

LICENSING COURT OF SOUTH AUSTRALIA

CAFÉ PRIMO - BERRI

JURISDICTION: Application for transfer of a restaurant licence

FILE NO: 1279 of 2011

HEARING DATE: 11 April 2011

JUDGMENT OF: His Honour Judge B Gilchrist

DELIVERED ON: 28 April 2011

Application for a restaurant liquor licence - Whether the applicant is a fit and proper person - Applicant investigated in respect of alleged firearm offences - Record of interview tendered - Agreed fact that the applicant has not been charged - Fact of not being charged not particularly relevant as his record of interview whether true or untrue reflects so poorly on him as to warrant a conclusion that he is not a fit and proper person to hold a restaurant liquor licence - Application refused - Ss s 55(1) and 63(1)(a) of the Liquor Licensing Act 1997

Sobey v Commercial and Private Agent Board (1979) 22 SASR 70

REPRESENTATION:

Counsel:

Applicant:	Mr A Maik
Respondent:	Brevet Sergeant C Brannan
Solicitors:	
Applicant:	O'Briens Solicitors
Respondent:	Commissioner for Police

- 1 The applicant, Mr Ajan Akran, operates a restaurant business known as the Golden Elephant Indian Restaurant in Berri. The business has been operating since 7 March this year.
- 2 Mr Akran seeks a transfer of a restaurant liquor licence from premises known as the Café Primo Berri to the Golden Elephant Indian Restaurant.
- 3 For the application to succeed, pursuant to 63(1)(a) of the *Liquor Licensing Act 1997*, Mr Akran must establish to the satisfaction of the Court, as the licensing authority, that he is a fit and proper person to hold the licence.
- 4 The Commissioner for Police has intervened in these proceedings. The Commissioner asserts that Mr Akran is not a fit and proper person to hold a licence on the basis of investigations into Mr Akran's alleged possession of unregistered firearms.
- 5 On 3 February 2011 police attended at Mr Akran's restaurant and seized a gun safe. The gun safe was found to contain a handgun, three rifles, three shotguns and six boxes of ammunition. Two of the rifles and one of the shotguns were registered in Mr Akran's name in New South Wales. The others are not registered.
- 6 Mr Akran was interviewed by police about the unregistered guns. The Commissioner tendered the record of interview without objection. There is no suggestion that it does anything other than faithfully record what Mr Akran said in response to the questions asked of him.
- 7 His story is as follows.
- 8 He said that he brought some of them from an old guy whose name he did not know; in a town that he did not know, but thought it might be West Wyalong. He said he brought them in something akin to a garage sale or a carboot sale. He said that he became aware of the sale when he drove past it. He said that the guns were not displayed. He said:

“We just got talking to him, you know I don't know just talking to him seeing like pretty cool and that just talking and that then he goes oh look get some of this stuff I brought a couple of that stuff off him”.
- 9 He said that one of the shotguns was given to him. He said that the person who gave it to him was a “real old codger”. He said that the old codger was going to throw the gun away and that he offered to take it. He was unable to say when this happened.

- 10 Mr Maik, Mr Akran's counsel, contended that Mr Akran has not, as yet, been charged with any criminal offence. He therefore comes before the Court as a person against whom no wrong has been proved. He further contended that even if Mr Akran is subsequently charged and convicted of offences under the relevant firearms legislation, the fact of those convictions in no way reflects upon his suitability to conduct licensed premises.
- 11 I think the circumstances would have to be quite exceptional for this Court to make an adverse finding as to the fitness of a proposed licensee based upon the mere assertion that the person may be charged with a criminal offence.
- 12 I also am prepared to accept that depending upon the circumstances of a particular case, a conviction for an offence under firearms legislation might not, of itself, necessarily compel a conclusion that the applicant is not a fit and proper person.
- 13 However, I do not need to decide these to dispose of this matter.
- 14 My concern is not the fact that these weapons were not registered; rather it is the circumstances in which the applicant claims they were acquired or his failure to honestly answer questions put to him by the police.
- 15 Pursuant to s 55(1) of the Act in determining whether the Mr Akran is a fit and proper person I must take into consideration:
- “(a) The reputation, honesty and integrity (including the credit worthiness) of the person; and
- (b) The reputation, honesty and integrity of people with whom the person associates.”
- 16 It will be seen that honesty, integrity and credit worthiness are key factors.
- 17 What Mr Akran said in his record of interview is either true or not true.
- 18 If it is true the circumstances in which Mr Akran claims to have acquired the unregistered weapons reflect very poorly on his integrity. They disclose a profound lack of judgment.
- 19 We know from the fact that two firearms are registered in his name that Mr Akran is aware of the need to register firearms. I think it can be safely assumed that he is aware that the acquisition of a firearm is a serious matter. If he is not aware of that he should be. In either case he would have us believe that he was prepared to buy firearms from the boot of a car or a garage sale without being supplied with any paperwork

in connection with them, without seeking any information about the identity of the supplier or the firearms and without obtaining a receipt.

- 20 This suggests a disturbingly cavalier attitude to the acquisition of firearms. He had no way of knowing anything about the integrity of the supplier. For all he knew the supplier could have an extensive criminal history. He was not to know whether the guns had been stolen, or whether they were being disposed of to conceal their involvement in a serious crime. He was also prepared to receive a gun from a stranger with no supporting documentation with the same risk that the supplier could have an extensive criminal history and the gun may have been stolen or was being disposed of to conceal its involvement in a crime.
- 21 If what Mr Akran told the investigating officer is not true this indicates a disturbing lack of candour to an officer of the law that would reflect very poorly on his integrity. To not be candid with the police on an issue as serious as the circumstances of acquiring firearms shows a want of honesty and credit worthiness. That lack of candour is hardly indicative of the level of responsibility that one should expect from the licensee of licensed premises.
- 22 Either way these matters do not suggest to me that Mr Akran is:
- “...possessed of sufficient moral integrity and rectitude of character as to permit him to be safely accredited to the public, without further enquiry, as a person to be entrusted with the sort of work which the licence entails.”(footnote omitted) ¹
- 23 It does not matter that Mr Akran has not been charged with an offence arising out of his possession of the firearms. His record of interview whether true or untrue reflects so poorly on him as to warrant a conclusion that he is not a fit and proper person to hold a restaurant liquor licence and I refuse the application.

¹ *Sobey v Commercial and Private Agent Board* (1979) 22 SASR 70 at 76 per Walters J