CO/3009/2013

Neutral Citation Number: [2013] EWHC 2716 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
THE ADMINISTRATIVE COURT

Royal Courts of Justice
Strand
London WC2A 2LL

Tuesday, 16 July 2013

B e f o r e:

MR JUSTICE DINGEMANS

Between:
93 FEET EAST LTD

Claimant

v

LONDON BOROUGH OF TOWER HAMLETS

Defendant

Computer-Aided Transcript of the Stenograph Notes of
WordWave International Limited
A Merrill Communications Company
165 Fleet Street London EC4A 2DY
Tel No: 020 7404 1400 Fax No: 020 7404 1424
(Official Shorthand Writers to the Court)

Miss S Le Fevre (instructed by Direct Access) appeared on behalf of the **Claimant**
Mr R Clarke (instructed by London Borough of Tower Hamlets) appeared on behalf of the **Defendant**
Mr J Rankin (instructed by the Police) appeared on behalf of the **Interested Party**

J U D G M E N T
(As Approved by the Court)

1. MR JUSTICE DINGEMANS: This is a hearing of a renewed application for permission to apply for judicial review of a challenge to interim suspension of a premises licence of 93 Feet East. The evidence shows that it was a club and, like all clubs, they are a potential target for criminal activity, including drug dealing. There are provisions assisting club operators and the police to work to together. It seems that the police lost confidence in the then management of the premises and made some undercover visits where they discovered open drug dealing, which they considered was not challenged by the appropriate authorities within the club. The police decided that it would be appropriate to take steps to suspend the licence.

2. I should note, out of fairness to the claimant, that that evidence, as to the extent and cooperation, is challenged. Be that as it may, on 10 December 2012, there was a suspension of the premises licence, and on 17 December, the claimant asked for a reconsideration of that, as they were entitled to under section 53B of the Licencing Act 2003.

3. On 18 December, the suspension was continued, and then, on 7 January, the issue was revisited when a decision was made on review within the relevant statutory period, that the licence should be revoked. There was also a separate decision about the continuation of interim suspension measures.

4. Miss Le Fevre, in skillful arguments on behalf of the claimant, has identified that those are two separate decisions. There was then an appeal against the revocation, and the suspension of that decision, pursuant to section 53C(11), and I will come back to the provisions in a short while.

5. Completing the chronology, that led to the appeal, and on 17 May 2013, in front of the Magistrates Court, the appeal was compromised on terms which, subject to conditions, allowed the premises to re-open. The claimant says: these were less onerous conditions than had been offered by the claimant before; and therefore the decisions on 18 December and 7 January were wrong.

6. Permission to apply on the papers was refused by Philip Mott~QC sitting as a Deputy High Court Judge, and the hearing has developed in front of me, with representation, both on behalf of the claimant and defendant, and interested party.

7. This proposed claim for judicial review raises an issue of statutory construction of sections 54A,B and C of the Licensing Act 2003. Those were inserted by the Violent Crime Reduction Act 2006, and the statutory purpose, as Mr Clarke submits on behalf of the defendant, and I accept, was so that problem premises, as they were perceived to be -- I make no comment about whether the claimant was rightly identified to be in that category -- could be closed pending the revocation proceedings and final judicial determinations. However, that doesn't answer the particular problems which are posed by section 53C. 53C provides that there should be a review of the premises licensing, following a review notice. Section 53C(2) says that the relevant licensing authority must:

(a) hold a hearing to consider the application for the review and any relevant representations;

(b) take such steps mentioned in subsection (3) (if any) as it considers necessary for the promotion of the licensing objectives; and

(c) secure that, from the coming into effect of the decision made on the determination of the review, any interim steps having effect pending that determination cease to have effect (except so far as they are comprised in steps taken in accordance with paragraph (b)).

I should just note that section 53C(11) provides:

"A decision under this section does not have effect until

(a) the end of the period given for appealing against that decision, or

(b) if the decision is appealed against, the time the appeal is disposed of."

8. The argument on statutory construction on behalf of the claimant, which I should say I was attracted to as being arguable for a period of time before Mr Clarke's explanation, was this. If one looks at 53C and says that any interim steps having effect pending that determination cease to have effect, and at 53(11) that a decision doesn't take effect until the end of that period, one is left in a situation where the interim steps, as it were, should cease to have effect.

