

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO. 534 OF 1995

BETWEEN:

**BRYCE MERREN AND
CARLENE HAMATY**

Plaintiffs

- and -

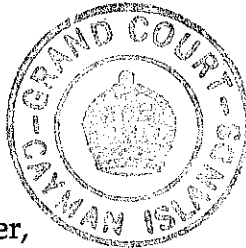
**THE LIQUOR LICENSING BOARD
AND THE ATTORNEY GENERAL**

Defendants

APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

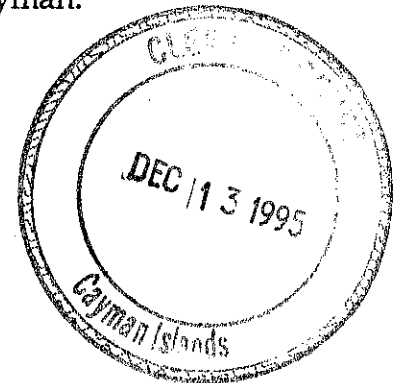
To the Clerk of the Court, Law Courts, George Town, Grand Cayman:

Name, Address
and Description
of Applicant:



Bryce Merren
Bayside Cafe and Boutique

Carlene Hamaty
Tortuga Rum Company Ltd.



Judgment, Order,
Decision or other
proceeding in respect
of which relief is sought:

Decision of Liquor Licensing Board in the matter of a variation sought by the Plaintiffs, reasons for which were provided on the 14th day of September, 1995.

Relief Sought:

(1)

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.

- (2) Damages.
- (3) Interest in accordance with the Judicature Law, on any damages assessed in such amount as may be deemed just.

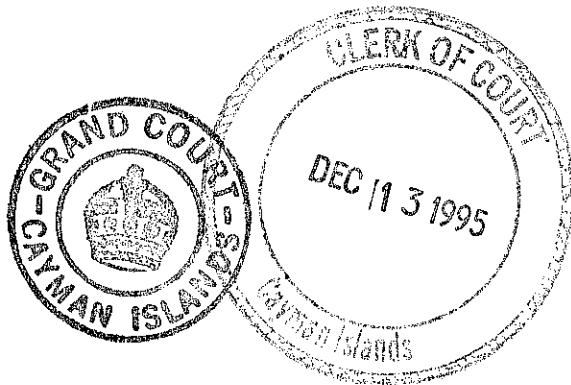
Name and address of
Applicant's attorneys:

Messrs. Collins Broadhurst and Furniss
P.O. Box 2503
George Town
Grand Cayman
Cayman Islands
B.W.I.
Attention: Peter A. Broadhurst

COLLINS BROADHURST & FURNISS

per. Collins Broadhurst & Furniss
Peter A. Broadhurst
Attorneys for Bryce Merren
and Carlene Hamaty

Dated: Dec. 13, 1995



GROUNDINGS ON WHICH RELIEF IS SOUGHT

- (1) It is respectfully submitted that the Liquor Licensing Board has made an error in law which appears on the face of the record in the reasons given for the decision or, in the alternative, exceeded its jurisdiction.
- (2) The reasons given for the decision was:

"Refused on the grounds that it (the proposed situs of the relocation) is not situated at a location where it will be of service to the public based on fact that a Duty-Free package license was operated there in the recent past (since South Terminal was constructed) and closed for lack of business."
- (3) There were two objectors to the Application, both of whom objected on the basis of economic grounds, and unfair competition, neither of which, it is submitted are proper and valid grounds for refusing an Application to vary a Package Liquor License location or licensee.
- (4) The Liquor Licensing Board refused the application on the basis that the location "would not be suitable to the public" because, in essence, a "previous Duty-Free package license was operated there in the recent past" and had "closed for lack of business".
- (5) It is submitted that the law applicable to this Application is as follows:

A. The Liquor Licensing Law:

Section 13 "(1) Where in any case, it is desired in respect of any licence to change -

- (a) the licensee;
- (b) the location of the licensed premises;
- (c) the licensed premises by making addition or alteration thereto;
- (d) the specified hours;
- (e) the category of licence; or
- (f) any condition imposed under section 7(1) (f),

the licensee or a prospective licensee may make application to the Chairman of the relevant Board in that behalf and the Chairman may grant such application subject to such conditions as he may decide to impose and shall endorse the licence accordingly:

PROVIDED that at least seven days before the grant of any application to change the location of the licensed premises under paragraph (b), notice of the application shall be made by publication in at least one newspaper circulating in the Islands and the Commissioner, the Chief Fire Officer and the Chief Medical Officer and any member of the public may object in writing to the application and the Chairman shall before granting such applications give due consideration to such objections.

(2) Every grant of a variation made by a Chairman under subsection (1) shall be reconsidered by the Board at its next meeting after the making of such grant and the decision of the Board and the date of such decision shall be endorsed on the relevant licence."

Section 17 *"(1) At any application for the grant of a licence the Commissioner, the Chief Fire Officer, the Chief Medical Officer or any member of the public who has given at least seven days notice of objection in writing to the Chairman may appear and be heard in objection to the grant of such licence.*

(2) At any meeting of a Board the Commissioner, the Chief Fire Officer, the Chief Medical Officer or any member of the public who has given to the Chairman seven days notice of objection may appear and ask for the revocation or discontinuance of any existing licence.

