

SUPREME COURT RULES DRUNK CAN SUE BAR FOR OWN PERSONAL INJURIES

As previously reported here, the Appellate Division ruled that a drunk driver who is involved in an accident can sue a tavern, which allegedly over-served him, for personal injuries. At issue in this case is a provision of the New Jersey statute which provides that a driver who is convicted of or pleads guilty to driving while intoxicated in connection with an accident “shall have no cause of action for recovery of economic or non-economic loss sustained as a result of the accident.” The Supreme Court upheld the Appellate Division decision and has ruled that an individual who has been convicted of, or pleads guilty to, driving while intoxicated may file a Dram Shop Claim against a tavern for allegedly over-serving him.

By way of background, on November 9, 2006, Frederick Voss was injured when his motorcycle collided with a vehicle operated by Kristoffe Tranquilino. Voss claimed that prior to the accident, he had been a patron at Tiffany’s Restaurant and that Tiffany’s served him while visibly intoxicated. After the accident, Voss’ Blood Alcohol Content was .196. He was charged with and pled guilty to driving while intoxicated.

Voss filed a personal injury claim against the driver of the vehicle he struck as well as Tiffany’s. Tranquilino was dismissed from the case. Tiffany’s filed a motion for summary judgment based on N.J.S.A. 39:6A-4.5(b) which provides that an individual convicted of or who has pled guilty to driving while intoxicated shall have no cause of action for recovery of economic or non-economic losses. The trial court denied that motion. Tiffany’s then appealed.

In reviewing this matter, the Appellate Division noted that the Dram Shop Act, N.J.S.A. 2A:22A-1 et seq., provides the exclusive civil remedy for injuries resulting from the negligent service of alcoholic beverages by a licensed server. Under the Dram Shop Act, negligent service of alcoholic beverages occurs “only when the server serves a visibly intoxicated patron...which was in a state of intoxication accompanied by perceptual acts or series of acts which present clear signs of intoxication.” In reviewing the legislative history of the Dram Shop Act, the Appellate Division noted that prior to the Dram Shop Act being enacted, a proposed version of the bill provided that: (1) any person who became intoxicated and sustained personal injuries or property damage as a result of his actions while intoxicated would be prohibited from instituting a civil action for damages against the licensed server; and (2) a person who knowingly rode in a vehicle operated by an intoxicated person would be prohibited from instituting legal action for damages against a licensed server. Both of these proposed provisions were stricken from the final version of the Dram Shop Act.

In addressing N.J.S.A. 39:6A-4.5(b), which was passed ten years after the Dram Shop Act, the Appellate Division noted that the purpose of that section of the statute was to reduce automobile insurance premiums. Accordingly, the Court found that a unilateral bar to intoxicated drivers pursuing a dram shop claim would undermine the public policy of holding licensed alcoholic beverage servers accountable for the service of alcohol to their patrons. The Appellate Division ultimately held that the Dram Shop Act was the sole remedy for claims against licensed servers and as such does not prohibit claims made by individuals who have pled guilty to DWI. As such, the Appellate Division found that it was permissible under New Jersey law for Mr. Voss to pursue his claim against Tiffany's.

In a two page decision, the Supreme Court affirmed the Appellate Division's findings. The majority of the court noted that N.J.S.A. 39:6A-4.5(b) was instituted to reduce automobile insurance and applying its language strictly would repeal a portion of the Dram Shop Act. The majority opined that repeal by implication is impermissible. Additionally, the court noted that while N.J.S.A. 39:6A-4.5 was intended to further deter drunk driving, the provision of the statute can coexist with the Dram Shop Act as "permitting a drunk driver to file an action against a liquor establishment and its servers for serving a visibly intoxicated patron similarly advances the goal of deterring drunk driving."

Justice Albin filed a dissenting opinion which accused the majority of ignoring the legislature and imposing its will in this case. Justice Albin wrote that the majority "has rewritten a clear and unambiguous statute under the dubious assumption that the legislature did not mean what it said." Justice Albin went on to note that N.J.S.A. 39:4-6.5 was passed a number of years after the Dram Shop Act. As it is presumed the legislature knew the Dram Shop Act existed, if it wished to allow drunk drivers to pursue their own legal actions, it could have easily included such a provision in the statute. The legislature did not, and as such, Justice Alden found that Voss should not be permitted to maintain this action.

Ultimately, this means that licensed liquor servers face potential lawsuits from individuals alleging to have been over-served in their establishment even if they plead or are convicted of driving while intoxicated. However, as a practical matter, in gauging comparative fault, generally a jury should find the majority, if not all, of the happening of the accident was due to the actions of the drunk.