9. I should also note that the claimant has referred to guidance that was issued both at the start by the Department for Culture, Media and Sport and then by the Home Office, on the section 53 provisions. The claimant noted at paragraph 6.2 some changes to the guidance, the effect of which is that the Home Office has now decided not to deal with the proper interpretation of 53C.

10. That said, it does seem to me that the proper answer to this question of arguability of this provision is provided by Mr Clarke. He says that the revocation of the interim suspension only comes into effect after the decision has been disposed of in the Magistrates Court. And therefore one is left with the original interim suspension. And he says that comes from the wording of 53C(2)(c) "secure that, from the coming into effect of the decision made on the determination of the review". So he says that the effectively what one had is the situation of 17 December and 18 December, continued.

11. And it seemed to me that that is a construction of 53C(2)(c) which is both consistent with the statutory objective that I referred to earlier and plain on the wording.

12. I should also note that there is an apparently unreported decision noted in Paterson's Licensing Acts 2013 at page 387 in the Chief Constable of Cheshire v Oates where, in

the Halton Magistrates Court it was said that the provision section 53C(2)(c) defied understanding by any human being.

13. In my judgment, the explanation given by Mr Clarke was the right explanation, although I accept the wording could have been more happily and easily expressed.

14. I do not think, in these circumstances, that this remains an arguable proposition on which to grant permission. I think that is a statutory scheme under which the review is suspended, pending the appeal.

15. The answer to that Ms Le Fevre gave was interesting. It was: well, in fact, properly analysed, what the magistrates did on this particular occasion, or the committee did on this particular occasion, was make two decisions: one to revoke the licence, and the other was to continue the interim steps in those circumstances. And that both were suspended under 53C(11). It does not seem to me that that is anything more than a construction of what went on in the particular circumstances of this case. That walks into the difficulty that the defendant and interested party have raised which is that this claim is now, in the general sense, academic, because on 17 May, compromise was reached in the Magistrates Court. To that, Ms Le Fevre's response is: I've still got a claim for a declaration and it would assist the parties to have this area of law clarified.

16. In my judgment, the argument that now remains is really a narrow construction of what was done on 7 January, and that is not likely to be of general assistance to anyone. The other point that remains open is the claim, if it is right, for breach of rights protected under the Human Rights Act, in particular article 1 of protocol 1: the qualified right to property.

17. It seems to me that if the claimant wishes to pursue that claim for damages, it may do so without any restriction of having to go through the grant of permission. Nothing that I have said prevents the claimant bringing a claim for damages, if it chooses to do so. This is because I have taken a decision on arguability on public law grounds, taking into account matters of whether this claim is academic, save in respect of the claim for damages.

18. For all those reasons, albeit very shortly expressed, it doesn't seem to me that this is an application to which I should grant permission.

19. MR JUSTICE DINGEMANS: Miss Le Fevre, thank you very much indeed for you submissions and for your book, which you may have back.

20. MS LE FEVRE: Thank you very much, my Lord.

21. MR JUSTICE DINGEMANS: Thank you both very much indeed.

22. MR CLARKE: My Lord, I seek the costs of the pre-action protocol letter and the acknowledgement of service set out in my skeleton argument.

23. MR JUSTICE DINGEMANS: Right. To avoid me having to trudge through the papers again, what were the pre-action costs and acknowledgement of service?

24. MR CLARKE: It comes to a total of £3,250.

25. MR JUSTICE DINGEMANS: Which is quite a lot for pre-action.

26. MR CLARKE: And also the acknowledgement of service.

27. MR JUSTICE DINGEMANS: Yes, or pre-hearing. Anyway, yes, thank you very much.

28. MR RANKIN: And I am seeking costs in the sum of £8,493.40.

29. MR JUSTICE DINGEMANS: And why is that so much?

30. MR RANKIN: Response pre-action protocol, a lengthy grounds for resiting the application, further skeleton, preparation for first appearance, and today's appearance of £360.

