Filed 12/1/10

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

FAIEZ ENNABE, Individually and as Administrator, etc., et al., Plaintiffs and Appellants, v. CARLOS MANOSA et al., Defendants and Respondents.	B222784 (Los Angeles County Super. Ct. No. KC053945)

APPEAL from a judgment of the Superior Court of Los Angeles County. Robert A. Dukes, Judge. Affirmed.

Innabi Law Group, Abdalla J. Innabi and Amer Innabi for Plaintiffs and Appellants.

Morris, Polich & Purdy, Richard H. Nakamura, Jr., Dean A. Olson and Sheena Y. Kwon for Defendants and Respondents.

_____

Civil Code section 1714, subdivision (c)[1] provides broad immunity from civil liability for a social host who "furnishes alcoholic beverages to any person." Under Business and Professions Code section 25602.1, the social host loses that immunity if he or she "sells, or causes to be sold, any alcoholic beverage, to any obviously intoxicated minor."[2] In this case of first impression, we hold that a social host charging guests an

---

[1] Civil Code section 1714 provides in pertinent part: "(b) It is the intent of the Legislature to abrogate the holdings in cases such as Vesely v. Sager (1971) 5 Cal.3d 153, Bernhard v. Harrah's Club (1976) 16 Cal.3d 313, and Coulter v. Superior Court (1978) 21 Cal.3d 144 and to reinstate the prior judicial interpretation of this section as it relates to proximate cause for injuries incurred as a result of furnishing alcoholic beverages to an intoxicated person, namely that the furnishing of alcoholic beverages is not the proximate cause of injuries resulting from intoxication, but rather the consumption of alcoholic beverages is the proximate cause of injuries inflicted upon another by an intoxicated person. [¶] (c) No social host who furnishes alcoholic beverages to any person may be held legally accountable for damages suffered by that person, or for injury to the person or property of, or death of, any third person, resulting from the consumption of those beverages."

On January 1, 2011, an amended version of Civil Code section 1714 will take effect which adds subdivision (d) to provide: "Nothing in subdivision (c) shall preclude a claim against a parent, guardian, or another adult who knowingly furnishes alcoholic beverages at his or her residence to a person under 21 years of age, in which case, notwithstanding subdivision (b), the furnishing of the alcoholic beverage may be found to be the proximate cause of resulting injuries or death." (Civ. Code, § 1714, subd. (d), added by Stats. 2010, ch. 154, § 1.)

[2] Unspecified statutory references are to the Business and Professions Code.

Section 25602.1 provides: "Notwithstanding subdivision (b) of Section 25602, a cause of action may be brought by or on behalf of any person who has suffered injury or death against *any person* licensed, or *required to be licensed, pursuant to Section 23300*, or any person authorized by the federal government to sell alcoholic beverages on a military base or other federal enclave, *who sells, furnishes, gives or causes to be sold, furnished or given away any alcoholic beverage*, and **any other person who sells, or causes to be sold, any alcoholic beverage**, to any obviously intoxicated minor where the furnishing, sale or giving of that beverage to the minor is the proximate cause of the personal injury or death sustained by that person." (Italics and boldface added.)

The portions of section 25602.1 in italics and bold type are at issue in this appeal. We refer to the italicized portion as the "required to be licensed" clause and the bold portion as the "any other person who sells" clause.

admission or entrance fee of $3 to $5 to a party where alcoholic beverages are available has not sold or caused to be sold an alcoholic beverage under Business and Professions Code section 25602.1 and is not civilly liable for damages for admitting to the party an obviously intoxicated minor who, upon leaving the party, drives his car into a pedestrian, another partygoer, killing him. Nor is such a social host "required to be licensed" within the meaning of Business and Professions Code section 25602.1. We therefore affirm the summary judgment granted in favor of defendant Jessica Manosa on the amended complaint of plaintiffs Faiez and Christina Ennabe for the wrongful death of their son, Andrew Ennabe.[3]

BACKGROUND

Although some of the facts are disputed, we view the record in a light most favorable to the plaintiffs and assume as true the plaintiffs' version of all disputed facts presented in opposition to the summary judgment motion. (*Wilson v. Murillo* (2008) 163 Cal.App.4th 1124, 1128.)

