

10.7.98
Liquor license.

IN THE GRAND COURT OF THE CAYMAN ISLANDS
HOLDEN AT GEORGE TOWN, GRAND CAYMAN
CAUSE NO: 44/98

BETWEEN : JACQUES SCOTT & COMPANY LIMITED APPELLANT

AND: RENARD MOXAM RESPONDENT/PLAINTIFF

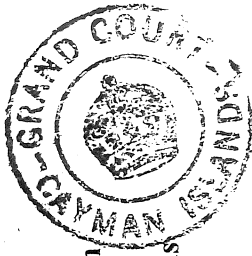
AND: THE LIQUOR LICENSING BOARD RESPONDENT/DEFENDANT

APPEARANCES: Mr. Lamontagne for defendants
Mrs. Sherri Bodden, for the applicant.

BEFORE DOUGLAS J.

RULING

On August 5, 1997, Renard Moxam, the Defendant in the cause, applied to the Liquor Licensing Board for the grant of a Liquor license under Section 10 (1) (b) of the Liquor Licensing Law (1996 Revision). As a result of this application being refused by the Board, Mr. Moxam applied for a judicial review which was granted, and the matter remitted to the Board for their consideration.



Section 20 (3) of the Court of Appeal Law (1996 Revision) delineates the powers of the Court in granting such a stay.

This section is as follows:-

No stay of execution or other proceedings shall be granted upon any judgment appealed against save upon payment by the appellant into the Grand Court of the whole sum, if any, found due upon such judgment and the amount of any costs awarded to the other party or parties to the action, or upon good cause shown to the Court or to the

Grand Court.

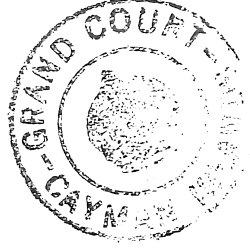
The first requirement of the above section has no relevance here as no sum is done on any judgment. The only requirement is that the applicant shows goods cause to the Court. In such application one of the most cogent facts in showing good cause is the likelihood that the appeal would be rendered nugatory should the stay not be granted. Mr. Lamontagne, Q.C. for the applicant concedes that this will not be the case. In support of his application Mr.

Lamontagne put forward two grounds. Firstly, that the appellant has a good, arguable case to put before the Court of Appeal. Secondly, that the Court ought to do what it considers fair and reasonable under the circumstances. As far as the first ground is concerned it appears that the sole issue is whether or not the Liquor Board has jurisdiction similar to that of English justices. In support of



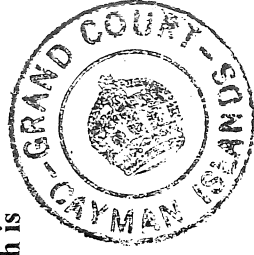
this he referred the court to the dicta of two eminent judges, late of this jurisdiction, with which the ruling of Mr. Justice Graham conflicts. It is not necessary, nor is it appropriate for me to attempt to adjudicate or interject my opinion as to the merits of this ground of appeal. What is of relevance here is whether the refusal of a stay will render the decision of the Court on Appeal nugatory. In view of the fact that this has already been conceded, this ground has no merit.

I now come to the second ground, what can be considered fair and reasonable under the circumstances. It is contended that the appeal will very well not be heard until September, and maybe later, and should Mr. Moxam be granted a license it would, in effect, be valid until September of the following year. Mr. Lamontagne for the applicant further submitted that under the circumstances it would not be fair and reasonable for the court to deny the stay. In support of this he cited the case of *Bibby v Partap* (1996) 4LRC, 462. In that case the Privy Council held that the Court possessed an inherent discretion in suitable cases to stay the carrying of a possession order while an appeal against the order was pending. I have been unable to see in what way that case is analogous to this present matter. In *Bibby's* case the applicants lived in modest wooden structures and had done so for a number of years. The appellants claimed that the property where they lived was not part of the respondent's estate, and that the evidence of title produced by the respondent was defective. The trial judge made possession orders against the appellants, and eventually their appeal reached the Privy Council. The reasons given for the Council's decision were



two fold. Firstly that the appellants were of little financial means with no alternative accommodation and the respondents had known from 1984 that the appellants were living on the property from which they sought to eject them. Secondly the respondents consented to the appellants having leave to appeal, which fact alone implied that they accepted that there was an arguable ground of appeal. It followed that the fairest and most sensible course was for the appellants to remain in the property until the Court of Appeal adjudicated their appeal.

The position of the parties in this matter is entirely different. In the Bibby case, had a stay not been granted, the appeal would, no doubt, be rendered nugatory. This is not the position in the case before me. The appellant cannot reasonably contend that in denying a stay the court would not be acting in a fair and reasonable manner. Mr. Justice Graham merely remitted the matter to the board directing it to hear and determine Mr. Moxam's application. This application is therefore based on the hypothesis that the board will grant the license to Mr. Moxam. Whether it does or not, no decision of the board will result in any quantifiable loss in damages to the appellant. The submission that any license granted to Mr. Moxam would be valid until September next year is of little merit. What section 14(3) of the Liquor Licensing Law provides is that any new license granted at a quarterly session shall remain in force, unless revoked. There is nothing to prevent the Board revoking a license, the granting of which is found to have been ultra vires in anyway wrongful.



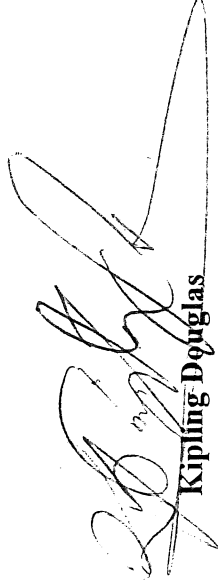
It seems to me that as far as this submission goes, the boot is on the other foot as the principle that the successful litigant should not be denied the fruits of the judgment or order in his favour (see notes to O. 59, r.13 (1) R SC p. 1015) applies.

I cannot but hold that a stay of execution would not be fair and reasonable to Mr. Moxam.

Accordingly this application is hereby dismissed

Costs to the respondent to be taxed or agreed.

Dated this 10th day of July, 1998.



Kipling Douglas

Judge of the Grand Court

