



MOTOR VEHICLE SALES AUTHORITY OF BRITISH COLUMBIA

(Previously known as the Motor Dealer Council of B.C.)

**IN THE MATTER OF THE *MOTOR DEALER ACT* R.S.B.C. 1996 C. 316 AND
THE *BUSINESS PRACTICES AND CONSUMER PROTECTION ACT* S.B.C. 2004 c. 2**

RE:

ISAAC ROBERTS

COMPLAINANT

AND:

**MATRIX AUTO SALES LTD.
(Dealer Registration #30590)**

MOTOR DEALER

AND:

**MOHAMMAD REZA FORGOHI
(Salesperson License # 108684)**

SALESPERSON

AND:

**RAMIN KARAMALI
(Salesperson License # 109444 – inactive)**

SALESPERSON

AND:

**REZAPOOR HABIBOLLAH
(Salesperson License # 109382)**

SALESPERSON

DECISION OF THE REGISTRAR OF MOTOR DEALERS
PRE-HEARING MATTER

1. On July 10, 2009 Matrix Auto Sales Ltd., Dealer Registration # 30590 (“Matrix”) was issued a Notice to Attend a hearing before the Registrar to answer allegations that it had breached the *Business Practices and Consumer Protection Act* S.B.C. 2004 c.2 (“BPCPA”) and provisions of the *Motor Dealer Act* R.S.B.C. 1996 c. 316 (“MDA”) and its regulations in its sale of a motor vehicle to the complainant Mr. Isaac Roberts. Summarizing the core issue alleged under the BPCPA; Matrix apparently represented by words or by conduct that the motor vehicle sold to Mr.

Roberts was fit for the road. Apparently, a B.C. government inspector subsequently determined the motor vehicle was unfit for the road and ordered it off the road.

2. The date set for the hearing was August 19, 2009. Various pieces of correspondence have flowed between Matrix's legal counsel and Denis Savidan, Manager of Compliance and Investigations with the Motor Vehicle Sales Authority (VSA) regarding document production and requests for information by Matrix. The VSA subsequently proposed bringing additional allegations against Matrix regarding its ownership structure and Matrix's alleged failure to inform the VSA about such changes. Ultimately the hearing date set for this matter was adjourned twice with a two day hearing set for November 16 and 17, 2009.

3. The issue before me arises from the letter sent by Matrix's legal counsel dated October 12, 2009, addressed to the Registrar. In that letter counsel for Matrix seeks the following information and/or documents:

- (a) Documents showing Mr. Roberts' motor vehicle purchase history for the past three years; and
- (b) Bank statements showing the withdrawal of the money used to purchase the motor vehicle in question.

4. Matrix's counsel argues these documents are necessary and relevant to its legal theory that Mr. Roberts purchased the motor vehicle in question for reasons other than "primarily for the individual's personal or family use": definition of "sale" under the MDA. Specifically Matrix's legal counsel states in his October 12, 2009 letter:

As you will see from the enclosed correspondence, one of the defences that the Respondents seek to raise is that the purchase of the vehicle was not a genuine consumer transaction and was probably for an illegal purpose by Mr. Roberts, i.e. money laundering. If that can be established, then we intend to argue that the legislation just cited has no application to the transaction and the Registrar has no authority to impose any of the penalties being sought. In our submission this is a legitimate and plausible defence which, if accepted, could result in the dismissal of the charges.

The main evidence of the illegality of the contract is the fact that Mr. Roberts paid for the vehicle in cash (some \$20,000 in 20s), which he admits. However, Mr. Roberts maintains the payment in cash was at the request of the Respondents, which is denied by the Respondents. I have explained in my letter of 22 September 2009 why Mr. Roberts' assertion is unlikely. However, it appears that this will become an issue at the Hearing.

5. In short, Matrix is advancing an extraordinary affirmative defence by alleging illegal conduct on the part of Mr. Roberts.

6. By letter dated October 15, 2009, I informed Matrix's legal counsel that Mr. Roberts should be apprised of Matrix's request and position and he should be allowed to comment. Mr. Roberts was given until Friday October 23, 2009, to make any comments and he has done so.

7. Mr. Roberts does not object to the disclosure of his prior motor vehicle history going back some three years. In sending his response to Mr. Denis Savidan, Mr. Roberts states:

Chiefly, I wanted to let you know that I am fine with releasing my ICBC purchase history to Bell, and I am actually encouraging you to do so. I think, after review of that info, that it will become clear to all involved that I am morally and legally intact in this situation.

8. Matrix wants the VSA to produce documents of Mr. Roberts' vehicle purchase history. Those documents are actually in the possession of the Insurance Corporation of British Columbia (ICBC) as the provincial registry of motor vehicles, and not under the control of the VSA. The VSA has access to some of those records in certain circumstances following the procedures under the *Freedom of Information and Protection of Privacy Act* R.S.B.C. 1996 c. 165 (FOIPPA). It does not have wholesale access, nor are the records under the VSA's control. I would note that Matrix has at all times had the ability to make an access to information request to ICBC for disclosure of Mr. Roberts' vehicle purchasing history under FOIPPA.

9. Counsel for Matrix suggests the Registrar has the authority to compel ICBC to produce the records Matrix seeks under section 7 of the MDA; noting that section is not confined to any particular person. For the reasons that follow, I disagree.

Authority to Compel a Third Party to Produce Documents

10. It is trite law that as a creature of statute, the Registrar's power to compel a third party to give up for inspection any documents in its possession or control must be found in statute. Is section 7 of the MDA available to compel a third party to give up its records?

