

26.9.96

IN THE GRAND COURT OF THE CAYMAN ISLANDS  
HOLDEN AT GEORGE TOWN, GRAND CAYMAN

C 534/95



**BETWEEN :** BRYCE MERREN AND  
CARLENE HAMATY Plaintiffs

**AND :** THE LIQUOR LICENSING BOARD  
AND THE ATTORNEY GENERAL Defendants

**HARRE CJ**

For the Plaintiffs - Mr. Peter Broadhurst  
For the Defense - Mr. Robin McMillan

**RULING**

This was an application by Originating Motion for the following relief -

“Order of Certiorari, to remove the decision of the Liquor Licensing Board, in refusing to permit the relocation of the Package Liquor License to premises across the street together with the refusal of the Liquor Licensing Board to permit the addition of Carlene Hamaty as a joint license holder of the Package Liquor License, to the Grand Court for the purpose of it being quashed, and ordering the Liquor Licensing Board to reconsider its said decision, together with an order of Mandamus remitting the matter to the Liquor License Board for reconsideration.”

The motion for damages and interest was not pursued.

The applicants wish to change the location of a package liquor license restricted to duty free sales to cruise ship passengers only issued to the first applicant for a location known as the Bayside Cafe and Boutique, Harbour

Drive, George Town, to a new location directly across the street at premises known as 'Island Taste.' That location was previously occupied by another duty free store which ceased to carry on business.

At the hearing before the Liquor Licensing Board two objections were considered. Both were from competitors and the substance of each was as follows-

"This letter serves as my written objection to the requested change. In essence the Licence will be as for Tortuga Duty-Free Liquors (they currently have three stores in the Harbour Drive area already), whose last application for an additional outlet was objected to by myself (and others) to no avail, despite the inability to have equal opportunity to advertise for Duty-Free Liquor sales on many of the visiting cruise ships. (They will not discuss Duty-Free Liquor sales 'unless you are from Tortuga').

My store is approximately 100 feet from the proposed location (which had already been operated as a Duty-Free Liquor store) presumably unsuccessfully, due to the inability to advertise aboard ship."

The following is from the second letter -

"I believe that three Tortuga Liquor Stores now covering the waterfront is adequate, a fourth store with the rum barrels hanging from a rope outside each premise looks like rum town instead of George Town.

As you know Blackbeard's LTD was in the ground floor of the Island Taste building, rent being C\$2,500.00 per month. Mr. Hamaty has promised a considerable increase in rent to acquire these same premises. Tourists make many requests for a local rum or spirits "Bottled & Blended in the Cayman Islands" Tortuga portrays this in their advertising: "Tortuga Rum, a Caymanian Rum - don't leave Cayman without it!!" fact is Tortuga is bottled and blended in Jamaica. Blackbeard's Spirits is the only product blended in the Cayman Islands. Currently, Tortuga Liquors is not carrying any of the Blackbeard's Line of product.

We are looking for a new location on the water front for Blackbeard's Liquors."

There was other correspondence suggesting that the first of these objectors was interested in acquiring the proposed premises for himself and indicating that the proposed rent offered to the applicants was \$2,800 per month.

The reason given by the Liquor Licensing Board for refusing to transfer the licence was as follows -

"Refused on the grounds that it is not situated at a location where it will be of service to the public based on fact that a Duty-Free package licence was operated there in the recent past (since south terminal was constructed) and closed for lack of business."

In so deciding, the applicants submit that the Board made an error of law and exceeded its jurisdiction.

Section 9 (1) of the Liquor licensing Law contains the following relevant provision -

"A Board shall not grant a licence unless satisfied that the premises in respect of which the application is made -

- (a) .....
- (b) .....
- (c) .....
- (d) are situated at a location where they will be of service to the public;"

There is nothing to prevent a restriction to a class or section of the public being made a condition of a licence R v. Sussex Confirming Authority ex-

parte Tamplin (1937) KB 106. I do, however, accept that 'public' in the context of service to the public is not synonymous with 'customers'. The Board is entitled, and indeed under a duty, to consider the general public interest in determining the question of 'service to the public.'

The record takes me no further in relation to the speculation of the second objector that the former enterprise at the proposed location closed "for lack of business."

I do not, however, have to speculate on the reasons why the board made what was obviously intended to be a reference to section 9 (d) as the basis for their decision. They expressed them in terms which have led me to the conclusion that this application succeeds.

The discretion given to the Liquor licensing Board is undoubtedly very wide. They can consider the character and necessities of the locality and neighbourhood in which the premises are situated and use their local knowledge. Sharpe v. Wakefield and others (1886-90) All ER 651. But there is a distinction to be drawn between this and matters of pure business economics. This distinction was expressed by Lord Bramwell in the following passage in his speech in Sharp v. Wakefield -

"Houses of public entertainment and for the sale of drink have been in this country and in many others the subject of regulation for police purposes: not for what one may call economic purposes, like the fixing of the price of bread, or the wages of labour, but for the maintenance of

order. Naturally the buildings themselves, their character, their number, and their neighbourhood, have been considered as well as the persons who should be permitted to carry on the trade or business. That certainly has been the case in England; and it is undoubtedly so now with respect to licences granted to sell drink on premises for the first time. This is so clear that the learned counsel for the appellant have not contended to the contrary. If an application is made for a licence to sell drink on premises not before licensed it is certain that the magistrates may refuse it, and may refuse for the reason and no other than that they think the neighbourhood does not need it - that none is needed, or none in addition to the houses already licensed."

This was followed by Collett CJ in Graham Thompson & Associates v. Liquor

Licensing Board and the Attorney General (1988-9) CILR at page 31. He said

this -

"I have carefully considered the language and arrangement of the Liquor Licensing Law, 1985 and have reached the conclusion that it was the intention of the legislature thereby to invest the Grand Cayman Liquor Licensing Board with a wide discretion analogous to that vested in the UK licensing justices by their comparable legislation. At the same time I respectfully adopt Lord Bramwell's exposition of the purpose for which that discretion is conferred, as being the maintenance of public order rather than for any economic purpose. While it is true, as was held in R v. Torquay Licensing JJ, ex p. Brockman (4) and in R v. Torbay Licensing JJ, ex p. White (3) that a board may lawfully adopt and apply a general policy with regard to the granting or withholding of licences, that policy, in order to be valid, must relate to the purpose for which the discretion is conferred by the applicable statute.

It follows in my view that it is not part of the function of a board exercising discretion under the 1985 Law to have regard to the desirability or otherwise of restricting the exercise of free competition in the provision of intoxicating liquor by retail to the public between persons who and whose premises qualify for the grant of the appropriate licence under ss. 8 and 9. That would be an economic and social, not a public order, purpose and I hold it to lie outside the ambit of the discretion vested in these boards even when applications for the initial grant of a licence are under consideration. Such considerations are equally irrelevant to the proper exercise of the discretion of a board concerned with an application for transfer as in the instant case."

It seems to me to be logically evident, that, just as in the case of a transfer of an existing licence to a new licensee, that relocation of licensed premises within the same area is likely to involve narrower considerations than an application for the grant of a licence for an additional new outlet. With respect to the Board, I do not think that it follows at all from the closure of an existing licensed business that it was situated at a location where another such business would not be of service to the public. In purporting to make that connection the Board was regulating for an economic purpose.

Having come to that conclusion, I ordered that the matter be remitted to the Liquor Licensing Board for reconsideration in accordance with the principles which I have expressed. The full terms of the order are already available.



G.E. Harre  
Chief Justice

26th September 1996

