

Decision Number 60C [2015] 2683

IN THE MATTER of the Sale and Supply  
of Alcohol Act 2012

AND

IN THE MATTER of an application by  
GOLDEN BOAT RESTAURANT LTD  
for renewal of an On Licence  
(Endorsed under s37) pursuant to  
s127 for premises known as  
Golden Boat Restaurant situated  
at 138 Main South Road, Christchurch.

AND

IN THE MATTER of an application by  
HING YU CHAN for a Manager's  
Certificate pursuant to s219 of the Act.

DECISION OF THE CHRISTCHURCH DISTRICT LICENSING COMMITTEE

Chairperson Mr R.J.Wilson JP  
Mr A.J.Lawn  
Mr D.L.Blackwell OSM

HEARINGS at Christchurch 5<sup>th</sup> October 2015 and 3<sup>rd</sup> November 2015

PRESENT Mr P.K.Chan, Golden Boat Restaurant Ltd  
Mrs M.K.Chan  
Miss H.Y.Chan, applicant for Manager's Certificate  
Mr J. Chen, Interpreter  
Ms J. Davison, Alcohol Licensing Inspector, CCC  
Ms P.Williams, for the MOH  
Mrs J. Anderson, Hearings Adviser, CCC

INTRODUCTION

- (1) This is an application by Golden Boat Restaurant Ltd for renewal of an On Licence (Endorsed under s37 for BYO) for premises known as Golden Boat Restaurant situated at

138 Main South Road, Christchurch. We are also dealing with an associated matter, an application under s219, by Ms H.Y.Chan (known as Angela Chan) for a Manager's Certificate. The application for renewal is opposed by the Inspector because of concerns about the suitability of the applicant, the lack of appropriate staff and the manner in which the premise trades. Although there is no objection to Angela Chan's application for a Manager's Certificate it is dependent for its success on the On Licence renewal being granted so the matters are being dealt with together.

- (2) A public hearing was initially commenced on 5<sup>th</sup> October 2015 in the absence of the applicant, Mr P.K.Chan. Golden Boat Restaurant Ltd was represented by Miss Angela Chan who explained that her father spoke little English and it was pointless for him to attend. Miss Chan is not a Director or shareholder of Golden Boat Restaurant Ltd and was not able to produce any authority to act for the applicant. In any event the Inspector explained that she wished to question Mr Chan about the running of the business and the lack of English language speakers when the restaurant was trading was a key issue. The matters were therefore adjourned with a request that Mr Chan be present and that the applicant provide an interpreter to assist in the presentation of his case.
- (3) The hearing resumed on 3<sup>rd</sup> November 2015 with both Mr Chan and his wife present supported by Mr Jimmy Chen, a licensed interpreter.

#### EVIDENCE FOR GOLDEN BOAT

- (4) Mr Chan was invited to make his case for renewal but contented himself with saying that he wanted the licence so his customers, who wished to do so, could bring wine to have with their meal. He said he had many loyal customers, both Chinese and Kiwi who liked to do this.
- (5) Ms Davison reminded Mr Chan that when his licence was granted in 2006 it was on the condition that he either learnt English or employed someone who did. Mr Chan explained that he had found learning English difficult because of his age. He had employed an English speaking staff member but this person had retired two or three years ago. He was assisted by his children, particularly his daughter Angela who spoke English and was frequently in the restaurant. He also had good neighbours who were happy to assist. He admitted however that from time to time alcohol was brought on to the premises when only he and his wife were present and neither spoke English.
- (6) Mr Chan explained that the number of bottles, both full and partly consumed, seen by the Inspector in public view on the premises had been accumulated over nearly ten years. Sometimes customers left wine behind and on occasions friends brought wine as a gift. The spirits, specifically whisky, he had acquired because he was subject to toothache and he liked to drink whisky as it helped deaden the pain. The spirit glasses which were evident were for supplying water. The number of empty bottles was because he was not very particular about putting the rubbish out and there had been an accumulation. He denied that alcohol was sold to customers. He explained that his residential address was only a place to sleep and they spent almost all their time at the restaurant.

