

LICENSING COURT OF SOUTH AUSTRALIA

CLARK HOTEL GROUP PTY LTD

JURISDICTION: Application for a Transfer of Hotel Licence

FILE NO: 8508 of 2015

HEARING DATE: 2 and 3 December 2015

JUDGMENT OF: His Honour Judge BP Gilchrist

DELIVERED ON: 18 December 2015

Application for a transfer of a hotel licence - Applicant is a corporate entity - Whether persons who occupy positions of authority in the entity are fit and proper persons - Meaning of fit and proper considered and discussed - Individually none of the issues raised by the police lead to a conclusion that the relevant persons are not fit and proper - Collectively they are of sufficient concern to warrant the transfer being on an interim basis and subject to conditions barring the involvement in the licensed premises of specified persons and limiting the distribution of profits- Ss 53, 55 and 63 Liquor Licensing Act 1997

Kia Xie [2015] SALC 28

Melody Karaoke [2015] SALC 4

Petracaro v Commissioner of Consumer Affairs (1994) 62 SASR 387

Darcy Wood [2012] SALC 95

Adelaide Stevedoring Co Ltd v Forst [1940] HCA 45; (1940) 64 CLR 538

Serious and Organised Crime (Control) Act 2008

REPRESENTATION:

Counsel:

Applicant: Mr M Barnett

Respondent Intervenor: Sergeant R Handley

Solicitors:

Applicant: Hume Taylor and Co

Respondent Intervenor: Commissioner of Police

- 1 This is an application by Watson Bros Commercial Pty Ltd for a transfer of a hotel licence in respect of premises known as the First Commercial Inn at Commercial Road, Port Adelaide.
- 2 The transfer is opposed by the police.
- 3 The directors and shareholders of Watson Bros are Nicholas and Alexander Watson.
- 4 Section 63(1)(b) of the *Liquor Licensing Act 1997* provides that in connection with a transfer of a licence to a corporate entity, each person who occupies a position of authority in that entity must be a fit and proper person.
- 5 Section 55 of the Act stipulates factors relevant to the enquiry as to whether a person is fit and proper. The Court is required to take into consideration the person's reputation, honesty and integrity, including their creditworthiness. It must also take into consideration the reputation, honesty and integrity of the people with whom the person associates.
- 6 The police contend that for the purposes of these provisions Nicholas and Alexander Watson are not fit and proper persons.
- 7 In particular they contend that they do not enjoy a reputation for integrity and honesty. In the case of Nicholas they contend that his creditworthiness is questionable. They contend that both have associated with persons of disrepute.
- 8 The allegation of a lack of integrity relates to the Watsons' dealings with licensed premises known as the Marble Bar Hotel.
- 9 The Marble Bar traded under a hotel licence in Waymouth Street, Adelaide. Nicholas Watson was a director and shareholder of Nowat Pty Ltd, the company that owned and operated that licence from November 2011. On 24 January 2012 Alexander Watson was conditionally approved as a responsible person in connection with those premises.
- 10 In 2012 there was a complaint by an adjoining business that the Marble Bar was not attending to its responsibilities in connection with garbage removal. A conciliation conference resulted in it undertaking to maintain an appropriate level of cleanliness outside of the hotel premises and to re-assess its garbage collection procedures.
- 11 In 2012 a number of disciplinary complaints were filed in this Court that alleged that on various occasions Nowat breached its responsibility under the Act in respect of its supervision and management of the Marble Bar by compromising patron safety. They alleged a number of instances of

overcrowding. They alleged an occasion when two fire exits were blocked. They alleged a failure to keep a clear path across the front of the premises for pedestrian traffic in Waymouth Street. They alleged an occasion when emergency exits were obstructed, access to fire equipment was obstructed and an electronic button release on an emergency exit was obscured. They also alleged a breach of a condition limiting profit sharing in that it allowed a private entity to charge patrons attending a function at the hotel.

