T. Hawkins, Esquire  
Helena L. Jedziniak, Esquire  
Hawkins & Jedziniak, LLC  
1225 South Church Street  
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[josh@hjlsc.com](mailto:josh@hjlsc.com)  
[helena@hjlsc.com](mailto:helena@hjlsc.com)

Christopher David Lizzi, Esquire  
Lizzi Law Firm, PC  
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[lizzlaw@aol.com](mailto:lizzlaw@aol.com)

Jack G. Gresh, Esquire  
Elizabeth F. Fulton, Esquire  
Hall Booth Smith, P.C.  
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[jgresh@hallboothsmith.com](mailto:jgresh@hallboothsmith.com)  
[efulton@hallboothsmith.com](mailto:efulton@hallboothsmith.com)

Penn W. Ely, Esquire  
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M. Dawes Cooke, Jr., Esquire  
Christopher Mark Kovach, Esquire  
Barnwell Whaley Patterson & Helms, LLC  
288 Meeting Street, Suite 200  
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Charleston, SC 29402  
[ckovach@barnwell-whaley.com](mailto:ckovach@barnwell-whaley.com)  
[mdc@barnwell-whaley.com](mailto:mdc@barnwell-whaley.com)

*(Signature on following page)*

*Catharine Garbee Griffin*  
by *Susan DeBoer*

Catharine Garbee Griffin

SC Bar No. 9821

BAKER, RAVENEL & BENDER, L.L.P.

3710 Landmark Drive, Suite 400

Post Office Box 8057

Columbia, South Carolina 29202

Phone: (803) 799-9091; Fax: (803) 779-3423

*Attorneys for Respondent Ruby Tuesday, Inc.*

January 29, 2021



BAKER RAVENEL BENDER  
ATTORNEYS AT LAW

RECEIVED

Jan 29 2021

SC Court of Appeals

Catharine Garbee Griffin  
Direct Dial (803) 343-3863  
[cgriffin@brblegal.com](mailto:cgriffin@brblegal.com)

January 29, 2021

E-mail: [ctappfilings@sccourts.org](mailto: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](mailto:josh@hjlsc.com)  
Helena L. Jedziniak, Esquire E-Mail [helena@hjlsc.com](mailto:helena@hjlsc.com)  
Christopher David Lizzi, Esquire E-Mail [lizzlaw@aol.com](mailto:lizzlaw@aol.com)  
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M. Dawes Cooke, Jr., Esquire E-Mail [mdc@barnwell-whaley.com](mailto:mdc@barnwell-whaley.com)  
Christopher Mark Kovach, Esquire E-Mail [ckovach@barnwell-whaley.com](mailto:ckovach@barnwell-whaley.com)

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

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Gregory  
Muxlow.....Appellant,

v.

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

---

Appellate Case No. 2020-000129

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**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*  
Joshua T. Hawkins, S.C. Bar #78470  
Helena L. Jedziniak, S.C. Bar #100825  
Hawkins & Jedziniak, LLC  
1225 South Church Street  
Greenville, South Carolina 29605  
(864) 275-8142 (telephone)  
(864) 752-0911 (facsimile)  
josh@hjllesc.com  
helena@hjllesc.com  
**Attorneys for Appellants**

Copies:

Catharine Griffin  
Baker Ravenel Bender  
**Attorney for Respondent Ruby Tuesday**

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

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

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

**RECEIVED**

**Feb 08 2021**

APPEAL FROM CHARLESTON COUNTY

**SC Court of Appeals**

Court of Common Pleas

The Honorable Bentley Price, Circuit Court Judge

Gregory Muxlow.....Appellant,

v.

Ruby Tuesday, KC Mulligan’s St. Ive’s and Carroll Management  
.....Respondents.

