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Employer Not Responsible for Accident Involving Off-Duty Intoxicated Employee

The Appellate Division has ruled that an employer is not responsible for the actions of its alcoholic employee when he is not engaged in work related activities and there is no knowledge that the employee has a drinking problem.

In this matter, Eugene Baum was an employee of Future Electronics, which sells semiconductors and their components. Initially, Baum was an "in house" salesperson. Eventually, he was transferred to an outside sales job.

On April 20, 2006, Baum struck two teenage girls walking on the side of a road in Kinnelon, New Jersey at 7:45pm. Earlier in the day, Baum had driven from his home in Dover, New Jersey to a business meeting in Monmouth County. During discovery, Baum admitted to having been drinking vodka from a water bottle when he drove to and from the business meeting. After returning home from the business meeting, Baum believes he continued to drink in his house. Baum then decided to drive to his mother's house in Kinnelon to get spare tire. During his drive to his mother's house, Baum used his cell phone at 7:19pm to check his voice mailbox at work. The accident happened twenty-five minutes later.

During discovery it was learned that Baum was driving a rental car. Baum admitted that he was driving the rental car due to the fact that his personal automobile was inoperable. Baum paid for the rental out of his own funds. Additionally, Baum noted that he had a drinking problem and had been hospitalized on three occasions for that condition from 2005 to 2006. However, Baum's boss testified that he had no knowledge that Baum had a drinking problem and never saw Baum in an intoxicated state.

Plaintiffs filed suit against Baum, Future and the car rental company. The rental company was dismissed from the action via summary judgment. At the close of discovery, Future filed a motion for summary judgment, which was also granted. The plaintiffs appealed that ruling.

In their appeal, plaintiffs argued that the granting of summary judgment was improper as Future could have been found responsible for the happening of the accident under the theories of (1) vicarious liability, based on respondeat superior; and/or (2) negligent retention and/or supervision.

With regard to the plaintiff's theory of respondeat superior, the Court found that there was no evidence that Baum was acting within his scope of employment when the accident. The Court noted that Baum admitted that he was driving to his mother's house for personal reasons. Additionally, the Court found that Baum checking his work voicemail twenty-five minutes before the happening of the accident was insufficient to establish that he was within the scope of his employment when the accident occurred.

The Court also rejected plaintiff's argument that Future could be found responsible for the happening of the accident due to the fact that they knew Baum had a drinking problem, but allowed him to become an outside sales person. In rendering its decision, the Court found that there was no evidence to establish that Future knew of Baum's drinking problem, or the state he was in at the time of the accident. The Court wrote, "Future did not supply the vodka to Baum, Baum was not visibly intoxicated from drinking

with a client for business purposes earlier in the day, and Baum was nether driving to, nor returning from work when the accident occurred."

This decision maintains well settled case law that in examining the potential liability of an employer, the notion of fairness and public policy must be considered. In a case where the employer has not supplied the alcohol (or venue for the consumption of alcohol) and the employee is not in the scope of his employment, an employer will generally not be held responsible for the actions of its employee.

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