

LICENSING COURT OF SOUTH AUSTRALIA

THE SANDS LIFESTYLE VILLAGE INCORPORATED

JURISDICTION: Variation and redefinition of licence

FILE NO: 792 of 2013

HEARING DATE: 3 May 2013

JUDGMENT OF: His Honour Judge BP Gilchrist

DELIVERED ON: Application granted on 3 May 2013
(Reasons published 10 May 2013)

REPRESENTATION:

Counsel:

Applicant: Mr P Schwennesen with Mr J Warner

Objectors: Mr K Lewitzka and Ms J Lewitzka

Solicitors:

Applicant: N/A

Respondent: N/A

- 1 This is an application by The Sands Lifestyle Village Residents Association Inc for the redefinition of a limited club licence in respect of premises at 670 Grand Boulevard Road, Seaford.
- 2 The Association operates a limited club licence within The Sands Lifestyle Village, a retirement village that contains numerous self contained units that surround a community centre and bowling green. Within the community centre is a swimming pool, croquet lawn, barbeque area and the community centre. Within the community centre is a dining hall, large hall, bar, bar store, and kitchen.
- 3 The licence was granted over an objection from the current objectors, Mr and Mrs Lewitzka, following a hearing in this Court in 2009: *The Sands Lifestyle Village Association Inc.*¹ Mr and Mrs Lewitzka are residents of the village.
- 4 The Court granted the licence for specified days permitting the sale and supply of liquor in five sections of the common property. Those areas being: Area 1 – the bowls club, Area 2 – the veranda attached to the bowls club, Area 3 – the hall, Area 4 – the dining room and Area 5 – the barbeque area.
- 5 The applicant seeks an extension of the licensed areas. It seeks to enlarge the licensed area pertaining to the bowling green; to licence a passageway that connects the hall and the barbeque area; and to extend the licence in the barbeque area to the surrounding verandah and paved area. Mr Schwennesen, who represented the Association, told me that the purpose of the application was twofold. Firstly, to prevent inadvertent breaches of the limited club licence by residents or their guests and secondly, to have some greater control over numbers and consumption in a paved outdoor area bordering our barbeque. Persons purchasing liquor from within the hall area are technically in breach of the Act by taking liquor into the barbeque area because the passageway is presently unlicensed. Persons purchasing liquor from within the bowling green are technically in breach of the Act by taking liquor into the adjacent area. At the present time the practice of some residents and their guests is to consume their own liquor in the area surrounding the barbeque area. The applicant would like to regulate that area and give residents and their guests the option of purchasing liquor.
- 6 A number of issues raised by Mr and Mrs Lewitzka were understandably a source of grievance to them, but they were matters over which I either have no jurisdiction or were not appropriate to argue in this case. For example, they contend that under the terms of their agreement with The Sands Lifestyle Village, no major change to the operation of the village

¹ [2009] SALC 11 and [2009] SALC 14

was permissible, without the agreement of all residents. They asserted that the grant of the licence was a major change and that since they did not agree with it, it should never have been pursued. I rejected that submission for a number of reasons. First, for the reasons stated by the majority in *Dalgety Wine Estates Pty Ltd v Rizzon*², the existence of a term in a contract cannot prevent the Licensing Court from deciding whether, despite the existence of that term, considerations of public interest outweigh the desirability of enforcing private rights. Secondly, the application I have before me is an application to extend an existing licence. I did not think it appropriate to use this as a vehicle for the objectors to revisit the earlier grant of the licence.

- 7 There were, however, some matters that they raised that I thought were valid.
- 8 They contended that it would be inappropriate to permit dining in the proposed enlarged licensed area pertaining to the bowling green. They contended that it would be inappropriate to permit the consumption of alcohol in the passageway that connects the hall and the barbeque area. They contended that the door between the end of the passageway and the barbeque area was an emergency door and that it should be clear of furniture to permit easy access.
- 9 Mr Schwennesen agreed with all of these matters.
- 10 Mr Lewitzka produced a medical certificate that indicated that the existence of the licence might compromise his health. Without encouraging him to needlessly agitate issues it seemed to me that if the application were granted on an interim basis, with liberty to apply, any unforeseen difficulties with the grant of this application could be addressed. Mr Schwennesen indicated that he would have no objection to the application being granted on an interim basis for twelve months.
- 11 In light of these concessions Mr and Mrs Lewitzka did not press their objection. Following that I indicated that I thought it was appropriate to grant the application, subject to the conditions just mentioned. I thought that the reasons for pursuing the application, as explained by Mr Schwennesen, sounded sensible. The extensions sought in respect of the passageway and the bowling green are not intended to escalate the sale of liquor. Their purpose is to prevent patrons inadvertently breaching the Act. The extension sought in the areas outside the barbeque area will provide for regulation in an area where people currently consume alcohol in an unregulated environment.

² [1979] HCA 41; (1979) 141 CLR 552

- 12 Thus in my view, in the exercise of the Court's discretion, the application should be granted.
- 13 I now direct the Clerk of the Court to prepare minutes of order that reflect these reasons.