A Bad Round of Golf

Many employers and fundraisers alike use golf as a way to make money and entertain. Golf, like many participation sports in this country, does not stand on its own. Many people take part in golf events, not to hit that little white-dimpled ball, but to drink and party. If that drinking and partying gets out of control, resulting in injury to others, the question may be posed: when does the law step in?

In *Klar v. Dairy Farmers of Am.,* 2021 Pa. Super. LEXIS 729, 2021 WL 5983828 (December 17, 2021) (Judith Ference Olson, J.), the issue was whether:

> (1) an unlicensed company-employer who provides an uncontrolled amount of alcohol to a visibly intoxicated employee in exchange for remuneration is liable to a third-party who sustains personal injuries as a result of the actions of the intoxicated employee; and
>
> (2) an unlicensed company-employer who provides an uncontrolled amount of alcohol to a visibly intoxicated employee, in exchange for remuneration, may be considered a "social host," despite the fact that it does not sell alcohol as a going concern operating on commercial principles and the alcohol was presumably furnished without profit or other indicia of commercial sale?

The question of liability on the part of the social host for serving alcohol to an intoxicated individual has a long history in Pennsylvania. In this case, an employer, the Dairy Farmers of America, Inc. (“DFA”), which did not have a liquor license, provided alcohol to somebody who was drunk. The “party animal”-golfer paid for the booze and thereafter seriously injured a third party. Under those circumstances, is the employer a “social host” liable for the harm caused to the third party, an innocent bystander, as it were?

The Superior Court concluded that 47 P.S. § 4-493(1) of the Dram Shop Act does not apply to DFA, as DFA is a non-licensee under the Liquor Code. Thus, the claim brought under that Act by the Appellant third party injury victim failed. Appellant relied upon the Superior Court's 1957 opinion in *Commonwealth v. Randall*, 183 Pa. Super. 603, 133 A.2d 276 (Pa. Super. 1957), a criminal case, as holding that a non-licensee (such as DFA) falls within Section 4-493(1)'s category of "any other person." The Court agreed with Appellant's interpretation of *Randall*; however, the panel also noted that, in the civil context, the Supreme Court did not follow *Randall* in its subsequent opinion in *Manning v. Andy*, 454 Pa. 237, 310 A.2d 75 (Pa. 1973). In *Manning*, the Supreme Court held that the statutory phrase "any other person" did not encompass non-licensees so as to permit the imposition of civil liability on private citizens who serve liquor to their guests.

Applying *Manning*, the Superior Court found no error in the trial court's dismissal of plaintiff's complaint. The Supreme Court in *Manning* held that -only licensed persons engaged in the sale of intoxicants have been held to be civilly liable to injured parties. *Manning, supra* at 76, citing *Jardine v. Upper Darby Lodge No. 1973*, 413 Pa. 626, 198 A.2d 550 (Pa. 1964) The Supreme Court in *Manning* stated:

> [Plaintiff] asks us to impose civil liability
> on nonlicensed persons like [the defendant-employers],
> who furnished intoxicants for no remuneration. We decline to do so. While [plaintiff's]
> proposal might have merit, we feel
> that a decision of this monumental nature is best left to the legislature.

Manning, supra, at 76.

The Superior Court in *Klar* compared the statutory language reviewed in *Manning* with the current statute and concluded that "*Manning* offers compelling support for the conclusion that DFA, as a non-licensee, is not subject to the standard applicable to licensees under Section 4-493(1)." *Klar*, 2021 Pa. Super. LEXIS 729, at *22. The fact that the golfer paid DFA the monetary contribution required to participate in the outing was not considered a factor distinguishing the Supreme Court's decision in *Manning*, where the alcohol was furnished for no remuneration. The Superior Court in *Klar* specifically noted that " the presence or absence of remuneration is neither relevant nor dispositive under the plain terms of Section 4-493(1). " *Klar,* at *22.

Appellant in *Klar* conceded that "DFA is not an 'eligible entity' that could have obtained a license for the [golf outing] and that DFA was not otherwise licensed" under the Liquor Code. Therefore, in accordance with *Manning*, the Superior Court ruled that DFA cannot be civilly liable for violating the standard set forth in Section 4-493(1). Appellant's first claim on appeal thus failed.

The Superior Court also dismissed Appellant's argument that DFA "acquired licensee status" and "stood in the shoes" of a licensee under *Hinebaugh v. Pa. Snowseekers Snowmobile Club*, 2003 Pa. Dist. & Cnty. Dec. LEXIS 113 (Lawrence Co. C. P. 2003), in which it was argued that a "prepaid punch-card system created by the defendant club constitute[d] a sale requiring the defendant club to have procured a license from the Liquor Control Board to so operate its bar." *Klar,* at *26. The Superior Court declined to apply *Hinebaugh*, a nonbinding common pleas court decision, because it relied on *Randall*, which the Court previously explained did not survive. *Manning*. *Klar*, at *26-*27.

