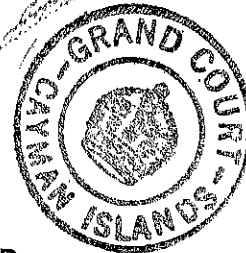
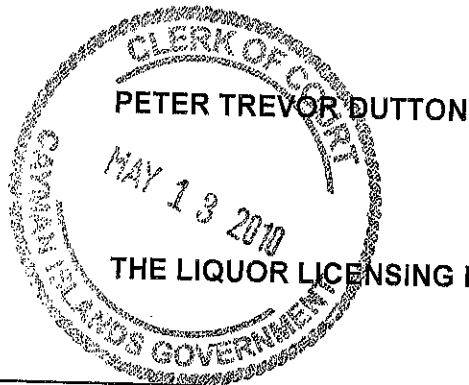


IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 190 OF 2010

BETWEEN:



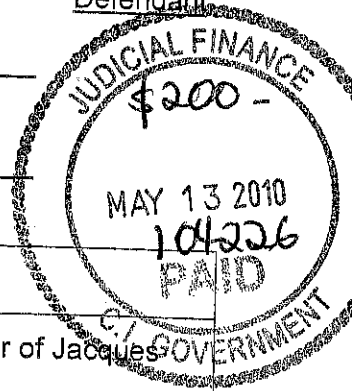
Plaintiff

AND

THE LIQUOR LICENSING BOARD

Defendant

APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW



To the Clerk of the Court Law Courts, George Town, Grand Cayman

Name, address and description of applicant(s)	Peter Trevor Dutton, Managing Director of Jacques Scott Group Ltd 384 Shedden Road, George Town, Grand Cayman
Judgment, Order, decision or other proceeding in respect of which relief is sought	Application to vary package liquor licence P29-71, heard on 22 April 2010
Relief Sought	
1 An order for Certiorari to quash the decision of the Liquor Licensing Board to deny the Plaintiff's application for a variation of a Package Liquor License pursuant to section 13(1) of the Liquor Licensing Law (2009 Revision) (the "Law").	
2 An order for Mandamus to require the Liquor Licensing Board to reconsider the Plaintiff's application for a variation of a Package Liquor License pursuant to section 13(1) of the Law and such reconsideration to occur within 21 days of the Order of this.	
3 Costs of these proceedings.	
Name and address of applicant's attorneys, or, if no attorneys acting, the address for service of the applicant	Maples and Calder of PO Box 309, Ugland House, South Church Street, George Town, Grand Cayman
Signed <i>Maples and Calder</i>	Dated: 13 May 2010

### Grounds on Which Relief is Sought

- 1 The application was an application to vary the Plaintiff's package licence P29-71 by changing the premises from 23 North Church Street to West Bay Block C, Parcel 289/290 (the "**Application**"). The Board convened a special meeting on 22 April 2010 (the "**Meeting**"), at which it considered the Application and heard oral submissions from the Plaintiff and various objectors (the "**Licensee Objectors**").
- 2 By a letter allegedly dated 25 April 2010 (but not received by the Plaintiff until 4 May 2010) (the "**Letter**") the Plaintiff received the decision of the Board to refuse the Application. A copy of the Letter is attached.
- 3 Pursuant to section 9(1) of the Law:  
  
*"A Board may not grant a license unless satisfied that the premises in respect of which the application is made –*
  - (a) *have exits plainly marked and lighted;*
  - (b) *have an adequate fire extinguishing system*
  - (c) *comply with the laws and regulations affecting building, town planning and public health;*
  - (d) *are situated at a location where they will be of service to the public; and*
  - (e) *will not cause inconvenience to the occupiers of neighbouring property"*

#### **Reason A of the Letter – Planning Objection**

- 4 Pursuant to Section 9 (4) of the Law the Board has a legal duty "in considering the suitability of premises for service to the Public shall have regard to any representations made by or on behalf of the...Executive Secretary of the Central Planning Authority..."
- 5 Pursuant to section 9(1)(c) of the Law the board "may not grant a license unless satisfied that the premises in respect of which an application is made...comply with the laws and regulations affecting building, town planning and public health".

6 No representation was made by the Executive Secretary of the Central Planning Authority. Every person who wished to be heard at the Meeting was heard on 22 April 2010. Further, the Board made no enquiries, nor was there any representation made (either by the Plaintiff or the Licensee Objectors) with respect to reason A of the Letter.

7 The Board has acted in breach of its statutory duties by substituting the Board's views for those of the Central Planning Authority. Further and alternatively, the Board has acted in breach of its statutory duties pursuant to Section 5(2)(c) to accurately record a summary of the evidence provided at the Meeting and this failure is reflected with the incorrect consideration of the evidence submitted at the Meeting.

