Trindle v NT Licensing Commission & Ors [2007] NTSC 30

PARTIES:	TRINDLE, GLENDA ROSE
	v
	CHAIRPERSON, NORTHERN TERRITORY LICENSING COMMISSION, MINISTER FOR RACING, GAMING AND LICENSING AND NORTHERN TERRITORY LIQUOR COMMISSION
TITLE OF COURT:	SUPREME COURT OF THE NORTHERN TERRITORY
JURISDICTION:	SUPREME COURT OF THE TERRITORY EXERCISING TERRITORY JURISDICTION
FILE NO:	No 81 of 2006 (20618391)
DELIVERED:	4 May 2007
HEARING DATES:	19 April 2007
JUDGMENT OF:	MILDREN J

CATCHWORDS:

CRIMINAL LAW AND PROCEDURE – Forfeiture and Confiscation – relief from forfeiture of property to the Territory – discretion of chairperson to dispose of forfeited vehicle subject to ministerial approval – opinion as to the state of mind of the owner – whether formed by minister or chairperson – Liquor Act s 100A, s 101.

Statutes:
Liquor Act, s 75(1)(a), s 75(1)(b), s 96(1), s 100A, s 101
Northern Territory Licensing Commission Act, s 28
Northern Territory (Self-Government) 1978, s 31

Cases:
Followed:
Ninnal v The Minister for Racing, Gaming and Licensing & Anor (2001) 162 FLR 330,
Wulaign Association Incorporated v The Minister for Racing and Gaming (1991) 1 NTLR 118,

References:
Hansard Debates, 13 October 1988

REPRESENTATION:

Counsel:

Plaintiff:	S Gearin
Defendant:	P Barr QC

Solicitors:

Plaintiff:	North Australian Aboriginal Justice Agency
Defendant:	Solicitor for the Northern Territory

Judgment category classification:	B
Judgment ID Number:	mil07401
Number of pages:	9

IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Trindle v NT Licensing Commission & Ors [2007] NTSC 30
No. 81 of 2006 (20618391)

BETWEEN:

GLENDA ROSE TRINDLE
Plaintiff

AND:

CHAIRPERSON, NORTHERN TERRITORY LICENSING COMMISSION

MINISTER FOR RACING, GAMING AND LICENSING

and

NORTHERN TERRITORY LIQUOR COMMISSION

Defendants

CORAM: MILDREN J

REASONS FOR JUDGMENT

(Delivered 4 May 2007)

[1] In this matter the plaintiff seeks declarations that the decisions of the Chairperson of the Northern Territory Licensing Commission and of the Northern Territory Liquor Commission which upheld the decision of the Chairperson were not made according to law and are void, and for consequential relief.

[2] In May 2005, the plaintiff was the registered owner of a Mitsubishi Lancer registration number NT 714-813. The plaintiff is an Aboriginal woman who lives and works at the Barunga Aboriginal Community in the Northern Territory. The Barunga Aboriginal Community is a declared restricted alcohol area pursuant to the Liquor Act.

[3] The plaintiff's eldest son, Alan, was the coach of the Barunga football team which was scheduled to play a game in Katherine on 13 May 2005. There were not enough vehicles to transport the team from Barunga to Katherine for the game. The plaintiff therefore agreed to lend her car to her youngest son, David, in order to provide additional transport for members of the team. The plaintiff told her son David that under no circumstances should he bring alcohol back to the Community after the match and that any alcohol in the vehicle had to be left at the "jump up" outside of the Barunga community. This was a common drinking area outside the boundaries of the Barunga restricted area.

[4] On 13 May 2005, the police stopped the vehicle in the Barunga community for the purpose of a random breath test on the driver. Police noticed a carton of 24 Bundaberg Rum and Cola cans on the back seat. The vehicle was then seized by police pursuant to s 95 of the Liquor Act and David Trindle was charged on complaint with bringing liquor into a restricted area contrary to s 75(1)(a) of the Liquor Act; with controlling liquor within a restricted area contrary s 75(1)(b) of the Liquor Act; and with possessing liquor in a restricted area contrary to s 75(1)(b) of the Liquor Act.

[5] David Trindle was subsequently convicted of the charge of possessing liquor and the two other counts were withdrawn.

[6] Section 96(1) of the Liquor Act provides that if a thing is seized under the Act and not released under s 100A and a person is found guilty of an offence in connection with which the thing was seized, the thing seized is forfeited to the Territory.

