STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF HAMPTON	)	CASE NO.: 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.	)	**PLAINTIFF'S MEMORANDUM IN OPPOSITION TO MOTION TO SEVER**

In this motion to sever, Greg Parker incredulously continues to demonstrate his callous indifference to the suffering of the Beach family, this time by attempting to burden them with two trials in which they will be forced to endure and relive the horrific events of their daughter's death and the unbearable recounting of the week-long search for her body. No family should have to deal with such despicable acts in seeking justice for the death of their daughter. For the reasons set forth below, Plaintiff respectfully requests an Order from this Court denying Parker's motion to sever.

Parker's real purpose in filing this motion to sever is to escape the application of joint and several liability which applies in this case. Our legislature and courts in South Carolina have decided that pure joint and several liability applies when the sale of alcohol and intoxication are

involved. As the Court knows, what that means is that each Defendant is jointly and severally liable for the verdict. In this motion to sever, Parker's seeks two separate trials, with two separate juries and two separate verdicts. If two separate trials take place and result in one verdict against Parker's and one against the remaining defendants, how will the Court enforce the law of joint and several liability? The answer is clear. It cannot be done. It is impossible. The granting of this motion to sever would be a pronouncement by this Court that, contrary to the very clear legislative pronouncement of South Carolina, joint and several liability does not apply to Parker's. This motion illustrates how desperate Parker's is to escape its fear of the application of joint and several liability in this case.

Furthermore, the motion to sever is contrary to the well settled law of this state. As the South Carolina Supreme Court has made clear, "[it] is well-settled that a plaintiff has the **sole** right to determine which co-tortfeasor(s) she will sue." Chester v. S.C. Dep't of Pub. Safety, 388 S.C. 343, 345–46, 698 S.E.2d 559, 560 (2010)(emphasis)(citing Doctor v. 346 Robert Lee, Inc., 215 S.C. 332, 55 S.E.2d 68 (1949); South Carolina Dep't of Health and Envir. Control v. Fed–Serv Indus., Inc., 294 S.C. 33, 362 S.E.2d 311 (Ct.App.1987). This is not simply an absolute right to determine the pleadings, but an absolute right to determine the presentation of the case and the parties joined at the trial. In Chester, a wrongful death case brought pursuant to the S.C. Tort Claims Act (TCA), the Defendant S.C. Department of Public Safety moved the Court for an order compelling the Plaintiff to add other tortfeasors as defendants, tortfeasors with whom the Plaintiff had already settled, and the trial court granted the motion. On appeal, the Supreme Court reversed:

> A ruling that a TCA defendant can compel a plaintiff to join other alleged tortfeasors as defendants in that suit would overturn this firmly entrenched common law principle [that a plaintiff has the sole right to determine which co-tortfeasor(s) she will sue]…We are not persuaded that the General Assembly, in enacting § 15–78–100(c), giving a TCA defendant the right to a proportionate verdict 'when

> an alleged tortfeasor is named a party defendant,' intended to abrogate the tort plaintiff's **right to choose her defendant**, nor to effectively force the plaintiff to choose between settling with some parties and thereby forego her right to sue a TCA defendant, or going to trial against all co-tortfeasors.

Id.

The South Carolina Rules of Civil Procedure are consistent with this long-standing principle, incorporating liberal joinder rules. Rule 20(a), SCRCP, provides:

> All persons may be joined in one action as defendants if there is asserted against them jointly, severally[1], or in the alternative, **any right to relief** in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all defendants will arise in the action.

Rule 20(b), SCRCP (emphasis added). Moreover, the law relating to joint and several liability that applies to Plaintiff's claims obviously allows the Plaintiff's joinder of two or more persons as defendants in situations where the combined acts of more than one person cause or contribute to cause an injury.

Each of these principles reflects the long-standing law that the civil plaintiff is the **master of her lawsuit** and **determines the claims to bring**. See, e.g., Steves & Sons, Inc. v. JELD-WEN, Inc., 988 F.3d 690, 728 (4th Cir. 2021)(citing United States ex rel. Bunk v. Gosselin World Wide Moving, N.V., 741 F.3d 390, 405–06 (4th Cir. 2013)(other citations omitted)(emphasis added); see also, Johnson v. Charlotte-Mecklenburg Sch. Bd. of Educ., 20 F.4th 835, 844 (4th Cir. 2021)("The plaintiff is the 'master of [her] complaint and determines [which] claims to bring.' Thus, in the present case, it was Johnson's choice as plaintiff whether to seek compensatory education as a remedy in federal court, and whether to abandon any claims made

[1] It is undisputed that because the claims arise out of the illegal sale of alcohol and intoxication, liability is joint and several. See, S.C. Code Ann. § 15-38-15.