- 12 The police further alleged that in their discussions with Nicholas Watson concerning these breaches he displayed a lack of understanding of the obligations imposed by the conditions of the licence.
- 13 By the time these matters were dealt with in this Court Nowat had ceased trading and was in liquidation and no one attended on its behalf. The police asked for an order that the company be found as not fit and proper so that it could not trade under the Act until further order. The Court made that order.
- 14 In connection with this venture Nowat left considerable debts. It is alleged, without being positively proved, that Nicholas Watson may have allowed the company to trade when it was insolvent. The company still owes its creditors a lot of money. Evidence from an accountant suggested that the unsecured creditors are still owed many hundreds of thousands of dollars. Hence the contention by the police that Nicholas Watson's creditworthiness is questionable.
- 15 Nicholas Watson said the Marble Bar suffered a downturn in business following the relocation of a number of Government offices that were previously located in the vicinity. He said that he left the accounting and financial management to a co-director, who was an accountant by trade. He said that the primary reason for the collapse of the venture was insufficient working capital. He said that he is a qualified lawyer and is acutely aware of the need for propriety in business dealings. He denied any wrong doing. He said that he had learned valuable lessons as a result of the failure of the venture. He said that on legal advice, given that Nowat was in liquidation when the disciplinary matters came before the Court, nothing was to be gained by attending on its behalf. Hence he did not make enquiries as to how that matter was proceeding.
- 16 Alexander Watson said that he had nothing to do with the financial management of the Marble Bar. He said that he was unaware of the fact of disciplinary proceedings against Nowat.
- 17 The allegation of a lack of honesty relates to the Watsons' failure to accurately complete the Application for Approval forms in connection with this transfer. Both have committed offences in connection with

traffic infringements. In the case of Nicholas Watson he was a director and shareholder of a company that has outstanding debts. The form requires an applicant to declare his or her offence history. It expressly states that the declaration includes traffic offences. The form also requires disclosure of particulars in connection with the indebtedness of a company of which the applicant was a director or shareholder.

- 18 The Watsons did not disclose their traffic infringements. Nicholas Watson did not admit to being a director and shareholder of a company that has outstanding debts. Both conceded in giving evidence before this Court that they did not give close enough attention to the completion of the form as they should have and that as a result the form was inaccurate and misleading.
- 19 The police also suggested a lack of candour in respect of their explanation as to how they came to be at the clubrooms of the Mongols Motorcycle Club in Thebarton on 27 February 2015. I will return to this shortly.
- 20 The Watsons called evidence from their father, Melvyn, who spoke on behalf of himself and his wife, Dianne.
- 21 He said that in early 2015 an opportunity arose through Ian and Sandy Furnell for their sons to buy the business and leasehold of the First Commercial Inn. He said that they held a lengthy family discussion about the boys' future and had resolved to assist them. They have made available \$90,000. The mother, Dianne Watson, has recently received an inheritance of \$100,000, the details of which were provided to the police. She also has received a \$50,000 payout on an insurance policy on account of a diagnosis of breast cancer.
- 22 He said that he too had come into funds on account of an inheritance.
- 23 He said that in addition to the \$90,000 they contemplated providing further funds to cover the proposed purchase price of \$100,000 and additional expenses.
- 24 They lost money in connection with their support of the Marble Bar venture. They are, however, prepared to proceed with their support of this venture because they believe that their sons have learnt a significant lesson about the operation of a commercial venture.
- 25 Mr Watson senior was not seriously challenged about any of this evidence.
- 26 Mr Furnell also gave evidence in support of the application. He plainly sees this as an investment opportunity. He has confidence that the venture will succeed and has no issue with the Watsons' propriety.

- 27 It is common ground that the Watsons are friends with Rami Choujaa. The police contend that Mr Choujaa is a person of dubious character and that their association with him is a matter of concern. They also suggest that the Watsons have an association with the Mongols and that that is also a matter of concern.
- 28 I had unchallenged evidence placed before me from an officer attached to the Crime Gangs Task Force. It reveals that the Mongols is comprised of a number of individuals involved in serious criminal activities, including offences of extreme violence, drugs and firearm trafficking, money laundering, blackmail and racketeering. It also reveals that the members of the Mongols pride themselves on being and being seen to be outlaws.
- 29 I also had unchallenged evidence placed before me from another officer attached to the Crime Gangs Task Force that revealed that at about 9.00pm on Friday 27 February 2015 members of the task force attended at the Mongols clubrooms at Thebarton to conduct a firearms prohibition compliance search. All present in the clubrooms were photographed and it was noted that Nicholas and Alexander Watson were present.
- 30 In his evidence Nicholas Watson refuted any suggestion that he is a member of or has any association with the Mongols. He said that on the night in question he was in the company of his brother Alexander and Mr Choujaa. The three men intended to travel to the Ramsgate Hotel at Henley Beach. He was the designated driver. They were travelling there from Para Hills. En route Mr Choujaa asked them to go via the Mongols clubrooms so that he could catch up with a “relative” as it had been the relative’s birthday a few days beforehand.
- 31 Alexander Watson gave the same evidence on this topic as his brother.
- 32 The cross examination of Nicholas Watson on this topic included the following:

