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Johnson & Veilleux Prevail in Law Court

Sam Johnson and John Veilleux recently scored an appellate win in *Fama, et al v. Bob's, LLC, et al*, 2024 ME 73, -- A.3d --, which overruled the Superior Court's denial of summary judgment. The Law Court concluded that the Plaintiff's liquor liability claim against a restaurant was barred by the named and retained requirement of Maine's Liquor Liability Act. The Court concluded that the Plaintiff's prior settlement of a worker's compensation claim involving her late husband's co-employee resulted in immunity to that co-employee, which in turn barred the liquor liability claim against the restaurant.

In *Fama*, an action was brought by a spouse personally, and in her capacity as the executor of the estate of her late husband, against a restaurant and her late husband's coworker for liquor liability, wrongful death, wrongful death conscious pain and suffering, loss of consortium, and battery. The allegations stemmed from an altercation that occurred after dinner while her late husband and his coworkers were staying in Maine on assignment for their employer.

The spouse had previously submitted a claim for worker's compensation benefits for her late husband's injuries and death, which claim was accepted, paid, and memorialized in a settlement agreement. Following that settlement the spouse filed claims against the restaurant her late husband had dinner at with his co-workers prior to the altercation, and the co-worker involved in the altercation with her late husband after dinner.

At the trial court level, the co-employee defendant moved for summary judgment arguing that given the worker's compensation settlement he was immune from suit pursuant to Maine's Worker's Compensation Act. The restaurant also moved for summary judgment arguing that in light of the immunity afforded to the co-employee defendant, the liquor liability claim failed as a matter of law. Both motions were denied and an interlocutory appeal was filed by the co-employee and restaurant.

On appeal, the Law Court addressed the interlocutory nature of the appeal. The Court concluded that it would reach the merits of the appeal because both the Death Knell and Judicial Economy exceptions to the final judgment rule applied to the facts of this case. Addressing the merits, the Law Court concluded that the receipt and retention of worker's compensation benefits by the decedent's spouse afforded immunity to the co-employee defendant pursuant to Maine's Worker's Compensation Statutes. Further, because the co-employee defendant was immune from suit, the Law Court held that the decedent's spouse was unable to maintain a liquor liability claim against the restaurant.

To maintain a liquor liability claim, in addition to naming the establishment serving alcohol, the Plaintiff must also name and retain the patron who was allegedly overserved. To be named and retained within the meaning of the Act, the overserved patron must have an actual and real financial stake in the outcome of the litigation. Here, because the allegedly overserved patron was a co-employee that was immune from suit, that co-employee defendant did not have an actual stake in the outcome of the litigation and therefore could not be named and retained in the lawsuit as required by Maine's Liquor Liability Act. As a result, the court concluded it was an error of law to deny the motions

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for summary judgment and the matter was remanded to the trial court for entry of judgment in favor of the co-employee defendant and restaurant defendant.

For more information, please contact Sam Johnson.

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