Supreme Court Case No. S189577

IN THE
SUPREME COURT OF THE STATE OF CALIFORNIA

FAIEZ and CHRISTINA ENNABE, individually and behalf of the ESTATE OF ANDREW ENNABE

Plaintiffs and Appellants,

v.

CARLOS, MARY, AND JESSICA MANOSA

Defendants and Respondents.

Court of Appeal Case No.: B222784

Superior Court Case No.: KC053945

Review Sought of the Opinion of the
Court of Appeal, Second Appellate District, Division One
Case Number B222784
Affirming Summary Judgment of the
Superior Court of the State of California for the County of Los Angeles
Case Number KC053945
The Honorable Robert A. Dukes, Judge Presiding

REPLY TO ANSWER TO PETITION FOR REVIEW

Abdalla J. Innabi (S.B. No. 172302)
Amer Innabi (S.B. No. 225413)
Innabi Law Group, APC
107 S. Fair Oaks. Ave., Suite 208
Pasadena, CA 91105

Attorneys for Plaintiffs and Appellants, FAIEZ and CHRISTINA ENNABE, individually and behalf of the ESTATE OF ANDREW ENNABE

Supreme Court Case No. S189577

IN THE
SUPREME COURT OF THE STATE OF CALIFORNIA

FAIEZ and CHRISTINA ENNABE, individually and behalf of the ESTATE OF ANDREW ENNABE Plaintiffs and Appellants, v. CARLOS, MARY, AND JESSICA MANOSA Defendants and Respondents.	Court of Appeal Case No.: B222784 Superior Court Case No.: KC053945

Review Sought of the Opinion of the
Court of Appeal, Second Appellate District, Division One
Case Number B222784
Affirming Summary Judgment of the
Superior Court of the State of California for the County of Los Angeles
Case Number KC053945
The Honorable Robert A. Dukes, Judge Presiding

REPLY TO ANSWER TO PETITION FOR REVIEW

Abdalla J. Innabi (S.B. No. 172302)
Amer Innabi (S.B. No. 225413)
Innabi Law Group, APC
107 S. Fair Oaks. Ave., Suite 208
Pasadena, CA 91105

Attorneys for Plaintiffs and Appellants, FAIEZ and CHRISTINA ENNABE,
individually and behalf of the ESTATE OF ANDREW ENNABE

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

STATUTES

OTHER SOURCES

I. INTRODUCTION

Plaintiffs, Faiez and Christina Ennabe, individually and on behalf of the Estate of Andrew Ennabe ("plaintiffs") respectfully submit their Reply to Defendants Carlos, Mary and Jessica Manosa's ("defendants") Answer to Petition for Review. First, defendants have not provided any grounds to deny review of the instant matter and do not contest that this is a ***"case of first impression."*** (See Cal. R. Ct. 8.500(b) and *Ennabe v. Manosa* (2010) 190 Cal.App.4th 707, 711 (emphasis added).) Second, contrary to defendants' unsupported assertions, the record is replete with facts evidencing that Defendant Jessica Manosa was acting as a "commercial host" for "commercial gain" on the day of the incident. Accordingly, review should be granted for the instant matter.

II. ARGUMENT

A. DEFENDANTS NEITHER PROVIDE ANY GROUNDS TO DENY REVIEW NOR CONTEST THAT THIS IS A "CASE OF FIRST IMPRESSION."

Under California Rules of Court, Rule 8.500(b), "The Supreme Court may order review of a Court of Appeal decision: (1) When necessary to secure uniformity of decision or to ***settle an important question of law***." (See Cal. R. Ct. 8.500(b) (emphasis added).)

It is apparent from defendants' Answer to the Petition for Review that defendants concede that this is a matter which is ripe for review based on their failure to address the grounds for review in this matter. Moreover, defendants' silence as to the Court of Appeal's statement that this is a "case of first impression" indicates defendants' clear understanding that this is the type of decision which may be reviewed by the Supreme Court, as they chose not to challenge that proposition. Instead, defendants have chosen to challenge the sufficiency of the record to assert the unsupported position that Defendant Jessica Manosa did not act with a commercial purpose or for "commercial gain" on the day of the incident (See Section II.B.). Defendants' failure to raise even one

reason to deny review and their utter silence to the Court of Appeal's statement that this is a "case of first impression" is an implicit concession that this matter should be reviewed by the California Supreme Court.

B. THE RECORD IS REPLETE WITH FACTS SHOWING DEFENDANT JESSICA MANOSA WAS ACTING AS A "COMMERCIAL HOST" FOR "COMMERCIAL GAIN" ON THE DAY OF THE INCIDENT.

