

NORTHERN TERRITORY LICENSING COMMISSION

REASONS FOR DECISION

LICENSEE: Ford Dynasty Pty Ltd

PREMISES: Lasseters Casino

LICENCE NUMBER: 80103004

PROCEEDING: Complaint Pursuant to Section 48(2):
Section 102 – Liquor not to be sold to an Intoxicated Person;
Section 121 – Failure to Remove or Exclude Intoxicated Person from the Licensed Premises.

HEARD BEFORE: Mr Richard O’Sullivan (Chairman)
Ms Brenda Monaghan (Legal Member)
Ms Helen Kilgariff

DATE OF HEARING: 25 March 2009

APPEARANCES: Mr Tony Whitelum for the Licensee
Mr Bradley Morgan, Nominee
Mr Steven Rogers, Security Manager
Mr Mark Johnson for the Director of Licensing
Senior Inspector Wayne Sanderson for the Director of Licensing
Inspector Paul Drake for the Director of Licensing

BACKGROUND

- 1) A complaint was lodged on behalf of the Director of Licensing pursuant to Section 48(2) of the *Liquor Act* (“the Act”) alleging a breach of Section 102 of the Act (selling liquor to an intoxicated person) and a breach of Section 121 of the Act (failure to remove an intoxicated person from a licensed premises). At the hearing, the Section 102 breach was withdrawn leaving the s121 breach with was the subject of the hearing. Mr Whitelum as Counsel for the Licensee admitted a breach of Section 121(below) based on agreed facts.

121 Power to exclude or remove persons

- (1) *A licensee or employee of the licensee shall, or an inspector may, exclude or remove a person, not being a bona fide resident of the licensee's licensed premises, from the licensed premises if the person*

is intoxicated, violent, quarrelsome, disorderly or incapable of controlling his behaviour.

- (1A) *A licensee, an employee of the licensee or an inspector may exclude or remove from the licensee's licensed premises:*
- (a) *a bona fide resident of the premises, if that resident is intoxicated, violent, quarrelsome, disorderly or incapable of controlling his behaviour;*
 - (b) *subject to any other law in force in the Territory, any person (including a bona fide resident), if the presence or continued presence of the person on or at the premises would or might:*
 - (i) *render the licensee liable to a penalty under this Act or any other law in force in the Territory; or*
 - (ii) *in his opinion, disrupt the business of the licensee or unreasonably interfere with the wellbeing of other persons lawfully on the premises; or*
 - (c) *for or during a period not exceeding 12 months from the time a person was found guilty of an offence relating to the possession or supply of a drug on licensed premises, that person.*
- (2) *A person to whom subsection (1) or (1A) is applicable shall immediately leave licensed premises on being requested to do so by the licensee, an employee of the licensee, an inspector or a member of the Police Force.*
- (3) *A member of the Police Force shall, on the demand of the licensee, an employee of the licensee or an inspector remove or assist in removing from licensed premises a person who has been requested by the licensee, an employee of the licensee or an inspector in accordance with subsection (2), to leave the premises.*
- (4) *A licensee, employee of a licensee, inspector or a member of the Police Force exercising a power under this section may use such force as is reasonably necessary for the purpose.*
- 2) At the hearing, the Commission was provided with a Brief of Documents, CCTV footage and a Statement of Agreed Facts. Evidence was provided by Licensing Inspectors Sondra Barry and Paul Drake that late in the evening of 4 October 2008 a female patron, Ms Beelitz (“Ms B”) was observed being assisted from The Juicy Rump, a bar and restaurant within the Lasseters Casino licensed premises. She was virtually “legless” and unable to walk unaided or physically control her movements.
- 3) Material provided in the Hearing Brief to Commissioners and to the Licensee relates to the following sequence of events leading to the laying of the complaint of the alleged breaches of the Act.

- At 22:58 hours Ms B enters The Juicy Rump;
- At 23:00 hours, she purchases drinks at the bar;
- At 23:20 hours on leaving the dance floor, she trips at a table in view of casino staff;
- At 23:50 hours she dances very unsteadily with a female friend for some minutes, stumbles and falls to the floor and is then assisted away from the dance floor;
- At 23:58 hours she leaves the premises aided by a male patron and is sufficiently intoxicated to be unable to walk unaided.

