

No. 1-10-0425

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

FIRST DIVISION
DATE March 28, 2011

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

RICHARD M. DALEY, Mayor of the City)	Appeal from the
of Chicago and Local Liquor Control)	Circuit Court of
Commissioner, and NORMA I. REYES,)	Cook County.
Commissioner, Local Liquor Control)	
Commission of the City of Chicago,)	
)	
Plaintiffs-Appellees,)	No. 09 CH 16293
)	
v.)	
)	
MGDN ENTERPRISE, LTD.,)	
JAMAL BUNNI, President,)	Honorable
)	Sophia H. Hall,
Defendants-Appellees.)	Judge Presiding.

PRESIDING JUSTICE HALL delivered the judgment of the court.
Justices HOFFMAN and LAMPKIN concurred in the judgment.

O R D E R

HELD: Judgment of circuit court affirmed where ruling of License Appeal Commission approving a liquor license for a packaged goods store was clearly erroneous.

In this administrative review proceeding, defendants MGDN Enterprises, Ltd., and Jamal Bunni, appeal from an order of the circuit court of Cook County reversing the ruling of the License Appeal Commission of the City of Chicago (Commission) in favor of defendants' application for a packaged goods liquor license. Defendants contend that the circuit court erred in reversing the ruling of the Commission because the ruling was not against the manifest weight of the evidence or otherwise reversible.

Testimony, maps, and photographs submitted by the parties during the administrative proceedings reveal that in May 2008, defendants applied for a license to operate a packaged goods store at 2353 North Narragansett Avenue in Chicago. The proposed store is on a plot of land situated at the corner of Fullerton and Narragansett Avenues. There are three canopied Citgo gas pumps on the northwest portion of the lot, and a building on the eastern portion which houses a mini-mart associated with the Citgo and the proposed packaged goods store. The building and the gas pumps share two common driveways and a parking lot, and are owned by defendant Jamal Bunni and his wife Samia, who are also the sole officers of both defendant-corporation and the corporation that owns the Citgo franchise.

As proposed, the packaged goods store would occupy the southern half of the building on the lot; the mini-mart, bearing the separate address of 6353 West Fullerton Avenue, would occupy

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the northern half. Further evidence shows that Bunni built a permanent wall to separate the two sides of the building, and that the gas pumps are situated primarily in front of the mini-mart. One gas pump, however, straddles the portion of the building which houses the proposed store.

On August 15, 2008, the Local Liquor Control Commission (LLCC), denied defendants' application for a liquor license because granting it would violate section 4-60-090(a) of the Chicago Municipal Code (Code). This section provides that "[n]o license for the sale of alcoholic liquor shall be issued to any *** corporation for the sale or dispensing at retail of alcoholic liquor on any premises used as a filling station." (added December 9, 1992).

Defendant appealed that ruling to the Commission and an evidentiary hearing was conducted. At that hearing, Alderman Isaac Carothers, in whose ward the subject real estate was located, testified that he approved the use of the site as a packaged goods store and had removed a moratorium on the site that would have prevented its approval. He also acknowledged that he has no power to issue a liquor license.

Bryan Knipper, a senior business consultant in the City's Department of Business Affairs and Licensing, testified that he reviewed defendant's application for a liquor license and recommended that it be denied. His investigation revealed that

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the property contains a singular-standing building with gas pumps in front of the building on the same tract of land with a shared driveway and parking. Knipper further testified that he considered a "premises" for purposes of the Code to be a "location" or a "tract of land with a building on it." For the purposes of his investigation, Knipper relied on the definition of "premises" in the Merriam-Webster dictionary. Knipper concluded that the building in question was "clearly constructed as a filling station," but acknowledged that he had not physically inspected the site and relied on investigative reports in reaching his conclusion.

Jamal testified that he and his wife own the parcel of land and the building in question. He constructed the Citgo gas station, which they converted from a vacant medical building. The portion of the building where the proposed package goods store is to be located has remained vacant since the conversion. On the advice of his alderman and counsel, he erected a wall between the Citgo mini-mart and the proposed store, which at one time had a doorway between them. He also testified that one of the three Citgo gas pumps in front of the building straddles the point that separates the two sides of the building, but the remaining pumps are solely in front of the mini-mart.

The Commission reversed the decision of the LLCC, finding that the prohibition set out in section 4-60-090(a) of the Code

did not apply to these premises. In doing so, the Commission found it relevant that the layout of the building indicates that there are two storefronts, one for the operation of the Citgo station and one for the operation of the package goods store. Bunni built a wall at a cost of \$150,000 to divide the spaces. The Commission also found it relevant that separate corporations own the franchise and the proposed store, and that there are separate leases for each storefront.

