CITATION: Smiley et al. v. Valour Group Inc. et al., 2025 ONSC 6736
COURT FILE NO.: CV-25-90274
DATE: 2025-12-02

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: WILLIAM JOHN SMILEY and DONNA-MARIE SMILEY, Plaintiffs

AND:

VALOUR GROUP INC., VERICO PRO FUNDS MORTGAGES INC., c.o.b. AS Pro Funds Mortgages, LAVENDER LAKE INC., VALOUR FAIRVIEW GO HOLDINGS INC., RICHARD HALL, CARMEN CAMPAGNARO and VALOUR PARTNERS ENTERPRISE FUND LP, Defendants

BEFORE: M. Bordin J.

COUNSEL: G. Morozov and T. Reid, for the Plaintiffs

G. Harper, for the Defendants

HEARD: In Writing

ENDORSEMENT

Overview

[1] This matter came to my attention in chambers as the Local Administrative Judge in Hamilton. The defendant's rule 21 motion is currently on the long motion list, pending availability of a judge to hear the matter. In my endorsement of November 14, 2025, I noted that the matter appeared to have no connection at all to Hamilton and requested submissions from the parties as to why this action has any rational connection to Hamilton and why a motion should not be required to be brought before the RSJ in Central West for the transfer of the action in accordance with the direction in the Consolidated Civil Provincial Practice Direction.

[2] The parties have provided their written submissions. Neither party disputes that this matter has no connection to Hamilton. The action concerns a claim for recovery of investment funds, loans, and related damages. Neither the parties, the property, the subject matter, the events, nor the lawyers have any connection to Hamilton. They are all connected to Central West and Toronto Judicial Regions.

Supreme Court of Ontario's inherent jurisdiction to control its own process

[3] In *BFT Mortgage Services Inc. v. Getz*, 2025 ONSC 2908 and in *RBC v Gill*, 2025 ONSC 3095, Kurz J. reviewed a number of legal authorities and provided reasons for determining that, subject to an explicit rule, the Superior Court has inherent jurisdiction to control its process and to find that a proceeding has been brought in an inappropriate jurisdiction and to make orders accordingly even though a party has not raised the issue and rule 13.1.02(2), when read together with rule 13.1.02(1), suggests that the court can only do so where a party raises the issue. I agree with Kurz. J.'s conclusion.

Alleged bias and choice of venue

[4] Rule 13.1.02(2)(a) provides that the court may, on any party's motion, make an order transferring the proceeding to a county other than one where it was commenced, if the court is satisfied that it is likely that a fair hearing cannot be held in the county where the proceeding was commenced.

[5] The plaintiffs submit they have legitimate concerns about the fairness and neutrality of proceeding in Central West because the defendants "have a significant presence and reputation in Burlington and the broader Central West community" and "have done business extensively in the region for decades." The plaintiffs state that the moving party defendants are defending more than fifty similar debt-collection actions in the Central West Region and suggest that this creates risks of potential bias amongst the judiciary.

[6] The moving party defendants take issue with the plaintiffs' characterization that litigating this matter in the Central West region would somehow unfairly vault the defendants into a preferred status and submit that there is no evidence of any bias.

[7] I reject the allegations of bias or that a fair hearing cannot be held in Hamilton. Courts routinely hear matters in which there are notorious or well-known parties. The court also routinely hears matters in which one of the parties is a frequent litigant. The allegations of bias and that a fair trial cannot be held in Central West are without foundation and come nowhere near meeting the test for reasonable apprehension of bias.

[8] The plaintiffs submit that there is no statute or rule that requires this proceeding to be commenced in the Central West Region and so the plaintiffs were entitled to select Central South Region as the venue. Further, that selection of Central South Region represents a legitimate, thoughtful exercise of the procedural rights available under Rule 13.1.01(2), made for the purpose of ensuring neutrality and fairness. The plaintiff's note that the defendants never raised any jurisdictional concerns and therefore the plaintiff's choice of venue should be respected.

[9] The moving party defendants take no position on whether the matter should remain in Hamilton or whether a motion should be brought by the plaintiffs to transfer this action to a more appropriate venue in the Central West region.