“And so that’s - when you went in there, then you saw lots of bikies? Yep.

Big sign Mongols. What did you do? You just had a drink of water? Had a drink of water. I said to Rami and also my brother at the time, ‘Let’s be quick, this is not really my scene, I’d rather get out of here to be quite honest’.

Did you try to get out? Sorry how do you mean?

Did you try to get out? Did you try to leave then? Well, I’m not going to leave without my brother.

Did you ask your brother, let's leave now? Yeah. I said, 'I think we should leave soon', and Alex was of the exact same view as me and

But you didn't leave? Well, we were in the process of asking - basically saying to Rami that we were going to leave when I'd say 50 cops rocked up, so we weren't about to leave then.

But you had a drink there, you stayed there and you didn't leave before the police arrived, did you? We were there for about I would say a period of 15 to 20 minutes prior to the police rocking up. So I had a bottle of water with me, yes.

And which Rami got for you? Yes.

And the police came in, is that what you say? The police rocked up, yes.

And the police had a conversation with you? So that's obviously jumping forward quite a large amount of time but, yes, they did.

All right. So when the police first got there what did they do? Well, it was quite kerfuffle, it's like something that I've never actually seen before with the police rocking up and then all these people trying to exit out of the place. That was sort of a bit like a movie scene to be quite honest with you. But, yeah, that's what happened.

So sometime after police spoke to you? Afterwards, yes.

Yes. And they took a photo of your licence and a photo of you? Yep.

And they took you aside to do that? Yes, the way that they were doing their operation was they were cherry picking people out of that - in that particular room where everyone was. They were just getting people one by one.

...

And when they took you outside they had a conversation with you? Correct.

Asked you what you were doing? Correct.

You didn't tell them then you were going - at a birthday party, did you? I can't recall what I told. I was - to be quite honest with you the police officer that took me out I was on a first name basis with, him being ex liquor licensing, so

I'm just telling you again, you didn't tell them you were there for a birthday, did you? No, I didn't. Not that I recall.

Because that's a recent invention, isn't it? No.

You've just made it up to justify why you're here, why you went to the Mongols Clubhouse? No, incorrect.

So you say you knew no one else in that premises except for Rami Choujaa and his cousin? Correct.

No one else? No one else."

33 It should be noted that Alexander Watson was not in Court when this evidence was given.

34 Alexander's cross examination on this topic included the following:

"Taking you now to 27 February this year, 2015, you went to the Mongols Clubrooms. Is that right?---Yes, correct.

And you went with your brother Nick and Rami Choujaa?---Yes.

Nick was driving?---Yes.

What caused you to go there?---What caused me to go there?

Yes, why did you go there?---We were on the way to the Ramsgate and Rami said, 'Can we pop in to see my cousin?'

And did Rami ring his cousin?---I can't remember, to be honest. I just tag along. I don't go out very much so.

So you don't know if Rami rang his cousin?---No, I'm not 100 per cent sure.

But you heard the conversation about asking to pop in there?---Yes.

When you went there, where did you go to?---What I perceive is the Mongols Clubhouse.

It was a big compound. Is that right?---Yes.

There was a high fence around it?---There was a big gate, yes.

And you couldn't get in there without the gate being opened?---No.

And there were security cameras?---It was dark.

When you got there what did you do?---When we - - -

Got to the clubrooms in the car?---In the car?

Yes?---Well, I just waited in the car and then the gate opened up.

How was the gate opened?---Electronically, I guess.

Do you know who opened it?---No.

Did you or Nick or Mr Choujaa make a phone call?---I'm not sure if anyone made a phone call, but I know the gate did open and we were let inside.

