

CITATION: Veerasingam v. Licence Appeal Tribunal, 2024 ONSC 3730
DIVISIONAL COURT FILE NO.: 683/23
DATE: 20240628

**SUPERIOR COURT OF JUSTICE – ONTARIO
DIVISIONAL COURT**

B E T W E E N:

BEASHEMA VEERASINGAM, Appellant

-and-

LICENCE APPEAL TRIBUNAL and ONTARIO MOTOR VEHICLE
INDUSTRY COUNCIL, Respondents

BEFORE: FL Myers J

COUNSEL: *Pradeep Chand*, for the moving party/appellant

Rishi Nageshar, for the respondent Ontario Motor Vehicle Industry
Council (Registrar, Motor Vehicle Dealers Act, 2002)

READ at Toronto: June 28, 2024

ENDORSEMENT

- [1] The facts matter.
- [2] Many lawyers graduate from law school thinking that their cases will be won with erudite advocacy concerning esoteric questions of complex jurisprudence intertwined with contemporary ideals of public policy reform.
- [3] But as every experienced advocate understands, the reality of life in the trenches of civil litigation is that cases are primarily won or lost on their facts. When the facts suggest that the justice of the case lies a certain way, in the vast majority of cases, the law will support or, at least, will not stand in the way of the just outcome.
- [4] There are very few cases where judges write that, while they believe the just outcome is “X,” they are constrained by the law to find “Y.” It happens. But not very often.

- [5] The primacy of the facts in advocacy leads to two very important and related canons of civil litigation.
- [6] First, the single-most important task of the litigator is to marshal and present the facts by admissible evidence to prove all necessary technical causes of action (or defence) and to establish the justice and justness of the client's desired outcome.
- [7] The second canon is a limitation on the first. It is contained in professional principles of ethics. But it is also a fundamental point of advocacy. The lawyer must never knowingly misstate the facts. A lawyer must not assert as true a fact that cannot reasonably be supported by the evidence admitted in the record.
- [8] This is not only a professional obligation, but an important point of advocacy. There is legal integrity and there is personal integrity. Impairment of either can have devastating consequences on a client's case and on future cases.
- [9] This motion demonstrates how one key fact can make all the difference. It also exposes the folly of misrepresenting the evidence.
- [10] In this motion in writing, the appellant seeks a stay pending appeal.
- [11] The appeal concerns the licensing or registration of the appellant as a car salesman under the *Motor Vehicle Dealers Act, 2002*, SO 2002, c 30, Sch B.

The Facts in Evidence and as Submitted

- [12] Para. 10 of the appellant's factum says:
- The Moving Party is a registered motor vehicle salesperson pursuant to the Act. The Moving Party obtained his motor vehicle salesperson registration on or about July 8, 2010.
- [13] The paragraph is not followed by any citation to the evidence.
- [14] Paragraph 11 of the appellant's factum continues:
11. On or about October 29, 2022, the Registrar issued a [Notice of Proposal] against the [appellant], regarding his registration as a motor vehicle salesperson, for the alleged contravention of section 6(1)(a)(ii) of the Act.²

[15] Footnote two at the end of para. 11 refers to the Registrar's Notice of Proposal that is an exhibit to the appellant's affidavit sworn for the motion.

[16] The Notice of Proposal involved allegations of sexual misconduct against the appellant as a car salesman. The Licence Appeal Tribunal upheld the proposal against the appellant's licence.

[17] It is that decision that the appellant seeks to appeal.

[18] The appellant asks for a stay of the order of the LAT pending the appeal to prevent him from suffering irreparable harm.

[19] Para. 32 of the appellant's factum says in part:

32. In this case, refusing to grant the stay would cause irreparable harm as the Moving Party will be forced to abandon his license as a motor vehicle salesperson, suffering the loss of goodwill, and a destruction of his client base of existing and potential clients while this appeal is being determined.

[20] So, I am told that the appellant has a licence. Without a stay, he will lose his licence and his livelihood.

[21] This sounds like a classic case for a stay pending appeal.

[22] Except, the appellant does not have a licence.