Central to the Commission's decision was the definition of "premises." The Commission relied on two definitions provided by Merriam Webster's dictionary, "a tract of land with the buildings thereon," or "a building or part of a building usually with its appurtenances." Based on the "specific evidence produced in this case," the Commission found it appropriate to apply the second definition, and, finding that there are two separate premises in the building, concluded that the premises housing the proposed store is not being used by the filling station.

The LLCC then filed a complaint in the circuit court of Cook County, seeking administrative review of the Commission's decision. At these proceedings, the circuit court noted that the subject location was a single structure, on land which has gasoline pumps and operates as a filling station. The court found that the Commission's decision was clearly erroneous and did not comply with the language and intent of the Code.

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On appeal, defendants contend that the circuit court erred in reversing the decision of the Commission because its finding was not against the manifest weight of the evidence or otherwise reversible.

Under the Administrative Review Law (735 ILCS 5/3-101 et seq. (West 2008)), this court reviews the administrative decision, rather than that of the circuit court. *Daley v. Lakeview Billiard Café*, 373 Ill. App. 3d 377, 381 (2007). In this case, the Commission found that the prohibition set forth in §4-60-090(c) of the Code did not apply to these premises, or impede the granting of a liquor license.

Whether defendant may be granted a license to sell packaged goods at the proposed store is a question clearly controlled by statute, in this case §4-60-090(a) of the Municipal Code, which in relevant part reads "no license shall be issued to any *** corporation for the sale or dispensing at retail of alcoholic liquor on any premises used as a filling station." Our analysis depends on the definition of "premises" as it relates to §4-60-090(a), which presents a question of statutory interpretation, subject to *de novo* review. *Maksym v. Board of Election Commissioners of the City of Chicago*, No. 111773, slip op. at 12 (January 27, 2011).

A reviewing court's primary goal when interpreting the language of a statute is to ascertain and give effect to the

intent of the legislature. *Devoney v. Retirement Board of the Policemen's Annuity & Benefit Fund*, 199 Ill. 2d 414, 424-25 (2002). Where the statutory language is clear and unambiguous, we will enforce it as written and not read into it exceptions, conditions, or limitations that the legislature did not express. *In re Christopher K.*, 217 Ill. 2d 348, 364 (2005). Words used in the Municipal Code, as in any other statute, are to be given their plain and commonly understood meaning in the absence of an indication of legislative intent to the contrary. *In re Petition to Annex Certain Territory to Village of North Barrington*, 144 Ill. 2d 353, 362 (1991).

We initially observe that the Code provides various definitions of "premises." Section 4-60-010 defines premises as the "place of business or other completely enclosed location particularly described in a liquor license where alcoholic liquor is stored, displayed, offered for sale ***." Chicago Municipal Code §4-60-010 (amended June 9, 2008). In other sections, it is defined as "a lot or a part of a lot, a building or a part of a building, or any parcel or tract of land ***" (Chicago Municipal Code §11-12-010 (added June 27, 1990)), and "any building, structure, enclosure, place, or premises ***" (Chicago Municipal Code §5-4-090 (added June 27, 1990)). It is thus apparent that there is no clear direction from the legislature as to the appropriate definition in this instance, and, we will, therefore,

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ascribe the plain and commonly understood meaning to that word. *North Barrington*, 144 Ill. 2d at 362.

In determining whether the prohibition in §4-60-090(a) of the Code applied to the "premises" at issue, the Commission considered the configuration of the land, the building, and the corporate structure that had been created by the owners. The Commission found it relevant that defendant established separate corporations and leases for the Citgo and the proposed store. However, defendant Bunni and his wife are the sole shareholders and officers of those corporations, and also own the subject land and building. Therefore, the proposed liquor store, although owned by a distinct corporation from the Citgo, would be effectively owned and operated by the same individuals who own the Citgo, the land, and the building. Thus, we do not believe the establishment of the separate corporate entities is dispositive of the question.

The Commission also found it relevant that defendant Bunni paid \$150,000 to separate the two sides of the building. Although this work divided the building in such a way that entry could be made through exterior doors, we are not convinced that this division automatically creates a separate premises under the Code.

In addition, we are not persuaded that because the plot of land at the corner of Narragansett and Fullerton Avenues bears

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two distinct addresses and has two driveways, that a separate premises has been established for the proposed store. Many buildings in Chicago border two streets and have two distinct addresses marking separate entrances to the building, but the location comprises one "premises." Here, as well, there are two addresses for this property; however, the two driveways equally service the building and the gas pumps.

Applying a plain and commonly understood meaning of "premises" to the facts in this case, we conclude that the subject property, *i.e.* a plot of land bordering two streets on which there is a building, a filling station, and appurtenances, comprise a single entity or "premises." As such, the granting of a liquor license to the proposed store on one side of the building would violate section §4-60-090(a) of the Code.

Accordingly, we conclude that the Commission's decision to the contrary was clearly erroneous, and we affirm the decision of the circuit court of Cook County.

Affirmed.