



**Common Law Division
Supreme Court
New South Wales**

Case Name: **PSG Security Group Pty Ltd v Commissioner of Police, NSW Police Force**

Medium Neutral Citation: [2022] NSWSC 964

Hearing Date(s): 18 July 2022

Date of Decision: 19 July 2022

Jurisdiction: Common Law

Before: Ierace J

Decision:

- 1) Leave is granted to the plaintiffs to file the notice of motion.
- 2) Leave to file the summons and supporting affidavit is refused.
- 3) The plaintiffs are to pay the costs of the defendant on the motion.

Catchwords: CIVIL PROCEDURE – Commencement of proceedings – Leave to commence action and file originating documents – Stay of orders refused by NSW Civil and Administrative Tribunal – Whether leave should be granted – No authority cited by plaintiff for orders proposed – Leave refused

Legislation Cited: *Corporations Act 2001* (Cth)
Security Industry Regulation 2016 (NSW), cl 13(1)(b)

Category: Principal judgment

Parties: PSG Security Group Pty Ltd (First Plaintiff)
ERA Security Group Pty Ltd (Second Plaintiff)
Commissioner of Police, NSW Police Force (Defendant)

Representation: Counsel:
J Donnelly; E Vuu (Plaintiffs)
D Birch (Defendant)

Solicitors:
McGirr & Associates (First and Second Plaintiffs)
Commissioner of Police, NSW Police Force
(Defendant)

File Number(s): 2022/210692

JUDGMENT

- 1 The plaintiffs are companies registered under the *Corporations Act 2001* (Cth) that provide security services under the authority of licences, known as Master Security Licences (“the licences”), issued by the Commissioner of the NSW Police Force (“the defendant”) pursuant to the Security Industry Regulation 2016 (NSW) (“the Regulation”). The plaintiffs have the same registered office, and director and secretary, who is Ajay Gulati. On the evening of 18 July 2022, the plaintiffs appeared in the duty list seeking leave to file a notice of motion, in which they sought leave to file a summons, that in turn sought orders restraining the defendant from enforcing a decision that the defendant made on 28 June 2022 to revoke the plaintiffs’ licences (“the defendant’s decisions”), until further order of the Court. Alternatively, the plaintiffs seek a stay of the defendant’s decisions. The notice of motion and summons are supported by an affidavit sworn by Mr Gulati on 7 July 2022. The application was opposed. I granted leave to file the motion and leave was granted to the plaintiffs to file the summons and affidavit for the limited purpose of hearing the application. At the conclusion of the hearing, I refused leave to file the summons and supporting affidavit and reserved my reasons.

- 2 The relevant background is that, on about 12 April 2022, a delegate for the defendant wrote to the first plaintiff to advise that, pursuant to cl 13(1)(b) of the Regulation, consideration was being given to revoking the first plaintiff’s licence (“a show cause notice”). The letter invited the first plaintiff to show cause as to why that should not occur. The concern that prompted the consideration was expressed to be that, contrary to the Regulation, it appeared that “a close associate” of the first plaintiff (its nominee for the security licence and a previous secretary of both plaintiffs), had falsely declared on the licence application form that he had not been concerned in the management of a corporation that was the subject of a winding up, or had an administrator appointed, within three years prior to that application.

- 3 The first plaintiff responded on 22 June 2022. On 28 June 2022, the defendant revoked the licences for both the first and second plaintiff, although the second

plaintiff had not received a show cause notice. The letters of notification explained the reasons for the revocation, which accorded with the concern expressed by the defendant in its letter of 12 April 2022.

- 4 On 6 July 2022, the plaintiffs lodged an application for administrative review of the defendant's decisions in the NSW Civil and Administrative Tribunal ("NCAT") and made an urgent stay application, pending the resolution of the review. The following day the stay application was refused. On 8 July 2022, the defendant undertook to not enforce the decisions, initially until 11 July and then to 5pm on 18 July 2022, to enable the plaintiffs an opportunity to consider their options, hence the timing of the application for urgent relief made to this Court.
- 5 The summons contends that the defendant committed jurisdictional error in applying the Regulation, or constructively failing to exercise her jurisdiction that the Regulation makes available to her, or taking into account "*an irrelevant consideration*", in making the determinations.
- 6 In oral submissions, the plaintiffs identified their immediate concern as the financial loss that would be occasioned by the loss of the licences while the matter was being determined by NCAT, noting that the hearing of the review of the defendant's decisions is set down for 12 and 13 September 2022. Their purpose in seeking to commence proceedings in this Court was to avail themselves of the benefit of a restraining order or stay until the NCAT proceedings were completed, although in due course they may actively seek judicial review.
- 7 The application was opposed on the basis that it constitutes an abuse of process to commence proceedings for that purpose, particularly when an appeal had not been lodged in NCAT against the refusal of the stay, and, in any event, that leave would not be granted to file the summons for the purpose of restraining or staying the orders while the NCAT proceedings were on foot.

8 I concluded that the plaintiffs had not demonstrated that leave should be granted to file the summons and supporting affidavit, other than to facilitate this application being heard in the duty list. By the plaintiffs' own admission, it is not their intention to prosecute their challenge to the defendant's decisions in this jurisdiction, but rather to continue to do so in the NCAT proceedings. That being so, I am unaware of any basis for this Court to grant the urgent relief that is sought. I note that the plaintiffs have not cited any authority for leave to be granted in circumstances when an appeal or judicial review is not to be prosecuted in this Court.

9 Accordingly, I make the following orders:

- (1) Leave is granted to the plaintiffs to file the notice of motion.
- (2) Leave to file the summons and supporting affidavit is refused.
- (3) The plaintiffs are to pay the costs of the defendant on the motion.

I certify that the preceding 9 paragraphs
are a true copy of the reasons for judgment
herein of the Hon Justice Ierace.

Date: 19 July 2022

Associate: 