In April 2007, 20-year-old Manosa hosted a house party at a vacant rental residence owned by her parents. The party was publicized to friends and non-friends by word-of-mouth, telephone, and text messaging, resulting in approximately 40 to 60 people in attendance. The majority of the people at the party were under age 21, and about one-third were unknown to Manosa. Earlier in the day, Manosa contributed $60 and two of her friends together contributed another $60 to purchase beer, tequila, and rum. According to Manosa, one of her two friends used fake identification to purchase the alcoholic beverages, but in their depositions the friends denied purchasing or supplying any of the alcoholic beverages. The alcoholic beverages were "communal"

Section 23300 provides: "No person shall exercise the privilege or perform any act which a licensee may exercise or perform under the authority of a license unless the person is authorized to do so by a license issued pursuant to this division."

[3] Manosa's parents, defendants Mary and Carlos Manosa, also obtained a summary judgment in their favor, but plaintiffs do not challenge the judgment as to them.

and available without limitation to the partygoers. Some guests brought their own alcoholic beverages to the party.

Guests gained access to the party by entering the rear yard of the house through a side walkway. Stationed at the walkway entrance was Todd Brown, a friend of a friend of Manosa. Manosa directed Brown to serve as a "bouncer" and to charge unfamiliar guests an admission fee. Unfamiliar partygoers were charged from $3 to $5. Payment of the fee allowed partygoers admission onto the property, an opportunity to enjoy music played by a professional disc jockey, and "access to whatever food and drink were there," including several cases of beer, three to four bottles of tequila and rum, and a cooler of hard alcoholic beverages with fruit juice, known as "jungle juice."

Between $50 and $60 were collected from the entrance fee; some of that money was used to buy additional alcoholic beverages during the course of the party.

Andrew Ennabe, age 19, a friend of Manosa, was not charged an admission fee. Earlier, Ennabe had been to another party. He arrived at Manosa's party in a state of obvious intoxication, and there he drank more alcoholic beverages. Thomas Garcia, age 20, was unknown to Manosa. Garcia was admitted to Manosa's party after he paid an admission fee for himself and a group of his friends. The person who took his money told him that there were alcoholic beverages if he wanted them. When Garcia arrived at Manosa's party, he was in a state of obvious intoxication. At the party he drank alcoholic beverages and acted in a rowdy and belligerent manner. After Garcia harassed female guests and dropped his pants several times, he was asked to leave the party. Ennabe and some other guests escorted Garcia off the premises and to his car. In driving away, Garcia struck Ennabe, who died a week later from his injuries. Garcia was convicted of a felony in connection with the death of Ennabe and sentenced to 14 years in prison.

Manosa did not know Garcia or his friends; she never saw Garcia during the party, did not know he was there, and was not aware of any problems with Garcia or other party guests. The April 2007 party was the only social gathering Manosa had held on the property.

Andrew Ennabe's parents, on behalf of themselves and the estate of their son, filed a wrongful death action against Manosa. After answering the amended complaint, Manosa moved for summary judgment on the grounds that she was immune from liability under Civil Code section 1714 and that Business and Professions Code section 25602.1 was not applicable. In opposition to the motion, plaintiffs argued that Manosa was not acting as a "social host" under Civil Code section 1714, subdivision (c) because she charged a fee to unknown and uninvited guests and that Manosa had forfeited immunity from civil liability under Business and Professions Code section 25602.1 for the same reason. After a hearing, the trial court granted the motion and rendered a summary judgment in Manosa's favor. Plaintiffs appealed.

DISCUSSION

Plaintiffs seek to impose civil liability on Manosa under the "required to be licensed" and the "any other person who sells" clauses of section 25602.1. As explained below, we conclude that the facts viewed most favorably to plaintiffs establish as a matter of law that Manosa (1) did not "sell or cause to be sold" an alcoholic beverage and (2) was not "required to be licensed" within the meaning of section 25602.1.

We exercise a de novo standard in reviewing a ruling on a summary judgment motion and underlying statutory construction issues. (*MacIsaac v. Waste Management Collection & Recycling, Inc.* (2005) 134 Cal.App.4th 1076, 1081–1082 (*MacIsaac*); *Barner v. Leeds* (2000) 24 Cal.4th 676, 683 [statutory construction].)

