

LICENSING COURT OF SOUTH AUSTRALIA

CERTAIN PREMISES

JURISDICTION: S 120 – Complaint for Disciplinary Action

FILE NO: 2213 of 2012

HEARING DATE: 20 November 2012

JUDGMENT OF: His Honour Judge BP Gilchrist

DELIVERED ON: 11 December 2012

REPRESENTATION:

Counsel:

Applicant: Brevet Sergeant C Brannan

Respondent: Mr D Ind

Solicitors:

Applicant: Commissioner for Police

Respondent: Michael Woods and Co

- 1 This is an application for disciplinary action that has been issued by the police.
- 2 It arises out of a series of events that commenced at a car park, followed by a bus journey from that car park to certain premises and at the premises themselves. These events were connected to a school formal held in 2012.
- 3 I do not know whether the respondent approached students and their parents or whether it was the other way round. But what is clear, is that the respondent was intimately involved in organising transport to a so called “after party” with the after party itself. It is also clear that alcohol was consumed on the bus and at the after party.
- 4 The police case in seeking disciplinary action against the respondent is based upon its assertion that he should have conducted these activities within the regulated regime that is prescribed by the *Liquor Licensing Act 1997* and that his failure to do so renders him liable to disciplinary action.

The facts

- 5 I now turn to consider the facts.
- 6 The respondent worked with an organising committee in connection with the after party. I do not know whether the committee comprised of parents, the students, or a mix of the two. I do know that the respondent encouraged parents to assist with the event and that a number did.
- 7 Attendance at the after party event was by invitation only. I do not know how it was determined that a person would be invited. What I do know is that approximately 400 persons attended the function and that many of those who attended were the guests of students from the school that conducted the formal. The respondent did not know the ages of these guests. It is agreed that some of those who attended the function were children as young as 16 years.
- 8 The invitees paid an entrance fee of \$50 to the respondent which covered the cost of transportation and expenses associated with the function, such as food, non alcoholic beverages and entertainment. The invitees were named on an invitation list. They were permitted to take with them up to four cans of alcoholic beverages. Although I was not told, it is reasonable to assume that these could comprise of beer and pre-mixed drinks.

- 9 It was envisaged that the invitees would assemble at the car park at around 11.30pm following the school formal and would hand over their alcoholic beverages to the organisers, who would in turn give the invitees a wrist band that recorded the number of drinks handed over. It was envisaged that no alcohol would be consumed on the bus. The buses were to then transport the invitees to a “secret location” being the premises. No invitation list was marked off regarding the persons entering the buses. The buses left the car park at around 12.10am the following morning, which was later than expected. It is agreed that some alcohol was smuggled onto the buses and was consumed over the course of the bus journey to the secret location.
- 10 Upon arrival the liquor was stored at the premises. No invitation list was marked off regarding those who entered the premises. Those who entered could present their wrist band to one or other of the persons who were assisting and could receive up to the designated number of cans that they had previously handed over. I do not know whether the system in place was such that the liquor was pooled or whether the liquor handed over was marked and the same can was returned. It is agreed that minors consumed alcohol at the premises.
- 11 The after party commenced at about 1.00am and concluded at about 3.00am.

The police case and the relevant statutory provisions

- 12 The police case focused upon various provisions of the Act.
- 13 I was taken to the objects provision which commences with the following statement:
- “The object of this Act is to regulate and control the sale, supply and consumption of liquor for the benefit of the community as a whole...”¹
- 14 I was then taken to the interpretation provision. It relevantly provides as follows:
- “ ‘sell’ includes—
- (a) to barter or exchange;
 - (b) to offer or expose for sale, barter or exchange;
 - (c) to supply, or offer to supply, in circumstances in which the supplier derives, or would derive, a direct or indirect pecuniary benefit;

¹ Section 3(1) *Liquor Licensing Act 1997*

- (d) to supply, or offer to supply, gratuitously but with a view to gaining or maintaining custom, or otherwise with a view to commercial gain”.²

