

**IN THE MATTER**

60D [2014] 1015  
of the Sale and Supply of Alcohol  
Act 2012

**AND**

**IN THE MATTER**

of an application **by Janhurst Holdings Limited** for a Special Licence pursuant to s.138 of the Act in respect to premises situated at **77 Victoria Street, CHRISTCHURCH**, Trading as **'Cruz'**.

**BEFORE THE CHRISTCHURCH DISTRICT LICENSING COMMITTEE:**

Chairman : Mr G B Buchanan  
Members: Mr A J Lawn  
Mr D Blackwell

Hearing at The Christchurch City Council Chambers , CHRISTCHURCH on the 14<sup>th</sup> of April 2014.

**APPEARANCES**

Mr M Ferguson; Christchurch City Council Licensing Inspector  
Sergeant Giddens for NZ Police  
Mr P Shaw On behalf of the Medical Officer of Health

**APPLICANT**

Mr B Williamson

**Introduction**

- (1) This decision relates to an application for a special licence under section 138 of the Sale and Supply of Alcohol Act 2012.
- (2) The application relates to the premises situated at 77 Victoria Street, Christchurch. trading as "Cruz".
- (3) These premises operate with an entertainment style on-licence. Their normal hours of trade require them to close at 4.00am. They are also required to be closed on certain day as described in section 46 and 47 of the Act. They have applied for a Special Licence to allow them to sell alcohol on Thursday 17 April , through to 4.00am on Easter Friday. Police and Health have objected to the granting of this licence.

**46 No sale or supply outside permitted trading hours: all licences**

- (1) *The holder of a licence must ensure that no alcohol is sold or supplied on the premises outside the permitted trading hours.*

**47 Sale and supply on Anzac Day morning, Good Friday, Easter Sunday, and Christmas Day restricted: on-licences**

- (1) *The holder of an on-licence must ensure that no alcohol is sold or supplied on the premises on Good Friday, Easter Sunday, or Christmas Day, or before 1 pm on Anzac Day, unless—*
  - *(a) it is sold or supplied while the holder also holds a special licence for the premises; or*
  - *(b) the buyer is a person of a kind described in subsection (2).*

*(2) The kinds of person referred to in subsection (1) are—*

- *(a) people residing or lodging on the premises;*
- *(b) people who are present on the premises to dine.*

**The Application**

- (4) Mr Williamson appeared as the applicant for this Special Licence. Mr Williamson gave evidence that demonstrated that he was a very experienced operator within the liquor industry. He has operated mainly entertainment type or Night Club style venues. He was used to dealing with larger groups of patrons.
- (5) Mr Williamson said that he thought that the inability to trade on these public holidays was a farce and lots of businesses were open for business. He said that he did not agree with parliament and that he had invested into his business and needed to get a return and have it open and trading.
- (6) He said that under the previous legislation, because of the style of licence that he had, he was able to trade on any and all the sacrosanct days. He said that he usually did so. His application was to host a birthday for a person he knew and had known for about 3 years. To questions from Sergeant Giddens, he said that this was the first time that he had applied for a Special Licence under this Act. He did so in person and paid the money to the Council with Mr Johnston, whose birthday party it is.
- (7) Mr Williamson told Sergeant Giddens that he had arranged to have entertainment for the Birthday in the form of a drag show. Mr Johnston did not know that this had been arranged but unfortunately this had now fallen through.

(8) Mr Williamson gave evidence that Mr Johnston, whose birthday is to be celebrated was unavailable to attend the hearing as he had work commitments. He submitted a sworn affidavit from Mr Johnston, which he read to the court.

(9) To questions from the committee about the legitimacy of the application and the manner in which Mr Johnston came to seek to have Mr Williamson host the party, he said that he had offered the premises to host an event over Easter

*"I am seeking to accommodate a business and private function.*

*We invited functions over Easter.'-- we have a huge investment in the business. We have to become more versatile."*

(10) Mr Williamson said that he did not think it unusual that the tickets that were to be sold or distributed to Mr Johnston's friends would also be seen as open to more than just his friends. He felt that there was sufficient control over the guests and event because the event was ticketed.

(11) Mr Williamson also produced documents pertaining to other applications and decisions by other District Licensing Committees from around New Zealand to demonstrate a lack of consistency in granting these types of licenses.

