

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

AND

IN THE MATTER of an application by
JUMBO CHINESE RESTAURANT LTD
for renewal of an On Licence
pursuant to s127 of the Act
for premises known as
Celine's Bar and Restaurant
situated at 62 Manchester Street,
Christchurch.

BEFORE THE CHRISTCHURCH DISTRICT LICENSING COMMITTEE

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

HEARING at Christchurch on 26th November 2015

PRESENT Ms J. Zhang, applicant Jumbo Chinese Restaurant Ltd
Mr Khim-Ming Tan, Jumbo Chinese Restaurant Ltd
Mr Bob Zhang, Interpreter
Ms A. Lavery, Alcohol Licensing Inspector, CCC
Constable G. Craddock, NZ Police
Mr P. Shaw, representing the Medical Officer of Health
Mrs J. Anderson, Hearings Adviser, CCC

INTRODUCTION

- (1) This is an application by Jumbo Chinese Restaurant Ltd for renewal of an On Licence for premises known as Celine's Bar and Restaurant situated at 62 Manchester Street, Christchurch. This is the first renewal of the licence. It is opposed by the Inspector on the

grounds of suitability of the applicant. The Medical Officer of Health although not formally in opposition wishes to bring some matters to the attention of the Committee. The concerns of the Inspector and the Medical Officer of Health relate to failure to appoint Duty Managers correctly, Duty Managers not being on the premises when alcohol is being sold and incorrect signage. There is an underlying matter in that the applicant and her staff have difficulty communicating in English thus making the monitoring role of the Agencies almost impossible. While the applicant has some proficiency in English she made use of an interpreter throughout the hearing.

EVIDENCE OF APPLICANT

- (2) Ms Jing Zhang said that she was the sole shareholder and Director of Jumbo Chinese Restaurant Ltd but the day to day running of the restaurant was largely in the hands of her husband as she has responsibility for two children, one of whom is only ten months old. Her husband does not speak English. She employs two Duty Managers, Ting Ting Sun and Khim-Ming Tan but Ting Ting is leaving shortly and Khim needs to return to Singapore for a period. She herself has completed the qualifications and intends to take on a Duty Manager's role in future. At present alcohol is only sold when one of the present Duty Managers is on duty. Ting Ting is a student and leaves around 10 pm to study while Khim-Ming comes on at around 5 pm after he finishes another job. He is expected to stay late while the restaurant is open but has had to leave early lately because of health issues. Ms Zhang said they start selling alcohol when the Duty Manager arrives and do not sell any after that person goes home. She said she thought it was in order to allow customers to consume alcohol that had been purchased prior to the Duty Manager leaving. With respect to the future Ms Zhang said members of her extended family were now able to care for the children and she would be able to spend a lot more time at the restaurant.
- (3) Under cross examination Ms Zhang agreed that at a meeting with Agency staff prior to the licence being granted she had given a commitment that English speaking staff would be employed. She confirmed that Ting Ting Sun spoke good English and Khim-Ming Tan spoke fair English. She herself spoke good English. She has lived in New Zealand for 12 years. However Ting Ting is a student and needs to go home early to study while Khim has a health problem and he is affected by the atmosphere in the restaurant. If there are no customers about he also tends to go home early. Ms Zhang conceded that on several occasions when Inspectors visited there was no staff member in the restaurant who could speak English.
- (4) There followed questioning about the administrative obligations of a licensee. It became very obvious that Ms Zhang had no idea at all of what is required. She seemed to think that it was sufficient for her to name people as Duty Managers without going through any formal process of appointment and notification. She was unable to explain a computer printout produced in evidence which showed only two Duty Managers appointed to Celine's, one a person she had never heard of and the other Ting Ting Sun. She was also unclear what was required on the sign advising the name of the Duty Manager. She said "Ken" was a misspelling of "Khim" while "Laura" was a name used by Ting Ting Sun. She was not aware that the Act required the full and correct name.

- (5) As the cross examination continued Ms Zhang became more confused and her English deteriorated. Even with the assistance of the interpreter she seemed to have difficulty in understanding the questions and her answers were at times not directed to what had been asked. Towards the end she became distressed.

EVIDENCE OF AGENCIES

- (6) Ms Zhang stated that she had read and understood the Inspector's brief of evidence which was taken as read. In summary Ms Lavery's evidence was that she had visited the restaurant on four separate occasions since taking over the renewal file. She had not met either of the two people said to be Duty Managers and no staff member had been present who could converse in English. On each occasion there had been failings in the required signage. On one occasion she had arranged with her colleague from the Medical Officer of Health's staff to conduct a controlled purchase operation. The outcome was that the two people who visited the restaurant were unable to purchase either alcohol or food because of the total lack of English spoken. In clarification to the Committee Ms Lavery explained that her concerns were two fold. Firstly the lack of properly certificated and appointed Duty Managers who were able to converse with inspecting agency personnel in English and secondly the failure of the applicant to understand and implement the various administrative requirements of the Act.
- (7) Mr Shaw gave evidence of visits to the restaurant frustrated by the inability of any staff member to speak English. He also noted failings in the signage displayed. He expressed surprise that the applicant needed the services of an interpreter today as he had been able hold a conversation with her on the telephone without difficulty. In his opinion Agency staff had gone out of their way to assist the applicant with advice. He had no problem with doing so but observed that given the large number of licences the Agencies had to monitor it would be an impossible job if all needed the same level of assistance.
- (8) Ms Lavery was recalled to the witness stand by the Chairperson to give evidence about a discussion between the Agencies which had been referred to. She confirmed that the Agencies had held a meeting where the possibility of enforcement action was discussed. While the Agencies were concerned about the conduct of the licence it was decided that assistance would be offered to try to get things right before resorting to enforcement action. Unfortunately despite advice given no improvement had been observed hence the opposition to the renewal application.

