

IN THE COURT OF COMMON PLEAS OF PHILADELPHIA
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

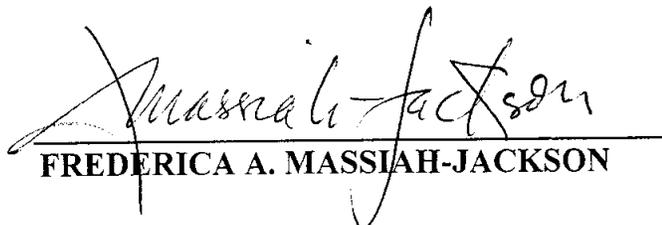
RICHARD ZAMBINO and DIANE ZAMBINO	:	
Plaintiffs	:	AUGUST TERM, 2009
	:	
vs.	:	NO. 2374
	:	
JEFFREY S. WINARSKI, and	:	
WHISKEY FLATS, INC. d/b/a	:	
OUT OF WACK JACK'S	:	
Defendants	:	

RICHARD ZAMBINO and DIANE ZAMBINO	:	
Plaintiffs	:	NOVEMBER TERM, 2009
	:	
vs.	:	NO. 4677
	:	
WHISKEY FLATS, INC. d/b/a	:	
OUT OF WACK JACK'S	:	
Defendants	:	

ORDER

And Now, this 28th day of February, 2011, upon consideration of all of the Motions for Summary Judgment and all of the Plaintiffs' Responses thereto, and for the reasons set forth in the Memorandum filed this date, it is hereby ORDERED that all Motions are **DENIED.**

BY THE COURT:


FREDERICA A. MASSIAH-JACKSON



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WHISKEY FLATS, INC. d/b/a	:	
OUT OF WACK JACK'S	:	
Defendants	:	

MEMORANDUM IN SUPPORT OF ORDER DENYING
ALL MOTIONS FOR SUMMARY JUDGMENT

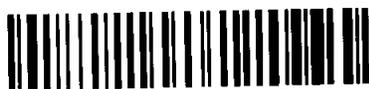
MASSIAH-JACKSON, J.

DOCKETED

FEB 28 2011

J. DIROSA
DAY FORWARD

February 28th, 2011



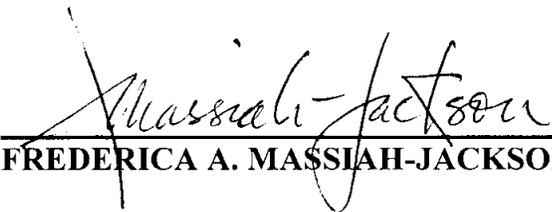
In these consolidated cases, the defendants have filed Motions for Summary Judgment insisting: First, that there is insufficient evidence of visible intoxication, and, Second, that the cause of action does not warrant a request for punitive damages. This Court does not agree. All Motions for Summary Judgment are **DENIED**. (**Control Nos. 10121954, 10121036, 10120916**).

Our Pennsylvania Appellate Courts have clearly held that violations of the Dram Shop Act may be established by circumstantial evidence. Fandozzi v. Kelly Hotel, 711 A.2d 524 (Pa. Superior Ct. 1998); Couts v. Ghion, 421 A.2d 1184 (plurality opinion) (Pa. Superior Ct. 1980). In addition, plaintiff's expert witness opines that Mr. Winarski's level of intoxication rendered him "unfit to drive", including "delayed reaction times, impaired judgment, impaired vision and impaired coordination." Generally, expert witnesses may testify about blood alcohol content/level when evidence of other conduct is presented. Fandozzi v. Kelly Hotel, *supra*; Ackerman v. Delcomico, 486 A.2d 410, 414 (Pa. Superior Ct. 1984). In this case, the testimony of the arresting officers will be relevant and admissible.

Finally, it will be up to the jury to determine whether the service of alcohol to a visibly intoxicated patron showed a reckless indifference to the interest of others. The parties should file appropriate Motions in Limine to alert the Trial Judge that the punitive damages hearing should be bifurcated and held if a compensatory damage award has been made.

Rule 1035.2 of the Pennsylvania Rules of Civil Procedure provides that summary judgment is appropriate only when there are no genuine issues of material fact. Under the circumstances presented here this Court is unable to conclude as a matter of law that summary judgment is appropriate.

BY THE COURT:



FREDERICA A. MASSIAH-JACKSON