The objective of statutory interpretation is to determine legislative intent. (*MacIsaac*, *supra*, 134 Cal.App.4th at p. 1082.) "'If the words are clear, a court may not alter them to accomplish a purpose that does not appear on the face of the statute or from its legislative history. [Citation.] At the same time, however, a statute is not to be read in isolation; it must be construed with related statutes and considered in the context of the statutory framework as a whole. [Citation.] A court must determine whether the literal meaning of a statute comports with its purpose or whether such a construction of one provision is consistent with other related provisions. Literal construction of statutory language will not prevail if contrary to the legislative intent apparent in the statutory

scheme. [Citation.] Statutory language should not be given a literal meaning that results in absurd and unintended consequences. [Citations.]'" (*Kalway v. City of Berkeley* (2007) 151 Cal.App.4th 827, 833.) "We may also look to a number of extrinsic aids, including the statute's legislative history, to assist us in our interpretation." (*MacIsaac*, *supra*, 134 Cal.App.4th at p. 1083, fn. omitted.)

A. Legislative History of Section 25602.1

"It is well settled that the Legislature possesses a broad authority both to establish and to abolish tort causes of action. As former Chief Justice Gibson put it over 30 years ago, 'Except as the Constitution otherwise provides, the Legislature has complete power to determine the rights of individuals. [Citation.] It may create new rights or provide that rights which have previously existed shall no longer arise . . . .' [Citations.]" (*Cory v. Shierloh* (1981) 29 Cal.3d 430, 439, quoting *Modern Barber Col. v. Cal. Emp. Stab. Com.* (1948) 31 Cal.2d 720, 726.)

In the 1970's in a series of three cases, our Supreme Court applied common law negligence principles to cases involving injuries caused by a person who had consumed alcoholic beverages. (See *Vesely v. Sager*, *supra*, 5 Cal.3d 153 (*Vesely*); *Bernhard v. Harrah's Club*, *supra*, 16 Cal.3d 313; *Coulter v. Superior Court*, *supra*, 21 Cal.3d 144.) "In reaction to these decisions, rare in terms of its specificity, the Legislature adopted section 25602, subdivisions (b) and (c) and stated that '. . . this section shall be interpreted so that the holdings in cases such as *Vesely* . . . *Bernhard* . . . and *Coulter* . . . be abrogated in favor of prior judicial interpretation finding the consumption of alcoholic beverages rather than the serving of alcoholic beverages as the proximate cause of injuries inflicted upon another by an intoxicated person.' (§ 25602, subd. (c).) Similar directive language was adopted as an amendment to Civil Code section 1714. (Civ. Code, § 1714, subd. (b).)" (*Salem v. Superior Court* (1989) 211 Cal.App.3d 595, 599–600.) In 1978, the Legislature enacted subdivision (c) of Civil Code section 1714.

Also enacted in 1978, the original version of Business and Professions Code section 25602.1 provided a narrow exception to the broad immunity created by Business and Professions Code section 25602 and Civil Code section 1714. Under former

Business and Professions Code section 25602.1, civil liability could be imposed on a licensee who "sells, furnishes, gives, or causes to be sold, furnished or given away" an alcoholic beverage to an obviously intoxicated minor. (Former § 25602.1; *Zieff v. Weinstein* (1987) 191 Cal.App.3d 243, 248.)

In 1986, section 25602.1 was amended to its current version (see *ante*, fn. 2), which broadens the exceptions to tort immunity. (*Baker v. Sudo* (1987) 194 Cal.App.3d 936, 943 [1986 amendments to section 25602.1 are not retroactive].) As pertinent to this appeal, causes of action may now be asserted against (1) "any person . . . required to be licensed, pursuant to Section 23300 . . . who sells, furnishes, gives or causes to be sold, furnished or given away" any alcoholic beverage to an obviously intoxicated minor and (2) "any other person who sells, or causes to be sold, any alcoholic beverage" to an obviously intoxicated minor.