11. In British Columbia, the interpretation of a B.C. statute must be viewed with the following over-riding principal of interpretation:

"...the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of..." [the Legislature, and the court must also apply] "...the principle,

encapsulated at s. 8 of the Interpretation Act, R.S.B.C. 1996, c. 238, that every act "must be construed as being remedial" and must receive "such fair, large and liberal construction and interpretation as best assures the attainment of its object."

Yeung (Guardian ad litem of) v. Au 2006 BCCA 217, 51 B.C.L.R. (4th) 258 at paragraph 32 (5 member panel of the C.A.), aff'd 2007 SCC 45, 70 B.C.L.R. (4th) 1 (S.C.C.)

12. First, I would note that section 7 of the MDA is limited within its terms to the Registrar's considerations under sections 4 and 5 of the MDA. Subsection 7(2) of the MDA also provides that the Registrar's ability to compel production of information is by withholding registration of an applicant:

7 (1) The registrar, in the exercise of the registrar's powers and duties under sections 4 and 5, may make inquiries and require information

(a) the registrar considers appropriate or necessary to decide whether or not to grant, renew, cancel or suspend registration, or

(b) respecting the business or proposed business of the applicant as authorized by the regulations.

(2) It is a condition of registration or renewal of registration that the applicant, or the holder of a certificate of registration or renewal, provide information and documents respecting the business of a motor dealer that the registrar or another person conducting an inquiry under this Act requires.

13. Nothing in section 7 provides a mechanism to enforce a third party to produce documents under its control. Without a mechanism to enforce an order for production on a third party, it is difficult to see a legislative intent that section 7 of the MDA was intended for that purpose.

14. Second, this matter is before the Registrar by means of a complaint from a consumer. Section 25 of the MDA deals with the Registrar's authority to compel a motor dealer to provide information where the Registrar receives a complaint. It does not authorize the Registrar to compel the production of information from a third party. The ability of the Registrar to enforce an order to produce records by a motor dealer is found in section 5. The Registrar can require a complainant to provide more information by refusing to proceed with investigating or hearing a complaint unless production is made. There is a clear legislative intent that the Registrar's authority to inquire under the MDA for the purposes of a complaint is to be found under section 25 of the MDA and not section 7. That authority does not include ordering a third party to produce documents.

15. Third, by virtue of section 8.1 of the MDA and section 29 of the *Motor Dealer Act Regulation* B.C. Reg. 447/78, the Registrar has been prescribed the authority under the following section of the BPCPA:

151 (1) For the purposes of an inspection, the director has the same powers that the Supreme Court has for the trial of civil actions to do the following:

- (a) summon and enforce the attendance of witnesses;
- (b) compel witnesses to give evidence on oath or in any other manner;
- (c) compel witnesses to produce records and things.

(2) When the director exercises a power under subsection (1), a person who fails or refuses to do any of the following is liable, on application to the Supreme Court, to be committed for contempt as if in breach of an order or judgment of the Supreme Court:

- (a) attend;
- (b) take an oath;
- (c) answer questions;
- (d) produce the records or things in the person's custody or possession.

...

16. Section 151(1)(c) of the BPCPA expressly authorizes the Registrar to compel the production of documents in the possession of a third party witness. Section 151(2)(d) provides a mechanism in which the Registrar may enforce that production order.

17. In reading the statutory scheme as a whole, it is my opinion that section 7 of the MDA was not intended to give the Registrar the authority to compel a third party to produce documents under its possession or control. Where a witness in a proceeding may have documents relevant to the issues at hand, then the Registrar may compel production of those documents under section 151 of the BPCPA.

DISCUSSION

18. At present there has been no request that someone at ICBC be made a witness to this matter. As Registrar, it would be open to me to summons someone at ICBC to attend as a witness

and produce documents relevant to the issues at hand under section 151 of the BPCPA. However, before making such an extraordinary order, I must be satisfied that the evidence to be produced is relevant and that there is a sound factual basis to make such an order. In my view, it would be inappropriate to exercise my discretion to grant the order sought, and to compel a third party to be a witness and to produce documents, where the application is based only on the dealer's extraordinary, unsubstantiated allegation of serious criminal misconduct on the part of the consumer.

19. The only basis Matrix has put forth to seek production of documents held by ICBC, is its allegation that Mr. Roberts has committed an illegal act. The evidence it advances in support of that allegation is Mr. Roberts' admission he paid cash for the vehicle in \$20 denominations. Mr. Roberts has explained the reasoning behind payment in this manner. The purchase of a motor vehicle by way of cash is, in-and-of-itself, not evidence of illegal conduct. It is certainly insufficient evidence to order a third party to go to the expense and time of producing records.

20. Matrix's allegation against Mr. Roberts of illegality is serious. As a matter of procedure, I am not inclined to make an order having the effect of subjecting the complainant to a searching inquiry where the application for the order is supported only by a mere allegation, especially an allegation of illegality. Otherwise, a complainant may be open to abuse and inconvenience in every case simply on a mere allegation of illegality advanced by a motor dealer or salesperson. In order to protect the process before the Registrar of Motor Dealers, I will require some clear evidence be advanced where illegal conduct is alleged, before ordering further document production. Relevance of the documents must also be shown.

21. Based on the facts and evidence provided by Matrix; I will not order someone at ICBC to be a witness and to produce Mr. Roberts' past three years of vehicle purchases. Mr. Roberts has already admitted to the cash payment of the motor vehicle in question. I see no reason to require further production of documents on that point based on the mere allegation of illegality.

Date: October 27, 2009



Ian Christman B.A., LL.B.