

**CITATION:** Mohammed v. Goodship, 2013 ONSC 4942  
**COURT FILE NO.:** CV-12- 452291  
**DATE:** 20130725

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** Jameel Mohammed, Applicant

**AND:**

Richard Goodship and Canmills Consultants Ltd., Respondents

**BEFORE:** Madam Justice Darla A. Wilson

**COUNSEL:** Jameel Mohammed in person

*Shanti Barclay*, Counsel for the Respondents

*Glenn Frelick*, Counsel for the Crown Law Office – Civil

**HEARD:** July 16, 2013

**ENDORSEMENT**

[1] This is an application brought by Jameel Mohammed [“Mohammed”] seeking an order pursuant to s. 140(3) of the *Courts of Justice Act*, R.S.O. 1990 C. 43 [“CJA”] granting him leave to proceed so that he can appeal the jury verdict rendered February 15, 2011 in court file number 04-CV-263418. That action was brought by Mr. Mohammed against the Defendants Richard Goodship and Canmills Consultants Ltd. in negligence for damages arising from the investigation of a fire that occurred on October 30, 1997 at Mr. Mohammed’s residence in Haliburton. For ease of reference, that action will be referred to as the Goodship action.

**BACKGROUND**

[2] There is a long, contorted history to this application and reference must be made to salient portions of it in order to give context to this motion.

[3] Mr. Mohammed brought an action against the insurer of his house following the fire. This was the York Fire & Casualty Company action. Mr. Mohammed was arrested and charged criminally with arson as a result of the fire. He was initially convicted but later the Court of Appeal allowed the appeal. In January, 2004, the criminal charges were withdrawn.

[4] The York Fire action was dismissed without costs on the basis of Minutes of Settlement executed by the parties. Mr. Mohammed attempted to resurrect that action but his motion was unsuccessful. He appealed that order, unsuccessfully, to the Court of Appeal and sought leave to appeal to the Supreme Court of Canada, which was refused.

[5] On February 9, 2004, Mr. Mohammed issued the claim in the Goodship action [court file 04-CV-263418]. In 2006, he sued the province in Newmarket in action number CV-06-080873-00, which I will refer to as the action against the Crown. I do not have the particulars of that action. He also sued the Township of Dysart in action CV-06-080771-00 as a result of a dispute over his mother's grave, which I will refer to as the Dysart action. Again, I was not provided with the particulars of that action.

[6] I pause to comment at this point that while counsel have been involved with Mr. Mohammed and his litigation for years, as the application judge, I was unfamiliar with the history of the various actions and proceedings leading up to today's application. It would have been most helpful if counsel had provided me with a chronology setting out what had transpired since 2004 when the Goodship action was commenced. There have been countless court appearances and many court orders from various judges in different jurisdictions in numerous actions, which is confusing. I have tried to piece together an accurate history based on the material that I have been provided with, but there may be errors.

[7] In any event, the Crown and the Township brought motions to have Mr. Mohammed declared a vexatious litigant pursuant to s. 140 of the *CJA*. On October 16, 2007, Justice Loukidelis made an order in the action against the Crown declaring the Plaintiff a vexatious litigant. He dismissed the claim and ordered that Mr. Mohammed "is prohibited from instituting any further proceedings in any court, including an action, application, motion, and appeal except by leave of a judge of the Superior Court of Justice."

[8] In the action against Dysart, Justice Loukidelis made the same order, dismissed the action and added a paragraph stating "all proceedings previously instituted by Mohammed be stayed and not be continued except by leave of a judge of the Superior Court of Justice, and that notice of any such application for leave be given to all affected parties."

[9] Mr. Mohammed sought leave to rescind the orders under s. 140(4) of the *CJA*. His applications were dismissed by Justice Mulligan in written reasons released November 17, 2008.

[10] On December 13, 2010, Justice Roberts heard an application from Mr. Mohammed to rescind the orders so he could bring an action against the OPP arising from issues around the towing of his car and his driver's license. Justice Roberts dismissed the application.

