

LICENSING COURT OF SOUTH AUSTRALIA

GOLD CLASS CINEMAS

JURISDICTION: Review of a Commissioner's decision

FILE NO: 697 of 2011

HEARING DATE: 14 April 2011

JUDGMENT OF: His Honour Judge B Gilchrist

DELIVERED ON: 8 June 2011

Application for review of Commissioner's decision - Principles guiding such applications discussed - Applicant sought an extension of a special circumstances licence and an authorisation to permit minors to remain on licensed premises after midnight - Held: that the evidence did not establish that the extension was likely to lead to a major social issue and the Commissioner erred in not granting an interim extension on terms - Held: that the evidence did not establish grounds upon which to grant the authorisation and the Commissioner was right to reject it - Ss 3(1), 22, 112(1)

Legal Practitioners Board v Jones [2009] SASC 347

REPRESENTATION:

Counsel:

For Gold Class Cinemas: Mr J Firth and Mr Moody
For the City of Marion: Mr M Roder SC and Mr B Allen
For the Commissioner of Police: Sergeant A Heffernan

Solicitors:

For Gold Class Cinemas: Moody Rossi and Co
For the City of Marion: Wallmans
For the Commissioner of Police: N/A

- 1 This is an application for a review of a Commissioner's decision pursuant to s 22 of the *Liquor Licensing Act 1997*.
- 2 The Commissioner had before him an application by the applicant, the Greater Union Organization. The application sought the redefinition and variation of an extended trading authorisation, and the variation of entertainment consents and licensed conditions in relation to various cinemas at the Greater Union complex at the Westfield Marion Shopping Centre. All but those that are the subject of this review were granted.
- 3 The review arises from the Commissioner's refusal to grant an extension of a special circumstances licence to permit Greater Union to allow patrons to consume alcohol in a particular cinema within the complex and his refusal to grant an authorisation to permit minors to enter and remain in licensed premises at that site after midnight pursuant to s 112(1)(b) of the Act.
- 4 Greater Union has been operating the complex at Marion since 1997. It undertook a major refurbishment in 2004 that saw the establishment of what are known as Gold Class Cinemas. These are situated in the southeastern corner of the complex. They comprise of three smallish cinemas of limited capacity in which patrons can indulge themselves in luxurious seating. As part of the package they can consume food and alcohol. The latter was achieved through a successful application for a special circumstances licence. Greater Union operates two other types of cinemas within the complex. These being VMAX and standard. In all there are 26 cinemas.
- 5 VMAX cinemas have screen sizes of approximately 20 metres and have the capacity to deliver movies in 3D. These are very large cinemas that have a capacity for 370 persons. Standard cinemas are much smaller in screen size and smaller in capacity.
- 6 Greater Union have two VMAX cinemas at the complex. Part of the application before the Commissioner effectively sought a special circumstances licence in respect of one of them.
- 7 Greater Union relied upon the evidence of its commercial director, Mr Duff. He said that Greater Union operated VMAX cinemas in New South Wales that are licensed. He said: "We have certainly had no negative feedback, and I am not aware of any incident or issues occurring. If they have occurred, I would know about them." He was asked about underage drinking in these cinemas. He said: "It's just not the environment where minors are seeking to drink... There's a lot of other options if they want to try and do that, which are, I would say, more accessible than our VMAX auditorium." He said that whilst

patrons take alcohol purchased at the bar into the cinema for consumption it was unusual for them to then leave the cinema to make another purchase.

- 8 Greater Union also relied upon the evidence of its regional manager, Mr Naismith. He confirmed what Mr Duff had to say. He also said that there were no reported incidents of any issues with minors consuming or attempting to consume alcohol at the complex. He said that the alcoholic beverages on sale at the complex were more expensive than standard prices. He quoted \$8.50 for bottled beer, \$6.50 for house wine and \$8.00 and \$10.00 for glasses of bottled wine. He said that when patrons purchase alcohol from the bar if anyone looks between 15 and 25 they check their ID. He said that during a film ushers check inside the cinema at last three times a session. He said that movies rarely extend beyond midnight.
- 9 Both said that there would be practical difficulties in limiting the license by a condition that minors had to be accompanied by adults. This is a condition that presently applies to the Gold Class cinemas, but the evidence indicated that minors rarely attend. That is scarcely surprising given that the entrance fee is \$40.00. The VMAX price is about \$3.00 higher than the standard price so it might be expected that many minors would attend, especially to movies such as Harry Potter or Pirates of the Caribbean. It seems that the problem is compounded by the fact that for VMAX many of the tickets are purchased on line.
- 10 In rejecting the applications that are the subject of this review the Commissioner said:

“Notwithstanding the best endeavours of the applicant, I hold concerns in relation to extending the licensed premises to the VMAX cinema having regard to its size and popularity of the facility with minors.

Consequently, I am not satisfied that it is appropriate to redefine the licensed premises to extend to the VMAX cinema and in the exercise of my discretion under section 53(1) of the Act I refuse that aspect of the application.

