

The Electric Light Hotel [2011] SALC 106

LICENSING COURT OF SOUTH AUSTRALIA

THE ELECTRIC LIGHT HOTEL

JURISDICTION: S 120 Complaint

FILE NO: 4130 of 2011

HEARING DATES: 8 November 2011

JUDGMENT OF: His Honour Judge WD Jennings

DELIVERED ON: 14 November 2011

REPRESENTATION:

Counsel:

Applicant: Sgt A Heffernan

Respondent: Mr P Hoban

Solicitors:

Applicant: Commissioner for Police

Respondent: Wallmans Lawyers

- 1 The complaint before the Court concerns a breach of a condition of a Limited Licence by the Electric Light Hotel by virtue of its not having four security guards on duty on the occasion of the Fringe Festival Opening on the 18th of February 2011.
- 2 The police attended the premises at about 9pm on the 18th of February and noticed that there were only three crowd controllers.
- 3 The responsible person Mr Korobacz was interviewed by the police and he said that he thought that four guards would only be required during the peak of the evening or during the Hotel's busiest times.
- 4 Sergeant Heffernan for the complainant advised the Court he was not opposed to a reprimand or a small fine.
- 5 Mr Hoban appeared for the Hotel. He told the Court that Mr Gannon, who was present in court, was the sole director and shareholder of the licensee company and that he accepted that he was responsible for the breach of the condition. Mr Gannon took the matter very seriously and was embarrassed that the breach had occurred. Mr Gannon was not present on the 18th of February. Mr Hoban said he accepted that the responsible person, who had been responsible for and had organised the number of guards, had let him down. Mr Hoban advised the Court that the Fringe Opening was a "washout" and the proposed parade was cancelled. The capacity of the Hotel is 600-700 patrons. Only 100-130 patrons attended the Hotel that night. He further advised the Court that Mr Gannon's main business involved retirement villages and that he was quitting the hotel industry; the lease of the Hotel expired the day following the hearing.
- 6 Four prior complaints that resulted in two fines and two reprimands were admitted by Mr Hoban: those offences concerned a failure to properly manage minors and patrons consuming liquor and standing in an outside area.
- 7 Mr Hoban submitted these offences were at the lower end of the spectrum. Whilst that may be so, the antecedent history of offences must be factored in to any penalty. In this regard I refer to what Judge Gilchrist said in *Mesa Lunga* [2011] SALC 85 (para 7) in the context of a fourth overcrowding breach:

"Whilst the overcrowding in this case is not that great, this licensee and licensees generally, need to understand that overcrowding is not on, and that licence conditions need to be complied with.

There also needs to be an understanding that the Court's endeavours to change behaviour do not involve infinite patience, and that even in the case of breaches that viewed in isolation are not terribly serious, the point will be reached where the Court's patience will be expended and suspension or disqualification will be ordered."

(my emphasis)

- 8 Had it not been for the obvious concern and contrition of Mr Gannon and the fact that he is quitting the industry, the fine that I would have imposed would have been substantially higher.
- 9 In all of the circumstances I impose a fine of \$300 on the licensee to be paid within 21 days of 8 November 2011.