

**SUPERIOR COURT OF JUSTICE – ONTARIO**

**RE:** 4151909 CANADA INC. c.o.b. PARS 2000, Plaintiff

**AND:**

SAIED MOGHADAM, Defendant

**BEFORE:** A. Kaufman J.

**COUNSEL:** Daria Strachan, Counsel for the Plaintiff

Chris Justice, Counsel, for the Defendant

**HEARD:** July 5, 2024

**ENDORSEMENT**

- [1] The plaintiff moves for an order for the recovery of personal property, specifically two vehicles belonging to the corporation.
- [2] The plaintiff corporation provides transportation services for airline crew and delivers and stores luggage for travelers. Its shareholders are Rafie and Zahra Moghadam, the defendant's parents.
- [3] The defendant worked for the corporation for 38 years, last serving as general manager. On May 30, 2023, certain financial irregularities were brought to the shareholders' attention. They executed a special resolution appointing their daughter, Saraya Moghadam, as the corporation's sole director. Pursuant to that resolution, the defendant's position as director was not renewed, and he was terminated immediately. His employment ended on July 20, 2023.
- [4] On December 6, 2023, this Court heard the plaintiff's motion for an interlocutory injunction to enjoin the defendant from attending at the corporation and interfering with its business. The plaintiff also sought an order for the return of company property, including the two vehicles that are the subject of this motion.
- [5] The defendant consented to most of the relief sought but did not agree to return the vehicles. He acknowledged that he purchased the vehicles through the company for his wife and stepdaughter and that the vehicles were insured by the corporation. However, the defendant

argued that it was an accepted practice to have family members drive company vehicles, and that if the court ordered these vehicles' return, other family members must also return their vehicles.

- [6] Justice Williams rejected the defendant's argument. She wrote that the defendant failed to appreciate that, unlike other people driving cars registered in the company's name, the defendant did not have permission to do so:

“Mr. Moghadam does not appear to appreciate that if there are other people driving cars registered in the company's name, they are presumably doing so with the company's consent. The company is now demanding the return of the two vehicles Mr. Moghadam purchased. Regardless of whether the purchase of the two vehicles was properly authorized by the company or whether other family members are driving vehicles purchased by the company, Mr. Moghadam is no longer a company employee, and the company is demanding the return of the vehicles. Mr. Moghadam, his wife, and/or his stepdaughter have no legal right to the vehicles; they do not own them.”

- [7] On December 6, 2023, Justice Williams ordered that the vehicles be returned to the company forthwith.
- [8] Despite numerous requests for the return of the vehicles, the defendant has not returned them. The parties appeared at a case conference before Justice Williams, where she directed the plaintiff to bring a motion under Rule 44 of the *Rules of Civil Procedure*.
- [9] Pursuant to Rule 44, a party may move for recovery of personal property. The motion must be supported by an affidavit setting out (a) the description of the property, (b) the value of the property, (c) that the plaintiff is the owner or lawfully entitled to possession of the property, (d) that the property was unlawfully taken from the possession of the plaintiff or is unlawfully detained by the defendant, and (e) the facts and circumstances giving rise to the unlawful taking or detention.
- [10] In my view, the plaintiff has established all of these requirements. The plaintiff's ownership of these vehicles has already been established during the injunction motion and is further confirmed by the registration certificates. The plaintiff has provided the vehicles' invoices, which confirm that they were purchased by the company and establish their value. The evidence shows that the defendant's employment and directorship were terminated and that Ms. Saraya Moghadam, the corporation's sole director, has demanded the vehicles' return. Finally, it is undisputed that the vehicles have not been returned.
- [11] The defendant responded to this motion with an affidavit stating that his mother, one of the corporation's shareholders, has no objections to the defendant's stepdaughter continuing to use one of the two vehicles until July 2025. He attached a letter purportedly signed by his mother as an exhibit to the affidavit.

- [12] I agree with the counsel for the plaintiff that this letter constitutes hearsay. Even if it could be admitted for the truth of its contents, the defendant's mother is no longer a director of the corporation and does not have any authority to manage the corporation as a shareholder. Moreover, the letter does not address the other vehicle that is the subject of this motion.
- [13] The defendant also alleges that his sister Saraya obtained the special resolution, which removed the two shareholders as directors of the corporation, by false pretenses. The defendant does not provide any details about these alleged false pretenses, and in any event, these allegations have not been proven.
- [14] The defendant further asserts that his employment was wrongfully terminated and that he would be entitled to the benefit of these cars, which were benefits of his employment, during the period of reasonable notice. The defendant intends to commence an action for wrongful dismissal.
- [15] If the defendant is successful in his wrongful dismissal action, he may be compensated for the value of any employment benefits he would have enjoyed during the reasonable notice period, but he is not entitled to use the vehicles before proving his case for wrongful dismissal, let alone before commencing such an action.
- [16] Finally, the defendant provided the court with a notice of application commenced by his mother, Zohra Moghadam, naming the corporation and Saraya Moghadam as respondents. The applicant alleges that Saraya obtained her signature on a purported resignation as a director through false pretenses and inserted herself as the sole director, thereby taking control of the corporation's day-to-day operations.
- [17] This application was commenced recently, and at this point, its contents are mere allegations. Until these allegations are proven, Ms. Saraya Moghadam continues to be the corporation's sole director. She has demanded the return of the corporation's vehicles and obtained an order from the Court for their return.
- [18] Based on the foregoing, the Court orders that the defendant return the vehicles to the plaintiff by July 15, 2024, at noon. Should the defendant fail to comply with this order, the Sheriff shall seize the vehicles from the defendant and deliver them to the plaintiff.
- [19] The plaintiff requested an order that, should the Sheriff be prevented from recovering these vehicles, an order be made against the defendant for the value of these vehicles. I decline to make such an order at this time as there is insufficient evidence about the current value of these vehicles. I shall remain seized of this aspect of the plaintiff's motion. If the Sheriff is prevented from recovering these vehicles, the plaintiff may send a letter to my attention and request further directions.
- [20] I have considered the parties' cost outlines. In my view, the hours and rates claimed by the plaintiff are entirely reasonable. The plaintiff was entirely successful and, given Justice William's December 6, 2023 order, which was not appealed, this motion should not have

been required. Costs are hereby awarded to the plaintiff, fixed in the amount of \$10,000 and payable within 30 days.

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Justice A. Kaufman

**Date:** July 5, 2024