## **Reporting Agencies**

### **The Police**

(12) Sergeant Giddens gave evidence that he was concerned about the nature of the event that was being conducted at CRUZ and so interviewed Mr Johnston asking him questions about the running of this event. He said that Mr Johnston said that he hoped half of the anticipated crowd of 150 people attending would be his friends. When asked by Mr Williamson, the Sergeant said he told Mr Johnston the likely time frame to resolve the application for the special licence so as to fairly advise him of the time it would take to resolve the matter.

(13) The Sergeant was questioned by Mr Williamson concerning the action of the Police in respect to other special licenses recently granted over the Easter Holidays. The Sergeant said that for the most part he was unable to comment about what enquiries were conducted and how decisions were reached concerning these licenses because he was not involved in them. He accepted that one licence was for a birthday party over the same period. That was for family members only and involved only 30 people.

(14) To questions from the Committee the Sergeant said that he felt that it was a contrived event. He accepted that a special licence did allow a person with an on-licence to trade on the sacrosanct days. He also accepted that a birthday could be granted a special licence.

(15) He stated that where half the tickets were to go to Mr Johnston's friends and the other half to people he did not know was a concern.

*"If he knew everyone going it would feel more like a genuine event."*

(16) The Sergeant said he felt that the event was contrived and client driven, wanting to trade to 4am. The Sergeant also felt that allowing the licence to operate till 4am was an additional factor in his assessment of the genuineness of the event. Normally a special licence for a birthday is until 1am. While 4 am is the usual closing time for these premises, a special licence to 4am for a birthday party is unusual.

(17) When asked, the Sergeant said that if the licensee accepted a 1am closing time the Police would withdraw their objection, as a matter of compromise, though he confirmed his position that he did not think it was a bonafide event.

## **Submissions**

### **Reporting Agencies**

#### **The Licensing Inspector**

(18) Mr Ferguson in his submissions said that the application for a special licence for a Birthday was a common event, usually approved. Also that a number of applications are also approved on the sacrosanct days and that the act provides specifically for this.

(19) The submitted the event itself did not have to be special

*Refer K P Newell LLA PH1062/2009 "it will be noted that the event or occasion does not have to be 'special'. It is the licence that is special because it is authorising the licensee to sell & supply alcohol at a time when the premises should by law be closed"*

(20) That a birthday party for which tickets are sold is not usual, but he submitted not unheard of. The use of tickets to recover costs of hosting the event should not be given any significant weight.

*"a continuation of normal trade where a premises is open to the public is just about the only type of event that in the past has been considered as not suitable or legitimate for the granting of a special licence."*

(21) Mr Ferguson submitted that it is normal practise to allow special licenses within the central city to extend their normal operating hours by one hour. In this case the hours sought are until 4am.

*"The hours sought are the normal hours this business is permitted to sell alcohol to on any day of the year under their existing licence."*

## **Police**

(22) Police submission was that this application was to extend the hours of the premises concerned and it was nothing more than business as usual. That tickets being dished out does not make it a bonafide event.

(23) That the legislators intended to restrict trading on sacrosanct days. He referred the committee to the case *Christie V Invercargill Licensing Trust NZLLA1225*, and *Bond Street Inn limited (1991) NZLR 9*

*"...we have a firm view as to what the special licence is **not** intended to cover. It is not intended to be a means for hotels and taverns to obtain extended trading hours, at times when the premises would otherwise be required to be closed."*

## **Canterbury Medical Officer of Health**

(24) Mr Shaw submitted that the example of a special Licence granted to Hornby Working Mens Club was different to this type of application as s47 does not apply to Club Licenses.

(25) He said that the non appearance of Mr Johnston who seeks to hold his birthday at CRUZ meant that he could not test the validity of the application. He expressed concern that there was a significant number of people who would be attending the party who were not known to Mr Johnston.

(26) He lastly submitted, that for these premises the normal time that they would be required to be closed under the act was in fact 12 midnight on Thursday the 17<sup>th</sup> April. This is the time required to be closed under section 47 and not 4am the following day, being Easter Friday.

## **Applicant submissions**

(27) Mr Williamson expressed frustration at the confusing decisions that existed in relation to special licences. He gave the example of an event at Ellerslie in Auckland that was admission by ticket. Tickets could be sold to any member of the public for this event, but a similar event in Queenstown was refused.

*"how does anyone operate in this environment"*

(28) He did not believe that parliament intended to shut down the central part of Christchurch by the restrictions imposed by the legislation. There were now 4 days when he could not open.

