

CASE NO. A06-2006

State of Minnesota
In Court of Appeals

JEAN CLARK, Individually and as Trustee for the Next of Kin of
TINA GROVE, Deceased, MICHAEL JUETTEN as Parent and
Natural Guardian of CHELSEA GROVE AND CHAD LINDBERG,
as Parent and Natural Guardian of CODY LINDBERG,
Respondents,

vs.

ROY JORGEN MUNKHOLM PETERSON,
Defendant,
GORDON WHEELER d/b/a CAMP RIPLEY STORE/BAR/CAFÉ
AND KRAZY RABBIT,
Appellant,
STATE OF MINNESOTA DEPARTMENT OF TRANSPORTATION,
Defendant.

RESPONDENTS' BRIEF

BLACKWELL BURKE, P.A.
Britton D. Weimer (#182035)
3601 West 76th Street
Suite 250
Minneapolis, Minnesota 55435
(952) 646-0400

Attorneys for Appellants

McCULLOUGH, WILLIAMS,
BOWDEN & CYR, P.A.
Susan Bowden, Esq. (#284610)
905 Parkway Drive
Saint Paul, Minnesota 55117-3198
(651) 772-3446

Attorneys for Respondents

TABLE OF CONTENTS

	<u>Page</u>
STATEMENT OF THE ISSUE	1
STANDARD OF REVIEW	2
SUMMARY OF ARGUMENT	2
ARGUMENT	3
I. THE TRIAL COURT PROPERLY DETERMINED THAT THE SALE OF LIQUOR WITHOUT A VALID LIQUOR LICENSE IS AN “ILLEGAL SALE” UNDER THE CIVIL DAMAGES ACT.	
A. The Civil Damages Act Should Be Liberally Construed	3
B. The Civil Damages Act Supports Respondents’ Claim Of An Illegal Sale.	5
1. Appellant’s Violation Was Substantially Related To The Purposes Sought To Be Achieved By The Civil Damages Act.	5
2. The District Court’s Ruling That Selling Liquor Without A License Is An Illegal Sale Is Consistent With The Six Established Categories of Illegal Sales.	8
3. The District Court’s Determination That Appellant Committed An “Illegal Sale” Does Not Create Uncertain, Retroactive Liability.	12
CONCLUSION	12

TABLE OF AUTHORITIES

Page

CASES

<i>Beck v. Groe</i> , 70 N.W.2d 886 (Minn.1955)	4, 7
<i>Cady v. Coleman</i> , 315 N.W.2d 593 (Minn. 1982).....	4
<i>Englund v. MN CA Partners/MN Joint Ventures</i> , 555 N.W.2d 328 (Minn. Ct. App. 1996), aff'd 565 N.W.2d 433 (Minn. 1997)	3, 6, 7, 9
<i>Fest v. Olson</i> , 163 N.W. 798 (1917).....	9
<i>Koehnen v. Dufour</i> , 590 N.W.2d 107 (Minn. 1999).....	4
<i>Herrly v. Muzik</i> , 374 N.W.2d 275 (Minn.1985)	3
<i>Hollerich v. City of Good Thunder</i> , 340 N.W.2d 665 (1983)	3-7, 9, 10
<i>Kvanli v. Village of Watson</i> , 139 N.W.2d 275 (1965).....	9
<i>Lefto v. Hoggsbreath Enters., Inc.</i> , 581 N.W.2d 855 (Minn. 1998).....	4, 12
<i>Rambaum v. Swisher</i> , 435 N.W.2d 19 (Minn. 1989).....	9, 11, 12
<i>Strand v. Village of Watson</i> , 72 N.W.2d 609 (1955).....	9
<i>Wall v. Fairview Hospital and Healthcare Servs.</i> , 584 N.W.2d 395, 404 (Minn. 1998)	2

STATUTES

Minn. Stat. § 340A.401.....	9
Minn. Stat. § 340A.410.....	9

STATEMENT OF THE ISSUE

- I. Whether the sale of alcohol by a liquor vendor who fails to have a valid liquor license constitutes an “illegal sale” under the Civil Damages Act.

THE TRIAL COURT RULED IN THE AFFIRMATIVE.

Most Apposite Cases:

Rambaum v. Swisher, 435 N.W.2d 19 (Minn. 1989).

Englund v. MN CA Partners/MN Joint Ventures, 555 N.W.2d 328 (Minn. Ct. App. 1996), aff'd 565 N.W.2d 433 (Minn.1997).

Lefto v. Hoggsbreath Enters., Inc., 581 N.W.2d 855 (Minn. 1998).

