

STATE OF SOUTH CAROLINA
COUNTY OF HAMPTON

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
2019-CP-25-00111

RENEE S. BEACH, as Personal
Representative of the Estate of MALLORY
BEACH,

Plaintiff,

v.

GREGORY M. PARKER, INC. d/b/a
PARKER'S CORPORATION, RICHARD
ALEXANDER MURDAUGH, RICHARD
ALEXANDER MURDAUGH, JR., JOHN
MARVIN MURDAUGH, as P.R. of the
Estate of MARGARET KENNEDY
BRANSTETTER MURDAUGH, and
RANDOLPH MURDAUGH, IV, as P.R. of
the Estate of PAUL TERRY MURDAUGH,

Defendants.

DEFENDANT
GREGORY M. PARKER, INC.'S
MOTION FOR SUMMARY JUDGMENT

Pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, Defendant Gregory M. Parker, Inc., d/b/a Parker's Corporation ("Parker's") respectfully moves this Honorable Court for an order granting summary judgment to Parker's on all of Plaintiff's claims against Parker's and dismissing, with prejudice, Plaintiff's Amended Complaint and action against Parker's. There is no genuine issue of material fact and Parker's is entitled to judgment as a matter of law.

This case arises from a boating accident that occurred in Beaufort County on February 24, 2019, which resulted in the tragic death of Mallory Beach, but the tragedy was not caused by Parker's or its employee Tajeaha Cohen ("Ms. Cohen"). On March 20, 2019, Plaintiff filed a Summons and Complaint in Beaufort County. Plaintiff dismissed that action and subsequently filed this case. Plaintiff then filed three Amended Complaints with the last being filed on February

23, 2022. Parker's timely filed Answers to the Complaints, including, on March 9, 2022, its Answer to Plaintiff's Third Amended Complaint and denied liability, accordingly.

The specific grounds supporting summary judgment in favor of Parker's is as follows:

I. The Sale was a Valid Sale under South Carolina Law

South Carolina does not have a Dram Shop Act. Rather, any civil liability in this State arises only from a defendant's violation of the criminal statutes at Title 61 of the South Carolina Code. *Hartfield v. Getaway Lounge & Grill, Inc.*, 388 S.C. 407, 417, 697 S.E.2d 558, 563 (2010); *Tobias v. Sports Club, Inc.*, 332 S.C. 90, 91–92, 504 S.E.2d 318, 319 (1998). Importantly, in order for a sale to amount to a violation of S.C. Code § 61-4-580(A)(1), the retailer must have knowingly sold beer or wine to an underage purchaser. That did not happen in this transaction. Instead, here, no evidence exists to support a finding that Ms. Cohen sold alcohol to Paul Murdaugh on February 23, 2019 with knowledge that he was underage. On the contrary, the evidence and testimony actually supports the opposite – that Ms. Cohen did not know Paul Murdaugh and that she truly thought he was presenting his identification at the time of the sale.

It is undisputed that the South Carolina Law Enforcement Division (“SLED”) investigated the sale and did not issue Parker's a citation or other reprimand under S.C. Code Ann. § 61-4-580(A)(1) or any other provision of Title 61; thus, it determined the sale was a valid sale under South Carolina law. As a matter of fact, SLED, the agency in charge of enforcing alcohol sales laws in South Carolina, reviewed the sale at three different levels and all concluded that no citation would be issued. Again, it is undisputed that the agency in charge of enforcing the laws of South Carolina reviewed this transaction and did not issue a citation. As Agent Horney stated, Ms. Cohen “did her due diligence.” *See* Deposition of Agent Chandler Horney, dated October 20, 2021 at 44:5-9. Lieutenant David Leslie, Agent Horney's supervisor, additionally testified that “we made

the determination not to charge...that ID was checked and...verified...After speaking with Special Agent Horney and Captain Sonnefeld, we decided not to make that charge...We made a determination to close it and it's been closed by our Agency...Agent Horney met with the prosecutor...presented the evidence and there was a decline to prosecute.” *See* Deposition of Lt. Leslie, dated August 24, 2022 at 111:2-112:1; 120:15-121:2. The sale was a valid sale, and the investigatory case by SLED is now closed.