[11] The jury verdict in the Goodship action was delivered February 15, 2011. Mr. Mohammed sought to rescind the vexatious litigant designation and appeal the jury verdict by way of a motion before Justice David Brown which was heard August 11, 2011. In his endorsement, Justice Brown dismissed the motion and noted there was no reason whatsoever to interfere with the order of Loukidelis J. dated October 16, 2007.

[12] By way of application returnable January 20, 2012, the Applicant brought an application against the Queen for leave to proceed with the appeal on the jury case and for rescission of the two orders declaring him a vexatious litigant [Court file Cv-11-427186]. This was heard by Justice Belobaba who dismissed the application to rescind the vexatious litigant order. He noted

there were no reasonable grounds put forward to appeal the jury decision and no reasons offered by the Applicant as to why the vexatious litigant order ought to be changed.

[13] Mr. Mohammed then brought another application against the Queen dated January 24, 2012 under section 140(3) for an order rescinding the vexatious litigant order and for leave to proceed with the appeal of the jury verdict [Court file CV-12-444673]. It also sought leave to rescind the two vexatious litigant orders.

[14] In February, 2012, Mr. Mohammed brought an application in the Dysart action to rescind the vexatious litigant order [Court file CV-12-446502]. The same relief was sought as in the January 2012 application: leave to continue in order to appeal the jury verdict in the Goodship action and rescission of the vexatious litigant orders from October 16, 2007. That application was heard by Justice Strathy on March 8, 2012 who ordered that Mr. Mohammed be granted leave only to file the Notice of Appeal. The balance of the motion was adjourned to be served on the Attorney General.

[15] On March 28, 2012, Justice Stinson ordered that the application in file CV-12-446502 be heard together with the one in file CV-12-444673.

[16] On July 20, 2012, Mr. Mohammed brought another application in Newmarket [court file CV-12-109839] seeking leave to proceed with an action against the province arising from an accident in which he was involved in 2011. In addition, he requested the vexatious litigant orders be rescinded. Justice Gilmore dismissed that application in written reasons.

[17] On March 14, 2013, the Registrar of the Court of Appeal sent Mr. Mohammed a notice of intention to dismiss the appeal for delay. Mr. Mohammed then served a motion for an extension of time to perfect the appeal. That motion was heard and dismissed by Justice Doherty on April 18, 2013. The appeal was dismissed for delay by order of April 29, 2013. Mr. Mohammed served a motion to appeal the order of Justice Doherty. The status of that motion is not clear; the Applicant advised the court that he has not received a date for the hearing of his motion.

[18] The application that is before the court today is file CV-12-452291. It was issued April 27, 2012 against Goodship and Canmills and seeks "limited relief" from the terms of the vexatious litigant orders to enable him to appeal the jury verdict as well as "broader applications for full relief from the section 140 orders".

## **POSITIONS OF THE PARTIES**

[19] Mr. Mohammed submitted that the vexatious litigant orders made do not affect the action against Goodship as it was commenced prior to the orders being made in 2007. He argued that he was granted leave by Justice Strathy to file his Notice of Appeal of the jury verdict but he did not understand that he needed to perfect the appeal within certain time limits. He submitted that his appeal has merit and the verdict was perverse and not based on the evidence at trial and it ought to be set aside.

[20] The solicitor for the Crown submitted that Mr. Mohammed brought this application and it was heard and dismissed by Justice Belobaba in February 2012, so it is moot.

[21] Counsel for Goodship and Canmills submitted that the Applicant is in contempt of court because he has failed to pay the costs orders against him and he has failed to follow the procedure set out by Justice Roberts in her order of December 13, 2010. The relief sought by the applicant today is the same relief sought previously and refused and thus it is an abuse of process.