before the state agency that she no longer wished to pursue")(citing Steves & Sons, Inc. v. JELD-WEN, Inc., 988 F.3d 690, 728 (4th Cir. 2021)). Moreover, as part of being the master of the case, the Plaintiff has the right to identify and pursue any of the defendants she chooses. See, Folkes v. Nelsen, 34 F.4th 258, 270 (4th Cir. 2022)(citing United States ex rel. Bunk v. Gosselin World Wide Moving, N.V., 741 F.3d 390, 405–06 (4th Cir. 2013)(discussing cases relying on the principle that the plaintiff is the "master of his complaint" and thus responsible for describing his claims, **identifying the defendants**, and **otherwise crafting the case he presents** to the district court for decision)(emphasis added)); Cook v. Lowe's Home Centers and Sessoms, 2006 U.S. Dist. LEXIS 79489 (D.S.C. October 30, 2006)("In that regard, the plaintiff has the **right to name whom he sues** and, in this case, has properly named [the agent] as one of the people that is potentially, jointly responsible for his injuries")(emphasis added); Cravens v. Lawrence, et al., 181 S.C. 165, 170, 186 S.E. 269, 271 (S.C. 1936)("When, then, the plaintiff has proceeded to sue them jointly, as he has done here, the cause is not removable to this [federal court], unless diversity of citizenship exists as to both joint defendants")).

As much as Greg Parker and his company wish otherwise, this role of the Plaintiff as architect of her case does not end with drafting the Complaint; rather, it continues through the presentation of the case at trial. This principle that the Plaintiff gets to decide how to present her case at trial is illustrated in Chester, where the Defendant was not allowed to compel the Plaintiff to add additional joint tortfeasors as defendants at trial, even when the result was that the named Defendant did not get the benefit of the proportionate verdict allowed by the TCA when additional tortfeasors are present at the trial as parties defendant.[2] Chester v. S.C. Dep't of Pub. Safety, 388

[2] The trial court had ruled the non-governmental defendants would only be in the case for the apportionment of liability rather than for the plaintiff to recover money damages from them.

S.C. 343, 345–46, 698 S.E.2d 559, 560 (2010). Rather, as architect of her case operating within the applicable rules and law, the Plaintiff not only decides which claims to assert and which defendants to name but also how to try the case.

Interestingly, Parker cites no authority for the assertion of a "right" to sever this case other than Rules 20(b) and Rule 42(b), SCRCP. The reason is there is no authority supporting the position of severing the trial of a case in which multiple joint tortfeasors are properly named. While both Rule 20 and Rule 42 contemplate certain situations in which the Court may choose to exercise its discretion to order separate trials, these rules do not support severance in this case:

> **RULE 20. PERMISSIVE JOINDER OF PARTIES**
>
> . . .
>
> **(b) Separate Trials.** The court **may** make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom he asserts no claim[3] and who asserts no claim against him, and may order separate trials or make other orders to prevent delay or prejudice.
>
> **RULE 42. CONSOLIDATION; SEPARATE TRIALS**
>
> . . .
>
> **(b) Separate Trials.** The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, **may** order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues, always preserving inviolate the right of trial by jury as declared by the Constitution or as given by a statute of the State.

Rules 20(b) and 42(c), SCRCP. Contrary to Parker's position, these rules do not come close to supporting severance. First, under each rule, separate trials are **discretionary** with the Court and still that discretion is limited. Contrary to Parker's claim, neither rule includes the word "should". Rather, the language of the rules makes the power of the Court completely discretionary and does

[3] Technically Parker is asserting a claim against the other defendants by asserting they are the cause of Plaintiff's damages. See, Answer of Gregory M. Parker to Third Amended Complaint.

not encourage the Court to order separate trials. Further, absent from the case law in which these rules have been used to order separate trials is any case involving separate trials of joint tortfeasors especially when the defendant requesting a severance is also blaming its co-defendants.[4] Instead, courts have exercised their discretion to order separate trials in very limited situations where there are separate issues, most notably when a complaint asserts equitable claims without a right to a jury trial but a counterclaim asserts legal claims with a right to a jury trial, or for bifurcation of the issues of liability and damages. Our rules of civil procedure must be applied within the context of the existing law, recognizing the fundamental right of the Plaintiff to try her case as she deems appropriate. Using either Rule 20(b) or Rule 42(b) as a basis for ordering separate trials in this case would effectively overrule the long-standing principle of law espoused by our Supreme Court in Chester that "a plaintiff has the **sole** right to determine which co-tortfeasor(s) she will sue" and how she will present her case at trial. Chester v. S.C. Dep't of Pub. Safety, 388 S.C. 343, 345–46, 698 S.E.2d 559, 560 (2010). Such a ruling would also obliterate the application of joint and several liability to this case.

