

LICENSING COURT OF SOUTH AUSTRALIA

CROWN INN HOTEL

JURISDICTION: Application for review of variation to licence conditions

FILE NO: 3608/2011

HEARING DATES: 18 August 2011

JUDGMENT OF: His Honour Judge B Gilchrist

DELIVERED ON: 18 August 2011

Referral of matter from the Commissioner - Commissioner had put in place interim orders to remain in place until after an application by the Commissioner for Police for disciplinary action has been heard and determined by the Court - Held that it was not open for the Commissioner to make interim orders that are binding upon the Court - Having heard submissions some interim orders imposed and consideration of additional orders adjourned pending further hearing - Ss 17, 43, 53 and 120 Liquor Licensing Act 1997

REPRESENTATION:

Counsel:

Applicant: Mr J Firth
Respondent: Sergeant A Heffernan

Solicitors:

Applicant: Wallmans
Respondent: Commissioner of Police

- 1 On 16 August 2011 the Commissioner for Police made an application in purported reliance upon s 43 of the *Liquor Licensing Act 1997* to the Commissioner of Liquor and Gambling seeking orders that Tom Nicholas Gardner not be employed in any capacity at the licensed premises known as the Crown Inn Hotel and that he not attend or be at the licensed premises.
- 2 Upon receipt of the application the Commissioner conducted a conciliation conference in purported reliance upon s 17(1)(b) of the Act and having reached the conclusion that the differences between the parties could not be resolved by conciliation he referred the matter to this Court for hearing and determination.
- 3 I say purported because the licensee contends that the application should never have been made and that the Commissioner for Police should have brought his concerns to the Court through the issue of disciplinary proceedings pursuant to s 120 of the Act.
- 4 Following the conciliation conference and in the exercise of the powers provided for by s 53 of the Act the Commissioner resolved to impose the following interim conditions on the licence.

“1. The extended trading authorisation for the Crown Inn Hotel is varied so that the trading hours on Friday and Saturday night will cease at midnight.

2. Tom Nicholas Gardner is to not act as a responsible person for the business conducted under the licence for the Crown Inn Hotel.

3. Alcohol will not be supplied or consumed as ‘shots’ after 10pm on any night that the licensee of the Crown Inn Hotel is authorised to trade in liquor.

4. All employees of the licensee of the Crown Inn Hotel that sell or supply liquor for on premises or off-premises consumption shall be instructed by the licensee forthwith on the provisions of section 108 of the Act (Liquor not be supplied to intoxicated persons) and the Intoxication Guidelines issued by the Liquor and Gambling Commissioner.

The interim conditions will remain in place until the application by the Commissioner of Police for disciplinary action is heard and determined by the Licensing Court.”

- 5 Upon this matter being referred to the Court the applicant made an urgent application seeking orders to vacate the above. It contended that it was beyond the jurisdiction of the Commissioner to impose interim conditions ostensibly binding upon this Court, given that as a result of the referral under s 17 of the Act this Court is now the relevant Licensing Authority.

- 6 Next it contended that if there is to be an application for interim orders it should be made to this Court upon a proper hearing.
- 7 Sergeant Heffernan conceded that it was beyond the jurisdiction of the Commissioner to have issued interim orders in such a way as to bind this Court. He was plainly correct in making that concession. Whilst I have great respect for the Office of the Liquor Gambling Commissioner, the fact is that that office operates within a hierarchy and when the Court's jurisdiction is invoked it must yield to the views of the Court. Consistent with this, once a matter is before the Court, it is for the Court and only the Court, to manage the litigation and that management extends to determining whether, and if so what, interim orders should be made pending final determination.
- 8 In any event the stated duration of the interim orders made by the Commissioner were too open ended because they refer to the cut-off as being when an application by the Commissioner for Police for disciplinary action has been heard and determined by the Court when no such application has in fact been made.
- 9 Mr Firth indicated that the licensee had no difficulty with conditions 3 and 4 of the interim orders and I accordingly resolved to put them in place as interim orders of this Court until further order with liberty to apply.
- 10 As to the other interim orders sought, as these are opposed, and as they are matters of some substance, I resolved to not make them until I had placed before me evidentiary material in support of them and after I had given the parties an opportunity to be heard. That application is listed for further argument on Wednesday 24 August 2011.