

LEGAL NOTICES, cont.

the creditors of Lauretta E. King executrix of the last will and testament of Russell O. Nye late of St. Thomas Township, Franklin County, Pennsylvania, deceased.

SLUTZKER First and final account, statement, of proposed distribution and notice to the creditors of Ida M. Snider and the Chambersburg Trust Company, executors of the estate of Henry Slutzker late of the Borough of Chambersburg, Franklin County, Pennsylvania, deceased.

SMITH First and final account, statement of proposed distribution and notice to the creditors of June Lucille Smith, executrix of the estate of Lupha Inez Smith late of Washington Township, Franklin County, Pennsylvania, deceased.

Glenn E. Shadle
Clerk of Orphans' Court of
Franklin County, Pa.

6-17, 6-24, 7-1

HILLTOP LIQUOR LICENSE APPEAL, C.P., Franklin County Branch, Misc. Docket Vol. Y, Pg. 241

Liquor License - Restaurant - Resort Area Exception

1. The Liquor Control Board has the discretion to issue additional licenses in an area whose quota is filled when that area is a resort area and the necessity for additional licenses is shown.
2. To determine if a resort area exists, the Court should consider specific evidence relating to the number and size of recreational facilities in and around the municipality.
3. The Court needs not consider only the township in which the restaurant is located, but should consider all of the surrounding geographical area, especially in today's mobile society.
4. In considering the necessity for another license, the Court must determine whether the applicant can add a service where and when the present licensees cannot.
5. The Court may not set aside a decision of the Liquor Control Board absent a clear abuse of discretion.

Guy J. DePasquale, Esquire, Attorney for Pennsylvania Liquor Control Board

Mark H. Pettigrew, Esquire, Attorney for License Applicant

OPINION AND ORDER

EPPINGER, P.J., March 4, 1983:

Appellants, Ok Cha Nam and Moonja McKenna, owners of Hilltop Inn, a restaurant specializing in Oriental and Italian food, located in Washington Township, Franklin County, Pennsylvania, filed an application for a new restaurant liquor license with the Pennsylvania Liquor Control Board. Washington Township has a quota of four retail licenses and the quota is filled. The Board has the discretion to issue additional licenses in resort areas if the necessity for additional licenses is shown. 47 P.S. Sec. 4-461(b). On December 3, 1982, the Board refused appellant's application finding that the Hilltop Inn is not located in a resort area and that no necessity for an additional license exists.

The resort exception was intended to render equitable distribution of such licenses in areas where, during certain seasons, the population is increased to such an extent that the

usual number of licenses is not adequate to serve the needs of the people and that the area's facilities are used primarily by temporary transients or tourists and not by area residents. *Appeal of Andes Grove Rod and Gun Club*, 201 Pa. Super. 21, 190 A.2d 355 (1963). *In re Brandywine Valley Inn, Inc.*, 53 Pa. Cmwlth., 203, 417 A.2d 823 (1980). Mr. David Bingham, an enforcement officer for the Liquor Control Board testified that he had contacted the Executive Director of the Waynesboro Chamber of Commerce, his Administrative Assistant, the Washington Township Supervisor, and the Washington Township Police Department, each of whom stated that they knew of no attraction or seasonal influx of people into the township. Mr. Bingham also stated that he contacted each of the current holders of the four liquor licenses in Washington Township, each of whom stated that they could handle the demand for alcoholic beverages at all times throughout the year. (Resp. Exh. 3, P. 6-7)

Lauren Kreager, park ranger at the Gettysburg National Military Park, whose job includes the compilation of monthly statistics, testified that well over a million people had visited the park in each of 1980 and 1981, the summer being the busiest season and most of the visitors being transients. (Resp. Exh. 3, p. 24) Richard Whitney, former assistant manager of Ski Liberty, testified that over 200,000 people visited Ski Liberty in each of 1981 and 1982, winter being the busiest season. (Resp. Exh. 3, p. 27)

To determine if a resort area exists the Court should consider specific evidence relating to the number and size of recreational facilities in and around the municipality, their proximity to applicant's place of business, the season during which the facilities are used, and the number of persons visiting them. *Aiello Liquor License Case*, Pa. Cmwlth., 399 A.2d. 154 (1979).

Mr. Luther Martin, a lifetime resident of the area, testified that in the general area of Hilltop Inn there is Gettysburg National Park (14 miles), Catoclin Park (10 miles), Cunningham Falls (11 miles), Ski Liberty (6 miles), Mischeaux State Forest (1 mile), Hand Glider High Rock (4 miles), Penn Mar (2 miles), Mother Seton (7 miles) and various campsites including Camp Eagle, Camp Comet, Camp Louise, Gettysburg Campground, and Granite Hill Campground. (Resp. Exh. 3, p. 13-14 and 16-17)

The Commonwealth tried to defeat this evidence by showing that these attractions are not located in Washington Township proper. One need not consider only the township in which the

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restaurant is located but should consider all of the surrounding geographical area, especially in today's mobile society. *Janes v. Pa. Liquor Control Bd.*, 43 Pa. Cmwlth. 165, 402 A.2d 1093 (1979). *In re Brandywine Valley Inn, Inc.*, 53 Pa. Cmwlth. 203, 417 A.2d 823 (1980).

