

BY ANDREA M. ALONSO AND KEVIN G. FALEY

## *The Extent of Personal Liability for Serving Liquor in New York*

**P**ersonal line carriers in New York are often confronted with claims stemming from situations where alcohol is consumed in homes — often by teens — and result in injuries. The extent of vicarious liability of the insured depends on the specific circumstances under which the alcohol was served and consumed.

Liability for furnishing alcohol in the case of a social host or homeowner is based not on statute but rather on a common-law theory of negligence. For the Dram Shop Act — which makes someone who sells liquor to an intoxicated person liable if that person injures someone or property because of the intoxication — to be applicable an “unlawful sale” must be alleged such as the furnishing of alcohol “for profit.” Mere service of alcohol is not enough. In social gatherings no actual “sale” has occurred and the Dram Shop Act does not apply. New York Courts have uniformly held that the law has no application to a social host in a non-commercial setting.<sup>1</sup>

Generally, a social host or homeowner is not liable for the acts of a person to whom they served liquor and who later caused injury to a third party. Common law did not recognize a right of action against a host based on his serving alcohol to one who later injured another.<sup>2</sup> No special duty requires a property owner to protect a person from the results of his own voluntary intoxication. Also, a defendant generally has no duty to control the conduct of third persons so as to prevent them from harming others, even where as a practical matter that person can exercise such control.

Common law does recognize a landowner's duty to take reasonable precautions to supervise a guest to prevent him from harming others, provided that the host knows that he can and has the opportunity to control the third party's conduct and is reasonably aware of the necessity of such control.<sup>3</sup> That duty generally extends only to persons who are physically present on the owner's property. This duty derives from a landowner's delegation to act in a reasonable manner to prevent harm to those on his property. Once the guest leaves the premises that duty generally ends. The decision of whether or not to find a social host liable is ultimately a question of fact for the jury and will be determined in view of all the circumstances of the individual case.

In *Strassner v. Saleem v. Lasch*,<sup>4</sup> the court denied the defendant's motion to dismiss the complaint solely



Andrea M. Alonso



Kevin G. Faley

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because of the homeowner's wrongdoing in serving alcohol to an underage guest. The motion to dismiss was granted in part, however, because the court found that a homeowner's duty to control or supervise intoxicated guests does not extend beyond the premises. The accident here occurred on an adjacent highway where the homeowner's guest was struck by a passing vehicle. An adjacent highway was considered “beyond the premises.”

Although liability for social hosts is limited, there are situations where they may be held liable for the subsequent actions of their guests. A social host may be found liable for an injury that occurs on his property if the plaintiff can prove that the host knew or had notice of a possible dangerous situation and a need for control, and had an opportunity to prevent or control the guest who caused it. This duty stems from the obligation of a landowner to keep its premises free of known dangerous conditions, which may include intoxicated guests.<sup>5</sup>

The duty is a question of foreseeability for the jury: “Was it foreseeable that someone would get drunk at the party, engage in a fight, and cause injury to a third party?”<sup>6</sup>

In *Kohler v. Wray*,<sup>7</sup> summary judgment was granted as to one of the hosts of a party because it was found that he had neither reason to anticipate nor opportunity to prevent the guest from assaulting the plaintiff.

The two hosts, a husband and wife, invited several friends to their home for a housewarming party that featured a band and several kegs of beer. Evidence was submitted that Mr. Wray had never before seen the guest fight with anyone, had no reason to think he might do so, and had no chance to stop the altercation.

The plaintiff tried to show that the hosts knew the tortfeasor to be a “jealous person,” but the court found this fact alone insufficient to charge the defendant with notice of a combative personality. In addition, the court recognized that common law did not recognize a right of action against a host based on his serving alcohol to one who later injured another. The wife was not granted summary judgment because she submitted nothing to relieve her responsibility.

### **Underage Drinking**

A greater responsibility is placed on homeowners and social hosts with respect to underage drinking. It is comparable to the standard used in commercial settings. In addition to common-law negligence, there can also be statutory liability under New York's General Obligations

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Andrea M. Alonso and Kevin G. Faley are partners at Morris Duffy Alonso & Faley. Robyn Goodman, a law student, assisted in the preparation of this article.

Law 11-100, which holds that there will be liability if a plaintiff can demonstrate that he was injured by reason of the intoxication of a person under 21, and that the host knowingly caused such intoxication by unlawfully furnishing to or unlawfully assisting in procuring alcoholic beverages for such underage person with the knowledge or reasonable cause to believe that such person was under 21.

The "reasonable cause to believe" question is for the jury to resolve. The statute may be utilized to find liability for injuries that occur away from the premises. New York's General Obligations Law §11-100 is not applicable to a homeowner who has neither supplied alcohol to nor procured alcohol for consumption by an underage person.