- (7) Ms Davison asked some questions which she requested Mr Chan answer without the benefit of the interpreter. It was apparent that Mr Chan had very little facility in the English language.
- (8) Ms Angela Chan said that she was frequently in the restaurant in the evening when alcohol was being consumed. She was a student in the day time but available at night. The restaurant is open until 3 am but is only licensed for BYO until 10 pm. She did not see this as an issue as most diners had completed their meals by 9.30 pm. After that it was mainly take aways. She confirmed that her father occasionally had a whisky in the restaurant at the end of the day but this would be with an old friend as a matter of courtesy. She agreed that personal supplies of alcohol should not be in the public area and she undertook to tidy these away to the kitchen. With reference to the Manager's Certificate she was prepared to give an undertaking that it would be utilized only at Golden Boat. She understood the responsibilities of being a Duty Manager and did not anticipate any difficulty in working with her father to ensure that the conditions of the licence were adhered to. Mr Chan was prepared to accept a condition that alcohol could only be brought on to the premises when an English speaking Duty Manager was present.
- (9) Mrs M.K.Chan was invited to give evidence but it became apparent that she too had little understanding of the English language.

#### EVIDENCE OF THE INSPECTOR

- (10) Ms Davison said she was concerned that alcohol was being sold on the premises contrary to the licence. While she had no direct evidence of this she believed the range of both full and partially consumed bottles on display gave the impression that alcohol was available for sale. She said that the absence of an English speaking person on the premises made it almost impossible for an Inspector, the Police or the MOH's staff to clarify what was going on. It was not acceptable to have to rely on customers or neighbours to act as interpreters.

#### SUBMISSIONS

- (11) As Ms Davison had made reference to some matters not included in her brief of evidence it was agreed that the applicant could have the opportunity to make a written submission after Mr and Mrs Chan and their daughter had considered further. A written response was received prepared by Angela Chan. She enclosed a BYO Policy and a Host Responsibility Policy and gave undertakings that the alcohol which had been left in public view would be cleared away. An undertaking was also given that alcohol would only be brought on to the premises and consumed while she was present.

#### DISCUSSION

- (12) The Committee agrees that management of the licenced premises has not been very satisfactory. It also concurs with the Inspector that monitoring and enforcement is made very difficult by the lack of English speaking staff on the premises. However it does not see the applicant's failings as wilful nor does it believe any great harm is occurring. Nevertheless it is appropriate when renewal is being considered to ensure that the law is complied with and that the Agencies are able to carry out their functions under the Act.
- (13) The applicant must take action to see that alcohol brought on to the premises by customers or for private consumption is handled appropriately. No alcohol is to be displayed in view of the public and any personal supplies must be stored in the kitchen. The Committee is mindful that in many ways the restaurant is home to Mr and Mrs Chan and their family and the line between customers, family and friends can get blurred. Steps must be taken to ensure that BYO alcohol is consumed only within the period permitted by the licence and any surplus either removed by the customer or disposed of.
- (14) We are mindful that this licence was originally granted on the basis that the licensee would learn the English language or failing that employ a manager who could speak English. The requirement to have someone in authority on the premises who can converse with both customers and staff of the enforcement agencies is widely accepted. In *Lim (2005) NZLLA PH 887/205* the Authority said  
*If a manager is unable to communicate with the patrons in the English language, or with representatives from the enforcement agencies, then there is no way that we can be satisfied that the provisions of the Act, (in particular relating to sales to prohibited persons), will be respected and complied with.*
- (15) It therefore follows that the renewal of this licence must contain a requirement that an English speaking manager is on duty at all times when alcohol is brought on to the premises and consumed by customers. The applicant has given an undertaking that, if granted a Manager's Certificate, Ms Angela Chan will fill this role. Our initial view was that this was unlikely to meet the need as Ms Chan would not be able to be present all the time. She is a young woman who no doubt has other interests and to expect her to be on the premises seven days a week would be unreasonable. On reflection however we see this as a matter to be sorted out within the family. All we require is that an English speaking person is on the premises to supervise the use of alcohol in accordance with the Act. If this requires the hiring of additional staff or putting up notices to the effect that alcohol may not be brought on to the premises at times when such a person is not present, then so be it.
- (16) We see no reason why Ms Chan should not be granted a Manager's Certificate but given her relative lack of experience we have sought and received an undertaking that it will only be utilized at Golden Boat Restaurant for the present. That limitation can be reconsidered at renewal.