STANDARD OF REVIEW

As stated by the Supreme Court:

Summary judgment is proper when the pleadings, depositions, interrogatory answers, admissions and affidavits show that there is no genuine issue as to any material fact and that either party is entitled to judgment as a matter of law. Minn. R. Civ. P. 56.03. On review of a grant of summary judgment, we determined whether there are any genuine issues of material fact and whether the District Court erred in its application of the law.

Wall v. Fairview Hospital and Healthcare Servs., 584 N.W.2d 395, 404 (Minn. 1998).

SUMMARY OF ARGUMENT

There is no dispute that the Krazy Rabbit and the Camp Ripley Store/Bar/Café were not compact and contiguous at the time the sale of alcohol was made to Peterson. Appellants only issue is whether or not the violation of compact and contiguous, as defined by the CDA and resulting in further violation of Minn. Stat. § 340A.401 for selling liquor without a license, creates an illegal sale from which Clark can recover.

The facts of this case evidence that an illegal sale was made pursuant to the Civil Damages Act and that the violation is substantially related to the purposes of the Civil Damages Act. The Trial Court did not err in holding that selling liquor without a license as a result of two buildings not being compact and contiguous, violations of Minn. Stat. § 340A.401 and Minn. Stat. § 340A.410, is an illegal sale.

ARGUMENT

I. THE TRIAL COURT PROPERLY DETERMINED THAT THE SALE OF LIQUOR WITHOUT A VALID LIQUOR LICENSE IS AN “ILLEGAL SALE” UNDER THE CIVIL DAMAGES ACT.

A. The Civil Damages Act Should Be Liberally Construed.

The purpose of the Civil Damages Act has been discussed in great detail in *Hollerich v. City of Good Thunder*, 340 N.W.2d 665, 668 (1983):

The concern of the Civil Damages Act is intoxication which results in injury to the intoxicated person’s dependants or others. The prohibition of after-hour sales tends to reduce liquor consumption late at night or in early morning hours, at times when the likelihood of overindulgence and the resultant hazards with which the Act is concerned is enhanced...(w)hat must be remembered, however, is that more than an illegal sale is required for dramshop liability. In addition a claimant must, first, establish that the illegal sale contributed to the intoxication, and second, that the intoxication contributed to the cause of injury.

Id. at 668.

In *Englund*, the court stated that the purposes of the act are: (1) to protect the health, safety and welfare of the public through careful regulation of liquor distribution; (2) to penalize dram shops for the illegal sale of liquor; and (3) to provide a remedy for innocent third persons injured as a result of another’s intoxication. *Englund vs. MN CA Partners/MN Joint Ventures, d/b/a Radisson Hotel South*, 555 N.W.2d 328, 332 (1997) (citing *Herrly v. Muzik*, 374 N.W.2d 275, 278 (Minn.1985)).

The purpose of the Civil Damages Act is to place on vendors the responsibility of complying with the requirements of Chapter 340A. *Englund*, 555

N.W.2d at 332. This burden provides vendors with an incentive to ensure all liquor sales are in compliance with the law. *Id. See also Beck v. Groe*, 70 N.W.2d 886, 894 (Minn.1955) (the right to sell is merely a privilege that may be revoked).

Defendant argues that the Civil Damages Act must be narrowly construed; arguing Clark's claim does not fall within one of the six currently recognized liquor liability claims. However, the court in *Beck* discussed interpretation of the Act:

...it may be interpreted, where the language is clear and explicit, so that its true intent and purpose is given full meaning, having viewed the evil to be remedied and the object to be attained. Its provisions, where clear as to intent and purpose, will be *liberally* construed so as to suppress the mischief and advance the remedy.

245 Minn. 28, 70 N.W.2d 886, 891 (Minn. 1955) (emphasis added).

There is nothing in the case law to indicate that the six claims currently recognized are exclusive or consist of an exhaustive list. To the contrary, the courts have delved deep into the purpose and intent of the Civil Damages Act. In *Hollerich*, the Minnesota Supreme Court stated:

We account for the fundamental purpose of the act to uphold liability in respect to people engaged in a business, making a profit in the provision of liquor. *See Koehnen v. Dufour*, 590 N.W.2d 107, 112 (Minn. 1999); see also *Cady*, 315 N.W.2d at 596. Although the Act is not to be construed "beyond its definite scope," it is to be liberally construed to the ends of suppressing the illegal furnishings of liquor that causes a person's intoxication and providing compensation for those who are injured as a result of this conduct. *Lefto v. Hoggsbreath Enterprises, Inc.*, 581 N.W.2d 855, 857 (Minn.1998) (citations omitted).

