CITATION: BMW Group Financial Services Canada v. Iknight Entertainment Inc. et al., 2025 ONSC 4494
COURT FILE NO.: CV-25-00001835-0000
DATE: 2025/08/01

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: BMW GROUP FINANCIAL SERVICES CANADA, A DIVISION OF BMW CANADA INC., Applicant

AND:

IKNIGHT ENTERTAINMENT INC. and ANTON JESLY, Respondents

BEFORE: Justice I.F. Leach

COUNSEL: Qasim Kareemi, for the Applicant

The Respondent Mr Jesley self-representing, and being granted leave to speak for the Respondent corporation Iknight Entertainment Inc. for purposes of today.

HEARD: August 1, 2025

ENDORSEMENT

[1] Before me is an application by the assignee of rights under a conditional sales agreement relating to a vehicle, seeking various orders to assist it with location and repossession of that vehicle, having regard to indicated defaults, by the two respondent buyers, in relation to their obligations under that conditional sales agreement.

[2] When the matter was called, the respondent Mr Jesley appeared, and was granted leave to speak for himself and for the corporate respondent as well for purposes of today. Mr Jesley also indicated:

a. that he currently is out of the country, but returning to Canada on Monday, August 4, 2025;

b. that the respondents are in the process of retaining counsel; and

c. that the respondents accordingly were requesting an adjournment of the matter to August 22, 2025.

[3] Counsel for the applicant indicated that the respondents' request for that adjournment would not be opposed, given that it was the first such adjournment request made by the respondents following initiation of the application herein on or about June 19, 2025.

[4] The adjournment was granted accordingly. However, given the issues raised in the application material filed to date, I also thought it appropriate to make the next return of the matter peremptory on the respondents.

[5] The application accordingly will stand adjourned to August 22, 2025.

[6] Having reviewed the application material served and filed by the applicant, I nevertheless also think it appropriate to document concerns I had regarding the applicant's initiation and pursuit of this particular application in this venue, (concerns conveyed orally to applicant counsel during the course of today's hearing), and indicate why I also think it appropriate to indicate that the applicant shall receive no costs whatsoever in relation to today's appearance.

[7] In that regard, provisions in the underlying conditional sales agreement suggest that the applicant should be entitled to immediate payment from the respondents of "any costs and/or expenses incurred by [the applicant] as a result of any failure by [the respondents] to comply with" the conditional sales agreement.

[8] However, I have exercised my discretion to deny the applicant the recovery of any and all costs in relation to today's appearance for the following reasons:

a. Our courts increasingly have expressed concern about mounting incident of forum shopping, whereby litigants are choosing to initiate proceedings in court venues of this province that have no rational connection to the underlying matters at issue, apparently in order to gain a perceived litigation advantage by doing so; e.g., circumventing the time involved in obtaining relief in venues rationally connected with the underlying dispute through the taking of unilateral steps to initiate proceedings elsewhere. For example:

    i. I raised that concern in *The Toronto Dominion Bank v. The Other End Inc.*, 2024 ONSC 5377, emphasizing that the already heavy dockets in regular motions court here in London were having to devote additional time to collection measures in relation to credit arrangements agreed upon elsewhere, between parties located elsewhere, in relation to property located elsewhere; i.e., litigation in respect of which the underlying matters at issue had no apparent rational connection to London, or indeed the Southwest Region.

    ii. I emphasized that concern again in *The Toronto-Dominion Bank v. Defenders Transport Inc.*, 2024 ONSC 5689, where I explained my view at the time that, while there currently was no mechanism in the existing *Rules of Civil Procedure* permitting the court to have such venue concerns formally addressed by way of an appropriate motion unless and until a responding party seeks or choose to bring a motion, the court still retains a discretionary jurisdiction to express its disapproval of such litigation

conduct via appropriate cost determinations, when the record in a particular case provides a justification for doing so.

iii. In *The Toronto-Dominion Bank v. The Other End Inc.*, 2025 ONSC 85, (addressing the change of venue motion brought in Toronto pursuant to my earlier decision in *The Toronto-Dominion Bank v. The Other End Inc.*, *supra*), R.S.J. Firestone emphasized, at paragraphs 29-30, that parties have an obligation "to choose a litigation venue rationally connected *to the matters at issue*", (emphasis added), and that "the practice of forum shopping must stop", as it is "not fair to other litigants or the court system as a whole".

