

Pernod Ricard Winemakers Pty Ltd [2018] SALC 31

LICENSING COURT OF SOUTH AUSTRALIA

PERNOD RICARD WINEMAKERS PTY LTD

JURISDICTION: Application for Review or an Appeal from
Commissioners decision

FILE NO: 252 of 2018

HEARING DATE: 9 March 2018

JUDGMENT OF: His Honour Judge BP Gilchrist

DELIVERED ON: 9 March 2018 Reasons published 21 May 2018

REPRESENTATION:

Counsel:

Applicant: Mr T Swaine

Solicitors:

Applicant: Swaine Legal

- 1 On 9 March 2018, I allowed an application for the review of a decision of the Commissioner for Liquor and Gambling. The Commissioner had, through his delegate, refused an application made by the applicant, Pernod Ricard Winemakers Pty Ltd, to alter the conditions of its direct sales licence. With respect, I formed the view that the Commissioner had erred in not granting the application. These are my reasons for doing so.
- 2 The licence contained the following condition:

The licensee shall ensure that liquor is not delivered to premises which are unattended at the time of delivery, and that the recipient of the liquor delivered is 18 years of age or over.
- 3 After making a reference to s 17(1)(a) of the *Liquor Licensing Act 1997*, the Commissioner resolved to determine the matter without requiring the applicant to attend the hearing. The Commissioner refused the application on the understanding that the applicant was seeking the deletion of the condition.
- 4 Section 17 provides as follows:
 - (1) The powers and responsibilities of a licensing authority under this Act are divided between the Commissioner and the Court as follows:
 - (a) the Commissioner is to determine—
 - (i) all non-contested matters except those that are, under some other provision of this Act, to be determined by the Court; and
 - (ii) all contested applications for a limited licence; and
 - (iii) all applications to which section 52 applies that relate to a small venue licence.
- 5 It is not clear whether the Commissioner in referring to s 17 was relying upon the provision as justification for dealing with the matter without hearing from the applicant or whether the provision was referred to, simply explain why the Commissioner was dealing with it as opposed to the Court.
- 6 Be that as it may, and notwithstanding the directive in s 18 of the Act for the Commissioner to act without undue formality; with respect, the Commissioner was obliged to afford the applicant procedural fairness, and that in turn meant that if the Commissioner was contemplating not granting the application, the applicant ought to have been given the right

to be heard. It is sufficient to refer to the judgment of Mason J (as he then was) in *FAI v Winneke* where he said:

The fundamental rule is that a statutory authority having power to affect the rights of a person is bound to hear him before exercising the power. The application of the rule is not limited to cases where the exercise of the power affects rights in the strict sense. It extends to the exercise of a power which affects an interest or which deprives a person of a “legitimate expectation”, to borrow the expression of Lord Denning M.R. in *Schmidt v. Secretary of State for Home Affairs*, in circumstances where it would not be fair to deprive him of that expectation without a hearing.¹ (footnotes omitted)

- 7 In an affidavit filed in support of the application for review it was made clear that the applicant was not seeking the deletion of the condition but rather was seeking its amendment to read as follows:

The licensee shall ensure that the recipient of the liquor delivered is 18 years of age or over.

- 8 The licensee wanted to be relieved of the obligation of ensuring that liquor was not delivered to premises which were unattended at the time of delivery.
- 9 Evidence was placed before the Court to the effect that the applicant operates an e-commerce platform via an internet website that is restricted to its employees and their nominees and which is not open to the general public. On occasions purchasers would want liquor delivered to a particular address at a time when the premises were unoccupied and under the existing condition that is not permitted. The purpose of the application to amend the condition was to allow this to occur.
- 10 The applicant asked the Court to note that the s 107A(3)(c) of the Act, albeit not yet proclaimed, expressly allows for liquor supplied through a direct sales to be delivered in accordance with the instructions of the purchaser.
- 11 If liquor is delivered to an unoccupied address there is always the potential for it to come into the hands of minors. But the Court is permitted to know that when a purchaser gives instruction for delivery of purchased goods to an unoccupied delivery address and those goods can be easily removed, the purchaser is likely to ask for the goods to be placed so as not to be readily accessible. Importantly the amended condition continues to impose an obligation upon the licensee ensure that the recipient of the liquor delivered is 18 years of age or over. In light of that and the limited range of customers that the applicant intends to

¹ (1982) 151 CLR 342 at 360.

serve, the Court formed the view that the possibility of the liquor delivered to an unoccupied delivery address falling into the hands of minors was not an unacceptable risk.

- 12 In all the circumstances the Court was satisfied that the alteration to the condition should be made.