

CITATION: Registrar, Motor Vehicle Dealers Act, 2002 v. Zabian, 2013 ONSC 6599
DIVISIONAL COURT FILE NO.: 26/13
DATE: 20131022

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT
HIMEL, SACHS AND WARKENTIN JJ.

BETWEEN:)
)
REGISTRAR, MOTOR VEHICLE) *Bernard C. LeBlanc*, for the Respondent
DEALERS ACT, 2002) (Appellant in Appeal)
)
Respondent)
(Appellant in Appeal))
)
- and -)
)
TOUFIC RADA ZABIAN) *Symon Zucker*, for the Appellant
) (Respondent in Appeal)
Appellant)
(Respondent in Appeal))
)
)
)
) **HEARD at Toronto: October 22, 2013**

HIMEL J. (ORALLY)

[1] The Registrar, *Motor Vehicle Dealers Act, 2002*, moves for leave to adduce fresh evidence at the hearing of this appeal. The appeal is of a decision of the Licence Appeal Tribunal dated March 21, 2011, in which the Tribunal ordered the Registrar to register the respondent as a salesperson under the statute, subject to a number of conditions.

[2] The Tribunal hearing involved the hearing of evidence concerning problems with the financial state of three formerly registered dealerships in which Mr. Zabian was the controlling mind.

[3] The respondent had testified that his accountant and business manager had engaged in the impugned conduct without his knowledge. He also testified that he believed that ongoing tax proceedings against him would be resolved in his favour and that he had initiated a civil action against his former accountant.

[4] The Tribunal ordered the Registrar to register the respondent as a salesperson, subject to terms which included keeping the Registrar informed as to the outcome of the tax and civil proceedings.

[5] Counsel for the Registrar argues that court records, transcripts and exhibits concerning two sets of proceedings from those proceedings are relevant. These were proceedings that were brought against the company and Mr. Zabian personally, and charges to which Mr. Zabian pleaded guilty as an officer and director for failing to file corporate returns.

[6] Counsel argues the records were not available at the time of the hearing before the Tribunal and wishes to tender this evidence as he submits it would have affected the outcome of the proceedings.

[7] Counsel for the respondent opposes the receipt of the information being submitted on the basis that, amongst other things, it would have been available through due diligence by the Registrar of Motor Vehicles.

[8] Section 134(4)(b) of the *Courts of Justice Act* provides that:

Unless otherwise provided, a court to which an appeal is taken may, in a proper case,

[...]

(b) receive further evidence by affidavit, transcript of oral examination, oral examination before the court or in such other manner as the court directs.

[9] The test for introduction of fresh evidence on an appeal is outlined in *R. v. Palmer*,

[1980] 1 S.C.R. 759 at p. 13 as follows:

- (i) The evidence should generally not be admitted, if, by due diligence, it could have been adduced at trial provided that this general principle will not be applied as strictly in a criminal case as in civil cases: see *McMartin v. The Queen* [1964] S.C.C. 484.
- (ii) The evidence must be relevant in the sense that it bears upon a decisive or potentially decisive issues in the trial.
- (iii) The evidence must be credible in the sense that it is reasonably capable of belief, and
- (iv) It must be such that if believed it could reasonably, when taken with the other evidence adduced at trial, be expected to have affected the result.


[10] The fresh evidence sought to be adduced here involves tax proceedings which were not concluded at the time of the appeal before the Tribunal. Certain of the proceedings against Mr. Zabian as Officer and Director were not known at the time of the hearing. The evidence is clearly relevant to a potentially decisive issue, that being the outcome of the tax proceedings and the respondent's role in the actions taken on behalf of the dealerships.

[11] The evidence is credible, as it consists of court records and contains documents from the Canada Revenue Agency. If believed, this evidence could arguably, along with the other evidence, have affected the result in this matter.

[12] We conclude that the test under *Palmer* is met and we admit the proffered evidence.


HIMEL J.


SACHS J.


WARKENTIN J.

Date of Reasons for Judgment: October 22, 2013

Date of Release: OCT 25 2013

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2002

Respondent
(Appellant in Appeal)

– and –

TOUFIC RADA ZABIAN

Appellant
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ORAL REASONS FOR JUDGMENT

HIMEL J.

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