[23] In paras. 1 and 2 of his affidavit, the appellant fudges the evidence as follows:

1. I (the "Moving Party") was previously registered as a motor vehicle salesperson under the *Motor Vehicle Dealers Act, 2002* (the "Act"). With fourteen plus years of experience as a motor vehicle salesperson, cultivating and fostering a client and customer base, I was previously employed at East-Court Metro Ford Lincoln Sales Ltd. and Leggatt Stouffville Ford, and as such have personal knowledge of the matters to which I herein depose, save and except where I have been advised of the same, in which case I believe such information to be true.

2. On or about October 29, 2022, the Registrar issued a Notice of Proposal (the "NOP") to refuse registration against my registration as a motor vehicle salesperson, for the alleged contravention of section 6(1)(a)(ii) of the Act. Attached hereto and marked as Exhibit "A" is a copy of the NOP issued October 31, 2022.

[24] Para. 2 of the Registrar's Notice of Proposal states:

Veerasingam is not currently registered under the Act. He was previously registered from approximately August 20, 2010 until June 6, 2022, when his registration terminated because he was no longer employed by a motor vehicle dealer.

[25] The appellant says he was previously registered and held a licence for over fourteen years. He omits to say that when the allegations of sexual assault came to light, he lost his job and therefore had to give up his licence.

[26] The appellant is applying for a new licence. The application is under ss. 6(1)(a)(ii) of the statute that provides:

Registration

6 (1) An applicant that meets the prescribed requirements is entitled to registration or renewal of registration by the registrar unless,

(a) the applicant is not a corporation and,

...

(ii) the past conduct of the applicant or of an interested person in respect of the applicant affords reasonable grounds for belief that the applicant will not carry on business in accordance with law and with integrity and honesty,

[27] Looking back at the affidavit, the appellant says he was registered and then the Registrar issued an NOP under s. 6. But he skims over that he is not registered now. In para. 11 of the factum he says the NOP was "regarding his registration." He does not say "regarding *his application* for registration." In para. 2 of his affidavit, the appellant says the NOP purported to "refuse registration *against my registration* as a motor vehicle salesperson."

- [28] The wording is carefully drawn to avoid saying that the appellant is applying for a new registration. It is drafted to sound like the appellant is registered and the Registrar proposes to revoke his existing licence or registration.
- [29] Para. 10 of the factum contains an express representation of fact that the appellant "*is a registered motor vehicle salesperson pursuant to the Act.*" It says he obtained his registration in 2010. It does not mention that he lost it in 2022.
- [30] Why does this matter?
- [31] This is a motion for a stay pending appeal. It is principally about whether the appellant will suffer irreparable harm pending the hearing of the appeal unless the order under appeal is stayed. In para. 32 of the factum, the appellant submits that without a stay he will be forced to abandon his licence, lose his goodwill, and lose his clients while the appeal is being determined.
- [32] None of it is true. He has not been licensed or worked as a car salesman since June, 2022.
- [33] In his affidavit, the appellant at least recognizes that he is not licensed currently. He says that without a stay:
- ... I will suffer irreparable harm as follows:
 - a. The continued refusal of my registration will disallow me from carrying on business as a registered motor vehicle salesperson;
 - b. The continued loss of my personal and business relationships;
 - c. The continued suffering of my personal and professional reputation;
 - d. The expense in continuing the appeal to the Divisional Court will be significant and unrecoverable.

[34] Contrast that evidence to para. 32 of the appellant's factum that I repeat here for convenience:

32. In this case, refusing to grant the stay would cause irreparable harm as the Moving Party will be forced to abandon his license as a motor vehicle salesperson, suffering the loss of goodwill, and a destruction of his client base of existing and potential clients while this appeal is being determined.

[35] This paragraph also contains no citation to the evidence.

Analysis

[36] Unless stayed pending appeal, the revocation of an existing licence will put a salesperson out of work.

[37] A stay of an approval of a regulator's proposal to refuse a new licence registration does, well, nothing. It continues the status quo of the past two-plus years.

[38] The appellant has applied to be registered anew. The Registrar has proposed to decline. The board upheld the proposal. If the board order is stayed, the proposal to decline registration remains in place. There is no request or law allowing for a mandatory order issuing a new licence to the appellant pending the appeal.

[39] This whole motion turns on mis-stating the appellant's existing position.