## **ANALYSIS**

[22] Section 140 of the *Courts of Justice Act*, R.S.O. 1990 c. 43 governs what has become known as vexatious litigant orders. It reads as follows:

- 140.** (1) Where a judge of the Superior Court of Justice is satisfied, on application, that a person has persistently and without reasonable grounds,
- (a) instituted vexatious proceedings in any court; or
  - (b) conducted a proceeding in any court in a vexatious manner, the judge may order that,
  - (c) no further proceeding be instituted by the person in any court; or
  - (d) a proceeding previously instituted by the person in any court not be continued, except by leave of a judge of the Superior Court of Justice.

[...]

### **Application for leave to proceed**

(3) Where a person against whom an order under subsection (1) has been made seeks leave to institute or continue a proceeding, the person shall do so by way of an application in the Superior Court of Justice.

### **Leave to proceed**

- (4) Where an application for leave is made under subsection (3),
- (a) leave shall be granted only if the court is satisfied that the proceeding sought to be instituted or continued is not an abuse of process and that there are reasonable grounds for the proceeding;
  - (b) the person making the application for leave may seek the rescission of the order made under subsection (1) but may not seek any other relief on the application;
  - (c) the court may rescind the order made under subsection (1);

- (d) the Attorney General is entitled to be heard on the application; and
- (e) no appeal lies from a refusal to grant relief to the applicant.

[23] Once a litigant has been designated a vexatious litigant, he or she requires leave of the court to commence a new proceeding or continue with a prior proceeding. The test for granting leave requires the applicant to persuade the court that the proceeding sought to be instituted or continued is not an abuse of process and there are reasonable grounds for proceeding.

[24] In the case before me, Mr. Mohammed was designated a vexatious litigant in two separate actions by the orders of Justice Loukedelis on October 16, 2007. As far as I am aware, those orders were not appealed nor have they been set aside so they are still in full force and effect. Since those orders were made, the Applicant has attempted to obtain leave to initiate new actions and to have the vexatious litigant orders rescinded. He has not been successful: the following judges heard his motions for leave and dismissed them: Justice Mulligan in November 2008; Justice Roberts in December 2010; Justice David Brown in 2011; Justice Belobaba in 2012; and Justice Gilmore in Newmarket in 2012.

[25] It is unclear to me how Mr. Mohammed was permitted to proceed with the jury trial in 2011 given the vexatious litigant orders. When I inquired of counsel on this point, I was advised that counsel for Goodship and Canmills was not aware of the orders at the time of the trial and consequently, they were not brought to the attention of the trial judge. It is, frankly, astonishing that in light of the litigation history of the Applicant and the two court orders declaring him a vexatious litigant which had been in existence for more than three years prior to the trial, he was permitted to proceed with the trial.

[26] In any event, an order under section 140 of the *CJA* is not made lightly by the court; they are unusual orders which are made as a last resort, where the conduct of the litigant demonstrates that there is a history of vexatious proceedings commenced and behaviour that includes attempts to re-litigate matters that have already been the subject of a judicial determination and failure to pay costs orders made against the litigant.

[27] In his order of October 16, 2007 Justice Loukidelis stated, “Mr. Mohammed is a litigant spiraling out of control who will continue to litigate and harass unless he is stopped now. He ignores costs orders while the applicants are forced to incur heavy legal expenses to defend each action. Enough. He must be prohibited from continuing this course of conduct.”

[28] With respect to the first ground of relief sought by the Applicant, namely leave to proceed to appeal the jury verdict, this must be dismissed for a number of reasons. First, there are no reasonable grounds for the Applicant to proceed. He was granted leave to file a notice of appeal of the jury verdict. He did so but did not perfect the appeal. His motion to extend time to do so was dismissed by the Court of Appeal and the Appeal was dismissed. There is no appeal to proceed with.

