

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

T MMARK Industries, LLC, d/b/a T MMARK
Liquors,

Petitioner,

vs.

South Carolina Department of Revenue,

Respondent,

and

Grace Covenant Tabernacle,

Intervenor.

Docket No. 15-AP-12007-CC

RECEIVED

SEP 28 2015

SC Court of Appeals

FINAL ORDER AND DECISION

APPEARANCES: For the Petitioner: Richard H. Wallace, Esquire
and Bobby Kneece, Esquire
For the Respondent: Justine M. Tate, Esquire
and Sean Ryan, Esquire
For the Protestants: *Pro Se*
For the Intervenor: Robert Thomas, Esquire

STATEMENT OF THE CASE

This matter is before the Administrative Law Court (ALC or Court) for a final order and decision following a contested case hearing pursuant to S.C. Code Ann. §§ 1-23-310 *et seq.* (2005 and Supp. 2014), S.C. Code Ann. § 1-23-600 (Supp. 2014), and S.C. Code Ann. § 61-2-260 (Supp. 2014). The Petitioner, T MMARK Industries, LLC, d/b/a T MMARK Liquors (Petitioner), applied for a renewal of a retail liquor license pursuant to S.C. Code Ann. §§ 61-6-100 *et seq.* (2009 and Supp. 2014), which was denied by the South Carolina Department of Revenue (Department) due to the receipt of timely filed public protests. Eighteen individuals, including Gerald W. Hughes, pastor of Grace Covenant Tabernacle (Grace), filed written protests to Petitioner's application.¹ The Court permitted Grace to intervene in this matter pursuant to ALC Rule 20.

¹ Four Protestants did not appear at the hearing. Their protests are deemed invalid. See S.C. Code Ann. § 61-6-185(C) (Supp. 2014).

FILED

March 25, 2015

SC ADMIN. LAW COURT

After notice of the time, date, place and subject matter of the hearing was timely given to all the parties and the Protestants, the Court held a hearing on this matter on March 2, 2015. All of the parties and the majority of the Protestants appeared at the hearing. After carefully weighing all of the evidence, the Court finds that the Petitioner's application for renewal of a retail liquor license should be granted.

FINDINGS OF FACT

Having observed the witnesses at the hearing and closely passed upon their credibility, and taking into consideration the burden of persuasion by the parties, the court makes the following findings of fact by a preponderance of the evidence:

At the time the Petitioner filed for a renewed liquor license for the store located at 409 Glowworm Road, Swansea, South Carolina, 29160, the Department found that the Petitioner was in compliance with the relevant South Carolina statutes and regulations. The renewal of the license was denied pursuant to S.C. Code Ann. § 61-6-185 based upon the protests filed by the Protestants. The Department issued the original license to the Petitioner in the Spring of 2014. On October 31, 2014, the Department received a renewal application for a retail liquor license from the Petitioner. Between August 25, 2014 and October 31, 2014, the Department received valid public protests from eighteen individuals. On December 9, 2014, the Department determined that the Petitioner met all of the statutory requirements for the license to be renewed, but the timely filed public protests required the matter to be put before this Court.

Patricia Kneece is the sole owner of the business T MMARK Industries, LLC, d/b/a T MMARK Liquors seeking a renewed retail liquor license. She is over the age of twenty-one. She was a legal resident of South Carolina for at least thirty days prior to the date of the application. She has not had a revocation of a beer and wine permit, or liquor-by-the-drink license within the past five years. Notice of the application was lawfully posted at the proposed location. Kneece is not involved in the day to day operations of the business. Her daughter and John Greg are responsible for the store's management, but were omitted from the list of principals in the application. The location is not within the municipal limits of the town of Swansea.

Gerald Hughes is the pastor of Grace. The church has been located off of Glowworm Road since its construction in 2008. In May 2014, Hughes was called by Deputy Snuffer from the Lexington County Sherriff's Department. Deputy Snuffer informed Hughes that the

Petitioner was seeking a retail liquor license for the store that was next door to Grace. Deputy Snuffer met Hughes outside of the church and, while sitting in the police car, Hughes filled out a protest form. Deputy Snuffer testified that he took the steps necessary to file the protest with the South Carolina Law Enforcement Division. The Department had no record that this protest was ever filed. I find that Snuffer incorrectly informed Hughes about the process necessary to file a valid protest causing Hughes to miss the opportunity to protest the original liquor license issued to the Petitioner.

William K. Westbury, a registered land surveyor, was hired by Grace to survey and prepare a plat of the intersection of Glowworm Road and Saylor Culler Road., showing both the church and the liquor store location. Westbury measured the distance that a pedestrian would take to the liquor store from the gate normally used to enter Grace. He used the shortest route of ordinary pedestrian travel, which had three legs: 28 feet from Grace's gate to the shoulder of the road; 370.9 feet down the shoulder of the road; and 88.82 feet from the shoulder, around the sign, to the liquor store entrance. The distance he measured totaled 487.72 feet.

The Department's complete file was entered into evidence. The file included a drawing of the area and buildings in question. The Petitioner's store and Grace were identified. The drawing, which the Petitioner and the Department stated was made by a South Carolina Law Enforcement Division (SLED) agent. The drawing shows a measurement from the front door of the store to the church, which measures 512 feet. The measured path illustrates a path straight to the center line of Glowworm Road at a sharp right angle and then turning into the church. Kneece testified that she is the one who made the measurement depicted in the SLED drawing. The drawing was dated November 24, 2014, which was six months after the Department first licensed Petitioner's store and a month after Petitioner filed an application for license renewal. Therefore, the Court finds that the Department issued Petitioner's original license without any evidence demonstrating the proposed location was an appropriate distance from the church.