In *Rust v. Reyer*,<sup>8</sup> summary judgment for a minor social host was denied after the court determined that injuries were caused by one of her underage guests to which she furnished alcohol on her property. The court found that she played an "indispensable" role in the scheme to make the alcohol available to the underage guests. Her part of having given permission to a fraternity to use her home to stage a party was enough involvement to deny her summary judgment with regard to resulting injuries, despite the fact that she did not organize the party, invite the guests, or provide the alcohol.

Similarly, in *Smith v. Taylor*,<sup>9</sup> the social hosts provided alcohol to approximately 40 to 60 guests, and the evidence leaned toward the conclusion that they knew or should have known that many of them were underage and consuming alcohol. The court granted a new trial on the common law negligence claim because of the trial court's failure to grant the defendant's request for a charge of foreseeability.

There is generally no duty for a non-participating parent whose child has served alcohol to underage guests, particularly when that parent had no knowledge that liquor will be served. However, liability for parents may present itself in a situation where the parents knew or should have known that there was a need to control their child and their child's guests, and they had an opportunity to so control them.

In *Lane v. Barker*,<sup>10</sup> the parents of a minor child gave permission for

their son to host a party at the family home. They expressly instructed that no alcoholic beverages were to be served to the minor guests. The child furnished alcoholic beverages to them anyway, resulting in one causing injury to another. The victim sued the defendant parents alleging violation of N.Y. Gen. Oblig. Law §11-100 and common law negligence.

The appellate court granted summary judgment to the defendant parents on the statutory count, finding that there is a mandatory requirement that a person "furnish" or "procure" alcoholic beverages as a predicate for liability, and this was not present here. On the common law negligence count, however, the court affirmed the dismissal of summary judgment, finding that the par-

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ents knew or should have known (were reasonably aware) that as many as half of the guests were minors and would be consuming alcoholic beverages, and the parents were home at the time of the party.

A new trial was ordered so that the jury could determine whether it was foreseeable that someone would get drunk at the party, engage in a fight and cause injury to a third party. If it is found that it was foreseeable, then the parents will be found to have had a duty to prevent this unreasonable risk of harm, and liable for common law negligence for failing to do so.

Distinguished from this case is *Guercia v. Carter*,<sup>11</sup> where the appellate court granted summary judgment to the parents of a 16-year-old host on both the plaintiff's statutory claim and their common law negligence claim, where the child held a party during which a guest was injured.

The victim presented no evidence that the parents were aware of, or that they had given permission for consumption of liquor on their prem-

ises by underage people. Furthermore, there was no evidence that the parents had the opportunity to control the conduct of the guests or that they were aware or foresaw the need to do so. In fact, the parents were out of town for the weekend and gave permission for their son to only invite "a few close friends" over to the house.

Elements such as the homeowners knowingly causing intoxication by furnishing or procuring alcoholic beverages for minors, giving permission for the consumption of alcohol for minors or having an opportunity yet failing to control the illegal drinking are "prerequisites to imposing common-law liability upon a landowner."<sup>12</sup>

## Conclusion

Liability for an individual in a social setting is limited and is a difficult burden for a plaintiff to prove. One must prove knowledge on the part of the defendant of the tortfeasor's vicious propensities as well as an opportunity to control.

With respect to minors being served alcohol in a residence, the burden of proof for a plaintiff is lessened. A defendant homeowner may be found liable for resulting injuries if a plaintiff can prove that homeowner had reasonable cause to believe or knowledge that the guest was under the age of 21 and still allowed for the consumption of or supplied liquor to that guest.

Liability in social settings rests wholly on an examination of what guests were invited to the home, what the host knew about the character of the guests and his or her age. These factual determinations, as in all negligence cases, will go to the jury.

(1) See *Kohler v. Wray*, 114 Misc.2d 856, 242 N.Y.S.2d 831 (Steuben Cty Sup.Ct. 1982).

(2) *Id.* at 858.

(3) See *Paul v. Hogan*, 56 A.D.2d 723, 392 N.Y.S.2d 766 (4th Dept. 1977).

(4) 156 Misc.2d 768, 594 N.Y.S.2d 559 (Monroe Cty Sup.Ct. 1993).

(5) See *D'Amico v. Christie*, 71 N.Y.2d 76, 524 N.Y.S.2d 1 (1987).

(6) See *Lane v. Barker*, 241 A.D.2d 739, 660 N.Y.S.2d 194 (3d Dept. 1997).

(7) 114 Misc.2d 856, 242 N.Y.S.2d 831 (Steuben Cty Sup.Ct. 1982).

(8) 670 N.Y.2d 355, 670 N.Y.S.2d 822 (1998).

(9) 304 A.D.2d 902, 757 N.Y.S.2d 617 (3d Dept. 2003).

(10) 241 A.D.2d 739, 660 N.Y.S.2d 194 (3d Dept. 1997).

(11) 274 A.D.2d 553, 712 N.Y.S.2d 143 (2d Dept. 2000).

(12) See *Reickert v. Misciagna*, 183 A.D.2d 151, 590 N.Y.S.2d 100, (2d Dept. 1992).