

*Gregory Demond, Co-administrator (Estate of Benjamin Demond), Et Al. v. Project Service, LLC, Et Al. (SC 20025)(SC 20026)(SC 20027)(SC 20028)*

The Plaintiffs in this case brought claims against the defendants for the wrongful death of Benjamin Demond and for injuries sustained to his two children as well as injuries to another driver during a multicar motor vehicle accident caused by a drunk driver. The plaintiffs alleged that the defendants, who operated an interstate highway service plaza, were liable for the wrongful death of Demond as well as the other injuries sustained in the accident. The plaintiffs base this claim on the fact that the defendants allowed the drunk driver, Goodale, to live in his vehicle at the service plaza for the week preceding the accident. While on the defendants' premises, Goodale consumed large amounts of alcohol. Shortly before the accident occurred, Goodale was consuming alcohol while parked at the service plaza, then proceeded to drive away from the service plaza and enter the highway. Goodale subsequently caused the accident to occur.

The plaintiffs contend that, through a series of contracts and subcontracts, the defendants had entered into an agreement to operate and maintain the service plaza. The state contracted with Project Services, who then subcontracted the day to day operations to Alliance. Alliance operated the fuel services area and subcontracted to 4mm for the day to day operations of the service mart. Through these contracts, the defendants agreed not to permit the consumption of alcohol or loitering on the service plaza grounds. The plaintiffs allege that the defendants breached a duty stipulated under the Restatement (Second) of Torts §324A, which states, "one who undertakes, gratuitously or for consideration, to render services to another which he should recognize as necessary for the protection of a third person . . . is subject to liability to the third person for physical harm resulting from his failure to exercise reasonable care to [perform] his undertaking . . ." The plaintiffs argue that defendants breached their duty of care by not removing Goodale from the premises, as they were contractually obligated to do, and such negligence resulted in the deadly car accident.

The defendants argue that they owed no duty to care to the plaintiffs. The trial court found that the defendants did owe a duty of care to the plaintiffs by virtue of their contractual agreement. The trial court granted summary judgement for the defendants for public nuisance claims but denied them summary judgment for negligence claims. The trial court found that "the defendants were negligent, that their negligence increased the risk of harm to the plaintiffs beyond that which existed without the defendants' contractual undertaking, and that the plaintiffs or others had relied on the defendant to exercise reasonable care."

The issue presented to the Court in this case is whether the defendants assumed a duty of care to the plaintiffs and other highway travelers by virtue of their contractual obligation to prevent alcohol consumption and loitering on the service plaza premises. The Court determined that the defendants did not owe a duty of care to the plaintiffs in this case. The Court found that the trial court incorrectly found that the defendants owed a duty of care to the plaintiffs and as a result, improperly denied the defendants motion to set aside the jury verdict and direct judgement in the defendants' favor. The Court reasoned that in order for a court to impose a duty of care based on §324A there must be "an express contractual undertaking or evidence of an unambiguous intention on the part of the contracting parties to protect third persons from foreseeable, physical harm within the scope of the services to be performed under the contract." The Court found that there was insufficient evidence to support the determination that the defendants, in signing the contract, had the intent to protect drivers and passengers traveling on

the highway from the risk of harm presented by alcohol consumption occurring on the service plaza premises. The Court reasoned that the contract did not mention any explicit intention to provide such protection on the part of the defendants. Additionally the Court reasoned that evidence that potential harm to highway travelers is a foreseeable result of the defendants negligent failure to prevent loitering and alcohol consumption at the service plaza was insufficient to prove that such provisions in the contract were included with the intention of protecting drivers and passengers traveling on the highway.

The Court additionally found that because it had established that the defendants owed no duty of care to the plaintiffs, it was unnecessary to determine the validity of the defendants' alternative claims. The defendants presented alternative claims arguing that even if the court determined that they did owe a duty of care to the plaintiffs, they were still not liable for negligence under §324A. The defendants argued that in negligently failing to perform their contractual duties, they did not increase the risk of harm to the plaintiffs and therefore are not liable under §324A (a). The defendants further argued that they could not be held liable under §324A (c) because no party relied on the defendants to protect highway travelers. The Court found that there was insufficient evidence to suggest that the defendants increased the risk of harm to the defendants, nor was there sufficient evidence to establish reliance on the defendants to protect travelers on the highway.

Lastly, the Court ruled that the trial court had properly granted the defendant summary judgement on the plaintiffs' public nuisance claim. The Court reasoned that the defendants' failure to prevent loitering and alcohol consumption at the service plaza was not the proximate cause of the injuries suffered by the plaintiffs. Rather, the Court determined that the sole proximate cause of the accident was Goodale's act of driving while intoxicated. The Court ultimately found that the defendants did not owe a duty of care to the plaintiffs and the plaintiffs' claim of public nuisance was without merit.