

[2] Felix Omoregie has been registered as a motor vehicle dealer since May, 2008. Between February and August, 2009, he committed several contraventions of the *Highway Traffic Act*, including making false statements and operating without insurance. On November 18, 2009 he was charged criminally with four counts of possession of property obtained by crime relating to four stolen motor vehicles found by police on the premises of his dealership. The charges were subsequently withdrawn, that is, withdrawn subsequent to the decision below.

[3] The Registrar of the Ontario Motor Vehicle History Industry Council ("OMVIC") issued to the appellant on March 5, 2010 a Notice of Proposal to Revoke Registration. The matter proceeded to a hearing before the Licence Appeal Tribunal on September 10, 2010. The Tribunal heard evidence on behalf of the Registrar from Det. Constable Thomas Hockney and Laura Halbert, Director of Compliance with OMVIC. The appellant gave his own testimony.

[4] The Tribunal heard from Det. Hockney, the following facts: On November 17, 2009, he received a call from Durham Police regarding an ongoing investigation of vehicles stolen from driveways. One such stolen vehicle had been followed to the appellant's lot. The police obtained a search warrant and found four vehicles on the property that had been reported stolen. The keys to the vehicles were in the appellant's office. Det. Hockney was present when the search warrant was executed and the four vehicles found.

[5] The appellant testified that he had been approached by two strangers seeking to ship cars overseas. They did not provide him with the proper paperwork and he did not know that the cars were stolen.

[6] The Tribunal, in its Reasons, stated that the evidence showed “willful blindness” on the part of the appellant with regard to the alleged stolen property. The appellant failed to exercise due diligence by getting the names, addresses, phone numbers, vehicle documentation and other relevant information from the men who dropped off the vehicles. The education and experience of the appellant suggest that he ought to have known that something was wrong when the men did not return for days and never submitted the requisite paperwork.

[7] The Tribunal further noted that, as a sole proprietor, the appellant is responsible for all that takes place on his premises. He ought to have contacted the police and not having done so is a “failure to act with honesty and integrity ... and is not responsible and law abiding conduct”.

[8] The Tribunal also considered some of the *Highway Traffic Act* offences to indicate a lack of honesty and integrity and a failure to uphold the standards required by the *Act*. In this respect, I quote from the decision of the Tribunal at p. 7 of its Reasons:

The appellant testified that it was his non-payment of the insurance premiums that resulted in his convictions for:

Operating/Misuse of a Motor Vehicle with no insurance;

The use of a dealer plate; and

The failure to surrender the permit

There is no reasonable excuse and no evidence presented that the possession and insurance related offences are not industry related. The conviction for making a false statement cannot be viewed as acting with honesty and integrity. The speeding conviction is of less concern.

[9] In light of the foregoing, the Tribunal concluded that the appellant's past conduct does provide reasonable grounds to conclude that he will not carry on business with honesty and integrity and in accordance with the law. The Tribunal therefore directed the Registrar to carry out the proposal to revoke.

[10] The appellant takes the position in this Court that the Tribunal erred in the following ways:

- (i) By taking into account the criminal charges he was facing, which were ultimately withdrawn after the Tribunal's decision was released.
- (ii) By permitting Det. Hockney to give evidence concerning what certain videos showed, without the videos being tendered in evidence.
- (iii) That the evidence of Det. Hockney was unreliable and ought not to have been believed and in his words, that Det. Hockney's testimony was "bogus".
- (iv) By finding numerous convictions for *Highway Traffic Act* offences, when according to the appellant he was guilty of only three.

[11] Concerning the first point, in our view, the fact that criminal charges have been laid is irrelevant to the determination which the Tribunal is required to make in a case such as this. If there had been convictions, those convictions of course would be highly relevant. However, we note that the fact of the four charges was not material to the decision. The substance of the decision lay in the finding of willful blindness and the *Highway Traffic Act* convictions.

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[12] Second, while the *Statutory Powers and Procedure Act*, s. 15 permits the Tribunal to admit hearsay evidence, there are limits and it would have been preferable in this case to have the videos tendered in evidence. However, the only part of the videos not confirmed by the testimony of the police officer's personal observations and indeed the evidence of the appellant, related to the disposal of personal property from the vehicles – evidence which had no impact on the result.

[13] Third, concerning the credibility of Det. Hockney, it was the task of the Tribunal to weigh the evidence and make findings of credibility. There is no palpable and overriding error found in the reasons relating to the issues of credibility.

[14] Fourth, the Ministry of Transport Ontario record filed as an exhibit, demonstrates a variety of convictions under the *Highway Traffic Act*, several of which are relevant to the central issue before the Tribunal.

[15] The Appellant told this Court that he had tendered another document to the Tribunal, which he says showed only three convictions. It was not made an exhibit.

[16] The appellant did not file a complete transcript in this Court of the proceedings below and we therefore do not have a record of exactly what transpired in reference to the document in question.

[17] Counsel for the respondent however indicates that the document was handed to the Tribunal but was not made an exhibit.

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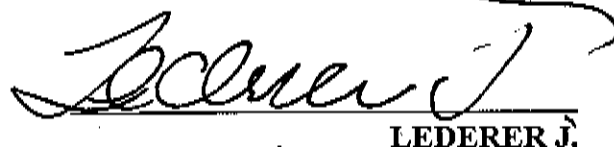
[18] Clearly the document should have been made an exhibit. However, the ultimate determination of the Tribunal only relied on four of the convictions in question – all of which it found are industry related and relevant to the central issue.

[19] Accordingly, we cannot accept the submissions of the appellant and the appeal is dismissed.

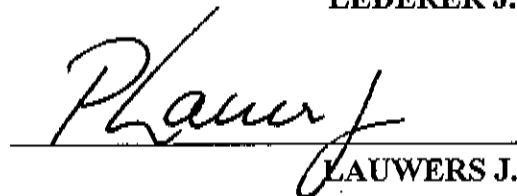
[20] On the question of costs, in our view, there were arguable issues raised by the appellant and we are of the view that there should be no order as to costs.



FERRIER J.



LEDERER J.



LAUWERS J.

Date of Reasons for Judgment: March 21, 2011

Date of Release: **MAR 28 2011**

CITATION: Omoregie v. Registrar, Motor Vehicle Dealers Act , 2011 ONSC 1791
DIVISIONAL COURT FILE NO.: 496/10
DATE: 20110321

**ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT**

FERRIER, LEDERER AND LAUWERS JJ.

BETWEEN:

FELIX OMOREGIE, o/a FILAZO INTERNATIONAL
AUTO SALES

Appellant
(Applicant at the Hearing)

- and -

REGISTRAR, MOTOR VEHICLE DEALERS ACT

Respondent
(Respondent at the Hearing)

ORAL REASONS FOR JUDGMENT

FERRIER J.

Date of Reasons for Judgment: March 21, 2011

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