

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

DAVID SHULTZ, individually and as administrator of the estate of PATRICIA SHULTZ,	: NO. 18-1308
	:
	:
Plaintiffs,	:
vs.	: CIVIL ACTION
	:
ALEC T. BARNES, THOMAS A. BARNES, CHRISTINE M. BARNES, STEVE SHANNON, STEVE SHANNON TIRE COMPANY, INC., COLONIAL HOUSE INN, INC., DONALD W. HUFNAGLE, SHARON A. HUFNAGLE, AND ROCKY SANGUEDOLCE,	:
	: Five
	: Preliminary
Defendants.	: Objections

OPINION & ORDER

This matter concerns the death of Patricia Shultz (“Ms. Shultz”) as an alleged result of Alec T. Barnes colliding with Ms. Shultz’s motor vehicle while he was driving a motor vehicle under the influence of alcohol. Before the Court are Defendants Colonial House Inn, Inc.’s (“CHI”), t/d/b/a “Riverside Bar,” and Rocky Sanguedolce’s (“Mr. Sanguedolce”), president and owner of CHI (collectively “Defendants”), *Preliminary Objections to Plaintiffs’ Complaint*.¹ On May 31, 2019, Plaintiff David Shultz, individually and as administrator of the estate of Ms. Shultz, filed an *Answer to Defendants’ Preliminary Objections*.² Following the July 17th argument, the Court finds the following:

- 1) Defendants’ First Preliminary Objection is **SUSTAINED**. Plaintiffs’ Count

¹ Defendants Colonial House Inn, Inc. & Rocky Sanguedolce’s Preliminary Objections to Plaintiffs’ Complaint (May 16, 2019); *see also Shultz, et al. v. Barnes, et al.*, Order: Scheduling Order 1 (July 12, 2019).

² Plaintiff David Shultz, individually and as administrator of the estate of Patricia Shultz’s Answer to Defendants Colonial House Inn, Inc. & Rocky Sanguedolce’s Preliminary Objections to Plaintiffs’ Complaint (May 31, 2019).

VII alleges a violation of the Pennsylvania Dram Shop Act against Defendants.³

However, other than bald conclusory assertions that Defendants “knew that Alec Barnes was visibly intoxicated before he was served Alcohol at Riverside Bar” and “knew that Alec Barnes became visibly intoxicated during the course of being served alcoholic beverages at Riverside Bar,”⁴ Plaintiffs only allege that: (a) “[a]t approximately 9:17 P.M., Alec Barnes arrived alone at the Riverside Bar,” (b) “[b]etween 9:19 p.m. and 12:09 a.m., Alec Barnes was served with and consumed a minimum of nine (9) Budweiser beers,” and (c) “[a]t approximately 12:09 a.m., Alec Barnes exited the Riverside Bar and proceeded to leave in a White 2014 Steve Shannon Dodge Journey and drive toward his home.”⁵ According to the Pennsylvania Superior Court:

It is not enough for an injured plaintiff to produce evidence that alcoholic beverages were served to patrons. Civil liability is imposed upon the tavern keeper who has served alcoholic beverages to a patron only when the patron was visibly intoxicated and, as a consequence, the patron or another person has been injured. Even if a patron is intoxicated at the time he or she is injured or causes injury to another, the tavern keeper who served the alcoholic beverages to the patron will not be held civilly liable unless the patron was served at a time when he or she was visibly intoxicated. Moreover, the mere breach of the statutory duty to refrain from serving alcohol to visibly intoxicated persons does not alone establish liability; the plaintiff must also show that the breach was a proximate cause and the cause in fact of the injury. Even if a patron has been served alcoholic beverages while visibly intoxicated, there will be no civil liability imposed upon the tavern keeper unless the injuries to the patron or a third person were proximately caused by the patron's intoxication.⁶

³ 47 P.S. § 4-493(1) (“It shall be unlawful—[. . .] For any licensee or the board, or any employe, servant or agent of such licensee or of the board, or any other person, to sell, furnish or give any liquor or malt or brewed beverages, or to permit any liquor or malt or brewed beverages to be sold, furnished or given, to any person visibly intoxicated [. . .]”); 47 P.S. § 4-497 (“No licensee shall be liable to third persons on account of damages inflicted upon them off of the licensed premises by customers of the licensee unless the customer who inflicts the damages was sold, furnished or given liquor or malt or brewed beverages by the said licensee or his agent, servant or employee when the said customer was visibly intoxicated.”).

⁴ Plaintiffs’ Complaint ¶¶98(a)-(b) (Apr. 30, 2019).

⁵ *Id.*, ¶¶23-25.