iv. In *BFT Mortgage Services Inc. v. Getz,* 2025 ONSC 2908, and *Royal Bank of Canada v. Gill*, 2025 ONSC 3085, Justice Kurz emphasized the same concerns regarding forum shopping, in cases where litigation had been commenced in court venues, (Halton/Milton and Hamilton respectively), where the underlying substantive disputes had nothing whatsoever to do with those chosen litigation venues, apart from perceptions by the parties initiating the litigation that it was more convenient for them to do so from their perspective; e.g., having regard to their choice of counsel. In his aforesaid decisions, Justice Kurz provided extensive reasons for his view that the court has inherent jurisdiction to determine that a proceeding has been brought in the wrong location and make orders accordingly, notwithstanding the provisions of Rule 13.1.02(2) suggesting that the court may have ability to make orders transferring a proceeding to a county other than the one where it was commenced only where a party to the proceeding has brought a motion in that regard, apart from the differentiated circumstances governed by Rule 13.1.02(1) where the court is expressly permitted to raise venue concerns and make transfer orders on its own initiative.

b. I repeatedly have raised such venue selection and forum shopping concerns, and many of the above authorities, with counsel representing the applicant herein, in relation to such applications brought here in London by the applicant. In particular:

i. The applicant, BMW Group Financial Services Canada, routinely brings applications in the nature of the one before me in regular motions court, here in London, in the County of Middlesex. I personally have been obliged to address many such applications, with the applicant sometimes choosing to bring more than one such application on any given regular motions Friday here in London. Other judicial colleagues here in London have been obliged to do the same.

ii. In each and every one of those applications I have been called upon to address, there has been no rational connection whatsoever between the

underlying matters at issue or the parties involved and the County of Middlesex, or the Southwest Region, in the sense that:

1. the underlying conditional sales contract initially was entered into between a vehicle retailer and one or more buyers of the vehicle in a place located outside the Southwest Region;

2. all of the original parties to the underlying conditional sales agreement, (i.e., the relevant retailer and buyer or buyers), were corporations or individuals with offices or residences located in places located outside the Southwest Region;

3. the original retailer had assigned its rights under the conditional sales agreement to the applicant, the office of which is located outside the Southwest Region, in Richmond Hill, Ontario;

4. in its applications, the applicant, based in Richmond Hill, sought relief vis-à-vis a respondent or respondents, (i.e., the buyer or buyers alleged to have defaulted in obligations owed pursuant to the underlying agreement), whose corporate offices and/or residences were located outside the Southwest Region; and

5. in its applications, the applicant also was seeking orders facilitating repossession of the underlying vehicle or vehicles involved, in respect of which the applicant had information, (including data from the vehicle's operational tracking device), indicating that the vehicle or vehicles were located in a place outside the Southwest Region, with the London court being asked to make orders providing search and seizure authority to bailiffs and sheriffs in regions other than the Southwest Region.

iii. When I have raised such concerns, counsel for the applicant consistently has argued that the applicant is entitled to proceed as it has, via its chosen counsel, in this venue; e.g., because the *Rules of Civil Procedure* as currently framed ostensibly give parties the ability to initiate litigation in whatever court venue they choose, (without the court having any ability to address or alter that venue selection in the absence of a party motion raising issues related to venue), and because the applicant and its counsel perceive the bringing of such applications in London to be more convenient from their perspective, particularly insofar as the applicant has chosen to retain counsel with an office here in London.

iv. I in turn repeatedly have reiterated my view, expressed in *The Toronto Dominion Bank v. Defenders Transport Inc.*, *supra*, that a party's unilateral selection of counsel is *not* a factor connecting the *underlying dispute* with a venue, but really speaks only to how and where that party

arbitrarily chose to pursue a claim in relation to that dispute. In other words, unilateral party selection of counsel, (merely to suit the convenience of that party and/or its counsel, without any apparent regard whatsoever to the countervailing interests of the court or other litigants in relation to proper venue selection), does not establish a rational connection between a venue and the underlying matter, or dispel associated concerns about forum shopping.

v. In relation to such applications brought by the applicant, I therefore repeatedly have asked counsel to convey such concerns to the applicant, and to urge the applicant to pursue its claims in venues rationally connected to such claims, (claims which counsel based in London can just as easily initiate and pursue in appropriate venues in an era of electronic filings and virtual proceedings), instead of continuing to burden the London court with such matters.