Here, Parker wants is an empty chair to blame.[5] Knowing that this is a case in which pure joint and several liability applies, Parker wants to remove all other defendants from the trial in

---

[4] See, Answer of Greg M. Parker to Third Amended Complaint, paragraphs 28, 33, 35 and37.

[5] The case of Fernanders v. Marks Construction of S.C., Inc., et al, 330 S.C. 470, 499 S.E.2d 509 (Ct.App. 1999), is illustrative here. In Fernanders, a child drowned when she fell out of a bumper boat and her clothing became entangled in the propeller. The child's estate sued the amusement park and the manufacturer of the boat. The manufacturer, a foreign corporation, did not submit to personal jurisdiction and therefore did not appear at trial. The amusement park, concerned that it would be liable for the entire verdict as a joint tortfeasor, moved to sever the claims. The trial court denied the motion, obviously because it is not proper to sever claims against joint tortfeasors when that is how the plaintiff, as master of his complaint, has chosen to pursue the case. Although the denial of the motion to sever was not the issue on appeal, the case illustrates why it is not proper to sever claims against joint tortfeasors. It should be noted that Fernanders was essentially overruled by statute on the issue that was actually on appeal as it was decided in 1999, before the enactment of S.C. Code Ann. § 15-38-15 which softened the effect of joint and several liability for

order to blame the other defendants without any pushback. In a pure joint and several situation where the actions of multiple tortfeasors joined together to cause a death, it would be unduly prejudicial to the Plaintiff's rights under South Carolina law to order separate trials. In fact, such an order would essentially obliterate the application of joint and several liability to this case and thereby rob Plaintiff of her right to a jury trial. That result is certainly not intended by the discretion granted this Court by Rules 20 and 42 which must be exercised within the bounds of the applicable common law principle that "a plaintiff has the **sole** right to determine which co-tortfeasor(s) she will sue." Chester v. S.C. Dep't of Pub. Safety, 388 S.C. 343, 345–46, 698 S.E.2d 559, 560 (2010).

Further, the trial of any wrongful death claim, much less one in which the family will be forced to relive the week-long search for their daughter in the vast expanse of the Beaufort waterways and marshes, is a traumatic experience that no family should be forced to endure more than once. If separate trials are ordered, there will be no collateral estoppel effect from the first trial and no findings will be binding on the other defendants in a later trial. As such, there is no judicial economy promoted by separate trials. In essence, there will be nothing to avoid complete duplication in a second trial of the other defendants or to prevent the certainty of inconsistent verdicts.[6] This equates to the opposite of expedition and economy contemplated in the rules.

The argument that Parker's sets forth claims undue delay and prejudice. As for undue delay, the rules themselves provide that a newly named defendant results in a delay of trial for at least 180 days after service of the last pleading. See, Rule 40(b), SCRCP. In essence, a delay of

---

defendants found to be less than 50% at fault in cases **not** involving alcohol, gross negligence or reckless or willful conduct.

[6] For example, assume the jury returns a verdict of $100 million dollars against Parker, while a second jury returns a lesser verdict against the remaining defendants. Does the Court really expect Parker will not argue he should be entitled to a remittitur or new trial based on that lesser verdict? The risk of confusion and prejudice dictates the Court should deny the motion.

180 days is not an undue delay under the rules. How then can a delay from October to January qualify as an undue delay? By definition, that short length of time is not an undue delay.

As for prejudice, Parker's argues that being tethered to the notoriety of the Murdaughs is prejudicial for Parker's. This is code for Parker's ulterior motive of trying to escape joint and several liability. Parker's does not want to be tethered to the Murdaugh Defendants because Parker's fears what joint and several liability really means. That is not the type of prejudice contemplated by either Rule 20 or Rule 42. Such application of Rule 20 or Rule 42 to sever the Plaintiff's claims would be tantamount to a ruling that joint and several liability does not apply to Parker's because it would be prejudicial. That argument is farcical and is not the law of South Carolina.

Parker's end game is patent; they want to have their cake and eat it too. Unfortunately for the Parker, they do not get to tell the Plaintiff how to try and present her case, just as this Court already recognized in the hearing on Defendant Murdaugh's motion to stay by noting that the only way the case will move forward in October is if the Plaintiff chooses to sever her claims. Plaintiff is not choosing that path. For each of these reasons, the Plaintiff respectfully requests the Court to deny the motion to sever.

GOODING AND GOODING, P.A.

By: s/Mark B. Tinsley

Mark B. Tinsley – S.C. Bar #15597
P.O. Box 1000
Allendale, SC 29810
803-584-7676
Attorneys for Plaintiff
mark@goodingandgooding.com

August 30, 2022