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THE HIGH COURT

CIRCUIT APPEAL
COUNTY WESTMEATH

IN THE MATTER OF AN APPLICATION BY MICHAEL GLENNON.

AND IN THE MATTER OF SECTION 6 OF THE LICENSING (IRELAND) ACT, 1902,
AS AMENDED BY SECTION 24 OF THE INTOXICATING LIQUOR ACT, 1960.

AND IN THE MATTER OF SECTION 12 OF THE INTOXICATING LIQUOR ACT, 1927,
AS AMENDED BY SECTION 8 OF THE INTOXICATING LIQUOR ACT, 1943.

Judgment of Mr. Justice McWilliam delivered on the 13th day of NOVEMBER 1984.

This appeal has been brought by the Superintendent of the Garda Síochána in charge of the licensing area which includes Moate, County Westmeath, against an Order by the Circuit Court Judge for the Midland Circuit certifying that premises at Moate are a restaurant for the purposes of the above-mentioned Acts.

By notice of motion dated 9th November, 1983, Michael Glennon, as nominee of MacGlenn Developments Limited, applied under the provisions of Section 6 of the Licensing (Ireland) Act, 1902, as amended, for a publican's licence for premises adjoining premises in respect of which he already held a licence and, at the same time, applied for a certificate under the provisions of Section 12 of the Intoxicating Liquor Act, 1927, as amended, for a certificate that the premises are a restaurant for the purposes of the Intoxicating Liquor Acts.

The application came before the Circuit Court Judge on 6th December, 1983, when he granted a certificate for an ordinary seven day publican's licence. He appears to have adjourned that part of the application relating to a restaurant licence.

On 29th February, 1984, the Circuit Court Judge certified that the premises are a restaurant for the purposes of the Intoxicating Liquor Acts. It is against this Order only that the appeal has been brought.

The premises contain two stories. The ground floor has been attractively renovated, is furnished with dining tables, contains a substantial bar counter and has a small dance floor at the end of the room away from the bar. The portion of the ground floor not containing the bar counter, being the smaller part of the dining area and the dance floor can be closed off from the portion with the bar. On the first floor there is a large room, although not so large as that on the ground floor, in which there are seven snooker tables. There is also a bar in this room and tea and coffee and light snacks are served there. Access can be gained to this room without entering the room on the ground floor.

Evidence was given on behalf of the proprietors that full lunches and evening meals are served on the ground floor, that a good restaurant trade has been built up and that the restaurant is considered to be the main part of the business and did well during the tourist season. There

is now both a manageress and a chef employed. It was stated that there is a good demand for functions and that it is for this reason that a restaurant certificate is required as such a certificate would enable the Applicant to obtain special exemption orders in proper cases.

It is not suggested that the premises are not properly conducted or that there is not a genuine restaurant trade carried on but the Superintendent, when giving evidence, expressed doubts whether snooker players and others might not be legally on the premises during the extended hours during which patrons might be entitled to have intoxicating liquor with meals in the restaurant or while functions with special exemption orders were in progress. This point was not made by his counsel and I am satisfied that it has no validity as the penalties for breaches of the general licensing laws continue to apply to persons not having meals or attending the functions.

The argument put forward on behalf of the Superintendent was that the entire premises must be structurally adapted for a restaurant and mainly used for such and that, as a large part of the premises consists of bars and the upper floor consists of a snooker room with no real restaurant facilities, it cannot be said that the premises are mainly used as a restaurant.

Section 1 of the 1927 Act provides that the expression "on-licence" means a licence for the sale of intoxicating liquor for consumption on or

off the premises.

Section 12 of the same Act provides as follows:-

(1) Where on the occasion of any application for a new on-licence or a certificate for the transfer or renewal of an on-licence, the applicant requests the Court to certify that the premises in respect of which the certificate is sought are a restaurant for the purposes of this Act, the Court, if satisfied after hearing the officer in charge of the Garda Síochána for the licensing area that such premises are structurally adapted for use and bona fide and mainly used as a restaurant, refreshment house or other place for supplying substantial meals to the public, shall grant such person a certificate (in this section referred to as a restaurant certificate) certifying that such premises are a restaurant for the purposes of this Act.

Section 5 as amended by Section 6 of the 1943 Act provides as follows:-

(1) If the holder of an on-licence for premises which are a hotel or a restaurant applies to the Justice of the District Court for an order (in this Act referred to as a special exemption order) exempting him on any special occasion from the provisions of this Act relating to prohibited hours in respect of the said premises, such Justice may, if he thinks fit to do so after hearing the officer in charge of the Garda Síochána for the licensing area, grant to the applicant upon such conditions as he thinks

proper an order so exempting him during the hours and on the special occasion to be specified in such order.

It is not disputed that these premises are structurally adapted for use and are bona fide used as a restaurant. This being so I have to consider what effect is to be given to the word "mainly". This has to be done in the context that an applicant can only apply for a restaurant certificate if he is either the holder of an on-licence or is applying for one. It must be very rare indeed for the holder of an on-licence not to have a bar on the premises and I reject the suggestion that the presence of a bar in any way restricts the right of the applicant to obtain a certificate unless the part allotted to the bar is out of all proportion to the part allotted to the restaurant, which is not the case here. I am thus left to consider the situation that there is this large snooker room with another bar upstairs. If I were to apply the section literally I would have to hold that the entire of the premises included in the on-licence is not mainly used as a restaurant but I think I should also take into consideration the evidence that the snooker room is only open from 5.00 p.m. until 11.00 p.m. with slightly longer hours on Sundays whereas the restaurant is open as such all day.

Under the circumstances I think I should give a liberal interpretation to the section and I will affirm the Order of the Circuit Court Judge.

Hubert B. McWilliam
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