

**IN THE HIGH COURT OF NEW ZEALAND
AUCKLAND REGISTRY**

CIV 2009-404-5128

BETWEEN	MEGA TRADE (AKL) LIMITED First Appellant
AND	GRACE CHANG Second Appellant
AND	THE COMMISSIONER OF POLICE Respondent

Hearing: 30 October 2009

Appearances: J Wiles for appellants
G Kayes for respondent
J A L Oliver for Liquor Licensing Authority

Judgment: 30 October 2009

JUDGMENT OF ALLAN J

Solicitors:

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[1] This is an appeal against a decision of the Liquor Licensing Authority given on 3 August 2009. The decision related to two enforcement applications brought against the appellants, arising from the conduct of the business of a karaoke bar in Queen Street, Auckland. The applications followed a visit by the New Zealand police to the licensed establishment on 4 April 2009, when it was alleged alcohol had been unlawfully served to two intoxicated males.

[2] The first application before the Authority was to suspend the first appellant's on-licence, the second was to suspend the second appellant's general manager's certificate.

[3] The Authority upheld the applications and suspended the first appellant's on-licence for a period of 14 days, and the second appellant's general manager's certificate for a period of six weeks.

[4] It is common ground that the Authority took into account in determining the length of the suspensions, the fact that the parties had already served suspensions ordered by the Authority on a previous occasion. Those previous suspensions were the subject of an appeal, heard in this Court by Wylie J. His decision was delivered on 12 August 2009, some days after the Authority's decision now under appeal. The Judge allowed the appeal in part and quashed the suspensions.

[5] In the present appeal counsel for the appellants takes a number of points, not all of which are now pursued. But of particular importance for present purposes is the appellants' argument that the suspensions imposed were too lengthy and too onerous.

[6] On 3 September 2009 I made an order staying the operation of the suspensions, pending the outcome of the present appeal.

[7] There is a preliminary jurisdictional point. Mr Kayes points out that the appeal has been brought under s 138 of the Act. As observed by Wylie J in his decision of 12 August 2009, *Mega Trade (Akl) Ltd & Ors v Commissioner of Police*

HC AK CIV 2009-404-1137, there is no right of appeal under s 138 against suspensions imposed pursuant to ss 132(3)(a) and 135(3)(a) of the Act. An appeal does however lie under s 139.

[8] Mr Wiles applies for an order amending the appellants' appeal. Mr Kayes for the respondent consents to the amendment, which is accordingly granted.

[9] Counsel have responsibly consulted following the delivery of Wylie J's decision of 12 August 2009. Mr Wiles contends that in the light of that decision, and of the consideration that the Authority must necessarily have given to the earlier suspension in its choice of penalty, the Court ought now to reduce the periods of suspension in order to take into account the less blameworthy prior record upon which the appellants are now able to rely. Mr Kayes does not cavil at that approach. I should indicate also that Mr Oliver is present in Court this morning, representing the Authority in another matter, and has been able to indicate that he can see no objection to the revision of the penalties in the light of what occurred following the delivery of the Authority's earlier decision.

[10] Mr Wiles' submission is that the suspension of the first appellant should be reduced from 14 to five days, and that the suspension period in respect of the General Manager's certificate should be reduced from six to four weeks. Mr Kayes accepts that the reduced penalties are appropriate. I agree.

[11] I therefore allow the appeals. The periods of suspension imposed by the Authority in its decision of 3 August 2009 are quashed. In the case of the first appellant I substitute a period of suspension of five days to take effect during the period 1-5 November 2009, both dates inclusive. In the case of the General Manager's certificate I substitute a suspension period of four weeks, to take effect during the period 1-28 November 2009, both dates inclusive.

[12] The order staying the periods of suspension imposed by the Authority made by me on 3 September 2009 will lapse at the end of 31 October 2009.

[13] There will be no order as to costs.

C J Allan J