

Decision No: **52/ON/029/2015**

Record No: **15204165**

IN THE MATTER

of the Sale and Supply of Alcohol Act 2012

AND

IN THE MATTER

of an application by Gurprabh Limited for an on licence pursuant to s100 of the Act in respect of premises situated at 76 Market Street, Blenheim, Marlborough District known as "Kokomo"

BEFORE THE MARLBOROUGH DISTRICT LICENSING COMMITTEE

Chairman: John Leggett

Member(s): Elizabeth Hawthorne, Margaret McHugh

HEARING at Blenheim at 10.00 am on Friday 9 October 2015.

Appearances

Applicant (represented by Jaswinder Paul and Kuldip Singh, with Randeep Singh in support) and Simon Gaines, Counsel for the Applicant

Karen Winter and Rachel Mercer – District Licensing Inspectors

Senior Sergeant Peter Payne for the Police

Dr Andrew Lindsay, Medical Officer of Health and Coral Hedley, Public Health Officer

RESERVED DECISION OF THE DISTRICT LICENSING COMMITTEE

INTRODUCTION

An Application for an On Licence was received by the Marlborough District Licensing Committee on 30 June 2015. The criteria found in Section 105 of the Sale and Supply of Alcohol Act 2012 applies to this Application.

The Application has resulted from the change in ownership of the premises known as Kokomo Beach Bar, situated at 76 Market Street, Blenheim. The premises are currently trading under a Temporary Authority.

A number of compliance issues have been raised by Police and Agencies from 30 June 2015. Police have raised concerns with issues of intoxication within the premises, fighting outside the premises and lack of food availability. The lack of food availability is also a concern raised by the District Licensing Inspectors and Medical Officer of Health.

The Police and District Licensing Inspector tabled reports which set out the details of objection to the Application.

The Application was to be heard 24 September 2015. That hearing was adjourned. Mr Jaswinder Paul appeared on behalf of the Applicant and sought an adjournment so that the Applicant could arrange legal representation. The request for adjournment was granted and the hearing reconvened Friday 9 October 2015. Mr Simon Gaines now appears as Counsel for the Applicant.

Medical Officer of Health provided a report dated 24 July 2015. The report offered no opposition to the granting of the licence although the Medical Officer of Health did raise concerns during the Hearing in regard to availability of food.

APPLICATION

The Application is made by Gurprabh Limited in respect of the premises known as Kokomo Beach Bar, operated from premises at 76 Market Street, Blenheim. A companies search shows that Gurprabh Limited has two Directors, Kuldip Singh and Sukhwinder Singh. The sole Shareholder is Kuldip Kaur. Mr Gaines advises Gurprabh Limited was incorporated for the purpose of owning and operating the Kokomo business. He advises the company owns no other licensed premises. One of the Directors, Kuldip Singh, appears for the company, along with Mr Paul. Mr Gaines advises that Mr Paul is present on behalf of the company and has the Directors' authority to proceed with the Application. He further advises that Mr Paul is not involved in the ownership, or management of the company, and acts as its agent for the purpose of overseeing the operation of the business known as Kokomo Beach Bar.

As a preliminary matter Mr Gaines sought to amend the days and times to Thursday, Friday, Saturday, commencing at 10.00 p.m. to 3.00 a.m. the next day, i.e. three days a week, on each occasion a total of five hours. This was accepted by the Committee.

Mr Gaines tabled a full submission on behalf of the Applicant.

Mr Gaines' submission acknowledges Mr Paul is effectively the "alter ego" of the Applicant and that the Committee's considerations of the Section 131 and 105 criteria will "necessarily engage in assessment of Mr Paul" (Paragraph 1.4 of Mr Gaines' submission). He cites *Utiker* (2014 NZAR 431, at 49) and notes that Section 105 factors are equally applicable to a person, other than the Applicant, who is involved in the Application.