HEARING

- 4) At the commencement of the hearing, Mr Mark Johnson, Counsel for the Director, advised that the complaint against the Licensee alleging a breach of Section 102 (selling liquor on the premises to an intoxicated person) was withdrawn. He also advised that he and Counsel for Ford Dynasty Pty Ltd, Mr Tony Whitelum had reached agreement on the Statement of Agreed Facts ("SOAF") tabled as Exhibit 1 at the Hearing and which acknowledges breach of Section 121 of the Act.
- 5) This SOAF outlines the course of events on the night:
 - a) that the female patron, Ms B was served two (2) glasses of wine and on leaving the bar, she slightly lost her balance;
 - b) Ms B stumbled and fell on departure from the dance floor after dancing with a male person;
 - c) Ms B again took to the dance floor and was unsteady on her feet and fell onto her buttocks. On regaining her feet she was still very uncoordinated and unsteady;
 - d) when she later left the premises, she was unsteady on her feet and had to be assisted by another male person. By this time it was clear that Ms B was unable to comprehend or effectively communicate with anyone.
- 6) Mr Mark Johnson provided evidence to the hearing illustrating a progressive increase in the intoxication of Ms B on the evening of 4 October 2008. The evidence included a viewing of the CCTV footage on the night. The Commission was able to gain a good comprehension from this footage which was filmed at twenty-four (24) frames per second. The camera surveillance evidence included different CCTV angles and confirmed the majority of matters set out in the SOAF.

- 7) The footage showed that on entry to The Juicy Rump, the female patron is seen purchasing two (2) drinks at the bar at around 23:00 hours and spends considerable time there while being served. She is observed to drop her head repeatedly and to drop change presented to her by bar staff, although she does show some agility in retrieval of this coinage. She was also observed slouching back onto the bar just prior to leaving and to stumble with drinks in hand although it is acknowledged that this stumble was not visible to bar staff.
- 8) At around 23:20 hours the Commissioners were able to view the female patron dancing with a male partner and on exiting the dance floor she is seen to trip or stumble into a table or chair leg. Some half hour later at 23:52 hours the female patron is again seen on the dance floor, dancing very unsteadily with a female friend for at least 5 minutes. During the period on the dance floor she is seen to fall to the floor and her unsteadiness appears to display a very visible sign of increasing and advanced intoxication. This progresses to the point where Ms B departs the premises and into the carpark very unsteadily and heavily assisted by a male friend.
- 9) The above chronology and events depicted on the CCTV footage was assisted with commentary by Inspector Paul Drake and interpretation provided by Mr Johnson, with such explanations and comments largely agreed to by Mr Tony Whitelum.
- 10) What neither party could agree on or provide evidence on was the number of drinks Ms B was served while on the premises and whether she was provided with drinks by other friends she was in the company of during the evening. It is agreed that one of the males in the group purchased drinks including sparkling wine for the table at which Ms B was seated but details of any other purchases is unknown.
- 11) What we do know is that by the end of the evening, Ms B was visibly highly intoxicated.

SUBMISSIONS ON PENALTY

- 12) In making submissions on penalty Mr Johnson acknowledged the cooperation of Lasseters Casino in the investigation of the matter. He summarised the events of the evening and advised that the propensity of a patron to fall increases with the level of intoxication of the individual.
- 13) In relation to a query by the Commission on a possible very early indicator of intoxication, that is the dropping of the head observed in the CCTV footage (where Ms B was purchasing initial drinks at 23:00 hours), the Commission was advised by Senior Inspector Wayne Sanderson that this mannerism could be attributed to one of three (3) factors:
 - The patron is tired;
 - It is a normal mannerism; or

- The patron is intoxicated.
- 14) This early behaviour of the patron could have been an alert for the patron to be monitored by staff. Mr Whitelum made reference to the issue of monitoring and advised that Lasseters' usual practice is to monitor everyone, through the ground staff and staff monitoring CCTV coverage. Ms B's behaviour should have been acted upon but was not because the two (2) operators monitoring the CCTV footage were otherwise occupied. Mr Whitelum further advised that Ms B left the premises within eight (8) minutes of the demonstrable evidence of intoxication, that is staggering and falling on the dance floor.
- 15) Mr Whitelum stated his client agreed that for the period Ms B and her female companion were on the dance floor until her departure at 23:58 hours, the level of intoxication should have been visible to staff and they should have intervened to remove her. \
- 16) In a further plea for leniency and mitigation, Mr Whitelum advised the Commission that Lasseters made a plea of guilty as soon as the full facts were known. This occurred with the receipt of advice on 16 March 2009 following which they made a guilty admission to Counsel for the Director on 17 March 2009.
- 17) In acknowledging Licensee responsibility, Mr Johnson referred to video footage clearly evidencing the intoxication of the female patron in the period shortly prior to her departure when she was visibly intoxicated on the dance floor.
- 18) In the absence of evidence from the patron in question, Ms B, Mr Whitelum advised the Commission needed to consider four (4) alternative possibilities as to how and why the physical condition of the patron deteriorated. These possibilities included:
- i) The patron arrived drunk;
 - ii) The patron got drunk on the premises;
 - iii) The patron was drugged through drink spiking;
 - iv) The patron had self medicated resulting in the deleterious erosion of her behaviour.

