



**LORAIN COUNTY COURT OF COMMON PLEAS
LORAIN COUNTY, OHIO**

**TOM ORLANDO, Clerk
JOURNAL ENTRY
Raymond J Ewers, Judge**

Date 10/18/17

Case No. 16CV189550

KIMBERLY A WAGNER

Plaintiff

GINO PULITO

Plaintiff's Attorney

(440) 322-1125

VS

TRAVIS R CARRUTHERS

Defendant

SEAN KENNEALLY

Defendant's Attorney

This matter comes before the Court on the "Motion of Intervenor Conifer Insurance Company for Reconsideration" and "Defendant Carrico Inc.'s Brief in Opposition to Motion for Reconsideration."

At issue is this Court's ruling of June 30, 2017 wherein Intervening Plaintiff's (*hereinafter Conifer*) Motion for Judgment on the Pleadings was denied. This denial was based upon a line of cases holding that common law claims outside of Ohio's Dram Shop Act, codified at O.R.C. 4399.18, are recognized in Ohio. Conifer sought a declaration that it owed no duty to defend or indemnify its insured, Carrico, Inc., d/b/a LoPorte Inn (*hereinafter Carrico*) due to its belief that the only avenue to recovery for Plaintiff is statutory and therefore excluded in a liquor liability exclusion contained in its policy.

Subsequent to this Court's ruling, the Supreme Court of Ohio ruled on the case of Johnson v. Montgomery, 2017-Ohio-7445. In Johnson, the Court stated: "The statute is straightforward. The only cause of action against a liquor-permit holder for off-premises





injuries caused by an intoxicated person arises when the permit holder (or an employee) knowingly sells alcoholic drinks to a noticeably intoxicated person or an underage person."

Due to this ruling, the only avenue for Plaintiff to recover from Conifer is through the Dram Shop Act. However, Conifer's policy clearly states:

2. Exclusions

This insurance does not apply to:

"Bodily Injury" or "property damage" for which any insured may be held liable by reason of:

- (3) Any statute, ordinance, or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

A motion for judgment on the pleadings, pursuant to Civ.R. 12(C), presents only questions of law, and it may be granted only when no material factual issues exist, and the movant is entitled to a judgment as a matter of law. *Peterson v. Teodosio*, 34 Ohio St.2d 161, 297 N.E.2d 113 (1973). This Court is restricted to review only the allegations in the pleadings. The non-moving parties are entitled to have all material allegations in the pleadings, with all reasonable inferences to be drawn therefrom, construed in their favor. *Id.* Evidence in any form cannot be considered for such ruling. *Conant v. Johnson*, 1 Ohio App.2d133, 135, 204 N.E.2d 100 (1964).

Taking into account the specific exclusionary language found in this Conifer policy, coupled with the decision in Johnson v. Montgomery holding that the only cause of action against a liquor permit holder for off-premises injuries is through the Dram





Shop Act, and upon reconsideration of this Court's prior ruling, the decision of June 30, 2017 is hereby vacated and held for naught. Conifer's Motion for Judgment on the Pleadings is granted and Conifer has no duty to defend or indemnify Carrico in this matter.

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RAYMOND J EWERS, JUDGE

cc: Atty. Pulito
Atty. Kenneally
Atty. Winchester
Atty. Cuppage

