Liquor Liability Points of Interest/ Dram Shop Laws 2017 – State of New Jersey - Law Offices of Thomas J. Wagner, LLC

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NEW JERSEY

I. GENERAL OVERVIEW OF THE LAW

a. First Party Liability

New Jersey Courts do recognize a cause of action for First Party Liability brought by an injured intoxicated patron or customer. See e.g. Voss v. Tranquilino, 206 N.J. 93, 19 A.3rd 470 (2011). The New Jersey Licensed Alcoholic Beverage Server Fair Liability Act, commonly referred to as the Dram Shop Act, governs these types of claims

. Generally N.J.S.A. §2A:22A-5 makes it unlawful for a licensed alcoholic beverage server to serve a visibly intoxicated person. A Plaintiff must show that (1) the server is deemed negligent pursuant to the statute; (2) the injury or damage was proximately caused by the negligent service of alcoholic beverages; and (3) the injury or damage was a foreseeable consequence of the negligent service of alcoholic beverages. N.J.S.A. §2A:22-5a.

The Act is the exclusive civil remedy for personal injury or property damage resulting from negligent service of alcoholic beverages by a licensed alcoholic beverage server. N.J.S.A. §2A:22A-4.

The Act does not require eyewitness testimony to prove a person was served an alcoholic beverage while visibly intoxicated. Halvorsen v. Villamil, 429 N.J. Super. 568, 571, 60 A.3d 827, 829 (App. Div. 2013). Visible intoxication is defined under the Act as "a state of intoxication accompanied by a perceptible act or series of acts which present clear signs of intoxication." N.J.S.A. §2A:22A-3. The New Jersey Supreme Court has held that it is possible to prove liability under the Act without direct eyewitness testimony on the visible intoxication issue. Mazzacano v. Estate of Kinnerman, 197 N.J. 307, 321, 962 A.2d 1103, 1111 (2009).

A licensed alcoholic beverage server cannot be liable for failing to monitor the conduct of a person to whom it did not serve alcohol, even if that person was intoxicated. Mazzacano, supra. at 324. A licensed alcoholic beverage server is "negligent only when the server served a visibly intoxicated person or serves a minor." Id. A licensed beverage server who serves an alcoholic beverage to a minor can be liable when the server knew, or reasonably should have known, that the person was a minor. N.J.S.A. §2A:22A-5(b)

b. Third Party Liability

New Jersey Courts do recognize an action brought by a third party injured by an intoxicated adult or minor served or sold alcohol by a licensed alcoholic beverage server. See, Rappaport v Nichols, 31 N.J. 188, 156 A.2d 1 (1959). When alcoholic beverages are sold by a tavern keeper to a minor or to an intoxicated person, the unreasonable risk of harm not only to the minor or the intoxicated person, but also to members of the traveling public, may readily be recognized and foreseen. McGovern v. Koza's Bar & Grill, 254 N.J. Super. 723, 604 A.2d 226 (Law Div. 1991); Rappaport v. Nichols, 31 N.J. 188, 156 A.2d 1 (1959).

c. Social Host Liability

Social hosts can be found liable for third-party injuries. A host who serves liquor to an adult social guest, knowing both that the guest is intoxicated and will thereafter be operating a motor vehicle, is liable for injuries inflicted on a third party as a result of the negligent operation of a motor vehicle by the adult guest when such negligence is caused by the intoxication. Kelly v. Gwinnell, 96 N.J. 538, 548, 476 A.2d 1219, 1224 (1984).

N.J.S.A. §2A: 15-5.6 now provides the exclusive civil remedy for injury resulting from the negligent provision of alcoholic beverages by a social host to a person who has attained the legal age to purchase and consume alcoholic beverages.

