

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 155 OF 2007

BETWEEN:

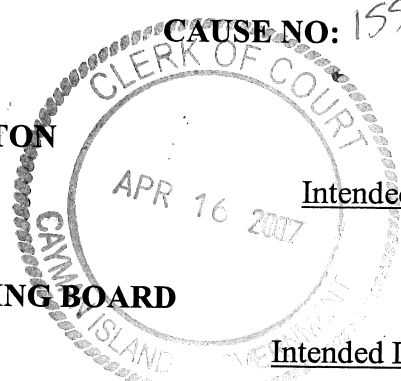
PETER TREVOR DUTTON

Intended Plaintiff

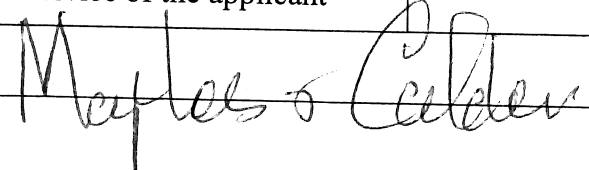
AND

THE LIQUOR LICENSING BOARD

Intended Defendant



APPLICATION FOR LEAVE TO APPLY FOR JUDICIAL REVIEW

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| To the Clerk of the Court, Law Courts, George Town, Grand Cayman | |
| Name, address and description of applicant(s) | Peter Trevor Dutton, Managing Directors 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 P28-70, heard on 8 March 2007 |
| Relief Sought | |
| <ol style="list-style-type: none"> 1. Mandamus by way of an application for judicial review directing the Board to promulgate forthwith its decision in relation to the Plaintiff's application pursuant to section 13 of the Liquor Licensing Law (2000 Revision) (the "Law") which was heard on 8 March 2007 ("the Application"). 2. An injunction by way of application for judicial review restraining the Board from seeking, admitting or considering any further representations and/or evidence, whether from the Sav-New Community Development Action Committee or Planning Department or any one else, apart from the representations made and the evidence given during the public hearing of the Application on 8 March 2007. 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 309GT, Ugland House, South Church Street, George Town, Grand Cayman |
| Signed |  |
| Dated | 16 April 2007 |

GROUNDS ON WHICH RELIEF IS SOUGHT

1 The Application was an application to vary the Plaintiff's package licence P28-70 by changing the premises from Red Bay Plaza to Countryside Shopping Village. During the hearing on 8 March 2007 the Board requested information about the application for planning permission made by the developers of the Countryside Shopping Village and the Plaintiff agreed to provide the Board with a copy of the minutes of the decision of the Planning Board. Having supplied this information to the Board, its hearing of the Application was concluded on 8 March 2007.

2 Pursuant to Section 5(2) of the Law the Board has a statutory duty to : -

"(a) *sit in a place open to the public;*

(b) *hear on oath every person who desires to be heard in any matter relevant to an application; and*

(c) *record a summary of the evidence given before it."*

It follows, on a true construction of Section 5(3), that the Board is not entitled to solicit and/or receive representations or evidence except during the course of a public hearing in which the applicant and any objectors have the opportunity to be heard.

3 Pursuant to Section 5(4) of the Law the Board has power to adjourn any application for a licence or any matter relevant thereto, either to a later date or a later session. No application was made by any objector for an adjournment. Every person who wished to be heard in respect of the Application was in fact heard on 8 March 2007 and the Board did not exercise its power to adjourn the hearing part heard.

4 By an e-mail transmitted after the end of the hearing on 8 March 2007 the Board stated that its decision was deferred for further deliberation (pursuant to section 5(3) of the Law).

5 Pursuant to section 5(6) of the Law the Board has a legal duty to promulgate its decision "*as soon as practicable*" after the conclusion of the hearing. The hearing of the

Application was concluded on 8 March 2007 and the Board retired to consider its decision but the Board has unlawfully failed to promulgate any decision, apparently for reasons explained by Mr Mitchell Welds, the Chairman of the Board ("the Chairman"), in a telephone conversation with the Plaintiff on 27 March and for reasons stated in a letter from the Board dated 2 April and received by the Plaintiff on 5 April 2007.

5. On or about 23 March 2007 the Board received a letter dated 19 March 2007 from Savannah New Community Development Action Committee which appears to be a pressure group comprising people resident in Savannah and Newlands. The letter made reference to a public meeting to be held on 28 March 2007 in the Savannah region, apparently for the purpose of assessing public opinion on the Application and persuading the Board not to grant it. In making its decision on the Application, the Board is not entitled to take into account the fact that the meeting took place or anything which was or was not said at the meeting.
6. On 27 March 2007 the Chairman telephoned the Plaintiff and asked the Plaintiff to withdraw the Application. The Chairman said that the Board was coming under pressure from the Savannah community to refuse to vary the licence and it would be easier for the Board if the Application was withdrawn. The Chairman told the Plaintiff that the Board was under "political" pressure. The Chairman also told the Plaintiff that he was having difficulty persuading other members of the Board to meet for the purpose of deliberating and making their decision and that two members, namely Mr Craig Nixon and Mrs Lynn Bodden-Smatt, had "excused themselves" apparently on the ground that they have conflicts of interest. In fact Mr Nixon and Mrs Bodden did not disclose any conflicts prior to or during the hearing and they both participated fully in the hearing. The Plaintiff told the Chairman that he would not withdraw the Application and asked that the Board make its decision as soon as possible. The Board has acted unreasonably, irrationally and in an ultra vires manner in telephoning the Plaintiff to request a withdrawal of the Application.
7. By a letter dated 2 April 2007 (but not received by the Plaintiff until 5 April 2007) the Board purported to have "deferred" the Application because, having read the material

submitted by the Plaintiff on 8 March 2007 about the application to the Planning Board, it said that "further issues have arisen in respect of which it must be satisfied" and that "we have deferred [the Application] pending receipt of certain information we have requested from the Planning Department". The Board has not identified the "further issues"; nor explained how or why those issues have arisen; nor explained the nature of the "certain information" which is being sought from the Planning Department; nor explained how this "certain information" is relevant to the Application. The Board is acting in breach of its statutory duties by seeking representations and/or evidence from the Planning Department notwithstanding that the hearing of the Application was concluded on 8 March 2007. Further and alternatively, the Board is acting in breach of its statutory duties by failing to explain the nature of the information sought; the reason why it is being sought; and its relevance to the Application.

8. In the circumstances, the Board's purported "deferral" is not a bona fide adjournment of the Application (no such decision or application having been made at the hearing on 8 March 2007) but an unlawful attempt to force the Plaintiff to withdraw the Application and/or an unlawful attempt to avoid having to make a decision because of the "political pressure" referred to by the Chairman in his telephone conversation with the Plaintiff.

Maples and Calder
Attorneys-at-Law