340 N.W.2d at 668.

Furthermore, the *Hollerich* court stressed that the Civil Damages Act was not limited to the five categories established at that time when noting:

...whether dramshop acts exist for other “illegal sales” would require consideration by us in the concrete setting of an actual case.

340 N.W.2d at 669.

Given the extensive discussion noted above, it is clear that imposing liability on the illegal furnishings of alcohol by a vendor, for a profit is exactly what the CDA was intended to suppress. Because the CDA is liberally construed, the trial court did not err in determining that serving alcohol without a license was an illegal sale.

B. The Civil Damages Act Supports Respondents’ Claim Of An Illegal Sale.

1. Appellant’s Violation Was Substantially Related To The Purposes Sought To Be Achieved By The Civil Damages Act.

Defendant Gordon Wheeler d/b/a the Camp Ripley Bar/Store/Cafe and “Krazy Rabbit’s” violation of provision 340A is substantially related to the mischief sought to be suppressed by the Dram Shop Act.

In *Hollerich v. City of Good Thunder*, the Minnesota Supreme Court added after-hour sales to the list of categories constituting “illegal sales” within the meaning of 340A. 340 N.W.2d 665, 665 (1983). In that case, the Defendant municipal liquor store sold alcohol to decedent in violation of a statute regulating hours and days of liquor sales. *Id.* The night of the sale, decedent drove, rolled his vehicle and was killed. The Court reasoned that 340A was created to suppress

mischief of social ills resulting from intoxication by providing an incentive for liquor vendors to do everything in their power to avoid making illegal sales. *Id.* at 664. It then concluded that the prohibition against after-hour sales is sufficiently related to the purposes of 340A that such sales are “illegal sales” within the meaning of the Act. *Id.* The Court stated:

The concern of the Civil Damages Act is intoxication which results in injury to the intoxicated person’s dependants or others. The prohibition of after-hour sales tends to reduce liquor consumption late at night or in early morning hours, at times when the likelihood of overindulgence and the resultant hazards with which the Act is concerned is enhanced...(w)hat must be remembered, however, is that more than an illegal sale is required for dramshop liability. In addition a claimant must, first, establish that the illegal sale contributed to the intoxication, and second, that the intoxication contributed to the cause of injury.

Id. at 668.

In *Englund*, the court stated that the purposes of the act are: (1) to protect the health, safety and welfare of the public through careful regulation of liquor distribution; (2) to penalize dram shops for the illegal sale of liquor; and (3) to provide a remedy for innocent third persons injured as a result of another’s intoxication. *Englund vs. MN CA Partners/MN Joint Ventures, d/b/a Radisson Hotel South*, 555 N.W.2d 328, 332 (1997) (citing *Herrly v. Muzik*, 374 N.W.2d 275, 278 (Minn.1985)). The court further reasoned that the sale of alcohol without safeguarding against off-premises consumption enhances the potential for drinking while driving, thus endangering others on the road. *Englund*, 555 N.W.2d at 332.

In *Rambaum*, the court considered whether there was a substantial

relationship between the unlicensed sale and the purposes of dramshop liability. 435 N.W.2d at 21. To do so, they looked at the manner in which certain kinds of illegal sales impacted the public's access to and consumption of alcoholic beverages. *Id.* at 22.

The court in *Englund* noted the following:

The legislature chose to regulate the sale of alcohol and place on liquor vendors the responsibility of complying with the requirements of chapter 340A. See *Beck v. Groe*, 245 Minn. 28, 39, 70 N.W.2d 886, 894 (1995) (noting right to sell alcohol is merely a privilege, which the legislature may revoke at will upon violation of statutory conditions); *Dahl*, 265 Minn. at 220, 121 N.W.2d at 324 (recognizing the legislature strictly regulates and controls alcohol industry for public welfare and safety).

Englund, 555 N.W.2d at 332.

Similarly, the *Hollerich* court stated that the after-hour sales violation was substantially related to the harm because the purpose of the act was to reduce liquor consumption late at night when hazards are enhanced. *Hollerich v. City of Good Thunder*, 340 N.W.2d 665 (1983). This reasoning is applicable to this case. As a result of operating without a license, liquor consumption is *increased* at night, until the time the bar closes.

The Civil Damages Act's purpose is to maintain control over the distribution of alcohol sales and the consumption of alcoholic beverages. Selling liquor without a license undermines the legislature's intent. This violation is substantially related to the purposes sought to be achieved by the Civil Damages Act and, therefore, constitutes an illegal sale.