How long were you stopped there for?---Five minutes.

Did the people inside know you were going there?---Not that I was going there, no.

...

Did you know Mr Choujaa's cousin?---No.

Never met him before?---Never.

Do you know who he is now?---Yes.

And that's Mario, is it?---Yes.

And you didn't hear Mr Choujaa say that he was going to see Mario?---No.

So you didn't hear him say that, 'Mario said we can go in'?---Not that I can remember.

You were just sitting in the back seat?---I was sitting in a - I can't remember if I was in the passenger or the rear seat to be honest.

You don't remember much about it at all?---I remember going there, yes.

It's a pretty significant thing, isn't it?---It is, yes. It's actually quite a scary thing.

...

How long were you there for?---Probably 20 minutes; probably, yes, 15, 20 minutes before the police arrived.

When the police arrived they spoke to you?---Everyone sort of scattered and me and Nick just stood at the bar and, yes, they removed two people before us and then they removed myself and Nick, and then we spoke to the police.

...

They took you out of the clubrooms itself to speak to you, didn't they?---Yes, right in the doorway - well, just about - - -

...

Had a conversation with you?---Not a conversation. They just asked a few questions.

And asked you why you were there, didn't they?---I sort of can remember, yes.

You didn't give them any reason, did you?---No.

But you could have told them that you were there for a birthday, couldn't you?---I could have, yes.

But you didn't?---No, I didn't.

Because you've just made that up now, haven't you, to justify you going there?---The birthday?

Yes?---No, I haven't. I haven't made that up at all.

Did you tell police you were trying to get out of the place?---No. It wasn't a lengthy conversation where I could tell them what the situation was. They basically just said, 'Can we have a photo, your licence?' They checked you if you had anything on you and then they sent you on your way. It wasn't a conversation, in-depth conversation where I could explain myself."

- 35 In closing submissions the police maintained the suggestion that the proposed venture might involve the Mongols. They referred to the attendance at the Mongol's clubrooms on 27 February 2015; the evidence of Mr Melvyn Watson that they had a family meeting in around March to April 2015; and the fact of the first payment from Mr and Mrs Watson being made in June 2015. They then submitted:

"[it] certainly ... wouldn't be hard to draw any conclusion that perhaps those three transactions and three events are related. And that inference can be further drawn that related to their association to the Mongols through their very good friend, Mr Choujaa."

- 36 They also referred me to a decision of this Court concerning *Kia Xie*.¹ That case was a sequel to a series of complaints concerning Melody Karaoke. Because of its repeated breaches the Court disqualified the corporate owner of Melody Karaoke.² Having found that Mr Xie was the directing mind and will of the corporate entities involved in Melody Karaoke's persistent breaches the Court concluded that Mr Xie was not a fit and proper person to hold any office under the Act.

¹ [2015] SALC 28.

² [2015] SALC 4.

- 37 It was submitted that by parity of reasoning, in light of the fate of Nowat in connection with the disciplinary action taken against it, that I should come to the same conclusion in respect of Nicholas Watson.
- 38 They submitted that the Court should be particularly concerned about the capacity of the Watsons to effectively manage the proposed venture. They took me to the record of interview in connection with the disciplinary proceedings and to an admission that in connection with safety policies there was little if any documentation.
- 39 They said:
- “a good business, you need policies and plans, and you need all these sorts of things to be able to run the business properly, to run the business efficiently, and more importantly, to run the business safely.”
- 40 They submitted that the evidence indicated that Nicholas Watson has failed to candidly accept his responsibility for the financial and safety shortcomings of the Marble Bar.
- 41 They submitted that given Alexander’s role in the business of the Marble Bar, that he too should assume some of the responsibility for its financial woes.
- 42 They submitted that I should find that Rami Choujaa is a very good and trusted friend of the Watson brothers.
- 43 They submitted that the Watsons account as to how they came to be at the Mongols club rooms was unbelievable.
- 44 They submitted that the club house was like a fortress and the notion that they just called in with a mate so that the mate could wish someone “happy birthday” did not ring true.
- 45 They asked me to note evidence that indicated that a Mongol member was paroled on 27 February 2015, and that the irresistible inference to be drawn is that the Watsons were at the club rooms as part of the celebrations for a member finishing parole.
- 46 They submitted that the ease with which Mr Choujaa gained access to the club rooms indicated that he enjoys a strong relationship with the Mongols bikie gang. They submitted:
- “for a person who’s not known, to wander into the Mongols clubroom and just help themselves to drink would be somewhat of a death sentence. You just wouldn’t do it. You don’t go in there, unless you’re known; unless you know where the drinks are; unless

you know where all these things are occurring, otherwise people will take action.”