Social hosts are only directly liable to minor guests served alcoholic beverages and to third persons injured in motor vehicle accidents. Componile v Maybee, 273 N.J.Super. 402, 641 A.2d 1143 (Law Div. 1994)

Courts have held that a social host who leaves alcohol out for guests to take on their own "provides" alcohol within the meaning of the Social Host statute. Dower v. Gamba, 276 N.J. Super. 319 (App.Div.1994), certif. denied, 140 N.J. 276 (1995).

d. Liability Involving Minors

New Jersey Courts do recognize an action for first party liability brought by an injured minor patron or customer who was sold alcoholic beverages by a licensed alcoholic beverage server. N.J.S.A. §2A:22A-5(b).

A minor guest who was served alcoholic beverages by a social host is entitled to assert a first party liability claim against the host. See, Batten v. Bobo, 218 N.J.Super. 589, 528 A2d 572 (Law Div. 1986)

II. KEY STATUTES & REGULATIONS

In New Jersey, there is a Dram Shop Act, officially titled The New Jersey Licensed Alcoholic Beverage Server Fair Liability Act. N.J.S.A. § 2A:22A-1 et. seq.

Section 2A:22A-4 of the Act states "This act shall be the exclusive civil remedy for personal injury or property damage resulting from the negligent service of alcoholic beverages by a licensed alcoholic beverage server."

In order to establish liability under the Act , N.J.S.A. §2A:22A-5 provides that:

a. A person who sustains personal injury or property damage as a result of the negligent service of alcoholic beverages by a licensed alcoholic beverage server may recover damages from a licensed alcoholic beverage server only if:
(1) The server is deemed negligent pursuant to subsection b. of this section; *and*
(2) The injury or damage was proximately caused by the negligent service of alcoholic beverages; *and*

(3) The injury or damage was a foreseeable consequence of the negligent service of alcoholic beverages.

b. A licensed alcoholic beverage server shall be deemed to have been negligent only when the server served a visibly intoxicated person, or served a minor, under circumstances where the server knew, or reasonably should have known, that the person served was a minor.

N.J.S.A. §2A:16-5.6 provides the exclusive civil remedy to a person injured as a result of the negligent provision of alcoholic beverages by a social host to an individual of legal age. The statute provides:

> b.A person who sustains bodily injury or injury to real or personal property as a result of the negligent provision of alcoholic beverages by a social host to a person who has attained the legal age to purchase and consume alcoholic beverages may recover damages from a social host only if:
>
> (1) The social host willfully and knowingly provided alcoholic beverages either:
>
> (a) To a person who was visibly intoxicated in the social host's presence;or
>
> (b) To a person who was visibly intoxicated under circumstances manifesting reckless disregard of the consequences as affecting the life or property of another; and
>
> (2) The social host served alcohol to the visibly intoxicated guest that created an unreasonable risk of foreseeable harm to the life or property of another, and the social host failed to exercise reasonable care and diligence to avoid the foreseeable risk; and
>
> (3) The injury arose out of an accident caused by the negligent operation of a vehicle by the visibly intoxicated guest that was served alcohol by the social host.

A social host is not subject to first party claims asserted by adult guests. N.J.S.A. 2A:15-5.7 provides:

> "No social host may be held liable to a person who has attained the legal age to purchase and consume alcoholic beverages for damages suffered as a result of the social host's negligent provision of alcoholic beverages to that person."

III. NOTABLE CASES

Rappaport v. Nichols, 31 N.J. 188, 156 A.2d 1 (1959)

Defendant tavern keeper served alcohol to a minor, who then drove his mother's car, collided with another vehicle, and killed the other driver. The driver's estate sued for negligence, and the trial Court granted his motion for summary judgment for failure to state a claim. On

appeal, the Court held that there was a claim for relief, and that the tavern keeper knew or should have known that the person being served was a minor or intoxicated.

Kelly v. Gwinnell, 96 N.J. 538, 476 A.2d 1219 (1984)

Plaintiff, the victim of a drunken driving accident, sued defendant drunk driver and defendant host, who had served alcoholic beverages to the drunken driver. The Court held that where a host provides liquor directly to a social guest and continues to do so even beyond the point at which the host knows the guest is intoxicated, and does this knowing that the guest will shortly thereafter be operating a motor vehicle, that host is liable for the foreseeable consequences to third parties that result from the guest's drunken driving. The host and guest are liable to the third party as joint tortfeasors.