[7] Section 100A provides as follows:

> "**100A. Release of seized vehicle, &c., pending prosecution**
>
> (1) The owner or other person who, but for its being seized, would be entitled to possession of a vehicle, vessel or aircraft seized under this Part may, before the trial of a person for the alleged offence in connection with which it was seized, apply to the Minister for its release to the owner or that other person, as the case may be.
>
> (2) The Minister may, in his absolute discretion, after considering the recommendations of the Chairperson and being satisfied that the applicant was not knowingly involved in the act constituting the alleged offence in connection with which it was seized and had no reason to suspect that the vehicle, vessel or aircraft might be used in connection with the commission of the alleged offence, release it to the applicant on such conditions relating to its production as evidence at the trial of the alleged offence as the Minister thinks fit."

[8] No application was made to the Minister under s 100A before David Trindle was convicted. Subsequently the solicitors for the plaintiff applied to the

Chairperson for the return of the vehicle to her pursuant to s 101 of the Liquor Act. That section provides:

> "**101. Disposal of forfeited things**
>
> All things forfeited under this Part may be destroyed or otherwise disposed of in such manner as the Chairperson thinks fit, including, with the approval of the Minister where, in the case of a vehicle, vessel or aircraft, the Minister is of the opinion that the person was not knowingly involved in the act constituting the offence as a result of which it was forfeited and had no reason to suspect that it might be used in connection with such an offence, by selling or otherwise returning it to a person who, immediately before the forfeiture, had a legal or equitable interest in the vehicle, vessel or aircraft."

[9] The Chairperson, upon receipt of the plaintiff's solicitor's letter decided to conduct an inquiry in relation to the request and an oral hearing was held on 21 September 2005 at the Katherine Courthouse. At that hearing the plaintiff was represented by legal counsel. On 6 October 2005 the Chairperson published the reasons for his decision arising out of the hearing and rejected the plaintiff's application. The Chairperson directed that the vehicle be disposed of by gifting it to a suitable applicant yet to be determined and further approved by the Chairperson, and if no suitable tender is received (sic) that a destruction order is then to issue.

[10] The plaintiff's solicitors then requested a review of the Chairperson's decision pursuant to s 28 of the Northern Territory Licensing Commission Act. The Commission conducted a review and on 19 May 2006 published its decision which confirmed the decision of the Chairperson.

[11] The contention of the plaintiff is that the Chairperson and the Licensing Commission both fell into error by assuming that it was the Chairperson who had to form the requisite opinion referred to in s 101 of the Liquor Act. It was submitted that it was only the Minister who could form that opinion. Counsel for the plaintiff submitted that on the true construction of s 101 it was not up to the Chairperson to decide whether or not the plaintiff was knowingly involved in the act constituting the offence, etc but the Minister and that accordingly the plaintiff's letter addressed to the Chairperson should have been referred to the Minister. It is common ground that the Minister has not made a decision in relation to this matter.

[12] In my opinion, the plaintiff's contention is not supported either by the language of s 101 nor by the history of the legislation.

[13] Prior to 1988, s 101 provided as follows:

> "**101. Disposal of forfeited things**
>
> All things forfeited under this part may be destroyed or otherwise disposed of in such manner as the Chairperson thinks fit."

[14] At that time s 101A had not been inserted into the Act.

[15] In 1983, police stopped a motor vehicle on a road east of Hermannsburg being driven by one Gallagher which contained a number of passengers one of whom had two flagons of wine and a partly consumed can of beer between his legs. Another passenger had a partly consumed can of beer on

the seat beside him from which he admitted to police he had drunk. Both men were arrested and charged with consuming and being in control of liquor in a restricted area without a permit and were subsequently convicted by the Court of Summary Jurisdiction of charges of being in control of the liquor. When they were arrested, the motor vehicle in which they were passengers was seized by police pursuant to s 95 of the Act. At that time the vehicle was the property of one Frank Djana. Mr Djana claimed that the vehicle was being driven without his permission. An application was made to this Court for a *rule nisi* for the issue of a writ of certiorari to remove into the Court the records and decisions of the Chairperson of the Liquor Commission to be quashed. The Court rejected an argument that the Chairperson had power under s 101 to order that the vehicle be returned to Mr Djana. On appeal to the Federal Court of Australia, Toohey and Morling JJ held that s 101 gave to the Chairperson no more than an administrative function of determining the manner in which property which belongs to the Territory should be disposed of and that the section did not give him the power to negate a forfeiture brought about by the operation of sub-section (1) of s 96 because that required an exercise of the prerogative power of the Crown pursuant to s 31 of the Northern Territory (Self-Government) Act 1978. McGregor J was of a similar opinion.

