

AP 183/92  
MEDIUM  
PRIORITY

IN THE HIGH COURT OF NEW ZEALAND  
WELLINGTON REGISTRY

10/9

AP 183/92

1510

UNDER the Sale of Liquor Act 1989

IN THE MATTER of a determination of the  
Liquor Licensing Authority  
No. 2254/92

BETWEEN BAR SYSTEMS (NEW ZEALAND)  
LIMITED, a duly incorporated  
company having its registered  
office at Wellington  
Appellant

Hearing: 26 August 1993

Counsel: R.M. Crotty and J.L. Harvey for the Appellant  
J.A.L. Oliver for the Liquor Licensing  
Authority

Date of Judgment: 26 August 1993

---

ORAL JUDGMENT OF HERON J

---

This is an appeal on a question of law arising from the decision of the Liquor Licensing Authority comprising Judge F.G. Paterson as Deputy Chairman and two lay members given on 30 June 1992. The appellant sought an off-licence in terms of s.29 of the Sale of Liquor Act 1989 being one of the four categories now available to applicants under the 1989 Act. They are on-licences, off-licences, club licences and special licences. These provisions are new and follow the substantial changes to liquor licensing brought about by the 1989 Act.

It is important to note that the Act by sections 4 and 6 has as its primary object the establishment of a reasonable system of control over the sale and supply of liquor to the public and as an underlying principle that the sale of liquor to the public or any member of the

public requires a licence. Off-licences are defined in s.29 as follows:

"(1) An off-licence shall authorise the holder of the licence to sell or deliver liquor on or from the premises described in the licence to any person for consumption off the premises."

The appellant described its business as a liquor brokerage business which it operated from a residential address where the company has its office. Its business is related to and ancillary to a catering business. As I understand it a member of the public will request the company, the appellant, to supply liquor and that request will be made to the appellant's premises as I have just described. Thereupon the order is accepted by the appellant, arranging for the liquor to be delivered to wherever that member of the public directs.

The appellant has as part of its business, so I am informed, the regular supply of liquor to the Basin Reserve, to meet the demands that arise from time to time in respect of the various sporting attractions there. That aspect of the business has some complications which it seems to me cannot be appropriately addressed in this appeal.

Here what the appellant is seeking to do is to conclude a sale of liquor at the licensed premises applied for, and meet its obligations to deliver that liquor by arranging for the delivery from other suppliers. In respect of the Basin Reserve arrangements they may be complicated by the fact that the sale takes place at that venue, all the applicant company being involved in being a purchase from the supplier at that point, for which no licence would be required.

In terms of the business for which the applicant sought a licence I find that on the placing of an order with the company at the address given, and on its acceptance, a

sale takes place, to be followed by the necessary delivery of the goods.

Mr Crotty said that following an application to the Local Authority it was referred to the Liquor Licensing Authority because of the novelty of the application and the Authority's concerns at the hearing were directed to town planning. He says that the problems which arose with regard to the appropriateness of an off-licence were not referred to or assumed very little significance contrasted with the apprehended town planning difficulties. When however it was explained that the residential premises were being used entirely as an office and not for the storage or sale of liquor, the authority turned its concern to whether an off-licence could be issued in these circumstances. The Authority said:

"We have no difficulty in accepting that a sale can be completed even if delivery of the liquor is delayed. The test is "when does the property pass? ... We go further and say that it is an integral part of any licence permitting liquor sales that there be defined premises wherein the sales are to be conducted and that requirement is clearly made so that the surveillance of the business of the licensee can be effectively carried out. Under the Sale of Liquor Act the two main types of licences are an on-licence permitting liquor sales on the premises for consumption there and an off-licence permitting such sales or delivery on or from the premises for consumption elsewhere."

Critical to this case is subs.(2) of s.29. That provides:

"The holder of an off-licence may arrange for delivery to be made by the maker, importer, wholesaler, or distributor of any liquor from the premises of the maker, importer, wholesaler, or distributor; and, in any such case, the liquor shall be deemed for the purposes of this Act to have been delivered by the holder of the off-licence from the premises described in the licence."