**Reason B of the Letter – "Residential Population Distribution"**

8 Reason B is based on the Board's "thorough knowledge of the residential population of the district of West Bay".

9 Pursuant to the Law there is no mechanism whereby the Board can consider their own expert evidence. Pursuant to the Law, in addition to the Plaintiff (and his attorney), there is an opportunity for representations from the following persons at any application to grant, renew, vary or revoke license:

9.1 Any person who desires to be heard in any matter relevant to any application;

9.2 The Commissioner of Police;

9.3 The Chief Medical Officer;

9.4 The Chief Fire Officer;

9.5 The Executive Secretary of the Central Planning Authority; and

9.6 Members of the Public who may be directly affected by the grant of the license.

10 At the Meeting, the Board did hear evidence from the Plaintiff with respect to the unique nature of the proposed premises, the subject of the application. In the circumstances, it is unreasonable for the Board to disregard (i) the Plaintiff's representations at the Meeting as to the unique nature of the proposed outlet; and (ii) the detailed demographic analysis submitted by the Plaintiff at the Meeting, in favour of the Board's "thorough knowledge" of the "residential population distribution". The Board has acted unreasonably, capriciously and,

therefore, breached its statutory duty in submitting reason B of the Letter as a ground to refuse the Application.

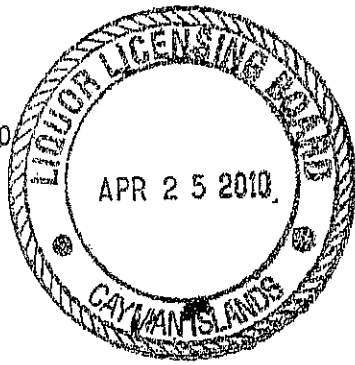
**Reason C of the Letter – Public Order Issues**

- 11 The Board did not receive any objection from the Commissioner of Police. In the circumstances, the Commissioner would have been obliged to make representation on matters concerning public order as an extension of the Police's obligation to maintain public order pursuant to section 33 of the Police Law (2006 Revision). However, the Board did hear representations from the Plaintiff and the Licensee Objectors.
- 12 The Board failed to take account of the unique nature of the proposed premises and have unreasonably concluded that the nature of the proposed premises selling fine wines, spirits and homeware products is an environment for "additional public order concerns".
- 13 In the circumstances, the Board's decision is unreasonable and not based on the evidence submitted at the Meeting.

Maples and Calder  
Attorneys-at-Law

THIS APPLICATION was filed by Maples and Calder, attorneys for the Plaintiff, whose address for service is PO Box 309, Ugland House, Grand Cayman, KY1-1104, Cayman Islands. (Ref: MWI/WPP/607194-03/1880291)

25 April 2010



171 Cricket Square  
Elgin Ave, George Town  
Grand Cayman KY1-9000  
Cayman Islands  
Tel: (345) 946-5446 Ext. 5  
Fax: (345) 946-6627  
Email: marva.scott@gov.ky

CAYMAN ISLANDS GOVERNMENT

**LIQUOR LICENSING OFFICE**  
MINISTRY OF FINANCIAL SERVICES, TOURISM &  
DEVELOPMENT

Mr. Peter T. Dutton  
Jacques Scott Group Ltd.  
P.O. Box 488  
Grand Cayman KY1-1106

Dear Sir,

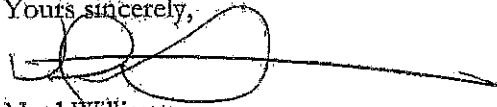
Having given due consideration to the application of Jacques Scott & Company for a variation of a Package Liquor License pursuant to section 13(1) of the Liquor Licensing Law (2000 Revision) to relocate its premises of operation to West Bay Block 5C, Parcel 289/290, the Liquor Licensing Board has determined to deny the application on the following legal grounds:

- (a) Having regard to section 9(1)(d) and section 9(1)(e) of the Liquor Licensing Law (2000 Revision), the Board is concerned that the general public of the district of West Bay would not be served by the additional traffic (both by ingress and egress), whether by motor vehicle or otherwise that the construct of such a substantial additional commercial building, providing the service which is the subject of the application would undoubtedly cause. In particular the board is concerned about the potential for slowing of traffic during afternoon peak hours as well as the risk of traffic accidents involving pedestrians in this area- there is accordingly a serious public safety consideration which falls squarely within the remit of the Board's decision-making authority;
- (b) Again, having regard to section 9(1)(d) of the said Law, and having a thorough knowledge of the residential population distribution of the district of West Bay, as well as the relative location to the principle tourist accommodation locations along the West Bay Road, of the proposed new building, the Board is of the firm opinion that the "relevant public" as referenced by the Applicant in citing the Cayman Islands Grand Court case of *Moxam v. Liquor Licensing Board* [1998 CILR], consisting of both the resident population of the district and the tourist population along West Bay Road would not benefit in any significant or different way by virtue of a grant of a variation of the existing license;
- (c) The Board further considers that in light of guidance provided to it by way of the unique local knowledge of the objectors to the application as well as the finding of the Grand Court of the Cayman Islands in *Graham Thompson and Associates Limited v. Liquor Licensing Board and Attorney-General* [1988-89 CILR], regarding the fact that the Board must consider public safety and public order issues, and despite the undertaking of the Applicant that it will provide

significant security measures, the Board is firmly of the opinion that a grant of a variation of the license which is the subject of the application, would have a high propensity to additional public order concerns for the District of West Bay.

Should you have any questions or concerns, please feel free to contact me.

Yours sincerely,

A handwritten signature in black ink, consisting of a large, stylized 'N' followed by a horizontal line that extends to the right and then loops back to the left, crossing under the 'N'.

Noel Williams  
Deputy Chairman  
Liquor Licensing Board -- Grand Cayman

cc.

Chairman, Liquor Licensing Board-Grand Cayman  
Executive Secretary, Liquor Licensing Board -- Grand Cayman