Mr Gaines' submission acknowledges:

- * Trading on two nights on Friday 15 May 2015 and Saturday 16 May 2015 during which time the Applicant did not hold a valid On Licence. A Temporary Authority was issued on Monday 18 May 2015.
- * Mr Paul's recent Court appearance on unrelated matters.
- * The Police and District Licensing Inspectors' reports raising concerns under the criteria of suitability in relation to prior operation without an On Licence, patron's stockpiling drinks prior to closing time, door security, fighting in street, removal of alcohol from premises, food preparation and availability, and intoxication of patrons.
- * The Police and District Licensing Inspectors' reports on amenity and good order, adequacy of systems, staff and training.
- * Acceptance as between the Directors, Shareholder of the Applicant company and Mr Paul, there being no direct experience in running an On Licence.

Mr Gaines' submission covers recent steps by the Applicant to deal with closing hour, transportation, dress code and food. He acknowledges an issue with disposal of trade waste and summarises steps by the Applicant to engage a plumber to remedy the trade waste issue and the Applicant's proposal to deal

with availability of food while the work is taking place, with the Applicant to prepare food off site and to have this available during hours of operation.

The Applicant's proposal in relation to availability of food was challenged by both the District Licensing Inspectors and Medical Officer of Health. The District Licensing Inspector (Rachel Mercer) advised that the premises were certified for preparation of food.

The Medical Officer of Health also questioned whether Mr Paul understood the obligations to provide food under the Sale and Supply of Alcohol Act 2012. Mr Paul had met with Police and Public Health Alcohol Licensing Health Promoter in July to discuss concerns around the availability of food at which time Mr Paul had indicated that he was aware of his obligations. This was not challenged by Mr Paul.

REPORTING AGENCIES

District Licensing Inspectors

District Licensing Inspectors tabled a report detailing objections to the issue of an On Licence. The report outlines the number of contacts made with Mr Paul and discussions to ensure that he was aware of his obligations under the Act.

Opposition to the Application is in respect of:

- * Suitability of the Applicant.
- * Days and hours of licence.
- * Amenity and good order.
- * Applicant's systems, staff and training.
- * Concerns in respect of compliance with the Food Hygiene Regulations 1974 in relation to the kitchen located at the premises.

Police

Senior Sergeant Peter Payne provided a written report which (inter alia) raised issues in respect of:

- * Intoxication within the premises, fighting outside the premises and lack of food availability since 30 June 2015.
- * Suitability of Applicant and referred to trading without a Licence 15 and 16 May 2015, issues following a Licensed Premises Check on 25 July 2015, 26 July 2015, 1 August 2015, 30 August 2015 and 6 September 2015.
- * Days and hours of licence.
- * Applicant's systems, staff and training.

Senior Sergeant Payne also outlined a number of issues involving businesses operated by Mr Paul in the past, and in particular two vineyard contracting businesses of which Mr Paul was a Director. This information was provided in response to Mr Gaines' submission outlining Mr Paul's business acumen.

The content of the reports provided by the Agencies were not disputed by Mr Paul.

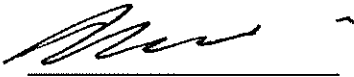
ATTENDANCE: Prior to the conclusion of the Hearing Mr Paul suddenly left the meeting, with the reason expressed to the Committee by Counsel that Mr Paul had an urgent business call he had to make.

DECISION

The Applicant has failed to satisfy the Committee that it meets the standard and the criteria set out in Section 105 of the Sale and Supply of Alcohol Act 2012. The Applicant did not dispute the content, including the incidents, set out in both the District Licensing Inspectors and Police reports. Indeed, the Applicant's submission accepts that the incidents took place and contended that these had been addressed. The Committee is not satisfied that this is the case. District Licensing Inspectors, Police and Medical Officer of Health (through staff) have met with Mr Paul on a number of occasions and have taken the time to explain the requirements of the Sale and Supply of Alcohol Act 2012 in respect of an On Licence and ongoing management and operation of the premises. On the undisputed evidence supplied to the Committee, there has been little or no change in the Applicant's approach.

The Committee declines the issue of an On Licence in the terms sought by the Applicant.

DATED at Blenheim this 15th day of October 2015



**CHAIRMAN
MARLBOROUGH DISTRICT LICENSING COMMITTEE**