According to an analysis of the 1986 bill which amended section 25602.1, "The purpose of this bill is to close gaps in the law which impose civil liability for selling alcohol to obviously intoxicated minors. [¶] According to the Senate Judiciary Committee analysis, [former section 25602.1] presently imposes potential civil liability for serving obviously intoxicated minors only upon liquor (and beer and wine) licensees. Thus, the status of the provider, i.e., whether or not the person is a licensee, is a determinative factor. [¶] . . . [¶] The narrowness of the statute has been criticized. [¶] The bill would impose liability for the sale or furnishing of alcohol to an obviously intoxicated minor by any person required to be licensed. This provision is intended to cover the seller operating without a license or with an expired, suspended or revoked license. The provision would not apply to the furnishing of alcohol by a social host." (Sen. Rules Com., Off. of Sen. Floor Analyses, analysis of Sen. Bill No. 1053 (1985–1986 Reg. Sess.) as amended June 18, 1986, p. 2.) In a paragraph captioned, "ARGUMENTS IN SUPPORT," the analysis stated: "According to the author's office, there is no reason to maintain the distinction between a licensed and a nonlicensed seller of liquor for purposes of imposing civil liability for such actions. It is asserted that the act of selling alcohol to obviously intoxicated minors for commercial gain should be a

sufficient basis for imposing liability, and that imposing civil liability only upon licensed sellers does not serve the best interests of the public. Further, the effect of the distinction may not have been foreseen or intended by the Legislature." (*Ibid.*)

After the 1986 amendments, the courts have continued to construe section 25602.1 strictly: "Section 25602.1 is a narrow exception to the Legislature's enactment of what our Supreme Court has termed 'sweeping civil immunity' from liability for injuries to third persons resulting from the furnishing of alcohol to another. [Citations.] As the sole exception to statutory immunity, section 25602.1 must be strictly construed to effect the Legislature's intent. [Citation.]" (*Hernandez v. Modesto Portuguese Pentecost Assn.* (1995) 40 Cal.App.4th 1274, 1281, fn. omitted [no liability for owner of building renting hall to sponsor of dance where alcoholic beverage served to minor].) The phrase "causes to be sold" in section 25602.1 "requires malfeasance, not acquiescence or mere inaction. [Citation.] The statute requires 'an affirmative act directly related to the sale of alcohol, which necessarily brings about . . . the furnishing of alcohol to an obviously intoxicated minor.' [Citation.]" (*Elizarraras v. L.A. Private Security Services, Inc.* (2003) 108 Cal.App.4th 237, 243 [private security company for nightclub serving alcoholic beverages to minors was not liable when minors left nightclub and were killed in car crash].)

With this legislative history in mind, we address the issues of whether Manosa is liable under the "any other person who sells" clause or the "required to be licensed" clause of section 25602.1.

As a preliminary matter, we reject plaintiffs' reading of section 25602.1 as imposing civil liability on *any person* who furnishes, sells, or gives alcoholic beverages to an obviously intoxicated minor. The language upon which plaintiffs rely is in the final clause of the statute, which contains the "proximate cause" requirement. The reference in the "proximate cause" clause to "furnishing, sale or giving of that beverage to the minor" is not intended to enlarge the scope of the preceding provisions, but merely to apply the proximate cause requirement in a global fashion to each preceding class of persons to be held liable. Plaintiffs' interpretation of the statute would render meaningless or

surplusage the provisions applicable to licensees, those required to be licensed, military bases, and the "any other person who sells" clause. Because we must give effect to all statutory provisions (*Big Creek Lumber Co. v. County of Santa Cruz* (2006) 38 Cal.4th 1139, 1155), we reject plaintiffs' proposed interpretation of the statute.

B. Manosa is Not Liable Under the "Any Other Person Who Sells" Clause of Section 25602.1

Although the Alcoholic Beverage Control Act (§ 23000 et seq.) contains a definition of "sell," "sale," and "to sell" in section 23025, the definition by itself does not resolve the issue of whether a social host who collects money from guests for a common fund with which to purchase alcoholic beverages or to help defray the cost of obtaining alcoholic beverages is a person "who sells, or causes to be sold," an alcoholic beverage within the meaning of section 25602.1.

