

**SUPERIOR COURT
OF THE
STATE OF DELAWARE**

T. HENLEY GRAVES
RESIDENT JUDGE

**SUSSEX COUNTY COURTHOUSE
ONE THE CIRCLE, SUITE 2
GEORGETOWN, DE 19947**

July 27, 2005

David A. Boswell
Wachovia Bank Building
4602 Highway One, Second Floor
Rehoboth Beach, Delaware 19971

Michael Silverman, Esquire
Silverman & McDonald
1010 N. Bancroft Parkway, Suite 22
Wilmington, Delaware 19805

Bruce C. Herron
1220 N. Market Street, #300
P.O. Box 25047
Wilmington, Delaware 19899

Gregory A. Morris, Esquire
Liguori, Morris & Redding
46 The Green
Dover, DE 19901

Michael Pedicone, Esquire
200 West Ninth Street, Suite 700
P.O. Box 1395
Wilmington, Delaware 19899

Cynthia G. Beam, Esquire
Reger & Rizzo
1001 Jefferson Plaza, Suite 202
Wilmington, DE 19801

**RE: Abraham Sanchez-Caza, et al. v. Estate of Susan Gordon Lloyd Whetstone,
et al.
C.A. No. 02C-08-002 (THG)**

Date Submitted: May 31, 2005

Dear Counsel:

On May 31, 2005, the following Motions for Summary Judgment were submitted to this Court for its review: a motion for Summary Judgment by Abraham Sanchez-Caza against the Estate of Susan Whetstone and Gigi Gross, a motion by William Lloyd against Abraham Sanchez-Caza, and a motion by Kathaleen Lloyd (since deceased), Candice A. Casey, Kathaleen McCormick and Key Box "5" Operatives, Inc. against Abraham Sanchez-Caza. The interconnectedness of these motions permits their determination in one decision by this Court. For the following reasons, the motions are GRANTED IN PART, DENIED IN PART.

Plaintiff Sanchez-Caza's Motion for Summary Judgment against the Estate of Susan Whetstone and Gigi Gross

On December 5, 2001, Plaintiff Abraham Sanchez-Caza (hereinafter "Abraham") was an eighteen (18) month old passenger in a grey 1988 Toyota Camry driven by Luciano Salem. His mother was riding in the front passenger seat of the same vehicle. The car was traveling westbound on Delaware State Road 20. At the same time, Susan Whetstone was traveling eastbound on State Route 20 in a blue Chevrolet Caprice station wagon, owned by Defendant William Lloyd.

At approximately 6:00 p.m., Whetstone attempted to pass four cars on a curve in the road which was marked with a double yellow line, indicating a no-passing zone. Several witnesses watched as she drove her vehicle illegally in the westbound lane into the path of oncoming traffic. Whetstone continued in the westbound lane of travel and collided head-on with Luciano Salem's vehicle. Abraham sustained personal injuries in the tragic automobile accident, which also claimed the lives of his mother, Luciano Salem and Susan Whetstone. Gigi Gross, Whetstone's passenger, survived but suffered serious physical injuries and has no recollection of any of the events leading up to the accident.

An autopsy completed on Susan Whetstone found that her blood contained .207 grams of ethanol per hundred milliliters, over twice the legal limit. The autopsy also found certain metabolites in Whetstone's blood which indicated that she had recently used cocaine.

Abraham, through his father and legal guardian, Rogelio Sanchez, instituted this action against William Lloyd and the Estate of Susan Whetstone, Key Box 5 Corporation, its members and directors, and Gigi Gross. Plaintiff moves this Court to grant summary judgment on the issue of Defendant Whetstone's and Gross' liability. The Court received no response from

Whetstone's estate. This is the Court's decision on the Plaintiff's motion for Summary Judgment against the Estate of Susan Whetstone and Gigi Gross.

Receiving no opposition on the issue of summary judgment against the Estate of Susan Whetstone, this Court finds in favor of the Plaintiff. The violation of a public safety statute or ordinance is considered negligence per se. *Sammons v. Ridgeway*, 294 A.2d 547, 549 (Del. 1972). Driving a vehicle while under the influence of alcohol or drugs is prohibited in the State of Delaware. 21 *Del. C.* § 4177. The laws against intoxicated driving were undoubtedly enacted to maintain the safety of our state's highways. Susan Whetstone was negligent per se by operating her vehicle in an intoxicated state. Also, there has been no dispute that Ms. Whetstone passed on a curve in a clearly marked no-passing zone in violation of 21 *Del. C.* 4119 and 4120. The motion for Summary Judgment against the Estate of Susan Whetstone is GRANTED.

Plaintiff also filed a Motion for Summary Judgment against Gigi Gross, the passenger in the Whetstone vehicle. However, since the filing of this motion, both parties have made certain stipulations as to Ms. Gross that make the determination of this motion unnecessary.

Defendant William G. Lloyd's Motion for Summary Judgment

Based on the above facts, Abraham alleged liability on the part of William G. Lloyd, the father of Susan Whetstone. Abraham alleges that W. Lloyd is liable for his injuries and the death of his mother based on the negligent entrustment of his vehicle to Susan Whetstone. Plaintiff also claims that W. Lloyd is liable under an agency theory, since Whetstone may have been operating the vehicle in an employment capacity at the time of the accident.