## DECISION

- (17) We are satisfied as to the matters to which we must have regard as set out in s105 and we grant the applicant renewal of an On Licence (Endorsed under s37 for BYO) pursuant to s104(1) for a period of three years. The applicant's attention is drawn to s259 of the Act which makes it an offence to fail to comply with certain requirements and restrictions imposed by or under this Act specifically ss46 to 63.
- (18) The licence will be subject to the following conditions:

Endorsement (BYO Restaurant)

s37 of the Act applies to this licence and the licensee is authorized to:

- Let any person who is on the premises to dine consume alcohol brought there by that person or by any other person who is there to dine with him or her; and
- Let the person who brought the alcohol to the premises remove any of it from the restaurant if the container is sealed or resealed; and
- Sell and supply, for consumption on the premises by any person who is there to dine, any food or hot drink containing not more than 14.33% alcohol by volume; and
- Let people consume alcohol on the premises.

Compulsory Conditions – s110(2)

- (a) No alcohol is to be sold or supplied on the premises on Good Friday, Easter Sunday, Christmas Day, or before 1 pm on Anzac Day to any person not present on the premises to dine.
- (b) Alcohol may only be sold or supplied on the following days and during the following hours when the premises are being operated as a BYO restaurant
- Monday to Sunday 12 midday to 10 pm
- (c) Water must be freely available to customers on the premises while the premises are open for business.

Discretionary Conditions – s110(1)

- (a) The following steps must be taken to ensure that the provisions of the Act relating to the sale and supply of alcohol to prohibited persons are observed:
- Display of appropriate signs adjacent to every point of sale detailing the statutory restrictions on the supply of alcohol to minors and the complete prohibition on sales to intoxicated persons.
- (b) The following steps must be taken to ensure that the provisions of the Act relating to the management of the premises are observed:
- Alcohol must only be consumed within the area marked on the plan submitted with the application.

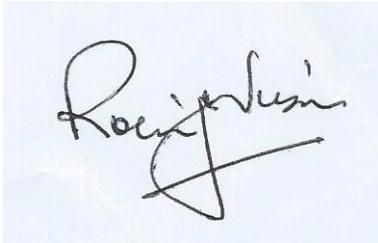
- At least one duty manager must be appointed in accordance with Part 2 of the Act.
  - A duty manager must be on duty at all times when alcohol is brought on to the premises and consumed during licensed hours. The duty manager must be reasonably proficient in the English language.
- (c) The following steps must be taken to promote the responsible consumption of alcohol:
- The licensee must implement and maintain the steps proposed in its host responsibility policy aimed at promoting the reasonable consumption of alcohol.

Other restrictions and requirements to be noted on the licence

s51 Non alcoholic drinks to be available  
s53 Food to be available  
s54 Help with information about transport to be available  
s56 Display of signs  
s214 English speaking manager to be on duty at all times and responsible for compliance.

- (19) With respect to the application by Hing Yu Chan for a Manager's Certificate pursuant to s119 we have considered the matters required under s222. We note that no objection has been raised by the Inspector and the NZ Police. We also note the undertaking given by the applicant that the Certificate will only be utilized at Golden Boat Restaurant. We therefore grant the applicant a Manager's Certificate for a period of one year.

Dated at Christchurch this 18<sup>th</sup> day of November 2015

A handwritten signature in black ink on a light blue background. The signature is cursive and appears to read 'R. J. Wilson'.

R.J.Wilson  
Chairperson  
Christchurch District Licensing Committee