Appellant's second claim under the common law also failed. In *Klein v. Raysinger*, 504 Pa. 141, 470 A.2d 507 (Pa. 1983), the Supreme Court held that, at common law, a social host is not liable for serving alcoholic beverages to a guest,

reasoning that it is the consumption of alcohol, not the furnishing of it which constitutes the proximate cause of the subsequent occurrence. In *Klar*, Appellant specifically averred that, "[a]s a prerequisite and condition for participation in the [golf outing, DFA] required [its] employees to make a monetary contribution ***to offset costs and expenses related to or associated with the [outing,]*** including . . . those for greens fees, food and ***alcohol***." *Klar*, at *28-*29 (emphasis in original). According to Appellant, after Williams paid DFA the requisite monetary contribution, DFA purchased the greens fees, food, and alcohol for the outing. The Appellant maintained that this fact took the case outside of the "social host" doctrine because a social host is one who serves alcohol without remuneration.

The Superior Court endorsed the view of the trial court that the averments in Appellant's complaint rendered the case similar to *Brandjord v. Hopper*, 455 Pa. Super. 426, 688 A.2d 721 (Pa. Super. 1997), which dealt with the collective purchase of alcohol by a group. In *Brandjord*, defendant James Punch and his three friends collectively purchased and drank beer together. When Punch was driving his friends home, Punch struck the plaintiff with his van and caused the plaintiff to suffer serious injuries.

The plaintiff sued Punch's three friends for negligence. The trial court granted the three defendants' motions for summary judgment and the plaintiff appealed to the Superior Court. Among his claims on appeal, the plaintiff contended that the three defendants were not social hosts because they "shared with Punch in the purchase, transportation, and consumption of alcohol." *Id.* at 726. The Superior Court rejected the claim.

Under the concept of a collective purchase, as applied in *Brandjord* and *Commonwealth v. Peters*, 2 Pa. Super 1 (Pa. Super. 1898) (where three individuals pooled money to purchase a bottle of whiskey, the actual purchaser of the whiskey could not be convicted of unlawfully "selling" the whiskey to the other two), the presence of remuneration will not defeat the rule adopted by our Supreme Court in *Klein*, which holds that the conduct of a social host who furnishes alcohol to an adult is not the proximate cause of a subsequent occurrence. Here, Appellant specifically averred that Williams paid DFA "to offset costs and expenses related to or associated with the [outing,] including . . . those for greens fees, food and alcohol." DFA then utilized the collected money from all participants to pay for all participants' "greens fees, food and alcohol." *Klar*, at *30-*31. The Superior Court agreed with the trial court's reasoning that this conduct did not negate *Klein*. "As the trial court ably explained, '[t]his type of collective fee does not qualify as remuneration and fails to place DFA in the position of being a licensee. Hence, DFA was a social host [and] . . . cannot be held liable for a claim of common law negligence as stated in *Klein*.' " *Id*. at *31.

Thus, Appellant's final claim on appeal was also swept aside.

The Order of the trial court granting judgment on the pleadings and dismissing the Appellant's claims was affirmed. Judge Musmanno joined the opinion by Judge Olson. Judge Nichols concurred in the result.

The following bullet points represent a summary of this case:

- Dairy Farmers of America sponsored a golf outing at which people paid a fee which was used for purchasing liquor, among other things.
- One of the drunk participants caused a serious accident.
- Dairy Farmers of America is not subject to liability under the Dram Shop Act because it was not a licensee for liquor; it was just a social host.
- The court reviewed all of the case law and found that the term "any other person" in the Dram Shop Act does not encompass non-licensees under controlling Supreme Court precedent.
- No error in trial court's dismissal of the complaint.
- Only licensed persons engaged in the sale of intoxicants are held to be civilly liable to injured parties.
- DFA is not an eligible entity that could have obtained a license for the outing and DFA was not otherwise licensed under the Liquor Code.
- DFA cannot be considered a social host when it received remuneration in exchange for the provision or furnishing of alcohol, it was argued, but the court disagreed.
- Even under those circumstances, DFA is just a social host even though employees were required to make a monetary contribution to offset costs and expenses related to or associated with the outing including green fees, food and alcohol, under the "collective fee" doctrine of *Brandjord v. Hopper*, 455 Pa. Super. 426, 688 A.2d 721 (Pa. Super. 1997).
- The presence of remuneration in these circumstances will not defeat the rule protecting social hosts from liability adopted by the Pennsylvania Supreme Court in the *Klein* case. *Klein v. Raysinger,* 470 A.2d 507 (Pa. 1983).

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