Accordingly Mr Crotty says if a sale can be completed on the premises in the normal way by the acceptance of an offer to purchase and if liquor can be delivered not from the premises as off-licence would otherwise require, but in the way provided by s.29(2), the appellant ought to have been entitled to obtain the licence on meeting all other criteria. That is the central issue in this case. The Authority acknowledged s.29(2), not directly referring to it, but said:

"It is true the Act does permit "delivery arrangements" in the particular cases of makers, importers, or distributors but that is clearly a "bulk supply" common sense extension of the operation of an off-licence which can easily be monitored by the inspecting authorities."

The Authority referred to a decision in which it had granted such a licence by way of a telephone order business, but pointed out that they were dealing then with premises in which there was a substantial quantity of liquor on those premises.

I do not think there is any particular relevance in the question posed by the Authority as to when the property in the goods will pass. The focus in respect of this section is when a sale occurs. I have no difficulty concluding that it can occur on the premises in the usual commercial way, either by fax, letter or telephone call, or a combination of them all. However Mr Oliver for the Commission, who has appeared and made submissions, has said that implicit in off-licences is the requirement that some quantity of liquor be stored on those premises. The entitlement to arrange delivery direct from the category of persons referred to in subs.(2) is a peripheral and incidental entitlement, the fundamental requirement being that the premises essentially be premises which store liquor for sale.

The Act gives no such directive, nor is there any assistance as to what extent there is to be some storage

of liquor. The reason Mr Oliver says the Act is to be so interpreted is for purposes of enforcement. Premises could be observed and inspected and mischiefs, such as sale to minors or trading outside the appropriate hours, properly controlled.

I consider those arguments difficult to accept. It seems to me that an off-licence run in the way proposed by the appellant here is subject to the normal scrutiny and inspection that any licensing inspector could employ. The inspector would be entitled to view records. It would be open to the Inspector if there were suggestions of trading outside hours to make the appropriate inquiries, just as it would be if such illegal trading was carried on at, for example, a bottle store.

The sort of business that the appellant wants to undertake, such as the sale of significant quantities of liquor to members of the public, for example for weddings and catering purposes generally, does not persuade me that there are difficulties in the overall compliance requirements of the Sale of Liquor Act. The licensing authorities know that it is this type of business that the appellant is undertaking. It is open to them to put the necessary conditions on the licence in order to ensure that it is this type of business which is being licensed. Appropriate records are to be kept, including records of times in which transactions are being undertaken and the like.

But central to Mr Oliver's concern about granting a licence in this case is his submission that implicit in the wording of s.29 is the requirement for the storage of some liquor on the premises. As a submission I reject that and find that the Act allows an off-licence to be granted where a sale takes place on the premises but delivery takes place off the premises, provided it is done in terms of s.29(2).

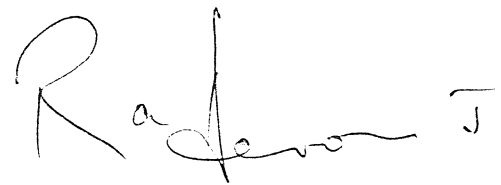
I have not considered for the purposes of this case the special provisions relating to caterers contained in s.51, except to note that this endorsement may be an entitlement that appellant may receive. Matters did not reach that stage because the application ran into the conceptual difficulties that I have described, and which are recorded in the Authority's judgment.

The appellant poses two questions of law for the Court. The first is would the sale of liquor take place at the premises at 178A Barnard Street, Wadestown, Wellington? The answer is "yes", in the circumstances as submitted to the Court. The second is, does the liquor sold from the premises at 178A Barnard Street have to be stored on those premises, to which the answer is "no".

It follows from what I have said that the appeal brought pursuant to s.139 of the Sale of Liquor Act 1989 is to be allowed.

I direct that the case be returned to the Authority for a licence to issue subject to such conditions to be fixed by the Authority as it thinks appropriate.

There have been delays in having the application considered in the first place, then the hearing before the Liquor Licensing Authority, and now this appeal. It is hoped that the earliest attention may be given to the issue of the licence with whatever conditions are considered appropriate in the circumstances.

A handwritten signature in black ink, appearing to read "R. A. J." with a stylized flourish at the end.

**Solicitors**

Chapman Tripp Sheffield Young for the Appellant  
Crown Law Office for the Liquor Licensing Authority