(29) He believed that the Police had an agenda to stop all Special Licenses on the sacrosanct days within the central city.

(30) He could not have a 1am closing because of the nature of his business and he is concerned about the business constraints this placed upon him.

## **Decision**

(31) Parliament has defined that licensed premises shall not be open on certain days of the year. It did have the opportunity in drafting this new Sale and Supply of Alcohol Act 2012, to reduce the number of days or do away with them altogether. It did not do so. It strengthened the restriction further by removing some of the exemptions from these restrictions. Mr Williamson had, under the Sale of Liquor Act 1989 previously been able to trade on all the sacrosanct days. That is no longer the case. This appears to us to be clear guidance that the starting point of our deliberation is that CRUZ should not be open to trade.

### **47 Sale and supply on Anzac Day morning, Good Friday, Easter Sunday, and Christmas Day *restricted: on-licences***

- *(1) The holder of an on-licence must ensure that no alcohol is sold or supplied on the premises on Good Friday, Easter Sunday, or Christmas Day, or before 1 pm on Anzac Day, unless—*
  - *(a) it is sold or supplied while the holder also holds a special licence for the premises; or*
  - *(b) the buyer is a person of a kind described in subsection (2).*
  
- (2) The kinds of person referred to in subsection (1) are—*
  - *(a) people residing or lodging on the premises;*
  - *(b) people who are present on the premises to dine.*

(32) We agree with the submission made by Mr Shaw, that section 47 requires that the premises be closed on Easter Friday. The normal hours of trade on this day are nil.

(33) Any person may apply for a Special licence under section 137 of the Act. There is nothing in the legislation that would prevent an existing licensee applying. On this occasion this is what has happened. Mr Williamson has a suitable venue that would otherwise not be trading and has sought to have a special licence allowing him to host a Birthday Party.

### **142 Criteria for issue of special licences**

- *(1) In deciding whether to issue a special licence, the licensing committee concerned must have regard to the following matters:*
  - *(a) the object of this Act:*
    - (b) the nature of the particular event for which the licence is sought and, in particular,—*

(34) There is clear guidance in case law as to what type of event or events are suitable to qualify for a special licence.

It should not simply be a method to trade on a day when they would otherwise be required to be closed. We agree with the Police submission on this point. (Ref: Bond Street Inn limited (1991) NZLR 9 )

Bond Street Inn Ltd [1991] NZAR 9. "Fitzroy Tavern decision (supra) His Worship made these comments:

*"A social gathering implies a common purpose (other than drinking), such as an entertainment either by visiting artists or members of the club, or a gathering for some purpose in which those present are mutually interested."*

(35) Mr Williamson sought to have his premises remain open to trade on Easter Friday and to that end sought enquiries from anyone who might be interested to hire his venue on this day. That in itself is not a problem. Mr Johnston made use of the opportunity to have CRUZ host his 23 birthday. It would seem to us that a birthday celebration is a suitable event for which a Special Licence could be granted.

(36) Mr Johnston is a key witness for the applicant but was unable to attend. While he did provide an affidavit it carries little weight, as the matters raised in the hearing by both the applicant and the reporting agencies could not be tested. We cannot make our decisions in a vacuum *Page v Police* (unreported HC V Christchurch AP 84/98 24 July 1998).

*" That implies an onus upon the applicant to demonstrate suitability. Such suitability is not established in a **vacuum** but in the context of the particular case"*

(37) We understand that the admission to the birthday party was to be by way of pre-sold and distributed tickets. It would have been helpful to establish how they were to be distributed. It was for the applicant to be able to answer these important questions. Evidence was given that half the tickets were to go to Mr Johnston's friends and the rest to people that he may not know.

(38) That other people not known to the host may be attending is a cause for concern. That people not associated with Mr Johnston would attend was little more than a general distribution to any member of the public. It would appear that for those who do not know Mr Johnston, it is merely a gathering to drink and/or be entertained. They have no connection to the event being hosted by Mr Johnston and have tainted the application, bringing the application into disrepute.

## **Conclusion**

- (14) The committee therefore concludes that the application for a Special Licence in respect to the premises known as CRUZ for the period from 10pm on Thursday the 17<sup>th</sup> April to 4am on Easter Friday is declined.

A handwritten signature in blue ink, appearing to read 'G. Buchanan', written in a cursive style.

Mr G Buchanan  
Chairman

For the reasons stated above