- 15 The police case is that that the respondent sold liquor without a licence. They do not suggest that the respondent sold liquor in the conventional sense of purchasing the liquor himself and then on selling it to others. Rather, the police case is founded on the premise that on the proper construction of the relevant provisions of the Act, and on the facts as agreed, the respondent’s involvement with liquor and its consumption satisfies the meaning of sold for the purposes of the Act.
- 16 As I understand the argument of the police they contend that the object and interpretation provisions of the Act inform the meaning to be ascribed to the word “supply” and that the word should be given a broad meaning. They then go on to contend that the broad meaning applies when considering that word in connection with the provision that defines the word “sell”.
- 17 The police submit that the arrangement that enabled those who attended the event to consume alcohol was such that the respondent can be said to have supplied liquor in circumstances where he derived a direct or indirect pecuniary benefit or commercial gain such that he can be said to have sold liquor for the purposes of the Act.
- 18 The police also made reference to the definition of “regulated premises” and “public place”. These are defined as follows:
 - “ ‘regulated premises’ means
 - (a) licensed premises; or
 - (b) a restaurant, café or shop; or
 - (c) an amusement parlour or amusement arcade; or
 - (d) a public place that is being used for the purposes of an organised event, where admission to the event is gained on payment of money, presentation of a pre-paid ticket or purchase of some item; or
 - (e) a public conveyance; or
 - (f) premises of a kind declared by regulation to be regulated premises,

² Section 4 *Liquor Licensing Act 1997*

and includes an area appurtenant to any such premises, but does not include any premises, place or conveyance declared by regulation not to be regulated premises;

‘public place’ means a place (not being licensed premises) to which the public has access (whether or not admission is obtained by payment of money).”³

- 19 The police contended that on the basis of these definitions the bus was a regulated premise as were the premises. The Act provides that it is an offence for a minor to consume liquor in regulated premises and for a person to supply liquor to a minor in such premises.⁴ It also provides generally that it is an offence for anyone to consume liquor in regulated premises that are unlicensed and for a person to supply liquor to anyone in such premises.⁵
- 20 I understand the police to contend that the respondent supplied liquor to minors at regulated premises and that he supplied liquor generally at regulated premises that were unlicensed. As a result they say that he breached the Act and for that reason he can and should be the subject of disciplinary action. In doing so they rely upon s 119(1)(d)(i) of the Act which provides that there is proper cause to take disciplinary action against a person who has been guilty of a breach of the Act.

Consideration

- 21 It is convenient to deal with the second argument first.
- 22 I begin by observing that liquor licensing compliance is regulated in at least two ways that are not mutually exclusive. The Act provides for various offences that are justiciable by way of a prosecution in the general courts. It also provides for the taking of disciplinary action, which is only justiciable in the Licensing Court.
- 23 Although there are similarities between a prosecution and the taking of disciplinary action, in the sense that both can be taken in respect of a breach of the Act, and both can result in the imposition of a fine, they are fundamentally different processes. I had cause to discuss this in *Glenelg Jetty Hotel*⁶. There I said:

“The end point of a prosecution is sentencing. Its purpose is to impose punishment as part of the administration of the criminal law.

³ Section 4 *Liquor Licensing Act 1997*

⁴ Section 114 (1) and (2) *Liquor Licensing Act 1997*

⁵ Section 129 (1) and (2) *Liquor Licensing Act 1997*

⁶[2011] SALC 59

The purpose of disciplinary action is not to punish the entity against which disciplinary action is sought. Although the analogy is not perfect, it seems to me that the primary purpose of disciplinary action is akin to the purpose that it serves in connection with the regulation of professionals.

... The purpose of disciplinary action is focussed towards protecting the public. That may be achieved by attempting to change behaviour for the benefit of the public and demonstrating to the public and to those involved in licensed premises that licensing authorities take obligations imposed by the Act and the conditions of a license seriously. Ultimately it may require removing the person from the service of the public. All of these serve the public interest.”⁷

- 24 A prosecution can be taken against any person who allegedly commits an offence under the Act.
- 25 In contrast to this, the wording of s 118(1) suggests that there are limitations upon whom disciplinary action can only be taken. It provides:

“(1) This Part applies to—

- (a) a person who is or has been licensed or approved under this Act;
- (b) a person who has sold liquor without a licence;
- (c) a person who occupies or has occupied a position of authority in a licensed entity or an entity that has sold liquor without a licence;
- (d) a person who supervises or manages or has supervised or managed a business conducted under a licence or a business in the course of which liquor has been sold without a licence;
- (e) an unlicensed person who has entered into an arrangement contrary to this Act with a licensee;
- (f) a lessor of licensed premises.

(2) This Part does not apply to a person approved as a crowd controller under Part 4 Division 10A.”

- 26 The word “Part” clearly concerns the regime under which disciplinary action is taken.