Appellant's operation without a license increased the number of alcohol vendors operating in that jurisdiction, thus increasing the public's access to alcohol. The Krazy Rabbit had a seating capacity of 195, therefore increasing the availability of alcohol to 195 additional patrons. At a minimum, this would result in additional drivers on the roadway that were under the influence of alcohol. Ultimately, this increases the danger to the public of drivers on the roadways under the influence of alcohol.

In total, Defendant Wheeler operated the "Krazy Rabbit" without the requisite license, thus *directly violating* the aim of the Act to regulate licensing. Gordon Wheeler held the "Krazy Rabbit" out to be a liquor establishment. Furthermore, alcohol was sold by the "Krazy Rabbit" to the public. Gordon Wheeler d/b/a Camp Ripley Bar/Store/Café and "Krazy Rabbit" is exactly the type of commercial vendor the Civil Damages Act was intended to regulate to protect the public and maintain regulation of the number of vendors. In order to preserve the purpose of the Civil Damages Act, Defendant Wheeler must be penalized.

2. The District Court's Ruling That Selling Liquor Without A License Is An Illegal Sale Is Consistent With The Six Established Categories of Illegal Sales.

Appellant attempts to distinguish a violation of Minn. Stat. § 340A.401 and Minn. Stat. § 340A.410, subd. 7 from the other 340A violations already established as illegal sales. To the contrary, the prohibition of selling liquor without a license is an attempt to govern the same issues as the other six: controlling alcohol dispensed to patrons.

Minnesota Statute 340A.401 reads:

340A.401 License required.

Except as provided in this chapter, no person may directly or indirectly, on any pretense or by any device, sell, barter, keep for sale, charge for possession, or otherwise dispose of alcoholic beverages as part of a commercial transaction without having obtained the required license or permit.

Minnesota Statute 340A.401. Minn. Stat. § 340A.410, subd. 7, lists general licensing restrictions on liquor vendors:

A licensing authority may issue a retail alcoholic beverage license *only* for a space that is *compact and contiguous*. A retail alcoholic beverage license is *only* effective for the licensed premises *specified in the approved license application*.

Minn. Stat. § 340A.410, subd. 7 (emphasis added).

Using the definition in *Rambaum*, “illegal selling” has been interpreted to include: (1) sales by clubs to persons other than members or guests, *Rambaum*, 435 N.W.2d at 22; (2) after-hours sales, *Hollerich*, 340 N.W.2d at 669; (3) sales to minors, *Kvanli v. Village of Watson*, 272 Minn. 481, 484, 139 N.W.2d 275, 278 (1965); (4) sales to obviously intoxicated persons, *Strand v. Village of Watson*, 245 Minn. 414, 419-20, 72 N.W.2d 609, 614 (1955); and (5) Sunday sales when prohibited by statute, *Fest v. Olson*, 138 Minn. 31, 33, 163 N.W. 798, 798 (1917). In *Englund v. MN CA Partners/MN Joint Ventures*, 555 N.W.2d 328 (Minn. Ct. App. 1996), *aff’d* 565 N.W.2d 433 (Minn. 1997), a sixth definition of illegal sale was determined: violation of an on-sale liquor license.

As the Court in *Hollerich v. City of Good Thunder* found, “Nowhere in the Act is the phrase ‘illegally selling’ defined; consequently one has to look elsewhere in chapter 340 for what is an illegal sale.” 340 N.W.2d at 666. The *Hollerich* Court rejected Defendant’s argument that the Act only prohibits sales to certain persons (i.e. obviously intoxicated persons and minors) and held that it also applies to the prohibition of sales at certain times and places. *Id.* at 667. The Court reasoned that prohibiting sales on certain days and times is no less regulatory than prohibiting to persons of a particular status. *Id.*

In this case, the District Court did not expand CDA liability on public policy grounds. Rather, the District Court merely defined an illegal sale based on specific sections of the Civil Damages Act that **existed** at the time the illegal sale was made.

Finding an illegal sale as a result of selling liquor without a license directly governs the dispensing of alcohol to patrons. What other purpose would the compact and contiguous requirement have if not to control the dispensing of alcohol to patrons?

If the requirement did not exist, what would prevent a bar owner from creating a strip mall across town with many bars connected to each other? What if the town or county limited the number of liquor licenses to 5, yet the strip mall consisted of 20 different bars? Isn’t the purpose to control the number of licenses, the amount of alcohol available to patrons, and to allow the county to control potential dangers?

