

Bensimon v Cumberland Arms Hotel [2021] SALC 78

LICENSING COURT OF SOUTH AUSTRALIA

BENSIMON, Toby

V

CUMBERLAND ARMS HOTEL

JURISDICTION: Costs Application

HEARING DATE: Written submissions - filed by applicant 16 July 2021
- filed by the respondent 7 July 2021

FILE NO: 7007/2016

JUDGMENT OF: His Honour Judge BP Gilchrist

DELIVERED ON: 8 October 2021

Bensimon v Cumberland Arms Hotel [2020] SALC 10

REPRESENTATION:

Counsel:

Applicant: Mr T Cogan

Respondent: Mr Billington

Solicitors:

Applicant: Starke Lawyers

Respondent: Crawford Legal

1 This is an application in connection with an order for costs made following the dismissal of the Mr Bensimon's complaint under s 106 of *the Liquor Licensing Act 1997*.¹ The parties seek clarification of what was intended.

2 The order that I made was as follows:

This matter was listed to resume before me on dates in the week of 23 April 2018. In my opinion the appropriate order for costs is that the hotel is entitled to any costs thrown away by reason of vacating those dates. Mr Bensimon should also be directed to pay the costs of the application for summary relief and any of the costs associated with the application for costs.

3 The Hotel contends that in conformity with this order, it is entitled to recover the costs incurred by it in relation the vacation of the trial dates, including its costs of retaining its own acoustic and building experts, costs associated with its preparation for cross-examination of witnesses previously called by the complainant, and its costs associated with the site view and court attendances by solicitors and counsel on 27 February and 1 and 2 March 2018.

4 The complainant contends that the order made was unambiguous and it means what it says, that is that the complainant is only liable to pay costs incurred in respect of the vacated hearing, the application for summary relief and the application for costs.

Analysis

5 Underpinning my adverse order for costs was my view that the complainant acted unreasonably in not withdrawing the complaint upon receipt of a letter from the Hotel's solicitor on 27 March 2018.

6 Had it withdrawn the complaint then and there, the Hotel would have been required to bear all its costs incurred to that date. Because the complaint was not withdrawn, the Hotel incurred costs after that date.

7 Read in the context of my reasons in respect of the order for costs, I struggle to see how there is ambiguity in the terms of my order but to avoid doubt I make it clear that the intended effect of my order was that the complainant was liable to pay on a party/party basis:

¹ *Bensimon v Cumberland Arms Hotel* [2020] SALC 10.

- (1) any costs incurred by the Hotel after 27 March 2018, in connection with the scheduled hearing in the week of 23 April 2018.
- (2) the Hotel's costs of the application for summary relief.
- (3) The Hotel's costs of the application for costs.

8 It was never my intention for the reach of that order to include costs incurred by the Hotel for work done prior to 27 March 2018.

9 There will be no order for costs in respect of the within application.