I also hold concerns in relation to permitting minors to enter or remain on the licensed premises after midnight noting that the applicant’s evidence that this approval would rarely be utilised by the applicant in any event.”
- 11 Mr Firth, counsel for Greater Union, contended that the Commissioner’s failure to grant a special circumstances licence in respect of the VMAX cinema was against the weight of the evidence. He said that if the Commissioner had a genuine concern he should have invited further

submissions from the parties in relation to imposing extra conditions to meet those concerns.

- 12 He said, for example, that Greater Union might have agreed to increase the number of ushers present within the cinema so as to police an asserted concern about underage drinking.
- 13 Mr Firth also pointed out that the event cinemas at Palace Nova East End in Rundle Street, Adelaide, advertise: “Sophisticated cinema, fully licensed; take your drink into the movie”. Mr Firth contended that despite advertising to this effect there was no evidence to suggest that this licence has caused any difficulty or had led to underage drinking or intoxicated patrons. Mr Firth noted that in connection with the special circumstances licence applying to the Nova, there is no restriction on minors going into those theatres.
- 14 As to the s 112(1)(b) point he said that the approval was sought on the basis that there were some movies and some functions that went after midnight, and it would mean that Greater Union would be breaking the law if the movie or function finished after midnight and it did not ask minors to leave at midnight. He said: “It’s not a big part of the business but we’re very surprised the Commissioner didn’t grant it. We say he simply had no valid reason and gives no valid reason for not allowing some extension past midnight for minors on these licensed premises”.
- 15 The City of Marion opposed the grant of the application because of its concern for the potential for underage drinking. It noted that this was not an issue in relation to the Gold Class Cinemas because it is clearly intended for adults. It said that the entrance of \$40 acted as a powerful disincentive for children to go into it. In contrast to this, its counsel, Mr Roder SC, pointed to the fact that the VMAX is only slightly more expensive than the standard cinema. He contended that it showed mainstream movies; the sorts of movies that one might expect would attract the interest of minors. He contended that the Nova provided little guidance because it is a different sort of cinema. He said it tended to have more art house type movies and generally attracted an older crowd.
- 16 Mr Roder pointed to the fact that the evidence established that for something of the order of 95% of the time whilst the movie is being shown within the VMAX, it is in complete darkness. It was contended that in those circumstances there was no effective way of preventing minors who attended the cinema with their friends from drinking alcohol on the licensed premises undercover of darkness.
- 17 The Commissioner for Police supported the position taken by the City of Marion.

- 18 In evaluating these submissions I remind myself that the application for review is in the nature of an appeal by way of a rehearing. Whilst that exercise requires me to conduct a through review of the material placed before the Commissioner it does not give me a licence to simply revisit the evidence and to reach my own conclusion as to what order should have been made. For me to interfere, I have to identify error.¹
- 19 On the evidence that was placed before the Commissioner I think he was entitled to take the view that the VMAX was the sort of cinema that would attract youths. He was entitled to find that because of the size of the cinema it would be very difficult to detect the consumption of alcohol by minors.
- 20 However the inescapable conclusion that has to be drawn from the evidence is that the only way that a minor could consume liquor purchased at the complex for consumption in a cinema is to be supplied the alcohol by an adult. If that adult were permitted to take only one drink into the cinema, and was unable to purchase alcohol to take into the cinema, say 30 minutes after the session had started, and if the alcohol was limited to wine or beer, it is difficult to see how this could be a major social issue. At worst a minor could conspire with an adult to be supplied something like one and a half standard drinks at a price tag of \$6.00 or more. That hardly seems like the type of environment that would lead to regular underage drinking, especially given the recurring theme of the two witnesses that people go to the cinema to watch a movie, not to drink.
- 21 The Commissioner was obliged to exercise his discretion with the objects of the Act in mind. Permitting a patron who has purchased a drink prior to seeing a movie promotes responsible consumption. The patron does not have to rush and finish the drink quickly before the movie starts. Allowing this practice also makes the cinema more attractive. Both of these reflect stated objects within the Act.²
- 22 The consumption of alcohol by minors in licensed premises is illegal and if the nature of the licensed premises was such that this was likely to be an issue this would be a powerful factor indicating that the discretion not to grant the license should be exercised. However, with respect, I do not think that the evidence that was before the Commissioner established that this was so.
- 23 I think that to reject the proposal out of hand was an error.
- 24 I would extend the operation of the licence to permit the consumption of alcohol within the stipulated VMAX subject to having an usher within

¹ See for example: *Legal Practitioners Conduct Board v Jones* [2009] SASC 347 at paras 12-14

² Ss 3(1)(a) and (b)

the cinema at all times when the licence is being used and subject to restrictions on the amount and type of liquor and the time when it can be taken in as discussed above. I would grant this on an interim basis for twelve months with liberty to apply if any issues arise.

- 25 In my view the evidence did not support a finding that authorisation under s 112(1) (b) of the Act should be granted. The authorisation is not there for the asking. In my view there needed to be some evidence that this was an issue and that it could not have been addressed in other ways. The issue apparently arises because the special circumstances licence permits trade until 2.30am. Given the evidence about drinking habits within the complex I struggle to understand why, in the ordinary course, it would be necessary to trade later than midnight.