Section 23025 defines "sell," "sale," and "to sell" as including "any transaction whereby, for any consideration, title to alcoholic beverages is transferred from one person to another, and includes the delivery of alcoholic beverages pursuant to an order placed for the purchase of such beverages and soliciting or receiving an order for such beverages, but does not include the return of alcoholic beverages by a licensee to the licensee from whom such beverages were purchased."

Section 23025 requires that there be a transaction, for consideration, whereby title to an alcoholic beverage is transferred from "one person to another." The statute thus contemplates a transaction in which one person relinquishes title to the alcoholic beverage and another person receives title to the alcoholic beverage. In the case of a social host, like Manosa, charging guests an admission or entrance fee of $3 to $5 to help defray the cost of providing "communal" alcoholic beverages to guests who serve themselves, there is no transfer of title to an alcoholic beverage at the time the entrance fee is paid. If any transfer of title occurs, it is only when the guests consume the alcoholic beverage.

But it is difficult, if not impossible, to determine which individual or individuals held title to the alcoholic beverages consumed by Garcia because not only Manosa, but

two of her friends as well, contributed the money to obtain the initial alcoholic beverages. Other guests paying an entrance fee, including Garcia himself, contributed the money used to obtain additional alcoholic beverages during the party. Hence, Manosa and all of her paying guests may be said to have provided alcoholic beverages to each other, making Manosa and all of the guests both sellers and purchasers. Under such circumstances, it would be unreasonable to deem a sale to have occurred within the meaning of sections 25602.1 and 23025.

Because the legislative history of section 25602.1 indicates that the 1986 amendment was not intended to affect the liability of a social host who furnishes alcoholic beverages, and because the definition of "sell" in section 23025 does not fit the situation of the social host, we conclude that a social host who charges guests an admission or entrance fee of $3 to $5 to help defray the costs of making alcoholic beverages available to his or her guests is not a person who "sells, or causes to be sold" an alcoholic beverage within the meaning of section 25602.1. There is, quite simply, no indication in the language or legislative history of section 25602.1 that the Legislature intended to impose liability on social hosts and guests who contribute money to a common fund to purchase alcoholic beverages for a social occasion.

Our interpretation of section 25602.1 is consistent with the result in the only other case in California addressing the issue of the liability of a minor social host where money is pooled to purchase alcoholic beverages for a party. Although *Bennett v. Letterly* (1977) 74 Cal.App.3d 901 (*Bennett*) predated the 1978 legislation discussed above, the case is instructive because it addressed the scope of "furnishing" under a former version of section 25658, subdivision (a), making it a misdemeanor to sell, furnish, give, or cause to be sold, furnished or given away to a minor any alcoholic beverage. (*Bennett*, at p. 904.) In *Bennett*, Letterly, a minor, hosted a party at his home for his classmates when his parents were away on vacation. Letterly and a friend, Howell, both contributed money to a common fund to purchase alcoholic beverages. Three minors, Howell, Alvarez, and Baca, left the party and went to a local liquor store, where Alvarez persuaded an unknown adult to buy liquor for them, using the pooled money. Upon

returning to the party, Howell poured and mixed his own whiskey drink and served himself. Howell later drove his car into Bennett's car, injuring Bennett.

In upholding a summary judgment granted in favor of Letterly, the Court of Appeal rejected Bennett's argument that Letterly was civilly liable based on a violation of former section 25658, subdivision (a). The court reasoned, "Assuming for the purpose of argument that the rule of *Vesely*[, *supra*, 5 Cal.3d 153,] . . . applies to a purely social situation such as that presented here, and is otherwise applicable to the facts of the case at bench, we have concluded that the conduct of [Letterly] does not constitute furnishing or causing to be furnished an alcoholic beverage to a minor in violation of . . . section 25658, subdivision (a)." (*Bennett*, *supra*, 74 Cal.App.3d at p. 904, fn. omitted.) As to the definition of the term "furnish," the court stated: "In relation to a physical object or substance, the word 'furnish' connotes possession or control over the thing furnished by the one who furnishes it. [Citation.] The word 'furnish' implies some type of affirmative action on the part of the furnisher; failure to protest or attempt to stop another from imbibing an alcoholic beverage does not constitute 'furnishing.' [Citation.]" (*Bennett*, at p. 905.)