Indeed, Ms. Cohen asked Mr. Murdaugh, an adult at the time, for photo identification; he presented a valid South Carolina driver's license; and Ms. Cohen reviewed the license and also scanned it to confirm it was valid and authentic. Unbeknownst to Ms. Cohen, Mr. Murdaugh fraudulently presented his older brother's valid driver's license. It is undisputed that Mr. Murdaugh previously used his brother's identification many times in the past to deceive and defraud other retailers to purchase alcohol successfully.

Accordingly, because there is no evidence that Parker's violated South Carolina law by knowingly selling beer or wine to an underage person, as SLED confirmed, Plaintiff cannot maintain her claims sounding in negligence in connection with the alcohol sale at issue in this case. Accordingly, the Court should grant summary judgment in favor of Parker's.

II. Superseding and Intervening Events, and Assuming the Risks, Broke the Causal Chain

As a matter of law, this Court should dismiss Plaintiff's causes of action against Parker's based upon the superseding and intervening acts and omissions of other persons and parties, and by Plaintiff assuming the risks thereby. *Bishop v. South Carolina Dept. of Mental Health*, 331 S.C. 79, 89-90, 502 S.E. 2d 78, 83-84 (1998) (affirming grant of summary judgment for defendants based on intervening negligence of other party). All of the passengers on the boat (the “Boaters”), including Ms. Beach, were adults. The undisputed facts show that the Boaters were aware that

Mr. Murdaugh and Connor Cook (the only individuals operating the boat on the evening of the accident) were noticeably intoxicated. The Boaters were aware of the risks of traveling on a boat operated by an intoxicated person, but voluntarily chose to ignore several different opportunities throughout the night to arrange for alternative transportation or to simply not get back on that boat with a highly intoxicated driver. Indeed, the evidence is uncontroverted that the Boaters, who drank with Mr. Murdaugh for many hours that evening, waited for him and Mr. Cook to go to a bar in Beaufort to drink even more alcohol, instead of getting alternative transportation home, and then the Boaters, including Ms. Beach, voluntarily got back on the boat being operated by a clearly drunk Mr. Murdaugh.

It is also undisputed that the Boaters and Ms. Beach were aware of Mr. Murdaugh's proclivity for excessive alcohol drinking and his unpredictable, reckless, and dangerous conduct while drunk. The undisputed evidence also shows that Mr. Murdaugh's parents permitted him and his underage friends to consume alcohol at the Murdaugh's river house, and that the Boaters earlier in the day hatched a premeditated plan for illegal, underage drinking and boating. The evidence is undisputed that the group's collective decision to travel by boat on a dark, foggy, winter evening rather than by car was to drink excessively but avoid the repercussions of law enforcement DUI checkpoints they believed they may encounter on the roads that evening. After first consuming alcohol at the Murdaugh's river house, the Boaters voluntarily boarded the Murdaugh's boat, which Paul Murdaugh operated while "shotgunning" alcohol on the way to a party hosted by Kristy and James Wood. The Boaters stayed at the Wood's house party for several hours consuming even more alcohol without any consequences or reprimand from the Woods or other adults, including relatives of the Boaters, at the party. The Boaters did not heed suggestions to spend the evening at the Wood's house rather than travel late at night in the Murdaugh's boat with an intoxicated Mr.

Murdaugh at the helm. Ms. Beach and the other Boaters also refused to get an Uber or other ride share services to get home safely, even though the group discussed doing so and as it was suggested by other adults during the evening.

Ms. Beach and the other Boaters were aware of the inherent risks posed by drunk driving, including their knowledge of Paul Murdaugh's prior accidents while intoxicated. Unfortunately, despite these dangerous risks, Ms. Beach and the other Boaters again boarded the Murdaughs' boat to venture to downtown Beaufort with an intoxicated Mr. Murdaugh driving the boat. After docking, Mr. Murdaugh and Mr. Cook stopped at Luther's Rare and Well Done, a bar, where Mr. Murdaugh again used his brother's valid license, and Mr. Cook used fake identification, to enter the bar and purchase and consume two large shots of hard alcohol each. Ms. Beach and the other Boaters waited in the nearby park knowing Mr. Murdaugh and Mr. Cook were in a bar drinking shots on top of all of the other alcohol they consumed during the evening. Ms. Beach and the other Boaters were aware that Mr. Murdaugh and Mr. Cook were noticeably more drunk when they returned from the bar. They were also aware it was a dark and foggy night, and that the only available light for the boat was a handheld flashlight. Although Ms. Beach and the other Boaters recognized it was unsafe, they nonetheless elected to re-board the Murdaughs' boat knowing that Mr. Murdaugh and Mr. Cook were very impaired from their many hours of drinking that night, including their consuming multiple shots of hard alcohol just before boarding the boat again. After which, a very real risk of getting back on that boat with all the existing and apparent risks occurred – the boat crashed.