⁷ [2011] SALC 59 at paras 20-1 and 24

- 27 Thus, whilst s 119(1)(d)(i) contemplates the taking of disciplinary action against a person who has been guilty of a breach of the Act, the section clearly states that it is in connection with “disciplinary action against a person to whom this Part applies”. In my view this means that it is therefore subject to the limitations prescribed. In other words, it does not apply to persons generally, but only to those persons stipulated in s 118(1).
- 28 This result should not be regarded as surprising. It is consistent with the differences between a prosecution and the taking of disciplinary action and the differences that those two processes serve.
- 29 Thus, the fact that the respondent may have committed a breach of the Act by supplying liquor at regulated premises to minors and to persons generally at regulated premises that were unlicensed, (and he may have) does not, of itself, provide the basis for taking disciplinary action against him.
- 30 Given the description of the persons against whom disciplinary action can be taken I think that this application can only succeed if on the proper construction of the Act and its application to the facts it can be said that the respondent either sold liquor or that he occupied a position of authority in an entity that has sold liquor. If he did, he would be caught by s 118(1)(b) or (c).
- 31 I now turn to consider whether either has been made out.
- 32 The liquor that was consumed on the bus was never in the possession of the respondent or those who were assisting him. I do not think in any sense that can be said to have been supplied let alone sold.
- 33 As I noted earlier, there is no suggestion that the respondent sold liquor in the conventional sense of purchasing the liquor himself and then on selling it to others. The issue is, to what extent has the conventional concept of sale been modified by the relevant statutory definition.
- 34 There is authority (*Symes v Stewart*)⁸ that the word “supply” in the context of liquor regulation can be construed broadly enough to cover a situation where a person hands over liquor to a person who already owns the liquor. I therefore accept that the circumstances of this case could justify a conclusion that the respondent supplied liquor.
- 35 However, as Isaacs J noted in that case, “the word ‘supply’ is a word of such elastic meaning that its signification must depend entirely upon its context and the subject matter dealt with.”⁹ Thus it would be wrong to

⁸ *Symes v Stewart* (1920) 28 CLR 386

⁹ (1920) 28 CLR 386 at 389

assume that just because there has been supply of liquor for the purposes of some of the provisions of the Act that there has been supply for all purposes or more particularly that there has been supply in the context of the sale of liquor.

- 36 Whilst the interpretation section extends the concept of sale beyond the provision of goods in exchange for money there is nothing in the provision that in my opinion extends the meaning beyond what would be regarded as a fundamental characteristic of sale, and that is, the transfer of ownership of goods from the putative seller to the putative purchaser. It is one thing to give the word “supply” a broad and perhaps unnatural meaning in connection with provisions designed to protect minors and intoxicated persons or to prevent consumption of liquor in regulated but unlicensed premises. It is another thing altogether to turn the concept of sale on its head and say that it can apply to circumstances where the goods that are the subject of the sale do not belong to the seller and are already owned by the purchaser.
- 37 In my opinion, where the definition of “sell” makes reference to the word “supply”, in that context it has “the meaning which it has in common parlance, namely, provided by or on behalf of a person to whom the thing belongs to someone to whom it does not or did not belong”.¹⁰
- 38 On that understanding I do not think that there was anything about the arrangement that the respondent entered into that would establish that he supplied the liquor consumed at the Burton premises. Thus, in my view, the respondent did not sell liquor. He is therefore not caught by s 118(1)(b).
- 39 On the evidence presented I am unable to find that those to whom the invitees handed their liquor, who then handed it back to them, supplied liquor in the sense just mentioned. Accordingly, in my opinion, it has not been established that they sold liquor at the premises. It follows that it has not been established that the respondent occupied a position of authority in an entity that sold liquor. He is therefore not caught by s 118(1)(c).

Conclusion and some passing observations

- 40 In my opinion, on the facts of this case, the respondent is not a person against whom disciplinary action can be taken. Accordingly, the application for disciplinary action must be dismissed.
- 41 Although that is sufficient to dispose of this case as a member of a specialist Court I think it appropriate to make comment about some aspects of the arrangements undertaken by the respondent and others.

¹⁰ *Ex parte Turner Re Hardy and Others* (1948) 48 SR (NSW) 133 at 135 per Jordan CJ

- 42 I am permitted to know that depending upon their strength four cans of pre mixed drinks could deliver upwards of six standard drinks, perhaps even as many as eight. The notion of a 16 year old child consuming that much alcohol within a couple of hours is of concern, as is the fact that that behaviour appears to have been condoned by adults.
- 43 I do not need to decide this here, but there appears to be a real possibility that the manner in which the respondent conducted this event, which I assume is a blueprint for others like it, exposes those who consume the alcohol and those who hand it over to criminal offences. I doubt that those involved had any appreciation of that possibility and might be very alarmed that that is so.