

LICENSING COURT OF SOUTH AUSTRALIA

SHAHIN ENTERPRISES PTY LD

JURISDICTION: Applications for Restaurant Licences

FILE NO: 4122/2018 & 4123/2018

HEARING DATE: 20 November 2018

JUDGMENT OF: His Honour Judge BP Gilchrist

DELIVERED ON: 19 December 2018

CATCHWORDS

*Application for two restaurant licences in respect of premises that also sell fuel - The Commissioner of Police opposes the applications on public interest grounds - The discretion conferred upon the Court discussed - **Held** that as these are novel applications a cautious approach is warranted - **Held** that to license an outdoor area in the general vicinity of fuel pumps is, for now, a step too far such that the application will not be granted in connection with the outdoor area - **Held** that because of the concern that the Court has in connection with the precedent these applications might set, it seeks an undertaking that no new applications are made for six months following the commencement of trade - Liquor Licensing Act 1997.*

Liquorland (Australia) Pty Ltd and others v Lindsey Cove Pty Ltd [2002] SASC 17; (2002) 81 SASR 337

Waiata Pty Ltd v Lane and Others (1985) 39 SASR 290

REPRESENTATION:

Counsel:

Applicant: Mr M Roder SC

Intervenor: Sergeant R Handley

Solicitors:

Applicant: Wallmans Lawyers

Intervenor: Commissioner of Police

- 1 The Court has before it two applications for restaurant licences. One is in respect of premises at Sir Donald Bradman Drive, Hilton. The other is in respect of premises at Salisbury Highway, Salisbury. Both restaurants will be known as Guzman Y Gomez, Mexican Taqueria. The applicant in both matters is Shahin Enterprises Pty Ltd.
- 2 Applications for restaurant licences rarely come before this Court. They are generally not contentious. In this instance the Commissioner of Police has intervened. The Commissioner opposes both applications.
- 3 Through a series of corporate entities the applicant conducts over 100 On the Run convenience chain stores, many of which are co-located with service stations selling fuel, including the Hilton and Salisbury stores that are the subject of the within applications.
- 4 In opposing the grant of the licences, the Commissioner contends that as a fundamental proposition, premises selling fuel should not also be selling alcohol and that to allow these applications would set an undesirable precedent.
- 5 Guzman Y Gomez is a casual dining restaurant chain offering a range of freshly prepared Mexican style food. It started in Sydney and has since expanded across Australia and Japan. There are about 122 restaurants in Australia. Most are licensed, and sell beverages consistent with a Mexican theme, such as Mexican beer, margaritas and Mexican soft drinks.
- 6 In 2016 the applicant acquired the right to operate these restaurants in South Australia. It opened a Guzman Y Gomez restaurant at the corner of King William Street and Hindley Street, Adelaide in about November 2017. It has traded successfully and uneventfully ever since. It recently opened another Guzman Y Gomez restaurant in Gouger Street, Adelaide. It is early days, but it too appears to be trading successfully and uneventfully.
- 7 The applicant opened a Guzman Y Gomez restaurant at the Salisbury site in late September 2018. For now it trades without a licence. It has an indoor and outdoor area. The applicant seeks a restaurant licence that would enable it to trade in both areas.
- 8 The applicant would like to open a Guzman Y Gomez restaurant at the Hilton site by February 2019. It will comprise of an indoor area only.
- 9 In respect of both applications, it is proposed that each will cease to serve liquor at 12 midnight. The On the Run stores operate continuously.
- 10 In respect of both restaurants, it is proposed that there will be two points of entry. One through the main door, the other through a door leading

directly to the restaurant. Each restaurant will have a dedicated point of sale, separate to the store's general point of sale.

- 11 The applicant says that based on the experience of the King William Street and Hindley Street restaurants, it is anticipated that the sale of liquor will be a very small component of the business. It has given assurances that its approach to the sale of alcohol will be professional and responsible. It points to its experience in dealing with the strict licensing requirements relating to the sale of lottery tickets, tobacco and fuel.
- 12 The Commissioner submitted that alcohol and fuel are a bad mix and that jurisdictions interstate have express laws that deal with this. Reference was made to s 22 of the *Victorian Liquor Control Act 1998* which prohibits the grant of a liquor licence or BYO permit to premises used primarily as a petrol station. I was referred to guidelines issued by the Business Unit of the Queensland Government that advised that the Commissioner for Liquor and Gambling was likely to refuse an application for a liquor licence where the sale of liquor and petrol is from the same point of sale, other than in a remote part of the State. I was referred to s 31(2) of the *New South Wales Liquor Act 2017* which prohibits the grant of a packaged liquor licence for premises comprising of a service station, which in turn is defined as premises used primarily for fuelling motor vehicles. I was referred to s 36A of the *Western Australia Liquor Control Act 1988* which prohibits the grant or removal of a licence that would authorise the sale of packaged liquor from any premises, if there is a petrol station on the premises and the premises are in the metropolitan area.
- 13 Amongst other things, I was taken to the submissions put by the Royal Australasian College of Surgeons in respect of the recent review of liquor licensing laws in this State. The College expressed support for the recent banning of advertising alcohol on buses, trains and trams.
- 14 The police submitted that all of this reflected a community expectation that service stations should not as a general proposition sell alcohol and that I should exercise the discretion that s 53 of the *Liquor Licensing Act 1997* confers to refuse these applications on the ground that it is not in the public interest to grant them.