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 electronic 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*

Joshua T. Hawkins, S.C. Bar #78470

Helena L. Jedziniak, S.C. Bar #100825

Hawkins & Jedziniak, LLC

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Greenville, South Carolina 29605

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**Attorneys for Appellants**

Copies:

Catharine Griffin  
Baker Ravenel Bender  
**Attorney for Respondent Ruby Tuesday**

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

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

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helena@hjllcsc.com

**RECEIVED**  
**Feb 08 2021**  
SC Court of Appeals

February 8, 2021

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

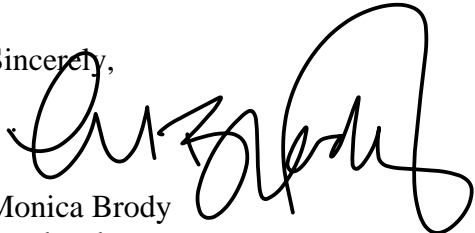
Re: *Gregory Muxlow v. Ruby Tuesday, KC Mulligan's, St. Ives and Carroll Management Group*  
Appellate Case No.: 2020-000129

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:

Catharine Griffin  
Baker Ravenel Bender  
**Attorney for Respondent Ruby Tuesday**

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

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

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	CASE NO. 2021-CP-23-03524
	)	
Gregory Muxlow, as Personal Representative of the Estate of Jennifer Muxlow,	)	
	)	
Plaintiff,	)	<b>AMENDED SUMMONS</b>
	)	
vs.	)	
	)	
Safety National Insurance and Arnold Harris,	)	
	)	
Defendants.	)	
	)	

YOU ARE HEREBY SUMMONED and required to answer the complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your answer to the said complaint on the subscriber at his office, 1225 South Church, Greenville, South Carolina, 29605, within thirty (30) days after service thereof exclusive of the day of such service, and if you fail to answer the complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the complaint.

Respectfully submitted,

Hawkins & Jedziniak, LLC

s/ Joshua T. Hawkins

Joshua T. Hawkins, S.C. Bar No. 78470  
 Helena L. Jedziniak, S.C. Bar No. 100825  
 1225 South Church Street  
 Greenville, South Carolina 29605  
 (864) 275-8142 (telephone)  
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 josh@hjlsc.com  
 helena@hjlsc.com

Greenville, South Carolina  
 October 12, 2021

Attorneys for Plaintiff

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	CASE NO. 2021-CP-23-03524
	)	
Gregory Muxlow, as Personal Representative of the Estate of Jennifer Muxlow,	)	
	)	<b>AMENDED COMPLAINT</b>
Plaintiff,	)	
	)	
vs.	)	
	)	
Safety National Insurance and Arnold Harris,	)	
	)	
Defendants.	)	
	)	

COMES NOW, the plaintiff, alleging and complaining of the defendants as follows:

**PARTIES, JURISDICTION, AND VENUE**

1. Gregory Muxlow (“the plaintiff”) is the Personal Representative of the Estate of Jennifer Muxlow and is a citizen and resident of Greenville County, South Carolina.
2. At the time of her death, Jennifer Muxlow (“the decedent”) was a citizen and resident of South Carolina.
3. Safety National Insurance (“Safety”) is an insurance company doing business throughout the United States, including South Carolina.
4. Arnold Harris is a citizen and resident of South Carolina.
5. The plaintiff reserves the right to amend the complaint in the future or to file another complaint as to other insurers that cover Ruby Tuesday’s liability claims.
6. Jurisdiction and venue are proper for the foregoing reasons.

**FACTUAL BACKGROUND**

7. The plaintiff incorporates the foregoing paragraphs as if repeated here, verbatim.
8. In August of 2016, Plaintiff Gregory Muxlow’s sister, Jennifer Muxlow, began working at a Ruby Tuesday located in North Charleston, South Carolina. Shortly thereafter, Jennifer and Ruby Tuesday manager Arnold Harris became romantically involved, despite this being against corporate policy. The relationship quickly turned abusive and violated company policy. Harris used his position with Ruby Tuesday to exert control over Ruby Tuesday’s employee, Jennifer.