"The act of selling alcohol to obviously intoxicated minors for ***commercial gain*** should be sufficient basis for imposing liability." (Sen. Rules Com., Off. of Sen. Floor Analyses, analysis of Sen. Bill No. 1053 (1985-1986 Reg. Sess.) (emphasis added).)

Plaintiffs have continuously maintained that Defendant Jessica Manosa is not insulated by civil protections afforded to "social hosts" under Civil Code section 1714(c)[1] and the facts support a basis for civil liability against her under Business and Professions Code section 25602.1. As previously mentioned, a "social" host would not arrange for a bouncer, open their property to individuals ***unknown to them*** (i.e. people who are not friends or associates), and ***require*** those same unknown people to ***pay a cover charge*** to enter their property and consume ***alcohol already purchased by them***, unless they were "engaged in commerce" or had the intent to achieve "commercial gain." In the instant matter, Defendant Jessica Manosa opened the subject property to ***unknown and uninvited*** underage individuals and caused alcoholic beverages[2] to be sold to them ***through a bouncer*** who charged a ***cover charge*** she required. [2AA 332:22-333:12, 334:17-335:16,

---

[1] Civil Code section 1714(c) provides, "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." (Civ. Code § 1714, subd. (c) (emphasis added).)

[2] With exception to mixers, ice, and plastic cups, alcohol was the only consumable item made available at the party in question. [2AA 308:21-25, 309:1-12, 310:18-25, 311:1-17.]

343:4-6, 345:1-7, 346:13-347:6, 351:22-352:13, 353:4-11, 354:5-13, 362:19-363:4, 365:4-19, 387, 389-391, 402-404.] There are absolutely no facts to support the conclusion that the "cover charge was to help defray the costs of making alcoholic beverages available" as stated by *Ennabe* Court. Moreover, plaintiffs have challenged this mischaracterization of the facts and the applicability of the *Bennett* case from the outset of their appeal. Again, defendant and the unknown and uninvited individuals admitted onto the property ***never decided*** to enter into a mutual arrangement where money would be "pooled" into a "common fund" to purchase alcohol. As the facts clearly show, when unknown and uninvited individuals approached the door they were greeted by defendant's bouncer who advised them that they may gain entry and drink alcohol already at the party if they paid a cover charge to him on behalf of defendant. [2AA 332:22-333:12, 334:17-335:16, 343:2-6, 351:22-352:13, 353:4-11, 354:5-13, 362:19-363:4, 365:4-19, 387, 389-391, 402-404.] The cover charge was not discretionary (i.e. a donation) but mandatory for the right to enter defendant's premises and drink the alcohol defendant had ***already*** purchased.

Moreover, the record indicates that only ***some*** of the money collected by Defendant Jessica Manosa's bouncer from unknown individuals went to the purchase of additional alcohol. Meaning, ***some*** money was not expended and retained for the benefit or gain of Defendant Jessica Manosa.

While plaintiffs concede that the definition of "consideration," which includes "cover charges," is derived from Business and Profession Code section 25604[3] relating to public nuisances, plaintiffs do not concede the event held on the

---

[3] Business and Professions Code section 25604 states that, "It is a public nuisance for ***any person*** to keep, maintain, operate or lease ***any premises*** for the purpose of providing therein ***for a consideration a place for the drinking of alcoholic beverages by members of the public or other persons***, unless the person and premises are licensed under this division. As used herein "consideration" includes ***cover charge***, the sale of food, ***ice, mixers or other liquids used with alcoholic beverage drinks, or the furnishing of glassware or other containers*** for

day of the incident was not a public nuisance and negligent per se in violating that statute. Permitting underage individuals comprised of the general public to come onto private property to drink alcohol for a fee is a public nuisance by its very definition. More importantly, plaintiffs reference Business and Professions Code section 25604 is to illustrate that the Department of Alcoholic Beverage Control and legislators who drafted and amended the ABC Act, which includes sections 23025,[4] 23399.1,[5] 25602.1, and 25604, intended to include "cover charges" as a form of "consideration" for the "sale" of alcohol. The fact that Court of Appeal gave no weight to either Business and Professions Code section 25604 or the Trade Enforcement Information Guide ("the TEIG")[6] published by the Department of Alcoholic Beverage Control was in error considering that those who draft and execute the laws relating to the disposition and sale of alcohol deem "cover charges" to be "consideration" for the "sale" of alcohol.

---

use in the consumption of alcoholic beverage drinks." (Bus. & Prof. Code § 25604 (emphasis added).)

[4] Business and Professions Code section 23025 defines "sell," "sale," and "to sell" to include "***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." (Bus. & Prof. Code § 23025 (emphasis added).)

[5] Business and Professions Code section 23399.1 states, "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. (See Bus. & Prof. Code § 23399.1 (emphasis added).)

