

**IN THE MATTER**

of the Sale and Supply of Alcohol Act 2012

**AND**

**IN THE MATTER**

of an application by **MEMORIES OF HONG KONG QUEENSTOWN LIMITED** pursuant to s.62 of the Act for an temporary authority in respect of premises situated at 34B The Mall, Queenstown, known as "Memories of Hong Kong"

**BEFORE THE QUEENSTOWN LAKES DISTRICT LICENSING COMMITTEE**

Chairman: Mr E W Unwin  
Members: Mr L Cocks  
Mr J M Mann

**HEARING** at Queenstown on 5 March 2014

**APPEARANCES**

Ms T Surrey – For the applicant  
Ms J Mitchell – Queenstown Lakes District Licensing Inspector – to assist  
Sergeant L K Stevens – N Z Police – in opposition

**ORAL DECISION OF THE QUEENSTOWN LAKES DISTRICT LICENSING COMMITTEE**

***Introduction***

- 1) Before the Committee is an opposed application for a temporary authority to carry on the sale and supply of alcohol. The application is brought by Memories of Hong Kong Queenstown Limited, (hereafter called 'the company'). The company has three shareholders. The majority shareholder owning 50% is Eugene Yuta Han. He is the 21 year old son of Ming Han. Ming Han owns 20% of the company. In reality he is responsible for the establishment of the company and the new business. The final 30% of the company is owned by his cousin Lin Can Tang who lives in Christchurch. Ming Han is 51 years of age. He and his son Eugene are the directors of the company. Mr Ming Han has been a very successful restaurateur in Queenstown. He has operated licensed restaurants in the area since 1994. His record has been unblemished in terms of business, although there are issues in relation to alcohol abuse as evidenced by the Police.

- 2) The reason for the application is that Mr Han currently operates a licensed Chinese restaurant in Beach Street, Queenstown. The business has been in its present location for ten years. The restaurant is open for lunch and dinner and can seat up to 120 people. The lease expires on 20 March 2014. A decision has recently been made to shift the business to another location at 34B The Mall. The premises used to be a Thai restaurant licensed to trade between 11.00am to 1.00am the following day Monday to Sunday. The restaurant has undergone a refit and is virtually ready to open.
- 3) The company has employed Sean Kevin McSparron as the Operations Manager. Mr McSparron gave evidence before us and impressed us with his attitude. He has held a Manager's Certificate for ten years and has never been the subject of any enforcement action by the regulatory agencies. He is to work full time and will recruit train and supervise staff.
- 4) Mr Ming Han advised that in addition to the setting up of the restaurant, he will also have an involvement with two other licensed premises. His intention is to run the accounting side of the operation, including stock ordering, invoices and commercial contracts. It seems that his son Eugene will have little initial presence in the operation of the business. In summary, when we lift the company's corporate veil, we have formed the view that Mr Ming Han is the company's 'alter ego' as well as its controlling force. At the same time we are not unmindful of the fact that the responsibility for conformity with the licence and the Sale and Supply of Alcohol Act 2012 (hereafter called the Act) is on the shoulders of the duty manager.

### ***The Hearing.***

- 5) When the application for a Temporary Authority was made on 14 February last, the Police noted that Mr Ming Han had a recent conviction for driving with excess blood alcohol. The evidence showed that at about 11.50pm on 22 May 2013, Mr Han was driving his motor vehicle in Queenstown. He was stopped and tested. He produced a breath alcohol level of 596 micrograms of alcohol per litre of breath. He elected to give a blood sample which on analysis showed a level of 167 milligrams of alcohol per 100 millilitres of blood, twice the allowable limit, despite the fact the Mr Han stated that he had recently consumed three glasses of beer.
- 6) This offending was to some extent compounded by an incident over two years ago when Mr Han was noted as being mildly intoxicated while in a Queenstown casino. He became involved in an argument with the acting shift manager during which he threatened and briefly pushed her. Although charged with disorderly behaviour and assault there was not the slightest possibility of injury according to the High Court's sentencing notes. The incident resulted in a court case, a plea of guilty and a conviction, which was overturned in the High Court when Mr Han was discharged without conviction.
- 7) For his part, Mr Han seemed to take the view that as a successful businessman in the hospitality industry in Queenstown, he was reluctant to give away any degree of responsibility. In particular he was not prepared to relinquish his directorship. He seemed to have little understanding of the link between his behaviour, and the committee's responsibilities when authorising

people to sell and supply alcohol. He appeared to treat the issue in a relaxed way. On the other hand the object of the Act as set out in S.4 is that:

- (a) ***The sale, supply and consumption of alcohol should be undertaken safely and responsibly; and***
- (b) ***the harm caused by the excessive consumption of alcohol should be minimised.***

This object is now an integral part of the new licensing regime. It is one of the matters that must be taken in to account when considering either an application for, or a renewal of a licence.

- 8) We are grateful to the Police Sergeant for drawing our attention to the case of *Henry v Strange* LLA PH 1632/96 which succinctly sets out the reality and difference between the responsibilities of alcohol licensed business people and the general public.


***“In many occupations off duty conduct is commonly ignored. An exception may arise where the conduct impacts upon work performance. Few trades or professions have a direct legislative link which requires that conduct, including out of hours activities, be considered under quasi-disciplinary procedure of s135 of the Act. Nevertheless that burden is imposed by Parliament on licensees (under S.132) and managers under the Sales of Liquor Act 1989. Their conduct and suitability may be examined at any time if an application is brought before this Authority”.***

- 9) We accept the point made by Ms Surrey that suitability must include a consideration of the nature of the business, and in this case it is accepted that the operation of a licensed Chinese restaurant should be low risk. On the other hand we were more than a little concerned that Mr Han did not really seem to get the point about what the Act is trying to achieve.

### ***The Committee’s Decision***

- 10) After considering the respective arguments we have formed the view that a temporary authority should be granted albeit with conditions. Pursuant to S. 136 (4) of the Act we may impose any reasonable conditions that we think fit. The temporary authority will be for three months or until the on-licence application has been determined whichever event happens first. The temporary authority may be issued with two conditions:
- (a) Within 30 days the company must appoint another director, and that director must be accepted by the Inspector and the Police as being a suitable person. If this condition is not fulfilled, then either we will re-hear the application or ensure that an application is brought to cancel the licence under S.283 of the Act.
  - (b) The closing hour of for the existing licence are to 1.00am. Under the temporary authority the closing time for the restaurant will be 11.00pm.

DATED at QUEENSTOWN this 4<sup>th</sup> day of March 2014

  
E W Unwin  
Chairman