9. On November 2, 2018, Ruby Tuesday's manager took Jennifer's car without permission, taking along with it her wallet, which included her identification, money, and debit and credit cards. During a frantic attempt to locate Ruby Tuesday's manager, her car, and her money, Jennifer was killed.
10. On April 24, 2019, Gregory Muxlow, individually and as Personal representative of the Estate of Jennifer Muxlow, brought suit against, among others, Ruby Tuesday, Inc. (2019-CP-10-04193).
11. On January 8, 2021, based upon uncontroverted testimony that Arnold Harris acted as a Ruby Tuesday employee and used his position with Ruby Tuesday when he contributed to Jennifer's death, the Charleston County Court of Common Pleas entered judgment against Arnold Harris and another defendant for \$2,200,000.00.
12. An appeal of the dismissal of Ruby Tuesday from the underlying suit, filed January 24, 2020, is currently pending in the South Carolina Court of Appeals. The Court of Appeals, over Ruby Tuesday's objection, granted the plaintiff's Motion to Amend the Record on Appeal to include the transcript and documents related to the damages hearing in which judgment was entered against Ruby Tuesday's manager. Upon information and belief, Ruby Tuesday's dismissal was improper for several legal reasons and is likely to be reversed. Additionally, the dismissal is inconsistent with judgment entered against Ruby Tuesday's manager and uncontroverted testimony that Ruby Tuesday's manager acted as a Ruby Tuesday employee and used his Ruby Tuesday position when he contributed to Jennifer's death.
13. Because the court reporter at the damages hearing is no longer employed with the Court and is believed to be in Georgia, the appeal has been continued pending the procurement of the transcript from the damages hearing so that the Record on Appeal may be supplemented. Upon information and belief, the Court of Appeals is likely to send the matter to the Circuit Court since there is now uncontroverted evidence that Ruby Tuesday's employee subjected Ruby Tuesday to liability, which is inconsistent with the Circuit Court's dismissal of Ruby Tuesday.
14. Upon information and belief, at no time during the underlying action or the appeal did Ruby Tuesday ever inform the plaintiff that Ruby Tuesday was in bankruptcy, or that Ruby Tuesday had vast amounts of insurance. Only then, after the South Carolina Court of Appeals granted the plaintiff's motion to amend the Record on Appeal, did Ruby Tuesday indicate it was in bankruptcy. Upon information and belief, the bankruptcy in no way affects Ruby Tuesday's

insurer's obligation to pay claims covered by insurance.

15. On October 22, 2020, the United States Bankruptcy Court for the District of Delaware issued an Order setting bar dates for filing proofs of claim. The Bar Date set forth in the Order was listed as April 5, 2021. On May 28, 2021, the plaintiff received an email from counsel in Delaware with information related to Ruby Tuesday's bankruptcy. The plaintiff is currently in the process of obtaining Delaware counsel to file appropriate documents with the Bankruptcy Court.
16. On July 23, 2021, *nine months after Ruby Tuesday voluntarily filed for bankruptcy*, counsel for Ruby Tuesday filed a Suggestion of Bankruptcy of Defendant and Notice of Stay in the South Carolina Court of Appeals.
17. Based upon Bankruptcy Court filings, several insurance policies were discovered, including Travelers' Policy KTQCMB2L04650620, and the plaintiff originally named Travelers as a defendant. Travelers contacted the plaintiff and provided a copy of its policy, which is a property damage policy. Plaintiff agreed to substitute the name of the appropriate insurer, which upon information and belief, is Safety National Insurance ("Safety"), policy #GLA4046180, effective 06/01/2018 - 06/01/2019.
18. The plaintiff is therefore informed and believes Jennifer Muxlow's Estate is entitled to a declaration, because of uncontroverted evidence from the damages hearing that Harris acted as a Ruby Tuesday employee and used his position when he contributed to Jennifer's death, that Harris may qualify as an insured under the policy, and that Safety must pay the judgment entered against Harris since he likely qualifies as an insured under the policy.
19. The plaintiff has specifically avoided naming Ruby Tuesday as a defendant in this action in an abundance of caution so as not to run afoul of any Bankruptcy Court orders.