[40] The issue was not lost on the respondent Registrar. Paras. 36 and 38 of his factum say:

36. Further, refusing to grant a stay order will maintain the status quo. In order to trade in motor vehicles, individuals must be registered to work for a specific motor vehicle dealer. Veerasingam applies for registration - he was not registered to a dealer at the time when the NOP was issued and, therefore, was not authorized to trade in motor vehicles at the time of the appeal of the NOP.

...

38. Allowing Veerasingam to be registered to trade in motor vehicles as a salesperson pending the outcome of his appeal to this Honourable Court would go further than

staying the decisions of the LAT; it would effectively overturn them by granting Veerasingam authorization to work in a regulated industry that he was not registered to work in at the time when the Registrar's proposal was issued.

- [41] That is, the LAT's order is not what prevents the appellant from working. Staying the LAT order pending the appeal will not allow the appellant to sell cars or do anything about the alleged harm the appellant says he continues to suffer.
- [42] In addition, part of the test for a stay pending appeal involves establishing a serious issue to be heard in the appeal. The appellant adduced little evidence at the hearing before the LAT and sought a last-minute adjournment. The adjournment was sought initially on the basis that the appellant had a scheduling conflict. But in his affidavit for this motion, the appellant also advises:

7. On or about June 7, 2023, my paralegal representative, Zeeshan Rahman (the "Former Representative"), orally requested an adjournment of the hearing and provided further particulars as to why an adjournment was necessary in the circumstances. My Former Representative was not prepared to proceed with the hearing due to the following reasons:

- a. my Former Representative's mother's health was in severe decline leading up to the hearing;
- b. my Former Representative needed to attend the hospital with his mother on or about June 8, 2023, in the midst of the hearing;
- c. my Former Representative was under the impression that the matter was going to settle before the hearing, and consequently, the hearing would not be proceeding;
- d. given my Former Representative's misguided understanding that the matter was going to settle before the hearing, my Former Representative did not have the required

materials prepared, filed, or served for the purpose of the hearing, such as my Statements of Anticipated Evidence, or Documents Intended to be Relied On; and

- e. further, the majority of the witnesses from my Witness List were not able to attend the hearing due to scheduling conflicts.

[43] The LAT denied the adjournment sought. On the merits, it disbelieved the appellant's evidence and found he had misrepresented the facts to customers, employers, the police, and while under oath to the tribunal.

Outcome

[44] Whether the appellant has established a serious issue for the appeal is dubious. As the appellant is not a registered salesperson, he will not suffer irreparable harm without a stay pending appeal. A stay will simply maintain the status quo.

[45] In this case, one fact is virtually determinative. If the appellant was registered and working, the harm caused by a revocation of an existing licence might have been a basis for a stay pending appeal. But as the appellant is not working and just applied for a new licence, a stay pending appeal will do nothing for him. He suffers no irreparable harm without a stay pending appeal.

[46] The motion is dismissed.

Costs

[47] The application below was brought by the Appellant to try to be re-registered. It was never about him losing a current licence, registration, or job. The appellant's evidence for this motion was cutely written to omit the key detail that he has not been licensed in over two years. But the factum contains overt misrepresentations. The fact that paras. 10 and 32 of the factum do not contain citations to the evidence is highly telling and troubling.

[48] It appears that counsel understood the centrality of the key fact. Unfortunately, he may have chosen to violate a canon of advocacy, if not of ethics, to try to win the motion.

- [49] The Registrar seeks costs of the motion. Costs are normally payable by the unsuccessful party to the successful party. Subject to hearing from the parties, that means that in the ordinary course, Mr. Veerasingam should expect to be ordered to pay a portion of the legal costs reasonably incurred by the Registrar on this motion.
- [50] I direct Mr. Chand to provide a copy of this decision to Mr. Veerasingam. Mr. Veerasingam should also be referred for independent legal advice concerning his potential liability for costs of the motion. Mr. Veerasingam needs independent legal advice on whether Mr. Chand ought to be required to pay the costs of the motion or to indemnify Mr. Veerasingam for any costs that may be awarded against him.
- [51] Counsel for the Registrar, the appellant, and Mr. Chand should agree on a process for delivery of written submissions as to costs. If they cannot agree, they may convene a case conference before me.

FL Myers J

Date: June 28, 2024