[6] The TEIG states: "Be aware that the definition of ***'sale'*** includes ***indirect 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.***" (www.abc.ca.gov/trade/TEU Information Guide 2009 v2.pdf (emphasis added.))

While Defendant Jessica Manosa wants this Court to believe that she did not subjectively intend to profit[7] on the day of the incident, her objective acts tell a completely different story. Moreover, defendants' desire to create an additional requirement of realizing a "profit" where the law requires none is completely misguided and confusing as the law only requires that the tortfeasor's aim or purpose be for "commercial gain" or profit to be held liable under Business and Professions Code section 25602.1. If defendant's position were taken as true, then the law would relieve those persons who poorly operate there commercial enterprises for less than a profit. Such a position is an illogical and inconsistent application of the Civil Code 1714(c) and Business and Professions Code section 25602.1.

Lastly, the enactment of Civil Code section 1714(d)[8] only goes to show the legislature's intent to further chip away at the civil immunities created by Civil Code section 1714(c) and 25602(b) passed in 1978 and to expand the scope of liability where underage drinking is involved. With the 1987 amendment to Business and Professions section 25602.1 and the subsequent passage of Civil Code section 1714(d), the legislature has extended and further broadened the circumstances in which civil liability can be imposed when underage drinkers are involved in an accident.

---

[7] Defendant Jessica Manosa denied knowledge of a cover charge despite testimony from several witnesses to the contrary. Clearly, circumstantial evidence may be used to establish or support an issue of fact where there may be no direct evidence (i.e. an admission that Defendant Jessica Manosa intended to charge a cover charge or make a profit.).

[8] Civil Code section 1714(d) provides, "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))

III. CONCLUSION

For the forgoing reasons, plaintiffs respectfully request that this Court review the Court of Appeal's Opinion in this matter.

Respectfully submitted,

DATED: February 1, 2011

By 

Abdalla J. Innabi
Amer Innabi
INNABI LAW GROUP, APC
Attorneys for Plaintiffs and Appellants,
FAIEZ and CHRISTINA ENNABE,
individually and on behalf of THE
ESTATE OF ANDREW ENNABE

CERTIFICATE OF COMPLIANCE

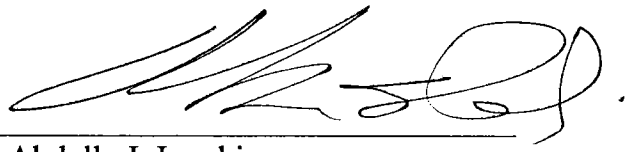
I, Abdalla J. Innabi, declare that:

I am an attorney in the law firm of Innabi Law Group, APC, which represent plaintiffs and appellants Faiez and Christina Ennabe, individually and on behalf of the Estate of Andrew Ennabe.

This Reply to Answer to Petition for Review was produced with a computer using Microsoft Word. It is proportionately spaced in 13-point Times Roman typeface. The brief contains 1,774 words including footnotes, excluding the tables and this certificate.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 1, 2011 at Pasadena, California.



Abdalla J. Innabi

PROOF OF SERVICE
BY OVERNIGHT COURIER AND PERSONAL SERVICE

CASE NAME: **Ennabe et al. v. Manosa et al.**
SUPREME COURT CASE NUMBER: **S189577**
COURT OF APPEAL CASE NUMBER: **B222784**
SUPERIOR COURT CASE NUMBER: **KC053945**

I, the undersigned, declare as follows:

1. At the time of service, I was at least 18 years of age and not a party to this legal action. I am a Citizen of the United States and resident of the County of Los Angeles where the within-mentioned service occurred.

2. My business address is 107 S. Fair Oaks Ave., Suite 208, Pasadena, California 91105.

3. On February 3, 2011, I served the ***REPLY TO ANSWER TO PETITION FOR REVIEW*** by overnight courier or personal service as follows: I enclosed a copy in separate envelopes, with postage fully prepaid, addressed to each individual addressee named below, and Federal Express picked up the envelopes in Pasadena, California, for delivery as follows:

Richard H. Nakamura
Dean A. Olson
Sheena Y. Kwon
MORRIS POLICH & PURDY LLP
1055 West Seventh Street, 24th Floor
Los Angeles, CA 90017
(*one copy*)

Clerk of the Court
California Supreme Court
350 McAllister Street
San Francisco, CA 94102
(one original & 13 copies)

Honorable Robert A. Dukes, Judge
Superior Court of California, East District
Los Angeles County – Department R
400 Civic Center Plaza,
Pomona, CA 91766
(*one copy)*

Clerk of the Court
Court of Appeal
Second Appellate District,
Division 1
300 So. Spring St. 2nd Fl
Los Angeles, CA 90013
(*one copy*)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: FEBRUARY 3, 2011

AMER INNABI
Print

Signature