

Ennabe v. Manosa (2014) 58 Cal.4th 697

Teen host of house party that charged a cover charge and provided alcohol to minors could be liable under Cal Bus & Prof Code § 25602.1 when intoxicated minor guest drove away from the party and struck and killed another partygoer.

FACTS AND PROCEDURAL POSTURE

On April 27, 2007 defendant Jessica Manosa held a party at a vacant rental house owned by her parents. Manosa and two of her friends purchased alcohol for the party, which was made available to everyone at the party. Manosa asked a friend to stand at the gate and act as a bouncer, and to charge anyone he didn't know a few dollars to get in. Manosa and most of the 40-60 guests at the party were under 21 years old.

Thomas Garcia arrived at the party and paid \$20 for himself and 3 or 4 friends. An invited guest, Andrew Ennabe, was a friend of Manosa. Garcia and Ennabe were both visibly intoxicated when they arrived at the party. Garcia denied drinking at the party, but other guests reported seeing him consume alcohol. Garcia became rowdy and aggressive, and reportedly made various obscene and threatening comments to female guests. Garcia was asked to leave, and Ennabe and some other guests escorted Garcia and his friends out of the party. Outside, one of Garcia's friends spit on Ennabe. Ennabe then chased the friend into the street. Garcia, having already gotten into his car, ran over Ennabe. Ennabe died from his injuries.

Ennabe's parents filed a wrongful death action against Manosa and her parents on three causes of action: negligence, premise liability, and liability under Bus & Prof Code § 25602.1. Defendants moved for summary judgment or adjudication, claiming that plaintiffs could not show liability under section 25602.1 and that they were immune under Bus & Prof Code § 25602(b) and Civil Code § 1714(c). The trial court granted defendants' motion. The Court of Appeal affirmed.

DISCUSSION

The first issue addressed by the court was whether the Bus & Prof Code § 25602.1 applies to a private individual that is not in the business or profession of selling alcoholic drinks. The Supreme Court held that it does. Section 25602.1 addresses four categories of persons. The first three involve persons engaged in commercial enterprises, but the fourth is "any other person" who sells alcohol. The plain meaning of this language is that it includes private individuals and social hosts who, for whatever reason, charge money for alcoholic drinks. Additionally, the court noted that numerous other sections in the Bus & Prof Code clearly apply to private individuals.

The court then turned to main issue of this case: whether Manosa "sold" alcohol. The general rule is that a social host is not liable for injuries caused by intoxicated guests. However, under section 25602.1, any person who sells alcohol to an obviously intoxicated minor is liable for injuries caused by that minor. Bus & Prof Code § 23025 defines sale broadly as any transaction in which title to an alcoholic beverage is passed for any consideration. In this case, Manosa charged a cover charge to enter the party, and then provided the alcohol to guests for "free."

First, the court noted that there were no appellate decisions on whether a cover charge constitutes consideration under section 25602.1. However, another ABC Act section, 25604 (dealing with

unlicensed clubs or drinking places) includes “cover charge” in its definition of “consideration.” To find a different definition of consideration in section 25602.1 would mean the legislature included two different definitions of sale and consideration within the same act. The court declined to find two different definitions of consideration under the ABC Act.

The court also cited an AG Opinion that answered the following question: “May the operators of a commercial enterprise who does not have an alcoholic beverage license legally offer and provide ‘complimentary’ alcoholic beverages... without specific charge while at the same time charging for the product provided or the services rendered?” The AG concluded that this situation constituted a sale, explaining that when consideration for an alcoholic beverage is included in the basic charge for another item or service it is wholly immaterial that no specific price is attached and that the furnishing of beverages, although denominated “complimentary,” are for a consideration and constitute a sale. Under the same reasoning, Manosa “sold” the alcoholic beverages when she charged guests a cover charge.

The court found additional support for its position from the Department of Alcoholic Beverage Control. The ABC also considers a cover charge a sale, requiring an ABC license where an admission fee is charged, and alcohol is provided.

Thus, if as plaintiffs contend, Manosa charged an entrance fee to her party which enabled guests to drink alcohol that she provided, she sold such beverages within the meaning of section 23025 and can be liable for Ennabe’s death under 25602.1. The court reversed and remanded for further proceedings.