[10] Rule 13.1.02(2)(b) provides that:

> …the court may, on any party's motion, make an order transferring the proceeding to a county other than one where it was commenced, if the court is satisfied,
>
> (b) that a transfer is desirable in the interest of justice, having regard to,
>
> a. where a substantial part of the events or omissions that gave rise to the claim occurred,
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> b. where a substantial part of the damages were sustained,
>
> c. where the subject-matter of the proceeding is or was located,
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> d. any local community's interest in the subject matter of the proceeding,
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> e. the convenience of the parties, the witnesses, and the court,
>
> f. whether there are counterclaims, crossclaims, or third or subsequent party claims,
>
> g. any advantages or disadvantages of a particular place with respect to securing the just, most expeditious and least expensive determination of the proceeding on its merits.
>
> h. Whether judges and court facilities are available at the other county, and
>
> i. Any other relevant matter.

[11] I acknowledge that there is no statue or rule that requires this proceeding to be commenced in any particular venue.

[12] Ultimately, as set out in the Consolidated Civil Provincial Practice Direction, it is the RSJ of the region to which the proceeding is sought to be transferred who determines whether the proceeding should be transferred.

[13] In *The Toronto-Dominion Bank v. The Other End Inc.* et al. 2025 ONSC 85, RSJ Firestone considered a motion to transfer an action to Toronto from London. I adopt the following statements by RSJ Firestone in *Other End*:

> [26] … while plaintiffs are generally entitled at first instance to choose where they commence proceedings, their decisions must be informed and reasonable. They do not have "carte blanche" to choose a particular venue without first considering whether the proposed Judicial Region and location has a rational connection to the matters at issue in the proceeding. In making this determination, consideration should be given to the relevant factors enumerated under Rule 13.1.02(2). Forum shopping is never appropriate.
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> [28] Delay in a particular location on its own, without due consideration of other connecting factors, is not a valid basis to choose one location over another.
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> [29] The same is true with respect to the availability of virtual hearings across regions. The introduction of virtual platforms as a method of appearance is meant to provide greater flexibility and proportionality and enhance access to justice. They are not intended as a means for circumventing the requirement to choose a venue rationally connected to the matters at issue or to otherwise engage in forum shopping. The availability of this mode of proceeding is not, on its own, a valid basis to choose a particular Region.
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> [30] The practice of forum shopping must stop. It is not fair to other litigants or the court system as a whole.

[14] I agree with the concerns of RSJ Firestone at para. 27 and of I.F. Leach J. as cited in *Other End* at para. 10 that the court must be mindful of broader concerns of the increased burden on judicial resources and delay that result from commencing a proceeding in a judicial region which has no connection to the matter. Such concerns include the potential for litigants whose matters have clear and obvious connections with Central South Region to have their access to justice delayed by litigants and counsel from elsewhere choosing this judicial centre and/or region when their matters should be dealt with elsewhere.

[15] At the time of the writing this decision, Hamilton is short two of its current complement of seven generalist judges (excluding the Regional Senior Judge).

[16] There are currently 20 motions and applications waiting to be called on the long motion list in Hamilton. The oldest matters on the running long motions and applications list have been waiting to be called since September.

[17] Based on the statement of claim and the submissions of the parties, none of the factors in r. 13.1.02(2) favour Hamilton as the proper jurisdiction for this proceeding. This matter has no rational connection to Hamilton. The plaintiffs essentially rely on their "procedural right" to select

any venue they want for the proceeding. I reject the plaintiff's assertion that selecting Hamilton as the venue represents a legitimate, thoughtful exercise of the procedural rights available under Rule 13.1.01(2).

[18] Too often there are matters on the lists in Hamilton which belong in another jurisdiction. This matter will take up a time slot that could be allocated to a long motion with a rational connection to Hamilton. It delays access to justice for parties whose matters have a rational connection to this jurisdiction. It is plain and obvious that when parties seek to have matters heard in Hamilton that do not belong in Hamilton, it delays access to justice for those who are properly before the court in this jurisdiction.

Disposition

[19] The plaintiffs are ordered to bring a motion in writing to the RSJ in Central West in accordance with the Consolidated Provincial Practice Directions. This matter is stayed pending determination by the RSJ with respect to the transfer of the proceeding. The plaintiffs must bring this decision to the attention of the Regional Senior Justice to whom the motion is brought.

M. Bordin, J.

Date: December 2, 2025