

Employee loses out in tort claims against Twin River

👤 By: Barry Bridges 🕒 October 15, 2021



Finding the plaintiff employee's allegations failed as a matter of law, the judge granted Twin River Casino summary judgment.

A federal judge has granted summary judgment favoring Twin River Casino in a plaintiff employee's lawsuit that claimed false arrest, malicious prosecution, defamation, false light, and intentional infliction of emotional distress arising out of the employee's arrest for possession of a controlled substance while at work.

The suit was mounted by Elizabeth Sankey, who was arrested in 2017 during one of her bartending shifts at Twin River after she was implicated in the illegal possession of a controlled substance by surveillance video and subsequent statements of a co-worker.

The drug charges were dismissed a few months later, and Sankey was reinstated to her position by a union arbitrator. She brought the instant action in 2019 seeking monetary damages against Twin River.

Although surviving the defendant's earlier request for a dismissal, Sankey did not fare as well in Twin River's present motion for summary judgment, with U.S. District Court Chief Judge John J. McConnell Jr. finding that she did not make her case in establishing the tort counts delineated in her complaint.

"There is no dispute that Twin River's decision to provide State Police with the surveillance video was not itself a false ... or malicious statement," McConnell wrote as to the defamation and false light allegations. "Furthermore, there is no evidence that Twin River published a false or fictitious fact about Ms. Sankey. [The plaintiff] points to news articles published about her arrest, but there is no evidence that Twin River was responsible for the publication of those articles."

Likewise, the facts did not support the plaintiff's recovery for intentional infliction of emotional distress.

"Twin River's decision to turn the surveillance videos over to the Rhode Island State Police was not extreme and outrageous; in fact, it was in response to its perception of the coworker's criminal activity at the casino," McConnell continued. "Considering the coworker's ultimate confession of his conduct to police and implication of Ms. Sankey's alleged complicity, there is insufficient evidence to conclude that Twin River's report was intentional or in reckless disregard of Ms. Sankey's emotional health."

A similar fate awaited the plaintiff's false arrest and malicious prosecution allegations, with Twin River winning summary judgment on all fronts.

The 10-page decision is *Sankey v. UTGR, Inc., et al.*, Lawyers Weekly No. 52-114-21. The full text of the ruling can be found [here](#).

Counsel for plaintiff Sankey was Warwick's Carl P. DeLuca, who was not available for comment.

Michael D. Chittick, Stephen D. Lapatin and Kyle M. Zambarano, of Adler, Pollock & Sheehan in Providence, represented defendant Twin River.

Chittick characterized the across-the-board resolution of the suit at the summary judgment stage as a "very appropriate and sound decision" by McConnell on the plaintiff's "dubious legal claims."

Drug charges dropped

Sankey, a bartender at Twin River Casino, was captured on surveillance video engaging in suspected narcotics activity with a co-worker in October 2017.

The tape was provided to the Rhode Island State Police Gaming Enforcement Unit. In an affidavit, a GEU detective described the footage as depicting the colleague removing a prescription pill bottle from a shelf at a service bar, removing a number of pills from the bottle, and placing them into a napkin. The co-worker then placed the bundled napkin into a purse belonging to Sankey, who pushed the napkin deeper into the bag.

The GEU did not take immediate action against either party, but instead instructed Twin River to keep a close watch on Sankey's colleague.

A month later, surveillance once again observed the co-worker passing prescription pills to another casino employee. Upon his arrest, the co-worker said in a recorded statement that he had provided Sankey with Adderall pills upon her request, as depicted in the first video.

The State Police arrested Sankey and charged her with one count of possession of a controlled substance. Her employment was terminated as a result.

However, the charges against Sankey were dropped within a few months after her attorney successfully argued that the pills in the napkin were never tested.

At that point, as a union member, Sankey demanded arbitration under the parties' collective bargaining agreement. At the hearing, the arbitrator concluded that the casino did not have probable cause to suspend Sankey because her colleague — who did not testify — provided unreliable hearsay in making his statement to the GEU.

The arbitrator thus ordered Twin River to reinstate Sankey to her job and to "make her whole for all lost wages and benefits," a decision it honored.

Sankey then commenced the instant lawsuit against Twin River, putting forth claims for false arrest, malicious prosecution, defamation, false light, and intentional infliction of emotional distress.

Twin River moved to dismiss early last year, arguing that the federal Labor Management Relations Act's governance of CBA-based claims precluded the action. McConnell denied the motion, viewing the record as inconclusive on whether the allegations were dependent on the CBA agreement or, rather, concerned matters outside its scope.

That brought the litigation to its present posture, with Twin River moving for summary judgment on all of Sankey's claims.

Elements found lacking

Concluding that the plaintiff's allegations failed as a matter of law, McConnell granted the motion favoring the defendant.

He began his written decision by casting a doubtful eye toward the related defamation and false light claims, which both require the utterance or publication of a false fact. The plaintiff based those counts on news articles published about her arrest that she said contained untrue statements.

"Ms. Sankey has produced no evidence that Twin River made false and malicious statements about her, so her claims fail on the first element," McConnell wrote, pointing out that it was the testimony of Sankey and her co-worker, along with the surveillance video itself, that led authorities to arrest the plaintiff and charge her with one count of possession of controlled substances.

Furthermore, he rejected the proposition that Twin River's statements were false because the charges against her were eventually dropped.

"Neither the outcome of the criminal investigation nor the arbitrator's conclusion impacts whether Twin River's statement was false, defamatory, or malicious," the judge added. "The Attorney General's decision ... on criminal charges is discretionary and it is undisputed that the arbitrator considered the coworker's testimony implicating Ms. Sankey hearsay because he did not testify in person at the arbitration hearing."

The plaintiff also failed to meet the requisite elements for malicious prosecution and false arrest.

"Twin River did not arrest or confine Ms. Sankey, the Rhode Island State Police did. There is no evidence that Twin River acted with any malice or ill will in how it investigated the coworker and Ms. Sankey, or in its decision to report the coworker's activity and provide surveillance video to the GEU," McConnell continued.

Finally, McConnell concluded that the plaintiff's intentional infliction of emotional distress claim could not withstand the motion for summary judgment as she offered no "proof of medically established physical symptomatology."

CASE: Sankey v. UTGR, Inc., et al.,
Lawyers Weekly No. 52-114-21

COURT: U.S. District Court

ISSUE: At the summary judgment stage, was a casino employee able to maintain false arrest, malicious prosecution, defamation, false light, and intentional infliction of emotional distress claims against her employer after being terminated from her job and then reinstated by an arbitrator once drug possession charges were dropped?

DECISION: No, the necessary elements of the various alleged torts were not satisfied

Issue: OCT. 18 2021 ISSUE

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