W. Lloyd moves this court to grant summary judgment in this matter because there is no evidence to suggest that he had any reason to know that Whetstone was an incompetent or unfit

driver. W. Lloyd claims that the Plaintiff failed to present any relevant evidence of improper driving by Whetstone. W. Lloyd further contends that he was not aware of any instances of intoxicated driving by Whetstone or any impairment of her judgment by her use of drugs and alcohol.

W. Lloyd also claims that Plaintiff's agency theory must fail because Whetstone was not engaged in employment activities at the time of the accident. W. Lloyd suggests that, while Whetstone may have been acting in an agency capacity prior to the accident, her use of alcohol and drugs removed her from that role and obviates a finding of agency. Therefore, he contends that the Plaintiff failed to show any admissible evidence that he knew or should have known of Whetstone's incompetency to drive at the time of the accident.

Again, the Court may only grant summary judgment when the moving party has shown that no issues of material fact exist. According to the record, Ms. Whetstone had a history of alcohol and drug abuse. Whetstone was previously admitted to a rehabilitation program for her addiction problems and was apparently attending alcoholics and narcotics anonymous meetings at the time of her death. There is evidence in the record that suggests W. Lloyd was aware of his daughter's drug and alcohol problems. However, W. Lloyd testified that he never knew Ms. Whetstone to drive while she was intoxicated by alcohol or drugs.

Whether or not W. Lloyd's entrustment of his vehicle to Susan Whetstone was negligent, based on his knowledge of her drug problems, remains a question of fact. It should be left to the jury to decide whether he was negligent in entrusting the vehicle based on his level of knowledge. This Court will not usurp the jury's decision on that issue.

Likewise, whether or not Susan Whetstone was engaged in employment activity at the time of the accident remains a question of fact. Key Box "5" is a Lloyd family business engaged in the operation of mobile homes. W. Lloyd testified in a deposition that Whetstone was taking a load of trash from one of the Key Box "5" trailers to a dump in Seaford at the time of the accident. He contends that she had cleaned the trailer out so that she could reside there. The Plaintiff argues that Whetstone was actually conducting company business by taking garbage to the dump.

W. Lloyd also argues that Whetstone removed herself from the scope of employment by consuming drugs and alcohol and driving a vehicle while intoxicated. W. Lloyd therefore claims that the agency claim should fail. I am unable to grant the motion for Summary Judgment based on the record before the Court. Whether or not Susan Whetstone was engaged in employment activity at the time of the accident and whether the consumption of drugs and alcohol thereafter removed her from such scope is a question of fact for the jury. W. Lloyd's liability under an agency theory depends on the resolution of these questions. The motion for Summary Judgment is therefore DENIED.

Key Box "5" and Lloyd Family members' Motion for Summary Judgment against Abraham Sanchez-Caza

Defendants Kathaleen Lloyd (now deceased), Candice A. Casey, Kathaleen McCormick and Key Box "5" Operatives, Inc. move for summary judgment in this matter. The parties claim that there is no evidence suggesting that Susan Whetstone was acting in the course of employment or an agency relationship with Key Box "5" Operatives, Inc. at the time of her death. They also move this Court to dismiss the action against them because they claim that the Plaintiffs are attempting to 'pierce the corporate veil' of the family corporation to reach the

personal assets of its members. They claim this action more properly belongs in Chancery court or, in the alternative, should be dismissed for a lack of evidence asserting that Whetstone was acting on the part of Key Box "5" at the time of the accident. Neither of these arguments provide a proper basis for summary judgment.

Whether or not Ms. Whetstone was acting in the course and scope of employment with Key Box "5" is a question of fact which is not ripe for summary judgment. There are certain facts in the record which indicate that Ms. Whetstone was occasionally given odd jobs by her family's business and received compensation for her work. She received payment as late as September 2001 for painting speed bumps in one of the corporation's residential developments. Key Box "5" is also a family business, giving rise to the possibility that Ms. Whetstone may have been acting on behalf of the corporation when she went to clean out a trailer and take refuse to a trash dump on December 5, 2001. Whether or not the corporation can be held accountable in any way for Ms. Whetstone's actions on December 5, 2001 is a question of fact which remains unanswered and is properly reserved for the jury.

Presently, the issues concerning whether or not the Plaintiffs in this action will be permitted to 'pierce the corporate veil' of Key Box "5" are before the Chancery Court. The Chancery Court has subject matter jurisdiction over matters which seek to bypass the traditional protections of corporate entities and access the individual members of a corporation. However, I do not find it necessary to dismiss Key Box "5" from this action because the issues before this Court do not involve piercing the corporate veil. The complaint against Key Box "5" is based on respondeat superior and agency theories. Kathaleen Lloyd, Candice Casey and Kathaleen McCormick are also properly named defendants in this matter. Under certain circumstances in

Delaware, corporate officers and directors may be liable for their active participation in tortious conduct even if they are officially acting for the corporation. *T.V. Spano Bldg. Corp. v. Wilson*, 584 A.2d 523, 530-31 (Del. Super. Ct. 1990). Whether or not the Lloyd family members knew of the existence and extent of Ms. Whetstone's ongoing addiction problem and continued to employ her are questions of fact that have yet to be resolved. The liability of the individual members of Key Box "5" will depend on the development of these facts. Therefore, dismissing this action against these parties at this time would be improper. The Motion for Summary Judgment is DENIED.

Very truly yours,

T. Henley Graves

THG/jfg
oc: Prothonotary