

Drunk and Disorderly – A Key Risk for Licensed Premises

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**CASE NOTE: *Spedding v Nobles; Spedding v McNally* [2007] NSWCA 29
New South Wales Court of Appeal – Beazley, McColl and Basten JJA**

FACTS

In October 1998 three women went to the Bald Faced Stag Hotel on Parramatta Road near Leichhardt. A man who was described as being of Lebanese appearance was outside the hotel on his mobile phone. One of the women made an inflammatory comment to the man and he subsequently hit one of them in the face and kicked her in the stomach before stealing her watch and going inside the hotel.

The three women entered the hotel and reported the incident to the barman who asked them to point out the perpetrator but then said he could not do anything about it because there was not enough staff. The perpetrator was in the hotel with a large group of 19 or 20 year olds of the same Lebanese appearance. The inference drawn from the evidence at the hearing was that the group was considered to be a “gang”.

The three women left the hotel briefly and then decided to re-enter in order to retrieve the watch. When they approached the gang two of the women were assaulted again (*at paragraph [31]*). One did not receive lasting injury but the other was hit repeatedly with pool cues and received severe head injuries and internal bowel injuries (*at paragraphs [3] and [6]*).

Two of the women made claims for damages in negligence against the licensee of the hotel. This case was an appeal of an earlier decision of the New South Wales District Court which found the licensee liable in negligence. Interestingly, the women were drunk and had quite a hazy recollection of the night – yet the Court still interpreted the facts to find in their favour against the licensee.

FORESEEABILITY

In this instance, the Court found that it was reasonably foreseeable because the women had told the barman about the first assault and theft (*at paragraphs [12], [15], [17], [23] and [36]*).

DUTY OF CARE

In this instance, the Court found there was a *duty of care to protect patrons from criminal assaults by third parties* on the licensed premises. The Court held that this duty arises from the obligation on the licensee to exercise control over the premises created by the Liquor Act 1982 (NSW) (*at paragraph [50]*).

The Court seemed to suggest that, as the bar was understaffed, this duty of care might have been discharged by calling police to attend the premises and restore order.

The Court also acknowledged that there was an existing (but slightly different) *duty of care owed by licensees to patrons in relation to the risks of violent behaviour of other patrons* (at paragraph [49]).

AWARD

The Court upheld the District Court Judge's decision that the licensee pay \$430,362.00 to the woman who had suffered serious injury and also ordered the licensee to pay her costs of the appeal.

RECOMMENDATION

As a result of the Court's decision in these proceedings, I would make the following general recommendations:-

1. Ensure adequate staffing at all times (more than one staff member), and particularly on busier nights where patrons tend to become intoxicated;
2. If staff are informed of violence toward a patron they should contact police immediately;
3. If staff anticipate a disturbance, especially violence toward any patron, they should immediately contact a manager who should assess whether it is appropriate to contact police and consider and take action to eliminate the disturbance; and
4. Assess existing insurance policies in light of this new duty of care in relation to criminal assaults.

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