

SHORT FORM ORDER

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SUPREME COURT - STATE OF NEW YORK

Present: HON. RALPH P. FRANCO, Justice

TRIAL/IAS, PART 12

CHRISTOPHER GRECO,

Action No.1

Index No.: 026904/99

Plaintiff,

-against-

MOTION SEQ. NO: 6, 7 & 8

THOMAS BEGLEY, Administrator of the Estate of MATTHEW P. BEGLEY, KERRY BENSON, Administrator of the Estate for MATTHEW P. BEGLEY, THE ESTATE OF MATTHEW P. BEGLEY, KELLIE M. HOWARD, JOSEPH M. HOWARD, JAMES PANARELLO, NICHOLAS BRANDO, NASSAU COUNTY POLICE DEPARTMENT, COUNTY OF NASSAU, CCM CONSTRUCTION, INC., DUBLIN PUB INC. and UNCLE BUDDY'S, INC.,

Defendants.

-----X
KELLIE M. HOWARD and JOSEPHINE M. HOWARD,

Action No.2

Plaintiffs,

INDEX NO.: 29635/99

-against-

THOMAS BEGLEY and KERRY BENSON, as Administrators of the Goods, Chattels, and Credits of MATTHEW P. BEGLEY, Deceased, and THE COUNTY OF NASSAU,

Defendants.

-----X
STEVE RUHS,

Action No. 3

Plaintiff,

INDEX NO.:002513/00

-against-

KELLIE M. HOWARD, JOSEPHINE M. HOWARD, and THOMAS BEGLEY and KERRY BENSON, as Administrators of the Goods, Chattels, and Credits MATTHEW P. BEGLEY, Deceased,

Defendants.

Motion (seq. no.6)by attorney for defendant Dublin Pub, Inc. for an order granting summary judgment pursuant to CPLR 3212 on behalf of defendant Dublin Pub, Inc. and dismissing plaintiff's complaint and all cross-claims currently pending against defendant Dublin Pub is denied.

Attorney for Dublin Pub contends there is no evidence that Kellie Howard was intoxicated at the time of the subject accident. Following the accident her blood was never tested for her blood alcohol level. Evidence shows that an employee of Dublin Pub saw Ms. Howard inside the premises and was aware she was underage. Laura Kelly first testified at her 50-h hearing that she wasn't sure whether Kellie Howard had anything to drink and she didn't know if Ms. Howard had anything to drink . It is claimed that Kellie Howard was the designated driver for the evening.

Attorney for plaintiff, Laura Kelly contends that the four occupants of the Kellie Howard vehicle were underage drinkers at the Dublin Pub. Kellie Howard drove her own car to Dublin with Laura Kelly as the passenger. Laura Kelly admitted to drinking and gave testimony that both she and Howard drank over a four hour time period. Plaintiff's attorney further contends that if an inference can be made as to the alleged visibly intoxicated state that Kellie Howard was in,

Dublin Pub must make a prima facie showing of entitlement to summary judgment by submitting sufficient evidence to eliminate any material issue of fact. Based on the evidence submitted and prior court holdings under the Dram Shop Act there are sufficient issues of fact to preclude the granting of summary judgment in favor of Dublin Pub.

In order to show that the damages suffered by a plaintiff in a Dram Shop action arose “by reason of the intoxication” of a patron to whom alcohol was illegally sold, there must be “some reasonable or practical connection” between the sale of alcohol and the resulting injuries; proximate cause, as must be established in a conventional negligence case, is not required See Catania v 124 In-To-Go, Corp. 287 A.D. 2d 476, appeal denied 97 NY 2d 699; McNeill v. Rugby Joe’s Inc. 2002 N.Y.App.Div. LEXIS 9428.

The parties are admonished that the denial of the within summary judgment motion should not be constructed in any manner as the final determination of this action which is made by the trial judge and /or jury as the case maybe.

Cross motion (seq no.7) by attorney for defendant Uncle Buddy’s Inc. For an extension of time within which to make a motion for dismissal pursuant to CPLR 3212 is granted, provided the motion is made returnable no later than December 18, 2002. The balance of relief requested is denied.

Cross motion (seq no.8) by attorney for County of Nassau for an Order pursuant to CPLR 3212 granting summary judgment to defendants County of Nassau, Nassau County police department, police officer Brandon and police officer Panarella dismissing plaintiffs complaint and all cross- claims against them is granted.

Attorney for County of Nassau and the individual police officers have established through sworn testimony of police officer Brando and police officer Panarella that the officers were not in pursuant of defendant Begley at the time of the accident.

Other than conjecture and conclusory statements not one iota of evidence has been submitted to establish that officers Brandon and Panarella acted recklessly in their actions. Upon seeing the late officer Begley driving towards them at speeds approaching 100 miles per hour, officers Brandon and Panarella decided to pull him over. They made a turn to begin following defendant Begley. After they executed the turn, approximately a quarter of a mile east of the officers on Jericho Turnpike, the subject collision occurred.

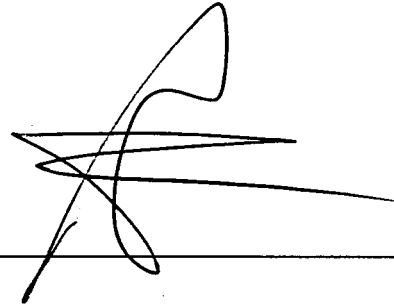
Further, the standard for liability for police officers where a pursuit occurs is that of reckless disregard. There has been no showing that the actions of the County defendants were negligent or reckless. See **Saarineen v.Kenr 8NY2d494**,

VTL sec 1004.

County of Nassau, James Panarello, Nicholas Brando and Nassau County
Police Department shall be deleted from the caption as party defendants .

Attorney for Dublin shall serve a copy of this Order on all counsel.

DATED: November 13, 2002



HON. RALPH P. FRANCO , J.S.C.

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ENTERED

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**NASSAU COUNTY
COUNTY CLERK'S OFFICE**