31. MR JUSTICE DINGEMANS: Yes, well you would not normally, under Mount Cook, get the cost of today, would you?

32. MR RANKIN: No.

33. MR JUSTICE DINGEMANS: No. So what is your proper claim?

34. MR RANKIN: It would be minus £360, so that would be --

35. MR JUSTICE DINGEMANS: Well, and the skeleton.

36. MR RANKIN: And the skeleton.

37. MR JUSTICE DINGEMANS: Yes, because that's all today, isn't it?

38. MR RANKIN: £7,200.

39. MR JUSTICE DINGEMANS: Thank you very much. Miss Le Fevre.

40. MS LE FEVRE: My Lord, while we accept in principle that we would ordinarily be expected to bear the costs of the acknowledgement of service and the pre-action protocol exchange, these costs do seem, in both applications, to be extraodinarily high for an application of this kind. We note too, the considerable disparity between the costs that are said to have been incurred by the defendant, and twice those for the interested party. We are yet to see a schedule in fact, or any kind of breakdown on behalf of the defendant in respect of their costs. We have a tabulated form of costs for the interested party, where one can see that over £2,000, for example, was incurred in correspondence, over £1,000 in work done in documents by the solicitor, and the counsel's fees of £3,760.

41. MR JUSTICE DINGEMANS: Yes.

42. MS LE FEVRE: And those are all costs that are said to be attributable to pre-action protocol, acknowledgement of service. So, whilst we have no difficulty with the principle of being expected to pay the costs of the acknowledgement of service, the sum total, and I haven't done the maths, of something approaching £11,000, where, in fact, precisely the same issues are raised by both the interested party and the defendant in responding to this proposed claim, do seem to us to be excessive, in fact, extraordinarily excessive. So those are the submissions we would make, and we invite you to make a proper order as to costs, reflecting the proper work that has been done on this case.

43. MR JUSTICE DINGEMANS: Mr Clarke, £3,250 is sort of slightly higher than the going rate for these things. What about £2,500 for you?

44. MR CLARKE: Well, my Lord, it may be higher than the going rate but the claim in this case consisted of some 75 paragraphs of grounds.

45. MR JUSTICE DINGEMANS: Yes.

46. MR CLARKE: And a statement which ran to some 700 pages.

47. MR JUSTICE DINGEMANS: Yes.

48. MR CLARKE: The breakdown is set out in our summary grounds of resistance, paragraph 54. It relates to 10 hours work for counsel, which comes to £1,650, and a similar amount of time for solicitors. So, given the issues and the volume of material served in this case, my Lord, I say it is not excessive.

49. MR JUSTICE DINGEMANS: Right. If I reduce you to £3,000, what do you say about that?

50. MR CLARKE: I wouldn't argue with that.

51. MR JUSTICE DINGEMANS: Mr Rankin, can you do better than £3,000?

52. MR RANKIN: Can I do better than £3,000?

53. MR JUSTICE DINGEMANS: Yes.

54. MR RANKIN: Well, yes. With respect, I'm 30 years called. I applied my mind to all of the paperwork, save for (Inaudible) 15 and 16. For the 700 pages of statement served, which is unusual in a case of this sort, and it required a considerable amount of work on our part in order to resist a claim which, in your Lordship's finding, is acAdemic and should not have been pursued.

55. MR JUSTICE DINGEMANS: All right. Thank you very much. I propose to make the order for costs for both the defendant and interested party, as we are still at the early stage and therefore separate costs are appropriate in relation to both.

56. The defendant seeks costs of £3,250 and broadly those seem to be proportionate, and I have rounded those down to £3,000. Time spent for counsel and solicitors might be thought to be slightly on the high side. But £3,000, and there seems to be no real argument between claimant and defendant in relation to that. The police have sought costs of £8,493. I have no doubt that they were all incurred and I have no doubt that on a party and own client basis they were properly incurred internally for their own purposes. And they have had the benefit of Mr Rankin's considerable experience. On the other hand, it seems to be disproportionate to expect the claimant to pay that sum at this stage in that amount.

57. To try and ensure that they are proportionate to the issues involved, I will round them down to the same sum that the defendant has incurred, which is £3,000.