MATTERS TAKEN INTO CONSIDERATION

- 19) The Commission is persuaded through both the SOAF and through the viewing of the CCTV footage that the patron was intoxicated on the premises and was showing sufficient signs of rising intoxication prior to her departure that should have caused an alert in the minds of Lasseters staff leading to monitoring, early intervention and patron removal from premises.

- 20) The issue of how she got into this state of visible intoxication is no longer as relevant given that the Section 102 complaint relating to the sale of liquor to an intoxicated person has been withdrawn. Therefore the prime matter for the Commission to consider is the degree of culpability of a Licensee in not taking heed of the earlier signs of intoxication of the patron.
- 21) Counsel agree that for the period Ms B and her female companion were on the dance floor until her departure at 23:58 hours, her serious level of intoxication should have been visible to staff and they should have intervened to remove her. It did not appear to be an overly busy night.
- 22) After viewing the video of Ms B on the dance floor, it is the Commission's view that staff monitoring patrons should reasonably have been aware of her level of intoxication before the dance floor incident. It is doubtful that she suddenly became 'legless' when she appeared on the dance floor and from the small amount of CCTV footage shown at hearing, there were indicators earlier in the evening that this was a patron to watch. It is not sufficient to plead that staff did not see the drunk person. All staff be they working behind the bar, on security, clearing glasses or monitoring CCTV have a role to play in monitoring patron behaviour and it is concerning that no one appeared to see the deteriorating condition of this young woman.
- 23) The Nominee of the premises, Mr Bradley Morgan gave evidence that he has recently implemented an upgrade of camera surveillance to help with detection of patron behaviour. He further outlined the practices and procedures of Lasseters in monitoring and managing patron behaviour.
- 24) Counsel for the Licensee and the Director have put to the Commission that given the Licensee's guilty admission and cooperation throughout the investigation, the candid admission of events during Hearing and the relatively good record of the Licensee, an admonishment would be an appropriate penalty in this instance.
- 25) Mr Johnson stated that the admonishment should be kept on the record and taken into account in any further hearings that could arise if breaches occurred.
- 26) The Commission notes the only recent incident in relation to penalty was that of a found breach relating to the service of alcohol to a minor. This breach occurred on 26 August 2005. The Commission takes into account the large number of patrons and events held on the premises and notes that this large throughput of numbers would give rise to potential breaches and errant patron behaviour.
- 27) It may well be that detected patron behaviour and misconduct leading to proven licence breaches is not proportionate to the market share serviced by Lasseters Casino and the Commission does accept the relative good record and management systems of the Licensee. The Commission also takes

account of the mitigating factors of their guilty plea and cooperation leading up to and at hearing.

28) However the Commission is also tasked with minimising alcohol related harm in the public interest. Section 3 Objects of the Act provides:

(1) The primary object of this Act is to regulate the sale, provision, promotion and consumption of liquor:

(a) so as to minimise the harm associated with the consumption of liquor; and

(b) in a way that takes into account the public interest in the sale, provision, promotion and consumption of liquor.

29) The burden on the Commission of providing public safety and confidence in both the conduct of licensed premises and the avoidance of social harm is becoming no less easy to reconcile with giving credit to anti risk measures being implemented by good Licensees.

30) In balance in this instance the Commission is more inclined to espouse the need for the public interest to be uppermost in its decision on penalty. Imposing no penalty other than an admonishment in a situation where a young woman has left the premises incapable of walking under her own steam, incapable of coherent speech and defenceless to events surrounding her is not acceptable to the Commission and nor would it be acceptable to the general public.

DECISION

31) The Commission imposes a one (1) day suspension of the liquor licence for the area known as The Juicy Rump within the Lasseters Casino licensed area. This suspension is to be on a Saturday being the day of the week on which the breach occurred and will take place on Saturday 9 May 2009.

Richard O'Sullivan
CHAIRMAN

24 April 2009