Parker's had no control over the foregoing intervening and superseding acts that were the direct and proximate cause of the boat crash and Ms. Beach's unfortunate death. These acts and omissions by others were not reasonably foreseeable to Parker's or Ms. Cohen at the time of the

legal sale. Instead, Mr. Murdaugh defrauded her with his brother's valid driver's license almost nine hours before the accident. The Boaters and others could have avoided the boat crash and tragic outcome at many junctures throughout the evening. The Boaters had multiple opportunities to avoid assuming grave risks and putting themselves in danger, but they intentionally failed to take any of those opportunities. The tragedy of that evening also could have been prevented if the adults at the oyster roast, some of whom were relatives of the Boaters, including parents, uncles, and aunts, would have stopped the group from getting back on the boat after drinking in their presence all evening. Accordingly, summary judgment on these undisputed facts is appropriate.

III. Fraud Upon the Retailer Precludes a Claim for Recovery

Finally, the Court should not permit Plaintiff to maintain negligence claims against Parker's based on a legal sale of alcohol earlier in the day to Mr. Murdaugh. It is undisputed that Ms. Beach was aware that Mr. Murdaugh had fraudulently used his brother's valid South Carolina driver's license to procure alcohol for a planned night of drinking and boating. As a matter of public policy, this Court should deny Plaintiff recovery in this case for claims based upon and through an allegation that Parker's violated S.C. Code Ann. § 61-4-580(A)(1) given the undisputed evidence that the sale of alcohol to Mr. Murdaugh was the product of his fraud and that Ms. Beach was aware of the fraud and consumption of alcohol obtained through such fraudulent acts. The individuals involved were all adults with respect to the committing of or knowledge of the fraud.

Moreover, the uncontroverted evidence demonstrates that Paul Murdaugh and the other Boaters planned to drink excessively on the evening of the accident prior to the purchase of alcohol from Parker's that day. As noted, they planned to take a boat in order to avoid DUI checkpoints. Moreover, every passenger on the boat during the crash, including Ms. Beach, had actual knowledge that Paul Murdaugh had severe drinking problems and "regularly drank to the point of

becoming grossly intoxicated.” *See* Affidavit of Morgan Doughty dated May 4, 2022. Indeed, Paul Murdaugh’s parents were aware of his “condition and proclivities” including the fact that he was “reckless based on his almost constant consumption of alcohol.” *See* Third Amended Complaint at ¶ 12. Paul Murdaugh’s parents “regularly provided him and other minors with alcohol.” *See* Doughty Aff. at ¶ 11. Numerous photographs and videos show conclusively that Paul Murdaugh routinely drank excessively and became intoxicated in the presence of his parents and with their permission. *See id.* at ¶ 12 and its attached exhibits. Furthermore, they were even aware that Paul Murdaugh had prior vehicular accidents caused by his consumption of alcohol, including almost killing Morgan Doughty. Despite this knowledge of Paul Murdaugh’s problems with drinking and his prior vehicular accidents while intoxicated, the Boaters repeatedly boarded the boat that evening – a boat that the Boaters believed would be operated by a severely intoxicated Paul Murdaugh, causing the accident, all of which resulted from the fraud procured upon Parker’s. That fraud, and the Boaters’ knowledge of it, precludes any recovery by the Plaintiff here.

WHEREFORE, and based on the above and the evidence which may hereafter be submitted to the Court, Parker’s respectfully requests that this Court grant its Motion for Summary Judgment and dismiss Plaintiff’s Amended Complaint and all causes of actions therein against it with prejudice.

Respectfully submitted,

s/David L. Williford

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Greenville, South Carolina