



Bar Owner Brings Suit against Police Alleging Harassment of Patrons and Staff

From the Desk of Kyle Riley: Taverns and bars are subject to routine inspections and monitoring by police officers and other government officials; however, if those officers conduct multiple inspections in a day and have a history of arresting patrons and employees, will a bar owner succeed in her claims for infliction of emotional distress and interference with a business expectancy? Read on to find out.

Claims Pointer: In this case arising out of a bar owner's suit against police officers and city officials, the Washington Court of Appeals held that the bar owner could not prevail on her claim for negligent infliction of emotional distress because the bar owner failed to identify a duty owed by the police officers. In addition, because Washington's statute permitted police officers to inspect businesses that sell liquor, at any time, the bar owner could not prevail on a claim for tortious interference with a business expectancy.

[*Barker v. Town of Ruston, et. al., No. 77745-9-1, Washington Court of Appeals Div. I \(May 7, 2018\).*](#)

Kye Barker ("Plaintiff") owner of Unicorn Sports Bar ("Unicorn"), filed suit against the Town of Ruston, the police department, mayor, police chief and other officers ("Defendants"). The lawsuit alleged that Defendants "unlawfully intimidated and harassed Unicorn customers and employees to drive the Unicorn out of business." When deposed, one of the officers testified to conducting "business checks" at Unicorn, sometimes more than once during his shift, citing Plaintiff for noise disturbance, arresting Unicorn patrons, and once arresting a Unicorn bartender for serving alcohol to an intoxicated individual. Other officers also testified to conducting periodic "bar checks" and "business checks."

According to Plaintiff's accountant, Unicorn incurred approximately \$100,000 in lost profits from 2006 to 2013, and was estimated to have up to \$24,000 a year in future damages. Plaintiff's lawsuit alleged "negligent infliction of emotional distress, intentional infliction of emotional distress, and tortious interference with a business expectancy." Defendants moved for summary

judgment and the trial court granted Defendants' motion. Plaintiff appealed.

The Washington Court of Appeals first looked to Plaintiff's claim for negligent infliction of emotional distress. The court noted that in order to succeed on a negligence claim, Plaintiff was required to show "(1) the existence of a duty, (2) breach of that duty, (3) resulting injury, and (4) proximate cause." The court found that Plaintiff did not identify a duty that Defendants owed to Plaintiff. Further, the court pointed out that the "public duty doctrine" immunizes public officials from liability for negligent conduct. While the public duty doctrine has four exceptions, Plaintiff did not argue that any of the exceptions applied. Accordingly, the Washington Court of Appeals found that there was no genuine issue of material fact, and ruled that the trial court properly dismissed Plaintiff's claim for negligent infliction of emotional distress.

The court next looked to Plaintiff's claim for intentional infliction of emotional distress. A plaintiff bringing a claim for intentional infliction of emotional distress must show: "(1) extreme and outrageous conduct;



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(2) intentional or reckless infliction of emotional distress; and (3) actual result to the plaintiff of severe emotional distress.” The court stated that Plaintiff’s brief provided no legal argument or factual basis in support of any of the three elements for intentional infliction of emotional distress and the Washington Court of Appeals determined that the trial court properly dismissed Plaintiff’s claim for intentional infliction of emotional distress.

Lastly, the Washington Court of Appeals considered Plaintiff’s claim for tortious interference with a business expectancy, which required that Plaintiff show:

“(1) the existence of a valid. . . business expectancy; (2) that defendants had knowledge of that [expectancy]; (3) an intentional interference inducing or causing a breach or termination of the. . . expectancy; (4) that defendants interfered for an improper purpose or used improper means; and (5) resultant damage.”

(emphasis added). The court stated that a Washington statute required all businesses that sell alcohol to be open at all times “to inspection by any liquor enforcement officer, inspector or peace officer.” The court explained that because Unicorn was a business that sells liquor, it was subject to inspection at any time. Because Plaintiff did not show that the officers exceeded their authority under the statute, even if the officers “interfered with the Unicorn’s business expectancy,” the officers “did not do so for an improper purpose.” Accordingly, Plaintiff could not meet the fourth element of her claim, and as a result, the Washington Court of Appeals determined that the trial court properly dismissed Plaintiff’s claim for tortious interference with a business expectancy.

View full opinion at: <https://www.courts.wa.gov/opinions/pdf/745549.PDF>



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