**FOR A FIRST CAUSE OF ACTION**  
**(Declaratory Judgment Action)**

20. All other allegations, to the extent that they are not inconsistent herewith, are hereby incorporated by reference.
21. Pursuant to the South Carolina Uniform Declaratory Judgments Act, *S.C. Code § 15-53-10 et seq.*, the plaintiff seeks a judicial declaration of the rights, status, and other legal relationships of the parties to this action regarding the various claims against the defendant.
22. The plaintiff seeks a declaration as to the obligation of Safety to cover the loss described herein.

23. Upon information and belief, the damages hearing and judgment entered against Ruby Tuesday manager Arnold Harris subjects Ruby Tuesday to both direct and vicarious liability, and Safety is required to pay the judgment entered against Ruby Tuesday's manager. Ruby Tuesday and Harris may also have *Tyger River* and bad faith claims against Safety if it refuses to pay the judgment, plus an appropriate amount of interest, which accrues daily on \$2,200,000.00.
24. The plaintiff is aware that any self-retained amount of the judgment may be a Ruby Tuesday asset and treated as bankruptcy dollars. The plaintiff only seeks a declaration as to the portion of the judgment that is not an asset and must be covered by the insurer. Other insurers may also have a duty to cover this claim. The plaintiff specifically states that no relief is sought that in any way conflicts with any Court Orders.
25. Upon information and belief, a declaration that an action against the defendants pursuant to *S.C. Code* §§ 38-59-20 and -40 at this stage serves equity and is proper.
26. The plaintiff is therefore informed and believes he is entitled to a declaratory judgment.

WHEREFORE, the plaintiff requests a jury trial and judgment against the defendants for a declaratory judgment that Safety and any other insurers providing coverage be held responsible to cover the damages awarded against Ruby Tuesday's manager and such other relief the Court deems just and equitable.

Respectfully submitted,

Hawkins & Jedziniak, LLC

s/ Joshua T. Hawkins

Joshua T. Hawkins, S.C. Bar No. 78470  
Helena L. Jedziniak, S.C. Bar No. 100825  
1225 South Church Street  
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(864) 752-0911 (facsimile)  
josh@hjlsc.com  
helena@hjlsc.com

Greenville, South Carolina  
October 12, 2021

Attorneys for Plaintiff

Pursuant to Rule 38, *SCRCP*, the plaintiff demands a trial by jury on all issues triable to a jury.

s/ Joshua T. Hawkins

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**Jan 10 2022**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

The Honorable Bentley Price, Circuit Court Judge

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Appellate Case No. 2020-000129

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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 10<sup>th</sup> day of January 2022, I have served the following with  
the foregoing Ruby Tuesday’s Update Regarding the Status of the Bankruptcy Action and Motion  
for Leave via electronic mail of same to counsel of record at the e-mail addresses shown below:

Joshua T. Hawkins, Esquire  
Helena L. Jedziniak, Esquire  
Hawkins & Jedziniak, LLC  
1225 South Church Street  
Greenville, SC 29605  
[josh@hjllesc.com](mailto:josh@hjllesc.com)  
[helena@hjllesc.com](mailto:helena@hjllesc.com)

Christopher David Lizzi, Esquire  
Lizzi Law Firm, PC  
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N. Charleston, SC 29406  
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Elizabeth F. Fulton, Esquire  
Hall Booth Smith, P.C.  
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*(Signature on following page)*

/s/ Catharine Garbee Griffin  
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January 10, 2022



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January 10, 2022

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

**RECEIVED**

**Jan 10 2022**

**SC Court of Appeals**

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 in the above-referenced matter please find Ruby Tuesday's Update Regarding the Status of the Bankruptcy Action and Motion for Leave with 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,

Suzanne Rodriguez  
Legal Assistant to Catharine Garbee Griffin  
CGG:sr

Enclosure

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