

No lease required: entitlement to occupy may be enough to licence a premises in Ireland

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A significant decision was handed down by Judge Meehan in the High Court on 8 July 2020 *In the Matter of Section 52(1) of the Courts Supplemental Provisions Act, 1961, between Galfer Filling Station Limited and Superintendent Patrick O'Callaghan.*

In this consultative case, the Court was asked to consider two questions in relation to a District Court application to revive wine, beer and spirit off licences attaching to a Spar premises in County Offaly.

In the normal course of applying for any kind of liquor licence, the applicant needs to prove that they are the holder of the lowest estate or tenancy of the premises - i.e. that the applicant has a sufficient interest in the property either by way of a lease or deed of conveyance.

To prove this, the applicant needs to show the Court evidence of its title to the premises in order for the licence to be granted.

In this case, the applicant was not the freehold owner or a tenant under a lease in respect of the premises, but occupied the premises under a franchise agreement. The High Court was therefore asked to consider the following questions:

- Is the franchise agreement sufficient estate or interest in the premises to allow the District Judge to grant the application to revive the licences in the name of the franchisee/applicant; and
- Is lawful occupation as set out in the franchise agreement sufficient to entitle the franchisee/applicant to apply for a licence in its sole name.

After considering the terms of the franchise agreement, Judge Meehan answered both of the above questions in the affirmative, stating in his judgment that a number of the terms of the franchise agreement, including a term which entitled the applicant to occupy the property for a period of

ten years, pointed to the applicant having “considerably more than just a bare licence”.

The Court concluded that even though the applicant may not have been stated to be a tenant, it did have a clear entitlement to occupy the premises. The Court was therefore satisfied that the applicant had a sufficient enough interest in the premises to allow the District Court Judge to grant the licence.

This decision will be very positively received by numerous similar retailers occupying premises under franchise agreements, that have been precluded from applying to licence their premises up to now. Combined with the recent rising trend for off sales rather than on sales, we are likely to see an increase in off sales applications in the courts in the coming months.

Ogier Leman have extensive experience advising on liquor licensing generally. If you have any queries please contact Elaine White at elaine.white@ogier.com

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