Consideration

- 15 I am permitted to know that in recent years there has been a dramatic shift in public opinion about the dangers of drink-driving and of the undesirability of aligning alcohol with motor vehicles. It is not so long ago that in Adelaide, the Grand Prix's major sponsor was a brewer. As the submission of the Royal Australasian College of Surgeons demonstrates, we now ban advertising alcohol on buses, trains and trams.

- 16 Although the legislation that I was referred to by the Commissioner relates to other jurisdictions, it conforms to the general notion that I think applies in this State, of a natural baulking at the idea that service stations generally (as opposed to those in remote locations) could sell alcohol.
- 17 In light of such matters, I was instinctively opposed to the idea of granting these applications. However, the discretion that s 53 of the Act bestows upon the Court cannot, as Doyle CJ pointed out in *Liquorland (Australia) Pty Ltd and others v Lindsey Cove Pty Ltd*¹ be used to simply reflect what the Court think is desirable. I have to consider the application dispassionately, and from all sides.
- 18 It must be acknowledged that underpinning these applications is a public demand. The applicant would not be investing in the proposals if it were otherwise. It also has to be recognised that many outlets that sell petrol, and especially the On the Run stores operated by the applicant, are vastly different to the service stations of an earlier era. They are places where people go to buy grocery items, milk, bread, newspapers and lottery tickets. They contain fast food chain stores like Subway. Many of the patrons of these stores do not go there to buy fuel. In a very real sense they are a mix of retail outlets that are co-located within the one building.
- 19 Due regard must also be had to the nature of the restaurants that the applicant proposes. These are not facilities of a type where patrons might be expected to linger and drink liquor over an extended period. If they were, I would be very concerned. The idea of a patron pulling up for petrol, then parking their car before settling in for a meal at the petrol station with copious amounts of wine over an extended period is unthinkable. But the facilities proposed by the applicant hardly seem to fit that category. They seem like places that people would go to eat quickly and maybe have one or two drinks.
- 20 The proposed restaurants will have a dedicated method of entry independently of the main door, a separate point of sale, and will be open for significantly reduced hours relative to the other facilities operating within the premises. This fortifies the notion that that will be a food outlet co-located with other retail facilities.
- 21 There could be little basis for objection if the proposed restaurants were separate but adjacent to the respective On the Run stores. Does that fact that they are co-located within those stores make all the difference? On reflection, I think not. As such, and subject to qualifications, I see no proper reason for not granting them.
- 22 In *Waiata Pty Ltd v Lane and Others*, having stated that this Court must act judicially, King CJ added:

¹ [2002] SASC 17; (2002) 81 SASR 337 at [27]-[29].

...but there is an unmistakably administrative element in its task of promoting, encouraging and maintaining a system of liquor facilities to meet the public need for liquor facilities and the wider community interests.²

- 23 With this in mind I think the following qualifications are necessary.
- 24 The first concerns the outdoor area at the Salisbury premises. The fact that it is outside, makes it look more like part of the service station than merely a co-located restaurant.
- 25 The second is the fact that these will be the first licensed restaurants operating with a service station in the metropolitan area of Adelaide. They have the potential to create an undesirable precedent. The applicant owns many On the Run service stations. It has the rights to operate Guzman Y Gomez restaurant's in this State. It might be expected that the within application will not be the only applications of this type that it pursues.
- 26 I think that in respect of both of these matters the Court needs to move cautiously.
- 27 I think that, at least for now, it is too big a leap to allow a licensed facility to operate outside of a service station in the general vicinity of petrol pumps. I think it offends the general public expectation that service stations are not places that we ordinarily associate with the sale of liquor. I do not think that it is in the public interest to allow the outdoor area of the Salisbury application to be licensed.
- 28 I am anticipating that both restaurants will trade uneventfully, that there will be no issues of social disturbance and that there will be no increase in drink-driving or other matters of concern that are attributable to them. But again, we are moving in uncharted waters. Before any future applications are considered, I think it is important to have an appreciation as to how these restaurants have operated. I would therefore only grant the applications upon the applicant giving an undertaking to the Court that it would not apply for another restaurant licence in connection with premises that also sell fuel, for a period of six months after that first of the two restaurants commences to trade as a licensed venue.
- 29 Subject to the applicant giving the undertaking in connection with further applications, I grant the application in connection with the Hilton premises as sought, and I grant the application in connection with the Salisbury premises for the indoor area only. In respect of the outdoor area I grant the applicant leave to renew its application at a later date.

² (1985) 39 SASR 290 at 295.