



HIGH COURT OF AUSTRALIA

17 June 2015

GNYCH & ANOR v POLISH CLUB LIMITED

[2015] HCA 23

Today the High Court unanimously allowed an appeal from a decision of the Court of Appeal of the Supreme Court of New South Wales. The High Court held that a lease granted in contravention of s 92(1)(d) of the *Liquor Act 2007* (NSW) ("the Liquor Act") was not void and unenforceable.

In 2012, the respondent leased part of its licensed premises to the appellants for the running of a restaurant. Section 92(1)(d) of the Liquor Act provides that a licensee must not lease certain parts of a licensed premises without the approval of the Independent Liquor and Gaming Authority ("the Authority"). The respondent did not obtain the approval of the Authority for the lease to the appellants and thereby contravened s 92(1)(d) of the Liquor Act.

Subsequently, relations between the parties deteriorated and, in 2013, the appellants were excluded from the premises. The appellants commenced proceedings in the Supreme Court of New South Wales seeking a declaration that they had a "retail shop lease", which has a minimum term of five years, under the *Retail Leases Act 1994* (NSW). The appellants also sought an injunction restraining the respondent from interfering with their possession of the leased premises. The respondent contended that the lease was unenforceable, having been granted in breach of the Liquor Act. At trial, the Supreme Court held that, although there had been a breach of s 92(1)(d), the lease was not unenforceable. The respondent's appeal to the Court of Appeal was allowed on the basis that a lease granted in breach of s 92(1)(d) conflicts with the purpose and policy of the Liquor Act, in particular the responsibility of the licensee to supervise the conduct of the business on the licensed premises. By grant of special leave, the appellants appealed to the High Court.

The High Court allowed the appeal, holding that on the proper construction of the Liquor Act the respondent's breach of s 92(1)(d) did not automatically render the lease void and unenforceable.

- *This statement is not intended to be a substitute for the reasons of the High Court or to be used in any later consideration of the Court's reasons.*