Requiring a license to sell alcohol puts the county on notice of the capacity of the establishment, the owner of the establishment, what type of alcohol will be served, if food will be served at the same location, and whether or not the business is in conjunction with any other business. (A. 86-87) These are all factors that provide the county with information to allow them to directly govern the dispensing of alcohol. Because Gordon Wheeler's son applied for a liquor license for the Krazy Rabbit but the license was never obtained, the county or city did not have the information it would have obtained had the license been in effect. *Id.*

The Court in *Rambaum* looked at the manner in which the illegal sale impacted the public's access to and consumption of alcohol. 435 N.W.2d at 21. The Court found it "...significant that the legislature has placed limits on the number of regular liquor licenses that a municipality may issue based on population." *Id.* at 22.

One of the easiest ways to control the amount of alcohol available to patrons is by limiting the number of liquor licenses. Minn. Stat. § 340A.401 and Minn. Stat. § 340A.410, subd. 7 prohibit selling liquor without a valid license, directly affecting alcohol consumption by regulating who can sell alcohol to the public. Because the requirement of compact and contiguous, as well as selling liquor with a license is clear and explicitly set forth in the CDA, a violation, as that which occurred here, is an illegal sale and the Trial Court's ruling should not be reversed.

3. **The District Court’s Determination That Appellant Committed An “Illegal Sale” Does Not Create Uncertain, Retroactive Liability.**

Appellant’s claim that any determination that Wheeler committed an illegal sale of alcohol cannot be applied retroactively is not based on precedent. If past sales were never held retroactively illegal, “suppressing the illegal furnishings of liquor that causes a person’s intoxication and providing compensation for those who are injured as a result of this conduct” would never be achieved. *Lefto v. Hoggsbreath Enterprises, Inc.*, 581 N.W.2d 855, 857 (Minn. 1998).

Minnesota courts have previously found parties guilty under the Civil Damages Act for acts not yet mandated. *See Rambaum v. Swisher*, 435 N.W.2d 19 (Minn. 1989) (holding for the first time that a sale to a non-member of a club is illegal); *Hollerich*, 340 N.W.2d at 669. (holding for the first time that after-hour sales results in liability). Both instances involved acts that were later found to be illegal. This case seeks nothing out of the ordinary.

More importantly, the two statutes that were violated by Gordon Wheeler d/b/a the Camp Ripley Store/Bar/Café were **in existence** at the time the illegal sale was made. The District Court in this case did nothing more than apply the existing law to the facts. As such, the District Court’s ruling should be upheld.

CONCLUSION

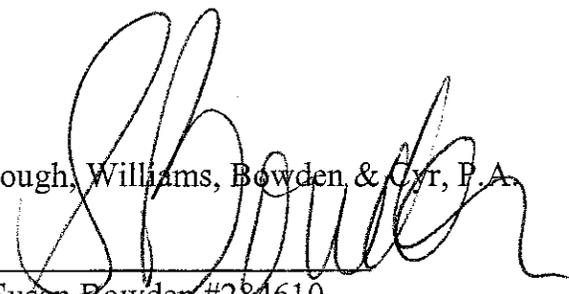
For all of the foregoing reasons, this Honorable Court should affirm the District Court’s grant of summary judgment to Respondents.

Date:

12/21/00

McCullough, Williams, Bowden, & Cyr, P.A.

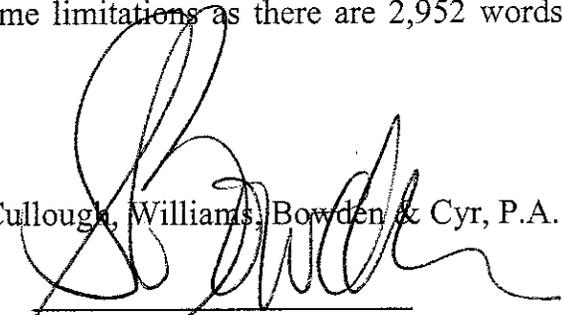
By:


Susan Bowden #284610
Maple Hills Office Center
905 Parkway Drive
St. Paul, MN 55117-3198
Attorneys for Respondents

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 132.01 subd, 3, the undersigned hereby certifies, as counsel for Respondents Jean Clark, Individually and as trustee for the next of kin of Tina Grove, deceased, Michael Juetten, as parent and natural guardian of Chelsea Grove, and Chad Lindberg, as parent and natural guardian of Cody Lindberg, that this brief complies with the type-volume limitations as there are 2,952 words of proportional space type in this brief.

Date: 12/21/06


McCullough, Williams, Bowden & Cyr, P.A.

By: _____
Susan Bowden #284610
Maple Hills Office Center
905 Parkway Drive
St. Paul, MN 55117-3198
Attorneys for Respondents