# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: ***A.M.P.M. Holdings Ltd. v. Freeman et al.***
2004 BCSC 627

Date: 20040416
Docket: L033634
Registry: Vancouver

Between:

**A.M.P.M. Holdings Ltd. &
Saylor Enterprises dba Oasis Hotel**

Petitioners

And

**Mary Freeman, Acting General Manager of
the Liquor Control and Licensing Branch
and Suzan Beattie, Adjudicator**

Respondents

Before: The Honourable Mr. Justice Ehrcke

## Oral Reasons for Judgment (In Chambers)

April 16, 2004

Counsel for the Petitioners J. Doyle

Counsel for the Respondents D. Roberts

Place of Trial/Hearing: Vancouver, B.C.

[1] **THE COURT:** This is an application for a judicial review of an order for reconsideration ordered by the Liquor Appeal Board with respect to hearing number EH01-31.

[2] The petitioners, doing business as the Oasis Hotel, operate a licensed premise known as the Sahara Club on King George Highway in Surrey, B.C. The petitioners were advised by way of a Notice of Enforcement Action, dated August 20, 2001, of alleged contraventions of ss. 33, 35 and 43(2)(b) of the ***Liquor Control and Licensing Act***, relating to events on April 28, 2001.

[3] An enforcement hearing took place before Adjudicator Suzan Beattie on

November 1, 2001. A number of witnesses were called and a number of exhibits marked. Adjudicator Beattie issued written reasons on March 5, 2002, for her decision that the Branch had proved the petitioners violated ss. 35 and 43(2)(b) of the ***Liquor Control and Licensing Act*** as alleged. The adjudicator imposed a penalty of a two day suspension for the contravention of s. 35 of the ***Act***, and no penalty with respect to the contravention of s. 43(2)(b).

[4] The petitioners appealed the adjudicator's decision to the Liquor Appeal Board, which was the appropriate route of review under the legislation as it then existed. The hearing before the Liquor Appeal Board took place on March 17, 2003, and the Board issued its reasons on June 18, 2003. In those reasons the Liquor Appeal Board confirmed the contravention alleged with respect to s. 43(2)(b), but ordered that the s. 35 allegation be sent back to the general manager of the Liquor Control and Licensing Branch for reconsideration with respect to the possible defence of due diligence.

[5] The petitioner made representations through correspondence with the general manager about the form that the re-hearing should take. Notwithstanding the petitioners' representations, the general manager has taken the position that the re-hearing will be before the same adjudicator who originally heard the matter, namely Suzan Beattie, and that the re-hearing will be on the record of evidence that has already been adduced without the calling of further evidence, and that the re-hearing will be on the basis of written submissions only, without the opportunity for further oral submissions.

[6] The petitioners have brought this petition under the ***Judicial Review Procedure Act*** seeking an order:

> (1) Quashing the acting general manager's decision to appoint Suzan Beattie as adjudicator for the purpose of reconsidering the matter sent back to the general manager by order of the Liquor Appeal Board.
>
> (2) Prohibiting Suzan Beattie from being the adjudicator on the reconsideration.
>
> (3) An order in the nature of mandamus requiring the acting general manager to appoint an adjudicator different from Ms. Beattie to conduct the reconsideration.
>
> (4) Quashing the acting general manager's decision that the reconsideration would not be a hearing *de novo*.
>
> (5) Requiring the reconsideration to be a hearing *de novo*, including complete *viva voce* evidence and the opportunity to make complete oral submissions.
>
> (6) In the alternative, requiring that at the reconsideration the petitioner be entitled to further cross-examine previous Branch witnesses, adduce additional *viva voce* or other evidence and make oral submissions.

[7] Counsel for the respondents submits that the petition should be dismissed, either on the merits or on the basis that it is premature since it amounts to something analogous to an interlocutory appeal, and that such appeals of interlocutory procedural rulings should be discouraged on the basis of judicial economy.

[8] Ms. Roberts, for the respondents, relies on the decision of the Federal Court Trial Division in ***Bell Canada v. Canadian Telephone Employees Association***, [2000] S.C.J. No. 947, in which Pelletier, J. referred with approval to the decision of the Federal Court of Appeal in ***Zundel v. Citron***, [2000] S.C.J. No. 678, (1999) 165 F.T.R. 113 and, in particular, to this passage from the ***Zundel*** decision:

> As a general rule absent jurisdictional issues rulings made during the course of a tribunal proceeding should not be challenged until the tribunal's proceedings have been completed. The rationale for this rule is that such applications for a judicial review may ultimately be totally unnecessary: a complaining party may be successful in the end result making the applications for a judicial review of no value. Also, the unnecessary delays and expenses associated with such appeals can bring the administration of justice into disrepute.

[9] I agree with the respondents' submission that this petition is in that sense premature. The re-hearing of this matter before the adjudicator has already been delayed so that this petition could be heard before me. If the re-hearing goes ahead as directed, the petitioners may be successful, in which case the issues before me become moot. On the other hand, if the petitioners are unsuccessful at the re-hearing, it will be open to them to raise all the issues now before me, either on an appeal or on a subsequent application at that time for judicial review.

[10] I pause here to note that because of a series of amendments to the ***Liquor Control and Licensing Act*** and differing views of counsel as to the interpretation of certain transitional provisions, there is a disagreement between them as to whether the appropriate route of review would be an appeal to the Appeal Board or directly to the court on an application for a judicial review. I express no view as to which interpretation is correct. That will be for others to determine, if and when the time comes.

[11] That leaves the issue as to the appropriate form of order for me to make on today's application. I canvassed with counsel whether the appropriate order should be to dismiss the current petition, or rather to adjourn it generally. As I understand the submissions of both counsel, they are in agreement that it is open to me to dismiss the petition at this time without prejudice to the petitioners' right to raise all of the substantive issues which they attempted to raise before me at a further appeal or application for judicial review, after the adjudicator has made her decision on the re-hearing. That is the order I make today.

(SUBMISSIONS BY COUNSEL)

[12] THE COURT: I am going to make the usual order of costs against the unsuccessful petitioner, and the costs will be Scale 3.

"W.F. Ehrcke, J."
The Honourable Mr. Justice W.F. Ehrcke