SUBMISSIONS

- (9) Verbal submissions were received. Ms Lavery said she opposed the renewal because she was not satisfied as to the suitability of the applicant. She conceded that Ms Zhang was able to quote various requirements of the Act but despite assistance and advice given she seemed unable to put into effect adequate measures to implement them. She also doubted that Ms Zhang, even if appointed as a Duty Manager, would be able to

provide the cover required seven days a week given the resignation of Ting Ting Sun and the projected absence of Khim-Ming Tan.

- (10) Mr Shaw said that while the applicant could speak on the Object of the Act and recite various requirements he did not believe she properly understood them. He also thought she had put herself on a "mission impossible" with respect to filling the Duty Manager's role herself given her other responsibilities. He referred the Committee to the decision of the Liquor Licencing Authority in *The Crossing on Kaiapoi Ltd (PH 469/2009 and PH 472/2009)* where the Authority made it clear that it was an absolute cornerstone of the Act (viz. the Sale of Alcohol Act 1989) that a properly appointed Duty Manager be present at all times when alcohol is sold or consumed on licensed premises. The Medical Officer of Health did not oppose the renewal within the statutory timeframe but was concerned at information that had come to hand since.
- (11) Ms Zhang said she and her husband were hard workers. They had various jobs since they came to New Zealand and had saved hard to buy the restaurant. She was sorry she had not managed it well but she had been preoccupied with the care of her family. She was prepared to engage suitable Duty Managers and would act as back up herself. She undertook to understand better the administrative requirements and see that they are met. She urged the Committee to give her a chance to put things right. She said the customers of her restaurant expected to be able to have a beer with their food. If she could not sell alcohol there would inevitably be a drop in business. She and her husband relied on the business to support their family. She was prepared to accept a reduction in hours to 11 pm during the week although she would like the present hours at the week end. She gave an assurance that there would be an English speaking Duty Manager present whenever alcohol was available for sale.

DISCUSSION

- (12) The opposition to the renewal of this licence is based on three points. There is doubt that Duty Managers are present when alcohol is being sold and consumed, there is the failure to appoint and notify Duty Managers correctly and to display appropriate signage and there is the extreme difficulty of Inspectors in performing their monitoring role when frequently no person (other than customers) at the restaurant can converse in English.
- (13) We have considered the evidence which has been tendered and we have been able to observe Ms Zhang as she struggled to understand and respond to questions relating to the management of the restaurant. We have no doubt at all that the applicant has failed to meet the requirements of the Act. We note that the Agencies have tried to help but over a period of several months no improvement has been seen. The matter of the failure to have English speaking staff is of concern to us. 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 of 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."*

(14) We are of the view that on its performance to date the applicant has not met the standard of suitability required of the holder of a licence under the Act. However we are mindful that this is not a high risk premise. We heard no evidence of sales to minors or intoxicated persons or other such offences. What we did hear was evidence of poor management with respect to administrative obligations and a seeming inability to get it right despite assistance and advice from the Agencies. We are also mindful that this is a renewal application and the consequences of a failure to have the licence renewed will be severe for this otherwise hardworking and law-abiding immigrant family. We are therefore prepared to give the applicant a further opportunity to put things in order as Ms Zhang requests and it is our intention to adjourn this hearing for that purpose.

However the applicant should be in no doubt as to what is required.

- She is to take steps immediately to engage a sufficient number of certificated Duty Managers to cover the entire period the restaurant is open and alcohol is available for sale and consumption.
- If there are periods when for one reason or another a qualified Manager is not on duty, appropriate signage must be clearly displayed that alcohol is not available for sale. At such times the applicant would be well advised to cover the alcohol display to avoid any doubt.

(15) From what we have said already it will be obvious that Duty Managers should have a reasonable proficiency in the English language, certainly enough to be able to manage alcohol purchase and consumption by customers and to discuss technical matters with representatives of the enforcement agencies who may visit. We are aware of course that as part of the process of obtaining a Manager's Certificate an applicant has to demonstrate knowledge of the English language. Regrettably it may be that a person whose English is not particularly good may be able to satisfy an examiner on the day. We have seen evidence of this for ourselves today.

- Let us be clear that the Duty Managers to be appointed to the applicant's premises must have reasonable proficiency in English as well as holding the appropriate qualification.

(16) The applicant must take immediate steps to gain an understanding of the administrative requirements of the Act.

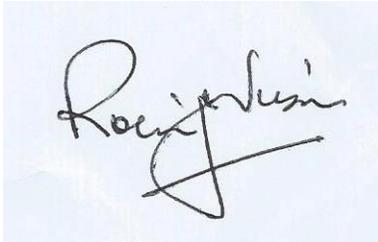
- In particular Ms Zhang must pay attention to the requirements relating to the appointment of Duty Managers, Temporary Managers and Acting Managers and their notification as required to the District Licensing Committee and the NZ Police.
- She must also ensure that the required signage is clearly displayed at all times. She must be meticulous in these matters.

(17) If these steps are taken immediately and the Agencies are satisfied there has been a very substantial improvement in the management of the premises during the period of adjournment and can report accordingly, the Committee may be prepared to then deal with the application on the papers. The applicant should be aware that in the event of a decision to renew the Committee may opt to renew for a shortened period. Conversely the applicant should be clear that if the Agencies are unable to report positively then this public hearing will be resumed. In that event in all likelihood the Committee will reach a decision to refuse the renewal.

DECISION

(18) The application to renew the On Licence for Jumbo Chinese Restaurant Ltd trading as Celine's Bar and Restaurant is adjourned for a period of three months from the date of this decision. The Agencies are requested to provide further reports at that time.

DATED at Christchurch this 8th day of December 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