The court in *Bennett* concluded: "The undisputed facts are that [Letterly] did no more than contribute $2 to $5 to a common fund intended to be used for the purchase of liquor. He did not himself purchase the liquor. There is no evidence that, once the alcohol was purchased and brought back to [Letterly's] house, he exercised any control over, or even handled, the bottle of whiskey Howell and Baca consumed. All the evidence indicates that Howell and Baca consumed the entire bottle of whiskey, pouring and mixing their own drinks and serving themselves. On these facts, [Letterly] was not guilty of furnishing an alcoholic beverage or causing such to be furnished in violation of section 25658, subdivision (a)." (*Bennett*, *supra*, 74 Cal.App.3d at p. 905; see also *Sagadin v. Ripper* (1985) 175 Cal.App.3d 1141, 1157 [characterizing *Bennett* as standing for proposition that "the mere act of contributing to a common fund for the purchase of liquor [does not] constitute furnishing where the defendant never exercised any control over the alcohol consumed by his companions"].)

Because the Legislature is deemed to be aware of statutes and judicial decisions already in existence when it enacts and amends statutes (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1096), we deem the Legislature to have been aware of *Bennett* and to have approved its narrow definition of "furnish" when it enacted Business and Professions Code section 25602.1 and Civil Code section 1714, subdivision (c) in 1978.

Accordingly, we conclude that, as a matter of law, Manosa was not a person who "sells, or causes to be sold," an alcoholic beverage within the meaning of section 25602.1.

C. Manosa is Not Liable Under the "Required to be Licensed" Clause of Section 25602.1

Relying on section 23399.1 and an interpretation of section 23399.1 as applied to private parties in the Department of Alcoholic Beverage Control's November 2009 Trade Enforcement Information Guide (TEIG), plaintiffs argue that Manosa fell within the "required to be licensed" clause of section 25602.1.

Section 23399.1 provides: "No license or permit shall be required for the serving and otherwise disposing of alcoholic beverages where all of the following conditions prevail: [¶] 1. That there is no sale of an alcoholic beverage. [¶] 2. That the premises are not open to the general public during the time alcoholic beverages are served, consumed or otherwise disposed of. [¶] 3. That the premises are not maintained for the purpose of keeping, serving, consuming or otherwise disposing of alcoholic beverages. [¶] Provided, however, that nothing in this section shall be construed to permit any person to violate any provision of the Alcoholic Beverage Control Act."

The circumstances of this case establish that no license was required for Manosa's party because the three conditions of section 23399.1 were met. For the reasons set out in part B of the Discussion, we conclude that there was no sale of an alcoholic beverage to Garcia within the meaning of sections 23399.1, 25602.1, and 23025. In a section of the TEIG dealing with private parties, a note provides, "Be aware that the definition of 'sale' includes <u>indirect</u> transactions other than merely paying for a glass of wine or other drink containing alcohol. For instance, if an admission fee is charged or there is a charge for

food and the alcohol is included, but not separately charged, an ABC license is required." (Cal. Dept. of Alcoholic Beverage Control, TEIG (Nov. 2009).) The TEIG cites no authority for its definition of sale; it does not discuss Business and Professions Code section 23025 or Civil Code section 1714, subdivision (c). We give the definition of "sale" in the TEIG no weight because it does not appear to address the statutes or issues presented in this appeal.

The remaining two conditions of section 23399.1 are met: the residence where Manosa held her party was not open to the general public, but only to those to whom the party was publicized; and the residence, used by Manosa for a party on only that one occasion, was not maintained for the purpose of keeping, serving, consuming, or disposing of alcoholic beverages.

For the foregoing reasons, we conclude that, as a matter of law, Manosa does not fall within the "required to be licensed" clause of section 25602.1.

As Manosa does not fall within the exceptions to immunity from civil liability set out in section 25602.1, we need not address other issues raised in her brief.

DISPOSITION

The judgment is affirmed. Defendant Jessica Manosa is entitled to her costs on appeal.

CERTIFIED FOR PUBLICATION.

MALLANO, P. J.

We concur:

CHANEY, J.

JOHNSON, J.