



QUEENS COUNTY

HOTEL/RESTAURANT

Dram Shop — Motor Vehicle — Passenger — Stop Sign

Bar blamed for drunken patron's car crash

VERDICT \$3,000,000
ACTUAL \$1,935,000

CASE Brenda Tunney v. Penny Leahy Corporation, d/b/a PJ Leahy's, John Doe Corp and John Rodden, No. 19892/04

COURT Queens Supreme
JUDGE Peter Kelly
DATE 2/2/2007

PLAINTIFF
ATTORNEY(S) David I. Goldstein, Law Offices of David Goldstein, Chestnut Ridge, NY

DEFENSE
ATTORNEY(S) Michael Janes, Kaufman Borgeest & Ryan LLP, New York, NY (Penny Leahy Corp.)
None reported (John Rodden)

FACTS & ALLEGATIONS At about 6 p.m. on July 31, 2002, plaintiff Brenda Tunney, a food caterer in her 40s, and her boyfriend, John Rodden, entered PJ Leahy's, a bar that is located in the Long Island City section of Queens. The two began consuming alcoholic beverages, and they did not leave until more than five hours later.

Rodden was driving Tunney's uninsured Nissan Pathfinder on Maspeth Street when he ran a stop sign at the intersection of Rust Street. His vehicle struck the front left side of an 18-wheel tractor-trailer that was proceeding through the intersection. Tunney sustained multiple fractures.

Tunney sued the bar's owner, Penny Leahy Corp., and Rodden. She alleged that the bar's employees were negligent in their service of alcohol to Rodden. She further alleged that Rodden was negligent in the operation of his vehicle.

Tunney claimed that the bartender was negligent in continuing to serve alcohol to herself and Rodden while they were visibly intoxicated. Tunney's expert witness in alcohol toxicology testified that Rodden must have exhibited gross levels of intoxication at PJ Leahy's based on the 0.25 level of alcohol content in his blood that was drawn at the hospital.

PJ Leahy's contended that there were no witnesses that could state that Rodden was visibly intoxicated when served alcohol at the bar and that the bartender was no longer employed at the business or able to be found.

During his deposition, Rodden denied being intoxicated and

claimed that he had merely consumed one or two beers. However, he did not appear at the trial, and default judgment was entered.

Defense counsel contended that Tunney could not prove that Rodden was visibly intoxicated while he was at the bar.

INJURIES/DAMAGES *coma; concussion; fracture, clavicle; hardware implanted; hip; internal fixation; leg; memory loss; open reduction*

Tunney was placed in an ambulance and transported to Elmhurst [N.Y.] Hospital Center. She sustained a concussion, leaving her in a coma for six weeks. She also sustained a broken right collarbone, broken right ribs and a broken right leg. She underwent open reduction and internal fixation with the installation of pins and rods in her right leg and right arm. She also underwent several months of rehabilitation.

Tunney claimed that she has no memory of the events before or after the collision. She contended that she walks with a limp as a result of the collision.

Tunney sought recovery of a total of \$3 million for her past and future pain and suffering.

RESULT The jury found that Rodden was 50% liable, that the bar was 10% liable, and that Tunney was 40% liable for getting in the car with Rodden.

Prior to the scheduled start of the trial's damages phase, Tunney and Penny Leahy Corp. agreed to a \$435,000 settlement. The matter proceeded to an inquest to determine Rodden's damages. The court awarded damages of \$3 million, of which Rodden is liable for \$1.5 million, based on his percentage of liability.

DEMAND \$500,000
OFFER \$435,000

PLAINTIFF
EXPERT(S) Jesse H. Bidanset, Ph.D., alcohol toxicology, Mineola, NY

DEFENSE
EXPERT(S) None reported

EDITOR'S NOTE This report is based on information that was provided by plaintiff's counsel and counsel of Penny Leahy Corp. Rodden's counsel was not asked to contribute.

—Maria Tidwell