- 47 They submitted that the financial position of Nicholas and Alexander Watson is very fragile. They submitted that the proposal was an absolute recipe for financial disaster and that as a result the Court should be very concerned about exposing potential creditors to the loss of money.
- 48 They submitted that Nicholas Watson’s failure to declare his previous involvement with the Marble Bar and his traffic history reflects very poorly on him. They submitted that I should find that that failure was deliberate, conscious action.
- 49 They submitted that I needed to look at the totality of the situation: the poor management of the Marble Bar; the subsequent charges in the Licensing Court that were laid; the finding in regard to those charges that Nowat was not fit and proper; the fact that the company went into liquidation; the fact that when it went into liquidation, Nicholas was a director, manager, responsible person, and Alex was a responsible person and the manager; that the liquidation has left significant outstanding debt; the association with the Mongols; the funding issues; and the failure to accurately declare.
- 50 They submitted that when all of these matters are taken into account the only conclusion that is open is that Nicholas and Alexander Watson are not fit and proper, and the transfer of the licence of the First Commercial Hotel would not be in the public interest.
- 51 Mr Barnett, counsel for the Watsons, submitted that the evidence established that the Watsons had associated with the Mongols on only one occasion. He said whilst it was a regrettable error in judgment that was imprudent and naïve, it did not adversely reflect of their fitness and propriety.
- 52 He submitted that the complaints filed against Nowat did not concern egregious breaches of the Act or the conditions of the licence and that had submissions been advanced it is probable that they would have been dealt with by way of fines.
- 53 As for financial mismanagement in connection with the Marble Bar, he submitted that there is no evidence to indicate any dishonesty or impropriety and that to a large extent the failings of the venture were due to factors outside of the Watsons’ control.
- 54 He said that the failure to properly disclose on the application forms was negligent rather than intentional; it was regretted and was not of great significance.

- 55 He submitted that the police had not established that the Watsons are not fit and proper persons and that the transfer should be granted.

Analysis

- 56 Although the Act talks in terms reputation, honesty and integrity, it is not the role of a licensing authority to conduct an exhaustive character assessment of an applicant that focuses upon every aspect of a person's moral integrity.
- 57 The focus of the inquiry is ultimately directed towards the person's capacity to perform the role under consideration and the extent to which blemishes on a person's character would potentially compromise his or her capacity to perform the role.³ That said, sometimes a person's misconduct will be so morally derelict that even if there is no direct link between that misconduct and the work of a licensee, the licensing authority would recognise that it would be an affront to the public conscience to hold the person out to be fit and proper.
- 58 The reason why a licensee must enjoy a good reputation and be regarded as honest and a person of integrity is because in connection with licensed premises the licensee is expected to always put the interests of the public first and to recognise that compared to that, the interests of the licensee come a distant second. Amongst other things a licensee must be able to resist the temptation to sell liquor at all costs and to adopt responsible practices that might have an adverse effect of the financial bottom line; to promote the sale of liquor in a responsible way that avoids excessive consumption; to not sell liquor to minors or to persons who are intoxicated; to comply with closing times despite a desire by patrons to drink on; to limit crowd sizes to within capacity, even though to do so might limit the opportunity for potential sales; to cease trading all together if patron safety is being potentially compromised; to comply with licensed conditions even when it is detrimental to trade to do so; to be alert for the potential for licensed premises to attract the unscrupulous and the predatory and those seeking to peddle drugs and other unlawful goods; and to immediately call the police if the need arises and to cooperate with police and licensing officials.
- 59 Those licensees that operate gaming machines need to also be aware of the potential for their machines to be used in connection with money laundering.
- 60 A person who deliberately fails to disclose relevant matters in an application in connection with a license shows a want of honesty that raises serious doubts as to the person's capacity to assume the level of

