The Negligence Report

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RECENT CASES PERTAINING TO DRINKING ESTABLISHMENT LIABILITY.

In this issue, we will examine two cases involving night clubs and their liability.

The Fourteenth District Court of Appeals in Parker vs. 20801, Inc., 2006 Tex. App. Lexus 2872 (Tex. App. – Houston [14th Dist.], 2006) addressed a pool hall's liability for the death of a patron in the parking lot outside the pool hall. John Parker and Anthony Griffin became intoxicated at the pool hall's grand opening. Mr. Griffin was the son of Mr. Parker's former girlfriend. While in the pool hall, they apparently engaged in some less than civil discussion which led to Mr. Parker's ejection from the hall. Mr. Griffin eventually followed him out to the parking lot. They resumed their discussion which led to a violent exchange. Mr. Parker came up on the short end of the altercation. In fact, Mr. Griffin struck him in the face causing him to fall back, striking his head on the pavement. The impact with the pavement led to brain damage. Mr. Parker felt that the pool hall shared in the culpability for his brain damage. He sued alleging causes of action under the Dram Shop Act and failure to exercise care in preventing intentional and criminal conduct. In particular, Mr. Parker claimed that the pool hall was negligent by telling him to leave the premises without regard for his safety, by not telling Griffin to leave the premises prior to Mr. Parker's injury, by failing to warn Mr. Parker that Mr. Griffin was exiting the pool hall and by not summoning the police sooner. The court disposed of the premises liability causes of action through reference to the exclusive remedy provision of the Dram Shop Act. The Act provides the liability under the Dram Shop Act for providers of alcohol's employees, guests and customer's actions is in lieu of common law liability. The court interpreted this section to pre-empt any common law action against an alcohol provider where the intoxication of a patron or guest is at issue. As a result, the court of appeals affirmed the summary judgment dismissing the premises liability claims of the Plaintiff. The court recognized its opinion was the first time the preemption doctrine had been applied to a case alleging premises liability. Previously, the pre-emption doctrine had been applied on numerous occasions to common law theories arising from auto accidents.

In Loeser vs. Sans One, Inc, 187 S.W.3d 685 (Tex. App. – Houston [14th Dist.] 2006), a different panel of this same court of appeals addressed injuries that occurred during the removal of patron from a night club. Mr. Loeser (well named, for once) ascended the stage, procured a microphone and demanded the air conditioning be turned up. The manager then proceeded to remove him from the stage. After removal from the stage, two unidentified individuals then threw Mr. Loeser over a stage rail and then pushed him out the emergency exit. Mr. Loeser said that it was his best guess that he had been hurt while being removed from the stage but acknowledged being thrown over the stage railing. The court found that Loeser failed to show that his removal from the premises was unreasonable under the circumstances or that his injury arose from a lack of reasonable care.

Comment: Obviously, the Parker case represents good legal authority for limiting a drinking establishment's liability to the Dram Shop Act for cases that involved an intoxicated patron and their actions. The Loeser case would seem to be a result of the forum as it was filed in Harris County and appealed to the conservative Fourteenth District Court of Appeals. With the facts alleged in this opinion, you will find that many District Courts in Texas would have found sufficient evidence of negligence and proximate cause to justify denying a Motion for Summary Judgment. Although the Court of Appeals never specifically identifies what evidence or testimony the Plaintiff lacked, it would seem the lack of testimony identifying the individuals who threw Mr. Loeser over the stage rail as employees of the bar or the failure to present expert testimony that the bar did not have adequate training on the removal of unruly patrons or that their method of removal was unreasonable were the shortcomings of the Plaintiff's case.

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