The path the SLED drawing depicts does not illustrate the shortest route of ordinary pedestrian travel. Therefore, the Court finds that the distance between the location and the church is the path measured by Westbury, 487.72 feet.

James Timothy Cross testified on behalf of the Protestants, the majority of whom are members of Grace. Cross is a member of the church and testified to various concerns of the proposed location. He expressed general fears regarding harm that the consumption of alcohol

brings to individuals and families. Cross went on to testify about the church's ministry to alcoholics and that the store's location directly opposed their efforts. In particular, the church is concerned about the billboard advertising moonshine with a large arrow pointing down at the church.

CONCLUSIONS OF LAW

Based upon the foregoing findings of fact, the court concludes the following as a matter of law:

Jurisdiction over this case is vested with the South Carolina Administrative Law Court pursuant to S.C. Code Ann. §§ 1-23-310 et seq., § 1-23-600, and § 61-2-260. “[T]he issuance or granting of a license to sell beer or alcoholic beverages rests in the sound discretion of the body or official to whom the duty of issuing it is committed[.]” Palmer v. S.C. Alcoholic Beverage Control Comm’n, 282 S.C. 246, 248, 317 S.E.2d 476, 477 (Ct. App. 1984); see also Wall v. S.C. Alcoholic Beverage Control Comm’n, 269 S.C. 13, 235 S.E.2d 806 (1977). The weight and credibility assigned to evidence presented at the hearing of a matter is within the province of the trier of fact. See S.C. Cable Television Ass’n v. S. Bell Tel. & Tel. Co., 308 S.C. 216, 222, 417 S.E.2d 586, 589 (1992). Furthermore, a trial judge who observes a witness is in the best position to judge the witness's demeanor and veracity and to evaluate the credibility of his testimony. See e.g. Woodall v. Woodall, 322 S.C. 7, 10, 471 S.E.2d 154, 157 (1996); Wallace v. Milliken & Co., 300 S.C. 553, 556, 389 S.E.2d 448, 450 (Ct. App. 1990).

Under S.C. Code Ann. § 61-6-120 (Supp. 2014), the Department cannot grant a retail liquor license for a location outside a municipality that is within five hundred feet of a church. The statute lays out how the distance is to be calculated and gives a definition for a church. Grace and the Protestants argue that this statute prohibits the Department from renewing the Petitioner's retail liquor license. However, the statute goes on to say that this “restriction[] does not apply to the renewal of licenses.” Id. When asked to interpret the meaning of a statute, the Court's task is solely that of seeking to effectuate the legislature's intent. Laird v. Nationwide Ins. Co., 243 S.C. 388, 134 S.E.2d 206 (1964). In deciding legislative intent, the first and most basic inquiry is whether the language of the statute is plain and unambiguous and whether the statute conveys a clear and definite meaning. If the answer is yes, no occasion exists for employing rules of statutory interpretation, and the court has no right to look for or impose another meaning. Paschal v. State Election Comm'n, 317 S.C. 434, 454 S.E.2d 890 (1995). The

plain meaning of S.C. Code Ann. § 61-6-120 is that the five hundred feet restriction cannot be challenged at the time of a license renewal. By not effectively filing their protests when the Department initially granted the Petitioner's retail liquor license, Grace and the Protestants lost their opportunity to raise this particular objection to the store's location.

The Intervenor argued that the Department improperly granted the Petitioner's initial retail liquor license due to mutual mistake and, therefore, the Petitioner's original license should be reformed. The original license was improperly granted by the Department for this location in contravention of § 61-6-120 because the location is less than 500 feet from Grace church. However, the doctrine of mutual mistake cannot be applied to invalidate that license. In general, "mutual mistake invalidates the formation of a contract, and provides a means to avoid it...where the mistake is common to both parties and by reason of the mistake each has done what neither intended." 30 S.C. Jur. Contracts § 27. The Intervenor's argument does not prevail in this case, because there is not a contractual relationship at issue. Mutual mistake is a legal doctrine that specifically applies in contract disputes. There is no contractual relationship between any of the parties in this case and, thus, the doctrine of mutual mistake does not apply. The Intervenor's argument that mutual mistake provides a basis for reforming the Petitioner's license is without merit. Despite the error in granting the original license, this Court finds no basis to void or reopen that license, but must consider only the merit of the renewal application at issue here.

The Court finds that the Protestants' concerns regarding alcoholism in the community, though sincere, are simply too general and speculative to warrant denial of the license sought. The Court observes that the instant application is for a retail liquor store and, as such, no on-premises consumption is permitted. Accordingly, the risk associated with nightclub-type establishments is appreciably lessened. The Court, therefore, finds that the Protestants' fears are too tenuous to demonstrate an adverse impact on the surrounding community.

ORDER

Based upon the Findings of Fact and Conclusions of Law stated above, the Court finds that the issues raised by the Protestants and Intervenor do not bar the renewal of the retail liquor license sought by Petitioner.

IT IS, THEREFORE, ORDERED that this case is **REMANDED** to the Department to investigate the two principals omitted from the application, namely the Petitioner's daughter and John Greg.

IS IS FURTHER ORDERED that the Department may grant or deny the license based upon the results of that investigation.

IT IS ALSO ORDERED that any appeal of that decision must be made by a new notice of contested case hearing and is limited to issues raised by the Department's decision upon remand.

AND IT IS SO ORDERED.



Deborah Brooks Durden
Administrative Law Judge

March 25, 2015
Columbia, South Carolina