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Court upholds hotel's reasonable use of force

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Introduction

Licencees are permitted under the *Liquor Act 1992* (Qld) (**Act**) to use force to remove unduly intoxicated or disorderly persons from their premises. However, the use of force by employees must be both reasonable and necessary in the circumstances, failing which employers may be held vicariously liable for the actions of its employees if the conduct was done in the intended or responsible pursuit of the employer's interest. This will include situations where employees (usually security guards) use unreasonable and unnecessary force to remove unduly intoxicated or disorderly persons from its employer's premises. However, the recent case of *Carlyon v Town & Country Pubs No. 2 Pty Ltd T/A Queens Hotel Gladstone (No.2)* [2015] QSC 025 confirms that courts will be reluctant to find an employer (or an employee) liable when the force used by an employee is necessary to ensure the safety of the licensed premises, and the level of force is reasonable and proportionate to achieve this aim.

Background

The plaintiff suffered a serious fracture to his leg when he was removed from the Queens Hotel Gladstone (**Hotel**) by a security guard, Shaan loane, on 9 May 2009. The plaintiff and Hotel staff provided the court with differing versions as to why the plaintiff was asked to leave the premises and the

events thereafter. The plaintiff's evidence was that he was falsely accused of knocking over a drink, was restrained by security guards in a headlock and then thrown or pushed down the stairs suffering a broken leg as a result.

The court heard evidence from two of the Hotel's staff. Their evidence was that the plaintiff slammed a glass onto the bar and was asked to leave the premises. He was escorted to the front entrance by Mr loane but failed to comply with Mr loane's reasonable directions to leave on at least four occasions. The Hotel's staff gave evidence that on the last occasion, the plaintiff lunged aggressively towards Mr loane who immediately restrained the plaintiff in a headlock. While restrained, the plaintiff struggled and thrashed around, attempted to escape the restraint and was abusive towards Mr loane. Mr loane walked the plaintiff to the exit. Once they reached the exit they tumbled down the stairs. Mr loane could not be located and was not called to give evidence.

The incident was captured on CCTV footage. The footage was viewed by police however it could not be located at the time of trial. Having viewed the footage, police decided not to pursue the investigation any further. The court accepted into evidence the notes from the investigating officer who had viewed the footage. The version of events provided by the Hotel's staff was largely supported by the police notes. The court thought the police notes to be the most reliable evidence and placed significant weight on them. It did not

place much weight on the evidence of the plaintiff given the large amount of alcohol he had consumed at the time of the incident (20 standard drinks). The court also noted that the plaintiff's evidence was not corroborated by any independent evidence and was contrary to the evidence of the Hotel's staff and the decision by the police not to prosecute.

Duty of care

Counsel for the Hotel alleged at trial that the Hotel could not owe a common law duty of care to the plaintiff because any such duty would be inconsistent with the Hotel's right under s 165(3) of the Act to use necessary and reasonable force to remove persons from the premises. The court found no such inconsistency and thought a licensee's right under the Act to remove patrons using reasonable and necessary force operated in tandem with their common law duty to patrons to take reasonable steps to ensure that they were not injured on their removal. As such, the court dismissed this argument relatively quickly.

Breach of duty

Having considered the evidence of all the witnesses, the court was satisfied that the plaintiff was being argumentative and aggressive and as such, Hotel staff had a reasonable basis for asking him to leave the premises. It was then for the Hotel to establish that the use of force by its staff was reasonable and necessary in the circumstances.

As the plaintiff ignored Mr loane's repeated verbal requests to leave the premises, the court considered it was necessary for Mr loane to use force to remove him. Security expert, John Pettit, (who was called by the plaintiff) gave evidence that the way in which Mr loane evicted the plaintiff was not safe or reasonable and said he should have used a wrist lock, which required the deliberate infliction of pain to induce compliance. The court quickly dismissed Mr Pettit's evidence as it did not consider him to be an expert, having had no practical security experience during his career.

In any event, the court thought the hold used by Mr loane was reasonable in circumstances where the situation escalated quickly and there was no real time for reflection. There was also no evidence from the plaintiff that the headlock was painful or his breathing was restricted and the plaintiff did not suffer any injury to his neck or shoulders. In contrast, the court thought the hold recommended by Mr Pettit was not reasonable because it involved the deliberate infliction of pain.

The court also rejected the plaintiff's argument that he was deliberately thrown, dragged or pushed down the stairs by Mr loane. Rather, the court was satisfied on the balance of probabilities that the plaintiff's injuries were caused when

he and Mr loane stumbled or tripped down the stairs and this occurred because the plaintiff was resisting removal and was thrashing and kicking about. It was these actions which caused both the plaintiff and Mr loane to fall down the stairs rather than the deliberate actions of Mr loane. The court was therefore satisfied that the Hotel's staff used reasonable and necessary force to evict the plaintiff from the premises.

The plaintiff further alleged that the Hotel failed to provide a safe security system and failed to adequately train its staff. The court said that even if this was the case, the most likely cause of the incident was the plaintiff's resistance to being restrained rather than the way in which Mr loane restrained the plaintiff. As such, the court found it unnecessary to consider whether the Hotel had a safe security system or adequately trained its staff as it did not consider this to be causative of the plaintiff's injuries.

Accordingly, the court dismissed the claim.

Comment

The court thoroughly reviewed the evidence of all witnesses and weighed up the reliability or otherwise of each witnesses' evidence. Because of the clear scrutiny of evidence it is very important in these cases for insureds to retain copies of any CCTV footage (this includes footage leading up to the incident to establish a plaintiff's behaviour prior to an incident) and to take detailed incident reports and/or statements from staff members and security guards at the time.

This decision is also an encouraging one for hoteliers and security providers as it confirms that these types of cases can be successfully defended when the force used by an employee is necessary to ensure the safety of the licensed premises and the level of force is reasonable and proportionate to achieve this aim.

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