[16] That decision led to the amendments being made to the Liquor Act in 1988 by Act No 62 of 1988, s 4 and s 5, which introduced s 100A and s 101 substantially in their present form.

[17] In the Minister's second reading speech relating to the amending 1988 Act, the Minister observed that the existing provisions appear to impose penalties on innocent parties and the amendment was made to:

> "…limit hardship on any innocent party by returning the vehicle, vessel or aircraft to the owner, pending trial… An amendment in the form of a new section 100A will allow the minister responsible for the Racing, Gaming and Liquor Commission to consider applications for the release of the seized vehicle, vessel or aircraft prior to a trial. The government is firm in its commitment to this legislation and is prepared to place the onus fairly and squarely on the shoulders of the responsible minister.
>
> The final amendment sought relates to section 101. Under current legislation, once the vehicle is forfeited, it becomes the property of the Northern Territory government and can be disposed of only by public auction, tender or some similar method. There needs to be a compatible amendment after conviction to protect innocent parties who may not have had the opportunity to seek the return of their vehicle prior to a trial. These occasions may be few and far between but it is an option that must realistically remain open if the amendments sought are to accomplish what they set out to do, and that is to protect any innocent owner or lessor of the vehicle, vessel, aircraft seized under the Liquor Act." (Hansard Debates, 13 October 1988 at p 4568)

[18] Counsel for the plaintiff relied upon the second reading speech in support of the argument that the Chairperson ought to have referred the plaintiff's letter to the Minister for his decision rather than deciding the question for himself.

[19] In *Wulaign Association Incorporated v The Minister for Racing and Gaming* (1991) 1 NTLR 118, the Court of Appeal dealt with a case where the Minister had refused an application by the owner of a vehicle made under s 100A without affording to the applicant the opportunity to be heard. The

Court of Appeal held that the Minister's decision was void, but nevertheless because the vehicle had been forfeited by virtue of the fact that the person in charge of the vehicle had subsequently been convicted and the vehicle had therefore been forfeited under s 96(1) of the Act, no relief could be afforded to the owner, the owner not having exercised any rights under s 101 at that stage. At pp 124-125 Kearney J considered the scheme of the Act and, in relation to s 101, at 125 said:

> "Once an item becomes a forfeited item the chairman may dispose of it at his discretion: s 101. Where the forfeited item is a vehicle, vessel or aircraft, the chairman may choose to return it to its previous owner (by selling it to him or otherwise), provided the minister approves and considers that the owner was not knowingly involved in the offence and had no reason to suspect that the vehicle, vessel or aircraft might be used in connection with the offence: s 101."

[20] In *Ninnal v Minister for Racing, Gaming and Licensing & Anor* (2001) 162 FLR 330 Martin (BF) CJ held that the approval of the Minister need only obtained in relation to an application under s 101 of the Liquor Act where the Chairperson has come to a decision that the vehicle should be sold or otherwise returned to the owner. His Honour said at p 332:

> "Under s 101 it is only the chairperson who has the power to destroy or otherwise dispose of a forfeited vehicle, and that, as he or she thinks fit. In my opinion it is plain that the decision to sell or otherwise return a forfeited vehicle to the owner after it has been forfeited falls within the discretion of the chairperson and can only be made by the chairperson. The implementation of the decision, however, is conditioned upon the chairperson first obtaining the approval of the minister. The ministerial approval is conditioned upon the minister forming the requisite opinions going to the state of mind of the owner."

[21] In this case the approach of the Chairperson and of the Commission was after a hearing to decide whether or not the plaintiff was not knowingly involved in the act constituting the offence as a result of which it was forfeited and had no reason to suspect that it might be used in connection with such an offence. Although strictly speaking that is a question for the Minister, it is a legitimate consideration for the Chairperson to take into account in exercising his discretion. If he were to be of the opinion that the plaintiff was not knowingly involved and had no reason to suspect that it might be used in connection with the relevant offence that is a matter which might legitimately incline him to exercise his absolute discretion in favour of the return of the vehicle. Even then the Minister's opinion would also have to be obtained and the Minister would have to come to the same conclusion.

[22] I consider that the interpretation given to s 101 by Kearney J in *Wulaign* and by Martin (BF) CJ in *Ninnal* is plainly correct.

[23] In the result the application must be refused and the originating motion dismissed with costs.