In addition to showing that the restaurant is in a resort area, the applicant must also show that there was a necessity for the additional license. *Com., Pa. Liquor Control Bd. v. Parker*, Pa. Cmwlth. , 425 A.2d 853 (1981). Factors to be considered on the issue of necessity are the need of persons who will use the facility and the number and types of establishments already present in the area. The Court should consider whether the clientele to be served is different from that served by the existing licensees. The question to be answered is whether the applicant can add a service where and when the present licensees cannot. *Brandywine*, supra. Luther Martin testified that the four licenses in Washington Township are currently held by the Unique Bar and Grill, Wisherd's Tavern, The Hut, and the Sunshine Trail, all of which are mainly bars and serve only sandwiches, if any food at all. They are not a family type restaurant as is the Hilltop Inn. (Resp. Exh. 3, p. 17-20). Ms. McKenna testified that the Hilltop Inn is a family type restaurant serving sit-down meals and is open until 8:00 P.M. on the weekday and 9:00 P.M. on the weekend. If granted a license, a bar would not be set up and drinks would be served with the meals. (Resp. Exh. 3, p. 10-11). Clearly, there is a need not served by the present licensees.

The Liquor Control Board has wide discretion regarding applications for liquor licenses. *Parks v. Com. Liquor Control Bd.*, 44 Pa. Cmwlth. 87, 403 A.2d 628 (1979). The Court may not substitute its discretion for that of the Board and will not set aside the Board's action absent clear abuse of discretion. Even where the Board makes erroneous finding, so long as grounds remain to support the Board's decision, the Court will not set aside the decision. *Parker*, supra. In order to set aside the Board's decision, the Court must make specific findings of fact. *Andes Grove*, supra.

The Court has made the specific findings of fact above and holds that the Board clearly did abuse its discretion in denying the application of the Hilltop Inn. There are no grounds that remain to support the Board's decision and it will be set aside.

ORDER OF COURT

March 4, 1983, the appeal of the applicant's from the denial of the Pennsylvania Liquor Control Board to grant them a liquor

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license is sustained, and the Board is directed to grant such license when all the requirements save the limits on number of licenses have been met.

ROBINSON V. TIMMONS, C.P. Franklin County Branch, A.D.
1983 - 5

Action to Quiet Title - Motion For More Specific Pleading - Possession

1. Where plaintiffs have set forth their chain of title and allege they are in possession of real estate, defendants are sufficiently advised of the nature of plaintiff's claim.

George E. Wenger, Jr., Esquire, Counsel for Plaintiffs

Deborah K. Hoff, Esquire, Counsel for Defendants

OPINION AND ORDER

KELLER, J., June 16, 1983:

This action was commenced on January 7, 1983, with plaintiffs filing of a complaint to quiet title to certain real estate situated in Montgomery Township, Franklin County, Pennsylvania. Defendants filed a Preliminary Objection in the nature of a Motion for More Specific Pleading on March 14, 1983. The objection was listed by plaintiffs for argument which was heard by this Court on May 5, 1983. The matter is now ripe for disposition.

Plaintiffs' Complaint is in the form of an Action to Quiet Title. The allegations contained therein set forth the names and addresses of all parties, the chain of title ending with each parties' ownership of a particular tract of real estate, the fact that plaintiffs are in possession of their real estate, the encroachment of defendants' land upon that of plaintiffs, and the request that defendants be compelled to commence an action of ejectment. Defendants' objection is to paragraph seven of the complaint which simply states, "The Plaintiffs are in possession of their real estate." The objection is raised due to plaintiffs' failure to set forth the manner in which plaintiffs allegedly assumed possession of the land and the nature of their occupancy and use of the land in question.

The authority cited by defendants in support of their motion for a more specific pleading is the case of *Goodhart v. Goodhart*, 6 Cumb. L.J. 123 (1956). The complaint in that action to quiet title was in the nature of a rule on the defendant to bring an action in ejectment. It consisted of four paragraphs giving the names and addresses of the parties, a description of the land in question, and an adverse possession claim. The Court, in discussing the inadequacy of the complaint, stated that the nature and extent of ownership by both parties should be set forth. Since the ultimate question concerned a claim of adverse ownership, the Court also said that the manner in which plaintiff assumed possession of the land and the nature of the possession over the years should also be alleged in the complaint.

The allegations set forth by plaintiffs in the instant case are certainly more detailed than those contained in the complaint in the *Goodhart* case. Here plaintiffs have quite clearly set forth the chain of title for all parties involved and identified the deed records verifying their claims. Furthermore, plaintiffs have not made any mention of adverse ownership. The comments made by the *Goodhart* court concerning the need for specificity in an adverse possession claim are therefore inapplicable to the present case.

In the case of *Detwiller v. Geyer*, 39 Northampton Co. Rep. 228 (1970), the plaintiff brought an action to quiet title and claimed ownership of the land by virtue of a chain of title set forth in an exhibit attached to the complaint. There was no averment that either party was in actual possession. Nonetheless, the Court found that the claim of ownership was sufficient to find that plaintiff was in possession of the land for purposes of passing on his right to bring an action to quiet title.

In the present case, plaintiffs have not only set forth their chain of title which they feel entitled them to possession but they have also included an allegation that they are in possession of their real estate. This is more than sufficient to advise defendants of the nature of their claim. Defendant's preliminary objection will be denied.

ORDER OF COURT

NOW, this 16th day of June, 1983, the defendants' Preliminary Objection in the nature of a motion for a more specific pleading is denied. The defendant shall file a responsive pleading