³ See, for example: *Petracaro v Commissioner of Consumer Affairs* (1994) 62 SASR 387 at 392 per Olsson J.

responsibility that one should expect from the licensee of licensed premises. Such a person would ordinarily be held not to be fit and proper.⁴

- 61 A person who is severely financially challenged might find it very difficult to resist the temptation of putting his or her financial interests ahead of the public's best interests. He or she might trade in an inappropriate way or be tempted by dodgy collateral deals.
- 62 A person with a criminal history, an association with drugs or an association with persons of disrepute might be less willing to engage with the police notwithstanding circumstances that would warrant them being called to assist.
- 63 A person who associates with persons of disrepute might be tempted to allow or even be coerced into allowing those persons or their associates to use the licensed premises in a way that is not in the public interest.
- 64 These are the matters to which the inquiry of fitness and propriety are primarily focussed.
- 65 With these matters in mind I now turn to the facts of this case.

Non disclosure

- 66 The only offences that the Watsons have committed are of a traffic nature. They are certainly not of a nature that would cause the Court to feel that it would be an affront to the public conscience to hold them out to be fit and proper.
- 67 The evidence does not establish that their failure to make the disclosure was deliberate. It makes no sense that they would knowingly jeopardise their applications by the deliberate omission of the commission of some traffic offences. The same is true in respect of Nicholas Watson's failure to disclose his financial dealings with Nowat. He must have known that the police knew it was insolvent. After all he had received some legal advice about that in connection with the disciplinary proceedings.
- 68 I do not ignore the fact of non-disclosure. It reveals a cavalier attitude to the completion of these forms that is of concern.

The Marble Bar

- 69 The mere fact that Nowat was held to be not fit and proper is of very little probative value. Unlike the situation concerning Melody Karaoke, this was not a case of serial breaches and hollow promises to improve after repeat attendances before the Court. Mr Barnett is correct in

⁴ See, for example: *Darcy Wood* [2012] SALC 95.

submitting that in the ordinary course of events the breaches would have attracted fines.

- 70 The fact that the Watsons have been involved in licensed premises that committed breaches of the Act and the conditions of the license is of concern. But the fact of those breaches, of themselves, does not support a finding of unfitness or impropriety.
- 71 I accept Alexander Watson's evidence that he did not have any direct financial dealings with the Marble Bar.
- 72 As for Nicholas Watson, whilst I accept his evidence that others might have been more responsible for the financial carnage that resulted from that venture, he is exposed to continued financial embarrassment as a result of it, and I must take this into account.
- 73 The evidence does not permit a finding that in connection with the Marble Bar that Nicholas Watson was in any way dishonest or that he acted with impropriety.

The Mongols

- 74 The Mongols is an outlawed motor cycle gang. Persons involved in licensed premises who have an ongoing connection with them might reasonably be expected to be tempted to or be coerced into allowing members of that gang or their associates to use the licensed premises in a way that is not in the public interest.
- 75 However, the evidence falls short of establishing that the Watsons have a relationship with the Mongols.
- 76 There are circumstances where a Court can be impressed by a sequence of events.⁵ But contrary to the submission put in this case, there is nothing striking about the timing of the Watsons' attendance at the Mongols clubrooms and the decision by their parents to advance them money. Mr Melvyn Watson's evidence about his and his wife's support for their sons was utterly believable and was not seriously challenged in cross examination. I accept his evidence. On the evidence presented I find that there is no financial or other connection between the Mongols and the proposed venture.
- 77 The only direct evidence of an association between the Watsons and the Mongols was their attendance on one occasion at the Mongols clubrooms.

⁵ See, for example: *Adelaide Stevedoring Co Ltd v Forst* [1940] HCA 45; (1940) 64 CLR 538.

- 78 I was left with the impression that Nicholas Watson was telling the truth when he said:

“Let’s be quick, this is not really my scene, I’d rather get out of here to be quite honest”.

- 79 I was left with the impression that Alexander Watson was telling the truth when he said in connection with his attendance at the premises:

“It’s actually quite a scary thing.”

- 80 I think Mr Barnett is correct in characterising their attendance as a regrettable error in judgment that was imprudent and naïve.