[29] Secondly, the moving party bears the onus of persuading the court that the proceeding sought to be instituted, in this case the appeal, is not an abuse of process and there are reasonable grounds for the proceeding. In the materials filed by Mr. Mohammed, much effort is spent to persuade the court that the verdict arrived at by the jury was not a proper one. Allegations are made of improprieties during the trial by the defence lawyer. The affidavit of the moving party filed in support of the application is replete with allegations of unfairness by opposing counsel and the judge during the trial. For example, Mr. Mohammed deposes that the trial judge “intentionally deleted his comments on the evidence” so that the defence counsel could lead the jurors “by their noses and ears” [paragraph 22]. As a whole, the affidavit is an attempt to re-argue the case at trial and on appeal.

[30] It is not the function of this court to make a determination about whether or not the jury verdict was a proper one on the evidence or was perverse. Further, it is improper to attempt to re-litigate issues which have already been determined in another proceeding. Mr. Mohammed has had his day in court; a jury rendered a verdict based on the evidence at trial. While Mr. Mohammed clearly does not agree with the verdict, there is nothing in the materials that persuades me that there are reasonable grounds for proceeding with the appeal, which has been dismissed in any event. For these reasons, I am not prepared to grant Mr. Mohammed leave to proceed under s. 140(4) of the *CJA*.

[31] I turn now to the “broader” relief sought, rescission of the section 140 orders. This relief has been sought from and denied by other judges of this court. There is nothing in the materials before me on this application that identifies any basis on which the orders ought to be set aside. On the contrary, looking at the conduct of Mr. Mohammed since 2007 when the orders were made, it is patently obvious that he has continued to demonstrate the exact behaviour that resulted in the orders declaring him a vexatious litigant more than 5 years ago: he does not accept the findings of a judge or jury; he continues to bring proceedings against the same parties for the same relief; he does not comply with costs orders made against him; he makes personal attacks on parties to the actions, their lawyers and judges. Despite numerous judges finding no reason to interfere with or rescind the orders of Justice Loukidelis, Mr. Mohammed persists in bringing further applications and motions for the same relief. It appears the s. 140 orders have had no real effect on the litigious conduct of the Applicant. There is no evidence filed before me to suggest that the trial before the jury was unfair to Mr. Mohammed; rather the materials filed in support of the rescission orders are attempts to re-litigate the issues that were determined at the trial on a full record.

[32] There must be, at some point, finality to litigation. While Mr. Mohammed may not agree with the verdict of the jury, it is unfair to the defendants in that action to continue to attempt to re-argue the case. Similarly, in my view, it is unfair to the Queen and to the Municipality of Dysart to continue to bring motions to have the s. 140 orders lifted. These motions have been determined to be without merit yet the responding parties are forced to file materials and attend before the court and incur further legal fees, which to date have not been paid by the Applicant. In essence, bringing these motions and applications has been a “free ride” for Mr. Mohammed. He is not incurring legal fees and is not abiding by the costs orders that have been made against him. That course of conduct is precisely what the vexatious litigant order is supposed to prevent.

[33] There is a remedy in our system for litigants who are dissatisfied with results after a trial. Mr. Mohammed's appeal has been dismissed. There is no basis on the evidence before me that would justify rescinding the vexatious litigant orders.

## CONCLUSION

[34] The application by Mr. Mohammed for leave under s. 140 to permit him to proceed with an appeal of the jury verdict in the Goodship and Canmills case is dismissed. The application for rescission of the vexatious litigant orders made by Justice Loukidelis October 16, 2007 is also dismissed.

[35] To be clear, Mr. Mohammed is barred from instituting a new proceeding or continuing on with an existing action without an order from this court. The administration shall not accept any material from the Applicant for filing unless it is accompanied by an order from a judge of this court permitting him to do so.

[36] This Application was ill-conceived and ought not to have been brought, given that there were no new circumstances and other judges had already dealt with the requests for leave and for rescission of the vexatious litigant orders. The Respondents are entitled to their costs, which I fix at \$1500.00 each payable within 30 days.

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D.A. Wilson J.

**Date:** July 25, 2013