Saving shadow licences

Philip Kolvin KC

Venus 14 Limited and Sahara Promotions Limited v London Borough of Newham and Metropolitan Police Service

Administrative Court

On 21st November 2024, Mr Justice Robin Knowles heard case stated appeals brought by Venus (the landlord) and Sahara (tenant) of a nightclub named Pier One in Bidder Street, London E16. Venus obtained an order quashing a District Judge's decision to revoke its shadow licence. The case contains lessons for those holding shadow licences.

Background

On two reviews brought by the Metropolitan Police, Newham's Licensing Sub-Committee decided to add conditions to the licence held by Sahara and the shadow licence held by Venus. The Police appealed against the decisions, asking for revocation, and were then joined in that request by Newham itself.

Their appeal was upheld by DJ McIvor sitting in East London Magistrates' Court on 30th November 2024. Following three days of evidence and consideration of 1200 pages of material, she held that there had been mismanagement of the premises, with poor control of alcohol supply and insufficient attention to welfare, as well as a lack of co-operation with the Police. As such she revoked the licence of Sahara.

Turning to the landlord, Venus, she concisely held that it would be "absurd" not revoke that licence too.

Both Sahara and Venus appealed by way of case stated, claiming that her decisions were unreasonable.

Stating the case for the opinion of the High Court, the District Judge said, in the case of Venus, that although it held only a shadow licence and had played no part in the management of the premises, there were reasons to revoke nonetheless. These were a) that the premises were "tainted", b) that Venus could transfer the licence to another with fewer safeguards than apply to new licences, c) that Venus had not "engaged" with the authorities during the review process and d) that there was "no basis" for treating Venus differently. Venus argued (among other things), that "tainted" was not a meaningful concept and that there was a clear basis to treat it differently since it had nothing to do with the mismanagement of the premises and in fact had never used its licence at all.

Shortly before the appeal was heard, Venus agreed a consent order with Newham and the Police allowing the appeal and quashing the decision to revoke its premises licence. The order contained an undertaking by Venus to terminate all leases on the premises. It also contained new agreed conditions to be placed on the licence. Those conditions fell into four categories.

- First, a condition excluded the tenant, its management and staff from future involvement in the premises.
- Second, there were management conditions requiring a dispersal policy, preventing drinking straight from spirit or wine bottles and requiring pour spouts, and the use of body-worn video by exterior security and any welfare officers.
- Third, The Sub-Committee had reduced trading hours by an hour; a revised condition added 30 minutes back.
- Fourth, there was a condition stating that the licence should not be operated until an application to the licensing authority was made and granted, for variation of the condition, including full details of the operating plan, the management structure and identify of all management personnel.

Despite the terms of the consent order, the High Court retained responsibility for deciding whether the order should be issued, given that it involved overturning an order of the lower court. The Court also needed to exercise its own judgment because, despite having signed the consent order, the Metropolitan Police claimed in court that they had felt railroaded by Newham's consent to do so.

Decision

Sahara's appeal fails. Following full argument, Mr Justice Knowles rejected Sahara's appeal. He found that of stand-out seriousness were an incident of 30th July where a vulnerable female was alleged to have left the premises and allegedly suffered a sexual assault, and a failure to hand over CCTV expeditiously. He was concerned that over a period of 7 minutes, a female went from appearing sober to being unable to stand unaided, and having said she did not wish to leave with a man was then helped into a taxi with the man by venue personnel. Also of importance were the District Judge's findings regarding free-pouring of alcohol and the capabilities of door staff, while remedial steps were too little and too late. Mr Justice Knowles pointed out that the District Judge was best placed, having heard the evidence, to come to a decision, and he regarded her decision as one she was reasonably entitled to make. He held it was not open to him to find that her approach was irrational. He held that the standards to which those operating these kind of premises are high, in order to protect the public.

Venus' appeal succeeds. Turning to the draft consent order, Mr Justice Knowles did not accept that there was no reason for Venus to engage with the authorities during the review process. Had it done so, discussions might have ensued as to how it could assist in resolving the situation.

Nevertheless, the Judge considered it relevant that the architecture of the consent order contained undertakings that were valuable to the authorities, and whose thrust was to look to the future, ending the involvement of Sahara and regulating the future use of the premises, including bringing an operating plan before Newham for approval. As such, the Judge was content to endorse the draft order.

As to whether the District Judge was wrong, Mr Justice Knowles simply held that, unlike her, he had further information before him in the shape of the consent order, which enabled him to deal with the case differently.

Lessons

A number of important lessons for shadow licensees emerge from this case.

First, while a shadow licence may be obtained simply to protect the licence in the event of loss of licence by the tenant, a landlord who does nothing more than collect the rent is at risk. There ought to be some oversight of the property: if there is none then the landlord may face criticism, and worse, at a licence review.

Second, if there is a review, the landlord ought to engage with the authorities at an early stage. If they do not, they risk being viewed as part of the problem, rather than part of the solution. It is right that a review places a landlord in difficulties: after all the facts against the tenant may not have been established and the landlord has no investigatory powers. However, if the landlord behaves just as a spectator, they lose all opportunity to influence the result.

Third, to protect their licence, at the review hearing, they ought to consider whether there is anything which they can offer as landlord.

Fourth, a landlord ought to consider what user covenants there are in the lease prohibiting conduct which places the licence at risk, and ought also to consider whether it would be prudent to invoke them.

Fifth, a landlord should have insurance against loss of the licence.

Sixth, and overarching all of this, is that the later the licence the more likely it is to attract enforcement action. The amount of interest a landlord takes in their premises should be in direct proportion to its hours.

In this case, it proved possible to save what was a valuable, late licence in a cumulative impact area. If it also assists landlords in the future, this may be seen as a wider benefit.

Philip Kolvin KC of 11KBW appeared for Venus, instructed by David Dadds of Dadds LLP Solicitors.