- 81 It is a matter of concern and I must take this into account. But, of itself it does not warrant a finding of unfitness or impropriety.

Mr Choujaa

- 82 I think Sergeant Handley is correct in submitting that anyone other than somebody who he enjoys a strong relationship with the Mongols bikie gang would not have been permitted the access to the clubrooms that Mr Choujaa achieved on 27 February 2015.

- 83 On the evidence presented I think it is likely and I find that Mr Choujaa has a relationship with the Mongols. As I said earlier, it is common ground that the Watsons are friends with Mr Choujaa.

- 84 An association by a person involved in licensed premises with a person who has an association with an outlawed motor cycle gang raises the possibility that as a result of that association the licensed premises might be used in a way that is not in the public interest.

- 85 This is a matter of concern and I must take this into account. But, of itself it does not warrant a finding of unfitness or impropriety.

The financial viability of the proposed venture

- 86 The failure of the Marble Bar does not fill me with a great deal of optimism about the viability of the proposed venture. But this is not a matter that goes directly to the issue of fitness and propriety. It is more relevant to the exercise of the Court’s very wide discretion under s 53(1) of the Act which gives the Court an unqualified discretion to grant or refuse an application under this Act on any ground, or for any reason, it considers sufficient. If I formed the view that this venture was doomed to fail, I should exercise my discretion to refuse it.

- 87 Despite my lack of optimism, the Watsons, their parents and Mr Furnell have confidence in the project. In light of that whilst I have some concerns I am unable to find that the proposed venture is doomed to fail.

Conclusion

- 88 Individually none of the issues raised by the police lead to a conclusion that the Watsons are not fit and proper. Collectively they give me a great deal of concern but not enough to find that the Watsons are not fit and proper persons and not enough to conclude that in the exercise of the Court's discretion I should refuse the application.
- 89 I am however permitted to act on my concerns.
- 90 Section 53(2a) enables the Court to grant an application on an interim basis. Section 53(3) empowers the Court to impose such conditions as it thinks fit.
- 91 Given the poor track record of the Marble Bar in terms of management from a compliance perspective, the shadow that is cast over this venture because of the Watsons' attendance at the Mongols clubrooms and their association with Mr Choujaa and the real risk that the Watsons will become financially challenged as a result of this venture and might be tempted to put their financial interests ahead of the public's interests, I propose granting the transfer on an interim basis for twelve months. If over that period there are matters that cause the police or the Commissioner for Liquor and Gambling to have legitimate concerns about the fitness and propriety of the Watsons or the management of the licensed premises over that period I grant them liberty to apply. I put the Watsons on notice that in terms of a finding of fitness and propriety they just got over the line and that it would not take too much misconduct to have them falling on the other side of the line.
- 92 Given my concerns about Mr Choujaa and the Mongols I impose a condition of the licence that the licensee shall not employ, engage or use in any capacity in connection with any aspect of the business of the licensed premises, Mr Choujaa or any member of the Mongols or any member of any organisation declared pursuant to the *Serious and Organised Crime (Control) Act 2008*.
- 93 I impose a condition directing the licensee to endeavor to ensure that no person's knowingly allowed entry to or permitted to remain on the licensed premises that is:
- A known member or associate of an outlaw motor cycle gang.
 - Any person wearing clothing, jewellery or accessories which are associated with outlaw motor cycle gangs.

- Any person displaying tattoos associated with outlaw motor cycle gangs.
- Any person identified by a Police Officer as being a reputed criminal gang member or associate, whether or not a member of an outlaw motor cycle gang.

94 I impose a condition directing the licensee to:

- To install at the licensed premises, as soon as reasonably practicable, adequate closed circuit television (CCTV) recording devices to enable monitoring of the public areas of the premises.
- Maintain the CCTV footage for a period of 14 days.
- Provide CCTV footage to SAPOL or authorised officers as soon as reasonably practicable upon lawful request by SAPOL or an authorised officer.

95 I also impose a condition to the effect that the profits of the licensed premises are not to be paid to or distributed to any other persons or entities other than the present directors and shareholders of Watson Bros without leave of the Court.

96 If there is no application made by the police or the Commissioner for Liquor and Gambling during that twelve month period upon its expiration I will allow the transfer without qualification but subject to the conditions just mentioned.