vi. I also have expressed disapproval of such conduct by awarding the applicant reduced costs, or by signalling my intention to do so prior to applicant counsel foregoing a request for costs on an elevated scale, or any costs at all.

c. The applicant nevertheless has continued its practice of routinely and frequently bringing such applications here in London, and adding to the already busy and frequently overloaded docket here, despite such matters having no rational connection with this venue. In this particular case, for example:

i. The original parties to the underlying conditional sales agreement were:

1. the corporate respondent, Iknight Entertainment Inc., with an indicated address in the city of Guelph, Ontario;

2. the respondent individual, Anton Jesley, with an indicated address in the city of Guelph, Ontario; and

3. a Retailer car dealership, Maranello Motors Limited, with an indicated address in the community of Woodbridge, Ontario, which is a suburb of the city of Vaughn, Ontario.

ii. The Retailer, Maranello Motors Limited, then assigned its rights under the agreement to the applicant, BMW Group Financial Services Canada. Again, the applicant's office is located in Richmond Hill, Ontario.

iii. The application before me indicates that:

1. the two named respondents are still located in Guelph, Ontario, where they were served;

2. the vehicle in respect of which the applicant seeks repossession is believed to be located in the city of Guelph, Ontario, according to its still operational tracking device; and

3. the applicant is asking the court here in London to grant orders that will authorize and facilitate a Sheriff or Bailiff from Wellington County to locate and repossess the vehicle in Wellington County.

iv. In short, not one aspect of the underlying matter in dispute, the parties to that dispute, or the relief sought in relation to the dispute, involves the city of London, the county of Middlesex, or the Southwest Region. The only connection with this city, county and court region is that the applicant has chosen to retain counsel with an office here in the city of London.

v. In my view, this application presents yet another blatant example of inappropriate forum shopping by the applicant, which continues, on a regular basis, to divert limited court resources in this venue from other matters that *do* have a rational connection to London, Middlesex County and/or the Southwest Region. There is absolutely no reason why the applicant and its chosen counsel could not have initiated and pursued this proceeding in a courthouse located in the Central West or Central East regions having obvious connections with the underlying dispute; i.e., by electronically filing its application in one of those other regions, with the application thereafter being addressed via one or more virtual hearings held by a courthouse in one of those regions, both of which clearly do have a rational connection to the underlying dispute, the parties involved, and/or the underlying property the applicant is seeking to recover. The applicant and its counsel have done otherwise simply because they feel that they can, and that doing so promotes convenience from their narrow perspective of self-interest. To the extent the judiciary here in London repeatedly has raised concerns about such forum shopping, the applicant and its counsel "respectfully disagree" that their conduct raises any such concerns, or any concerns of importance, meriting any change in their practice.

d. For now, at least, I stop short of finding that I have or should exercise the jurisdiction, described by Justice Kurz, to order transfers of venue in the absence of any party motion raising such issues pursuant to Rule 13.1.02(2) of the *Rules of Civil Procedure*.

e. However, as the applicant and its counsel apparently are not listening to the venue and forum shopping concerns repeatedly being raised by the court, and/or are not taking such concerns seriously, in my view matters have reached a point where such conduct at least merits a more severe expression of disapproval through exercise of the court's discretion regarding costs; i.e., via the complete denial of costs in relation to such applications, if the facts of the dispute underlying such an

application have no rational connection to this venue. For the reasons outlined above, that clearly appears to be the situation in this case, and such conduct needs to be condemned and effectively discouraged.

f. While I was not called upon to address and decide the substantive merits of this application today, in light of the respondents' request for an adjournment, and therefore will leave any formal determination regarding overall costs of the proceeding to the judge eventually deciding the matter on its merits, I do have the ability to address costs of today's proceedings before me, in respect of which the matter also deliberately was stood down until the end of my hearing day; i.e., until all matters with a rational connection to this venue had been given the priority they deserve.

g. For the reasons outlined above, the applicant shall be denied any and all costs associated with today's appearance, and applicant counsel is hereby directed to ensure that a copy of this endorsement is provided to the judge presiding over substantive hearing of the application when further costs associated with the application are being addressed.

[9] For now, the matter is adjourned to August 22, 2025, for the reasons noted above.

Justice I.F. Leach

Date: August 1, 2025