PROVIDED that, where in the case of such objection by a member of the public the Board is of the opinion that the objection is malicious, frivolous or vexatious, the Board may order the objector to pay the licensee any costs he has incurred thereby and to pay to the Board for the benefit of the revenue of the Islands a further sum at the rate of one hundred dollars for each hour or part of an hour of the Board's time taken up by hearing and investigating the objector's complaint."

Section 7 *"(1) A license is a permit to an individual person or to two individual persons jointly, who may or may not be the servants or representatives of another named person, in*

compliance with this Law, to dispose of -

- (a) such intoxicating liquors;*
- (b) in such quantities;*
- (c) to such persons;*
- (d) at such times;*
- (e) at such premises; and*
- (f) subject to such general conditions,*

as may be specified therein, and shall be in the form provided in the Schedule.

(2) Persons licensed under subsection (1) are licensees under this Law.

(3) Premises specified under subsection (1) (e) are licensed premises under this Law.

(4) A Board may in granting or renewing a licence in respect of any premises designate the whole or any part or parts of the licensed premises as a bar but no area shall be or remain designated as a bar unless it is capable of being locked off from the rest of the premises in such a way as to deny access thereto to persons other than the licensee.

(5) Whoever not being a licensee or the employee of a licensee engaged in his duties as such enters or remains in any bar during prohibited hours is guilty of an offence and the licensee shall, unless he proves that the offence has been achieved by means of forcible entry by a person not being in his employment or control, be deemed to have aided and abetted such offence.

(6) Sea-going vessels used for the entertainment of the public shall be deemed to be "premises" for the purposes of this section and the Board may grant a retail licence in respect thereof subject to such conditions as the Board may impose under subsection (1)(f).

(7) The bar of a sea-going vessel in respect of which a licence has been issued under subsection (6) shall be locked off

from the rest of the vessel and no intoxicating liquor may be disposed of, exposed for sale, offered for sale, or consumed, on such vessel, while it is at, or within half a mile of any land."

Section 8 *"(1) A Board shall not grant a licence to any person unless it is satisfied that such person is -*

- (a) of good character, and exhibits to the Board a certificate signed by the Commissioner showing his record of criminal convictions (if any) over the preceding fifteen years;*
- (b) over the age of twenty-one years;*
- (c) of sufficient business capability to understand and comply with the provisions of this Law; and*
- (d) has paid the fee prescribed for the grant of a licence.*

(2) A Board shall not grant a licence under section 7(6) to a person other than the captain or other person in charge of the vessel concerned and unless, in addition to satisfying the requirements of subsection (1), such person establishes to the satisfaction of the Board by evidence on oath or affirmation that all persons having a beneficial interest in such vessel, and the owner or owners of such vessel, are of good character.

(3) A Board shall not grant a licence under section 7(6) in respect of a vessel unless the Board is satisfied that the vessel is fit as to repairs, equipment (including fire-fighting, radio, life-saving and first-aid equipment) crew, fuel and in all other respects for all its voyages. A Board may at any time suspend such a licence if it is satisfied that the relevant vessel no longer complies with this subsection."

Section 9 *"(1) A Board shall not grant a licence 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.

(2) In considering the suitability of premises for service to the public, Boards shall have regard to any representations made by or on behalf of the Commissioner, the Chief Medical Officer, the Chief Fire Officer and the Executive Secretary of the Central Planning Authority as well as members of the public who may be directly affected by the grant of a licence.

(3) Subsections (1) and (2) do not apply to licences issued under section 7 (6) but in granting licences under that subsection the Board shall consult and have regard to any advice tendered by the Commissioner, the Chief Medical Officer, the Chief Fire Officer and the Port Authority and no licence so granted shall in any way derogate from the control exercisable by the Port Authority over such vessel."

B. Graham Thompson and Associates Limited vs. Liquor Licensing Board and Attorney General

**Grand Court (Collett, C.J.): Jan. 11, 1988
Reported 1988-9 CILR 25.**

Collett, C.J. at page 31:

"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. I accept Mr. Alberga's submission that, if the legislature had intended considerations of that nature to be taken into account by these boards, it would have expressly so provided in the statute and it has not done so. Accordingly, when reconsidering the application, as this court has directed the Board to do, it should take no account of the desirability or otherwise of large wholesale concerns engaging in the retail trade in intoxicating liquor in competition with others who are not wholesalers."

and at page 32:

"I would merely add in conclusion that the case-law indicates what is I think quite logically evident: that upon an application for a transfer of an existing licence to a new licensee, the relevant considerations are likely to be considerably narrower than upon an application for the grant of a new licence. The recent decision of the English Divisional Court in R. v. Haringey London Borough Council ex p. Sandhu (2) is a good instance of that principle. I commend it as well as the other legal principles I have just discussed for the guidance of the Board."

- (6) With all due respect to the Liquor Licensing Board, the reasons for refusal of this Variance are based on economic and social conditions rather than the maintenance of public order, and was irrelevant in considering the Application before them, on the basis of the applicable law and authorities.
- (7) No alternative remedy to judicial review exists.