

COURT OF APPEALS OF TEXAS, EL PASO

Primera Enterprises, Inc. d/b/a JB's Lounge v. Autrey

349 S.W.3d 167 (Tex. App.—El Paso 2011) · No. No. 08-09-00263-CV · Decided August 10, 2011

SUMMARY

The Texas Court of Appeals considered whether Primera Enterprises, Inc., doing business as JB's Lounge, established the statutory safe-harbor defense under the Texas Alcoholic Beverage Code against liability under the Dram Shop Act. The court held that JB's proved its employees had completed approved seller-training programs and that no evidence showed direct or indirect encouragement of over-service. The court sustained JB's matter-of-law challenge, reversed the judgment against it, and rendered a take-nothing judgment in its favor.

CASE DETAILS

COURT	Court of Appeals of Texas, El Paso
WRITING FOR THE COURT	David Wellington Chew, Chief Justice; Chew, C.J.; McClure, J.; Rivera, J.
JURISDICTION	Texas
DECIDED	August 10, 2011
DOCKET	No. 08-09-00263-CV
DISPOSITION	reversed
PROCEDURAL POSTURE	Appeal from a bench-trial judgment imposing liability on JB's Lounge under the Texas Dram Shop Act. JB's challenged the trial court's failure to find its statutory safe-harbor affirmative defense as a matter of law and challenged the legal and factual sufficiency of the evidence supporting liability.
STANDARD OF REVIEW	For a legal-sufficiency challenge to the failure to find an affirmative-defense issue in the appellant's favor, the court first examines the record for evidence supporting the finding while disregarding contrary evidence. If no supporting evidence exists, the court examines the entire record to determine whether the contrary proposition is conclusively established as a matter of law. The issue is sustained only when the contrary proposition is conclusively established.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Primera Enterprises, Inc. d/b/a JB's Lounge v. Mark Anthony Autrey

TOPICS

dram shop liability

appellate procedure

standard of review

negligence

proximate cause

PRACTICE AREAS

Torts

Alcohol liability

Appellate procedure

Remedies

QUESTIONS PRESENTED

1. Whether JB's established as a matter of law its affirmative defense under Texas Alcoholic Beverage Code section 106.14(a).
2. Whether the evidence was legally and factually insufficient to support JB's liability under the Texas Dram Shop Act.

HOLDINGS

1. JB's established the first two elements of the statutory safe harbor by requiring its employees to attend, and showing that they attended, a commission-approved seller-training program. Because the record contained no evidence that JB's directly or indirectly encouraged the employee to over-serve Flores, the safe-harbor defense was conclusively established as a matter of law.
2. The court declined to address JB's alternative legal- and factual-sufficiency challenges because sustaining the safe-harbor issue required reversal of the judgment against JB's.

KEY QUOTATIONS

"Under the 'safe harbor' provision, the actions of an employee in over-serving a patron 'shall not be attributable to the employer if: (1) the employer requires its employees to attend a commission-approved seller training program; (2) the employee has actually attended such a training program; and (3) the employer has not directly or indirectly encouraged the employee to violate such law.'" (349 S.W.3d at 170)

"As there is no dispute that JB's established the first two elements of the safe harbor defense, and as there is no evidence of 'encouragement' which would rebut the defense, JB's matter of law challenge on its affirmative defense must be sustained." (349 S.W.3d at 171)

FACTUAL BACKGROUND

Sergio Flores drank at least six alcoholic drinks at JB's Lounge on May 5, 2005, continued drinking after his friends left, and drove away from the lounge at approximately 11:30 p.m. About an hour and a half later, Flores was involved in a two-car collision and admitted that he was intoxicated and at fault. JB's presented evidence that its employees, including the employees working that evening, had completed Texas Alcoholic Beverage Commission-approved seller training and were instructed not to serve intoxicated customers. The record contained no evidence that JB's directly or indirectly encouraged the employee who served Flores to violate the Dram Shop Act.

PROCEDURAL HISTORY

After a motor-vehicle collision involving intoxicated driver Sergio Flores, the other driver sued Flores and JB's Lounge for negligence, gross negligence, and violations of the Texas Dram Shop Act. Following a bench trial, the trial court found Flores and JB's proximate causes of the collision, allocated 75 percent of the negligence to Flores and 25 percent to JB's, and entered actual damages against both defendants. JB's appealed. The Court of Appeals sustained JB's matter-of-law challenge to its safe-harbor defense, declined to reach the alternative sufficiency issues, reversed the judgment against JB's, and entered a take-nothing judgment in its favor.

DISPOSITION

reversed

REMAND INSTRUCTIONS

No remand was ordered. The judgment against JB's was reversed and a take-nothing judgment was entered in JB's favor.

CASES CITED

- Five Star Intern. Holdings, Inc. v. Thomson, Inc., 324 S.W.3d 160, 165 (Tex. App.—El Paso 2010, pet. denied)
- Dow Chem. Co. v. Francis, 46 S.W.3d 237, 241–42 (Tex. 2001)
- 20801, Inc. v. Parker, 249 S.W.3d 392, 394, 398–99 (Tex. 2008)