Lee v. Kiku Rest., 127 N.J. 170, 603 A.2d 503 (1992)

Plaintiff patron and a driver consumed alcohol at Defendant's restaurant. It was alleged that both plaintiff and the driver were served alcohol after they were visibly intoxicated. Plaintiff was injured when she and the driver were involved in an accident, and sought damages against Defendant for causing his injuries by continuing to serve alcohol to the driver after he was visibly intoxicated.

The Court stated that an intoxicated patron may no longer avoid responsibility for injuries proximately caused by his or her voluntary decision to consume alcohol to the point of intoxication. Further, if a tavern serves alcohol to a visibly-intoxicated patron, a court will ordinarily presume the patron's lack of capacity to evaluate the ensuing risks. Thus, a patron who voluntarily becomes visibly intoxicated and is then served alcohol by a tavern will not be entitled to a jury charge that places all responsibility for the ensuing injuries on the tavern. A voluntarily-intoxicated dram-shop patron is distinguishable from other plaintiffs who are excused for their failure to protect themselves from harm.

Mazzacano v. Estate of Kinnerman, 197 N.J. 307, 962 A.2d 1103 (2009)

Plaintiffs were the survivors of four men killed as a result of an attendee of defendant's pig roast causing a motor vehicle accident wherein he and his three passengers were killed. An autopsy of the driver revealed that his blood alcohol content was almost twice the legal limit. The driver was visibly intoxicated at the event, which allowed patrons to serve themselves, and continued to drink.

The Dram Shop Act provides a powerful incentive to a social club to monitor its guests at an affair, because if such a club allows the self-service of alcohol to a visibly-intoxicated guest or patron who then causes an automobile accident proximately related to his intoxicated condition, the club can be held accountable under the Act.

IV. STATUTE OF LIMITATIONS

In New Jersey, personal injury claims are subject to a two-year statute of limitations. N.J. S.A. § 2A:14-2(a). Our Courts also apply the so-called "discovery rule," which provides that in appropriate cases a cause of action will be held not to accrue until the injured party learned, or should have learned, that he has a basis for an actionable claim. Lopez v. Swyer, 62 N.J. 267, 270, 300 A.2d 563, 564 (1973).

V. COMPARATIVE NEGLIGENCE

New Jersey is a modified comparative negligence jurisdiction. This means that, under New Jersey law, an injured plaintiff may not recover if the plaintiff's own negligence is greater than that of the person or persons against whom recovery is sought. N.J. S.A. §2A:15-5.1. Thus, if the jury determines that the plaintiff is more than 50% responsible for the incident causing the alleged injury, then the plaintiff is precluded from obtaining an award of damages.

VI. JOINT AND SEVERAL LIABILITY

New Jersey has a joint and several liability law providing several liability for defendants less than 60% at fault, otherwise defendants will be held jointly and severally liable. N.J.S.A. §2A:15-5.3. Thus a defendant found to be 60% or more than fault is generally liable for the entire amount of a judgment. However, N.J.S.A. 2A:22A-6b limits the licensed beverage server's percentage share of damages to the percentage share of negligence attributable to their conduct.

VII. CONTRIBUTION AMONG JOINT TORTFEASORS

The New Jersey statute governing contribution against joint tortfeasors is N.J.S.A. §2A:53A-3, which states that:

> "Where injury or damage is suffered by any person as a result of the wrongful act… of joint tortfeasors, and the person so suffering injury or damage recovers a money judgment or judgments for such injury or damage against one or more of the joint tortfeasors… and any one of the joint tortfeasors pays such judgment in whole or in part, he shall be entitled to recover contribution from the other joint tortfeasor or joint tortfeasors for the excess so paid over his pro rata share."

This allows a party to pursue contribution from other joint tortfeasors, provided that there is a judgment, determination of damages, and existence of non-settling defendants. Such an action must be brought within 6 years from the entry of judgment. Ideal Mut. Ins. Co. v. Royal Globe Ins. Co., 211 N.J. Super. 336, 338 (App. Div. 1986).