

IN THE SUPREME COURT OF IOWA

NO. 18-1225

JERAMY HOLLINGSHEAD
Plaintiff-Appellant,

vs.

DC MISFITS, LLC
Defendant-Appellee.

APPEAL FROM THE IOWA DISTRICT COURT
FOR POLK COUNTY
HON. DAVID MAY, JUDGE

APPELLANT'S REPLY BRIEF

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STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. Guidelines for judging sufficiency of notice

Arnold v. Lang dba Joe’s Lang’s Tap, 259 N.W.2d 749

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II. Was Notice Given Within Six Months?

Arnold v. Lang, 259 N.W.2d 749

III. Was the Notice Given to the Dram Shop Carrier for Misfits?

Arnold v. Lang, 259 N.W.2d 749

IV. Did Notice State Plaintiff's Intention to Bring an Action for the Injury Under § 123.93?

Arnold v. Lang, 259 N.W.2d 749

V. Did the Notice Give the Time, Place and Circumstances of Plaintiff's Injury?

Arnold v. Lang, 259 N.W.2d 749

ARGUMENT

I. Defendant-Misfits urges a strict compliance standard when considering sufficiency of notice. In actuality the Court has again and again stated a liberal construction of the dram shop notice provisions is mandated. *Arnold v. Lang dba Joe's Lang's Tap*, 259 N.W.2d 749, 753 (1977) quoting *Meredith v. City of Melvindale*, 381 Mich. 572, 579, 165 N.W.2d 7, 11 (1969) . . . "a valid claim should not be penalized for some technical defect.'

The Court in *Lang* also said the object of the statute must be kept in mind and not given a construction that will defeat the ends of

justice. *Lang*, at 755.

Iowa Code § 123.93 has several requirements, some of which may require stricter compliance than others. For instance, it is imperative that the notice indicate an intent to bring a dram shop action. It is also necessary absent good cause that the notice arrive within six months. Other content requirements are judged on a question of substantial compliance and purpose of the notice. The statutory requirements are as follows:

II. Written notice given within six months of injury. In *Lang* the notice went out in ten months. *Lang*, at 753. In this case the notice was timely (Dram Shop Notice, App. 5) and no challenge is made on this requirement.

III. The notice must be given to the licensee or the dram shop carrier of the licensee. In *Lang* the notice/letter went to the premises carrier, not to the dram shop carrier. In this case the notice went to the dram shop carrier for DC Misfits, LLC, dba Misfits namely, Founders Insurance. (Dram Shop Notice, App. 5). The Founders Insurance carrier insured Misfits on the date of the injury. This fact is also not controverted.

IV. The statute makes clear the notice must advise the dram

carrier (or licensee) that a dram shop lawsuit is intended.

The notice in *Lang* failed in this regard. *Arnold v. Lang*, 259 N.W.2d 749. In this case the notice to Misfits in this case makes clear a lawsuit is planned. (Dram Shop Notice, App. 5). This is another fact not challenged.

V. The final notice requirement designed to afford the dram carrier an opportunity to investigate states the claimant must provide the time, place and circumstance of the injury.

The notice in *Lang* also failed in this requirement. In *Lang* only the date of the occurrence is given. There is no mention of the injury circumstances. There is no mention that the injury took place at Lang's. The letter (urged by Appellant in *Lang* as a proper 123.93 notice) simply said that counsel "represents Mr. Rick Arnold with regards to an accident that occurred on September 14, 1974." The Court goes on to point out that the alleged notice "does not mention Lang's name". The name of the bar, that is, the place where the injury occurred was "Joe Lang's Tap". The Court is merely enumerating all of the defects in the notice, including the failure to state the place where the injury occurred. This one sentence did not attempt to change well- founded case law and clear statutory language, nor the

recitation of § 123.93 given in the same opinion one page previous that does not mention any requirement that the owner or owners of the bar be identified in the notice to the insurance carrier. *Lang*, at 762.

Defendant Misfits is attempting to place unintended meaning to the word “Lang’s” and thereby add a requirement to the dram notice that does not exist under the statute or under any of the cases considering dram shop notice requirements. “Lang’s” is the bar, the location, the place.

The notice in this case gave the date, the place (“Misfits”) and the circumstances (attack by drunk patrons upon Plaintiff Hollingshead). (Dram Shop Notice, App. 5). No more is required.

The ruling sustaining the Motion for Summary Judgment and Defendant Misfits’ argument is based upon one and only one erroneous position. That is § 123.93 requires the exact, proper legal name of the owner or owners of the bar in addition to the time, place and circumstances. This position is not supported by the case law or statute. It is without question that the notice in *Lang* would have been substantially compliant if timely made to the dram carrier with the wording indicating the intent to bring action for an event

occurring on a certain date and describing the injury circumstances. This would be true if the notice said it happened at Joe Lang's Tap or Joe Lang's Bar or Lang's Tap or even just Lang's. If the bar at the time of injury was owned by Joe Lang's wife or son or daughter or in a corporation or if it had been sold a month before the injury to Bill Smith or if a trustee held title in bankruptcy or if ownership was held by any combination of countless individuals, partnerships, LLCs, it would make no difference. The law requires the carrier is told of the place involved. In the case involving Mr. Hollingshead that would be Misfits. This fact was expressed in the notice on no less than three occasions. (Dram Shop Notice, App. 5).

CONCLUSION

The 123.93 notice in this case served the purpose intended. The bar's dram carrier was given all the information in a timely manner needed to investigate the potential claim. Part of that needed information was the location, that is "place", where the incident occurred.

ATTORNEY'S COST CERTIFICATE

I, Robert B. Garver, hereby certify the actual cost of reproducing the necessary copies of the preceding Appellant's Reply

Brief consisting of 9 pages was \$-0-.

Respectfully submitted,

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