

Cooney v Municipality of Ku-ring-gai [1963] HCA 47

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Facts

- Cooney lived within the Ku-Ring-Gai Council area and rented out her home for parties and receptions.
- The Council alleged this was against the relevant Act, as it was a residential area and trade was not permitted.
- The relevant Act gave the Council power to declare areas "residential" and attach exceptions to allow certain trades. So as to allow for individual businesses, the council had taken to declare single homes and blocks as "residential areas" to allow trades.
- Cooney stated therefore that their declarations regarding "residential" areas were invalid as they were for an improper purpose.
- Cooney also argued that her business was not a "trade".
- The Council disagreed and sought an injunction restraining her from trading.

Issues

1. Were the Council's declarations of "residential areas" invalid?
2. Was Cooney's business a "trade"?
3. Could the Court order an injunction?

Held

- In regards to (1) -- by majority, the Court held that the Council did have the power to declare even single blocks as "residential areas". They held it was not beyond their power to do so.
- In regards to (2) -- by majority, the Court held that Cooney's business was a "trade" and was therefore in breach of the residential area restrictions.
- In regards to (3) -- by the majority, the Court held that they could order an injunction. In doing so, they overruled an earlier precedent in *Attorney-General v Gill*, which stated that an injunction could only be ordered in respect of "rights regarded in equity as proprietary"
- The Court held that there was no need for this narrow construction and the fact that the injunction restrains someone from doing something that could harm the general public.
- In this case, it could affect the whole neighbourhood if Cooney kept illegally trading. Therefore they granted the injunction.

Quotes

"A proper case [for an injunction] is... made out when ... some person bound by ... a municipal law imposing a restriction or prohibition upon the use of land in .. a municipal area for the public benefit or

advantage has broken, and will, unless restrained, continue to break that law for his or her own advantage and to the possible disadvantage of members of the public living in the locality." (Menzies J)

"residential district" is nothing more than a name given to an area so proclaimed and, as any defined portion of a municipality may be proclaimed a residential district and as prohibitions as set out may then be imposed upon use, it does not appear to me an abuse of power to do what has been done by the proclamation in question." (Menzies J"

Full text

- Available here: <http://eresources.hcourt.gov.au/showbyHandle/1/10731>
- Further reading regarding the overturning of *Gill*:
<http://classic.austlii.edu.au/au/journals/FedLawRw/1964/5.pdf>

Law case summary from www.lawcasesummaries.com