

Prohibitory injunction

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The First Hall of the Civil Court, presided over by Mr Justice Joseph R. Micallef, on June 20, 2011 in the case “Jeremy Cassar Torregiani and Mario Hammett vs the Commissioner of Police” ordered the issuance of an injunction against the Police Commissioner to prevent him from closing The Villa even if he suspected that the operators acted in breach of their trade licence. The injunction was issued without, in any way, limiting the power of the police to investigate and to file legal proceedings for any violation of law and/or commission of any crime.

The facts in this case were as follows:

The Hotel Le Meridien and The Villa Brasserie in St Julian’s had been in operation for some time, in terms of the commercial licence which was issued by the Malta Tourism Authority.

The Villa Brasserie was licensed as a bar and restaurant. It also had a licence to host conferences/receptions, parties, weddings and other meetings.

At issue in this case the court had to determine whether the Commissioner of Police had authority to close down the establishment (The Villa Brasserie), on suspicion of a breach of its operating licence, or whether the police should simply initiate legal proceedings and leave it up to the court to suspend or remove its licence, in accordance with the due process of law.

On the one side, the police claimed that they had the authority to take immediate action to stop any abuse by a commercial operator, to protect the community.

By these proceedings which were presented on June 10, 2011, Jeremy Cassar Torregiani and Mario Hammett filed an application before the First Hall of the Civil Court against the Commissioner of Police. They requested the court to issue a prohibitory injunction against the Police Commissioner in order to stop him from closing, disturbing or in any way impeding the operation of The Villa in terms of its licence.

In reply, the Police Commissioner contested the application.

It was submitted that:

- The police had sufficient executive authority. They had the duty to investigate and to exercise their power in case of a breach in the law and whenever an operator exceeded the terms of his permit. The police should not be hampered by any injunction to carry out its duties.
- Mr Cassar Torregiani and Mr Hammett did not have any civil rights to safeguard by the issuance of such injunction against the Commissioner. Their application was an abuse of the judicial process. They purportedly confused “civil rights” with “criminal issues”.
- They failed to indicate what rights they sought to protect by this injunction. It was stated that Mr Hammett and Mr Cassar Torregiani would not suffer any loss of rights; in particular since the police did not have the authority to cancel or suspend their licence. The police could only take action if it suspected that the operators were acting against the law.

On June 20, 2011, the First Hall of the Civil Court accepted the application of Mr Cassar Torregiani and Mr Hammett for the issuance of the injunction against the Police Commissioner without, in any way, limiting the power of the police to investigate and to file legal proceedings for any violation of law and or commission of any crime.

The following reasons were given for its decision:

The court noted that The Villa had two trade licences. It said that an injunction should not be issued to prevent the police from carrying out their duties, even if such act was of inconvenience or of prejudice, provided the police acted according to the law.

The Malta Tourism Authority, however, was the competent authority to control/monitor the terms of licence of The Villa and not the police. The police had no authority to cancel or suspend their licence. Its licence could be cancelled or suspended only in certain cases mentioned in the law and after review by the court.

The purpose of the injunction was to stop a person from carrying out an act which could be harmful to him. Applicants Mr Cassar Torregiani and Mr Hammett had to prove that the injunction was necessary to protect their rights and that they prima facie had those rights.

Prima facie rights: This was an objective requirement and not subjective. If this right was not apparent, it did not exist for the purpose of the injunction.

Both elements had to exist, otherwise the court could not accept to issue the injunction. At this stage of the proceedings, the court did not decide the merits. The proceedings were intended to be summary. A prohibitory injunction served to offer protection to a person whose rights would be lost or curtailed irreparably without such a warrant. The fact, however, that the warrant was issued did not mean that the court agreed that applicants had established their rights nor did it mean, in case the warrant was denied, that a person did not have such rights.

In the circumstances, applicants Mr Cassar Torregiani's and Mr Hammett's prima facie right was to prevent the police from taking the law in their hands, and from acting unilaterally and arbitrarily, and according to their own interpretation of the law, before the matter was brought before the court's consideration. The Police Commissioner denied acting as both judge and jury. It was his duty, he said, to prevent the commission of unlawful acts. It was stated that the Police had warned and not threatened Mr Cassar Torregiani and Mr Hammett.

As the Malta Tourism Authority was the competent authority to issue licences, the Police Commissioner should take instructions from the authority in matters of interpretation and in case of any doubt to the nature of activities covered by the licence.

If the Police Commissioner acted unilaterally, there was a danger he might act in excess of the authority, which by law was conferred upon him.

The court felt therefore that applicants Mr Cassar Torregiani and Mr Hammett were justified to file this application for the issuance of a warrant of prohibitory injunction.

The court considered further where a prohibitory injunction was requested against the government or against a public authority, established under the Constitution, applicants had to show:

- What act the court should prohibit;
- That the damage which applicants would suffer by such act would not be proportionate to the inconvenience, which would be caused to the other party, if the act were not stopped.

The court said that it was clear, that in the circumstances, the prejudice which would be suffered by Mr Cassar Torregiani and Mr Hammett in case it was to decline their application, was greater, and not in proportion to the harm and inconvenience to be suffered by the counterparty; assuming that the matter would be investigated further by the competent authority.

For these reasons the court found that there existed all elements warranting the issuance of the warrant of prohibitory injunction against the Police Commissioner.

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