⁶ *Holpp v. Fez, Inc.*, 656 A.2d 147, 149–50 (Pa. Super. Ct. 1995) (internal citations omitted) (finding the trial court had properly granted summary judgment on the Dram Shop Act claim because the plaintiff could

In addition, “[w]hether a person was visibly intoxicated when served is judged by physical appearance [. . .]”⁷ Plaintiffs’ complaint is devoid of such facts. Further, based on the fact that pre-complaint discovery was produced in this case, the Court expects greater specificity.⁸ Plaintiffs shall be granted time to amend their complaint.

2) Defendants’ Second Preliminary Objection is **SUSTAINED**. Plaintiffs’ Count VII individually names Mr. Sanguedolce as a Defendant and Counts VIII-X are asserted against “All Defendants.” Yet, Plaintiffs’ complaint contains no facts rendering Mr. Sanguedolce liable as an individual or, alternatively, asserts facts that support piercing CHI’s corporate veil. As the Superior Court has stated:

“[T]here is a strong presumption in Pennsylvania against piercing the corporate veil.... Also, the general rule is that a corporation shall be regarded as an independent entity even if its stock is owned entirely by one person.” [. . .] “[T]he corporate form will be disregarded only when the entity is used to defeat public convenience, justify wrong, protect fraud or defend crime.”⁹

Plaintiffs have not alleged such facts. Plaintiffs shall be granted time to amend their complaint.

3) Defendants’ Third Preliminary Objection is **SUSTAINED**. Plaintiffs’ Count IX asserts a wrongful death claim against “All Defendants.”¹⁰ Nevertheless, in ¶106 Plaintiffs allege that the cause of action is not only being brought on David Shultz’s behalf, but also “on behalf of those entitled, as beneficiaries, to recover damages for

not identify the patrons involved, whether the patrons had been intoxicated, and whether the patrons had been served while visibly intoxicated).

⁷ *Poon v. Dom*, 2017 WL 3267849, at *3–4 (W.D. Pa. July 31, 2017).

⁸ Two videotape recordings, totaling six hours, of Alec Barnes’s entire three-hour visit at CHI were produced in response to pre-complaint discovery.

⁹ *Good v. Holstein*, 787 A.2d 426, 430 (Pa. Super. Ct. 2001) (internal citations omitted).

¹⁰ Plaintiffs’ Complaint, ¶¶104-110.

and by reason of the wrongful death of Decedent including, but not limited to amounts for reasonable hospital, nursing and medical expenses, funeral expenses, burial expenses, financial losses, including loss of [. . .]”¹¹ This language violates the *Pennsylvania Rules of Civil Procedure*.¹² Plaintiffs shall be granted time to amend their complaint.

4) Defendants’ Fourth Preliminary Objection is **SUSTAINED**. Plaintiffs’ allegations of “recklessness” in ¶¶ 97-99, 103, and 110 are improper, as Plaintiffs have failed to allege facts that support such claims.¹³ Accordingly, “recklessness,” or a variant thereof, are hereby **STRICKEN without prejudice** from these paragraphs. If discovery should reveal facts which would support allegations of reckless conduct, then Plaintiffs may seek to amend the pleadings at that time.

5) Defendants’ Fifth Preliminary Objection is **SUSTAINED IN PART**. Plaintiffs’ *prayer for relief* clauses in Counts VII-X demand punitive damages. First, Count IX concerns wrongful death where an award of punitive damages is not allowed.¹⁴ Therefore, Plaintiffs’ demand for punitive damages are hereby **STRICKEN with prejudice** from Count IX’s *prayer for relief* clause. Second, as noted above, no facts are alleged against objecting Defendants that support a claim for punitive damages. Therefore, the Court also hereby **STRIKES without prejudice** the punitive damage demands in the *prayer for relief* clauses of the remaining counts as to objecting

¹¹ *Id.*, ¶106.

¹² Pa.R.C.P. No. 2204 (“In addition to all other facts required to be pleaded, the initial pleading of the plaintiff in an action for wrongful death shall state the plaintiff’s relationship to the decedent, the plaintiff’s right to bring the action, the names and last known residence addresses of all persons entitled by law to recover damages, their relationship to the decedent and that the action was brought in their behalf.”).

¹³ Of note, a “violation of the Dram Shop Act is negligence *per se*.” See *Holpp*, 656 A.2d at 149.

¹⁴ See *Harvey v. Hassinger*, 461 A.2d 814, 815 (Pa. Super. Ct. 1983) (“With respect to the wrongful death

Defendants. If discovery should reveal facts which would support a claim for punitive damages, Plaintiffs may seek to amend the pleadings at that time.

Plaintiffs shall be granted **twenty (20) days** from the date of this order to amend their complaint.

IT IS SO ORDERED this 19th day of July 2019.

BY THE COURT,

Eric R. Linhardt, Judge

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action it is clear that punitive damages are not allowed.”).