

REASONS FOR DECISION OF THE TORONTO LICENSING TRIBUNAL

Date of

Hearing: October 20, 2016

Panel: Daphne Simon, Chair; Moira Calderwood and Cezary Paluch, Members

Re: Cartwright Custom Renovations Ltd.
Vincenzo Forgione, President/Trades Person
Applicant for a Building Renovator Licence (Application No. B312318)

Counsel for Municipal Licensing and Standards: Mr. David Tortell

BRIEF BACKGROUND

The Applicant, Vincenzo Forgione (“Mr. Forgione”), President of Cartwright Custom Renovations Ltd, applied for a Building Renovator License for Cartwright Custom Renovations Ltd. in August 2013. The City of Toronto (the “City”), as represented by Municipal Licensing Standards (“MLS”), denied the application on the grounds that there are concerns with respect to the applicant’s ability to comply with s 545 - 4 C (1) (a), (b), (c) and (e) of the *Toronto Municipal Code* (“the Code” or “the by-law”).

The City relied on a list of by-law and *Highway Traffic Act* charges and convictions against Mr. Forgione, some of which fines remained unpaid, and the testimony of three witnesses.

Mr. Forgione requested a hearing before the Toronto Licensing Tribunal (“TLT”) to determine whether a Building Renovator Licence should be issued, suspended or have conditions placed on it. Ultimately, the Tribunal ordered that a licence should issue with conditions, the particulars of which are set out below.

ISSUE

1. Whether the conduct of the Mr. Forgione affords reasonable grounds for belief that he has not or will not carry on his business in accordance with law and with honesty and integrity. In other words, whether or not a Building Renovator Licence for Cartwright Custom Renovations Ltd. should be issued, suspended or have conditions placed on it.

THE HEARING

Mr. Forgione waived his right to representation and acknowledged his understanding of the matter before him.

The Tribunal ordered exclusion of witnesses.

October 20, 2016

All witnesses were sworn or affirmed before testifying.

CITY'S EVIDENCE

The City called three witnesses.

Witness #1 Terry Van Elswyk

Mr. Van Elswyk is the Supervisor of the City of Toronto, Municipal Licensing and Standards, Licensing Service. He testified that he oversaw MLS staff in their preparation of Report No. 6115 (hereinafter "the Report"). Mr. Tortell took Mr. Van Elswyk through the Report and highlighted the following areas:

- Page 6 – a chart completed by MLS with 4 by-law convictions from May 2010 in regard to renovation work at 111 Brampton Road. The convictions were for the following charges: Use a Name Not Endorsed on a Licence, Fined \$1345.00, No Licence Number on Documents, Fined \$1345, Carry on Business Under More Than One Name, Fined \$1345.00, Hire Unlicensed Sub trades, Fined \$4336.00.
- Mr. Van Elswyk testified that as of October 19, 2016 the fines for all 4 by-law convictions remain unpaid.
- Page 172– 2 charges that were brought against Drain Source Drain Service Ltd. under the Employment Standards Act for unpaid wages. Drain Source Drain Services Ltd. is owned and operated by Mr. Forgione. Both charges resulted in convictions in June 2006. Mr. Van Elswyk testified that both fines of \$482.00, respectively, remain unpaid.
- Page 182- 3 by-law charges against Drain Sense Plumbing & Drain that were withdrawn. Drain Sense Plumbing & Drain is owned and operated by Mr. Forgione.
- Page 192 – a chart prepared by MLS setting out 17 by-law, *Highway Traffic Act* and *Criminal Code* charges from 1998 to November 2015. Of those charges, there were 11 convictions, 6 of which were under the *Highway Traffic Act*. 1 conviction with a fine of \$510.00 for Unqualified Engage Trade remains unpaid.
- Page 235 – A request for information from Mr. Van Elswyk to the Ontario College of Trades for copies of records relating to a charge under the Ontario College of Trades and Apprenticeship Act of Engage in Unqualified Compulsory Trade. Mr. Van Elswyk testified that had received no information from the Ontario College of Trades by the date of the hearing.
- Report No 6115 was entered as Exhibit 1.

October 20, 2016

Witness #2 Douglas Stubbings

Mr. Douglas Stubbings (“Officer Stubbings”) is a Municipal Standards Officer with MLS and has worked in this role for the last 10 years. His job entails ensuring that businesses are properly licensed and meet the provisions of the City’s by-laws.

111 Brampton Road

Officer Stubbings testified that the homeowner of 111 Brampton Road, Ms. B contacted the City on May 26, 2011 regarding renovation work that was left incomplete by Mr. Forgione. Officer Stubbings testified that he was in charge of investigating the complaint. As part of his investigation, he contacted the complainant and attended at the premises to review the work that was not completed. He took photographs. He also reviewed the written contract entered into by the complainant and Mr. Forgione and made several notations of “not done” where work was not completed (page 82 of the Report). Officer Stubbings testified that he contacted Mr. Forgione, on several occasions, to have him complete the work. Officer Stubbings testified that Mr. Forgione gave him “basically empty promises” when he said he would return to complete the job but never did.

After a few months, Officer Stubbings laid the 4 by-law charges which resulted in the October 2013 convictions (page 6 of the Report). Officer Stubbings indicated that there is no charge under the City by-law for not completing renovation work under a contract. When asked why he took the time to go through the contract with the complainant and note what was “not done”, his answer was that he may have “over-investigated” the matter.

Officer Stubbings testified that Ms. B sued Mr. Forgione in Small Claims Court and she received a judgment in the amount of approximately \$20,000 on September 11, 2012 (page 64 of the Report). Officer Stubbings testified that, further to a conversation with Ms. B on October 19, 2016, the amount of the judgment remains unpaid. He did not have any involvement in the Small Claims Court matter.

Officer Stubbings opined, under cross-examination by Mr. Forgione, that the work he observed completed at 111 Brampton Road was, in fact, properly installed.

438 Wilson Avenue

Officer Stubbings testified that on or about December 1, 2014, a request for assistance came to MLS in regard to a low rise apartment building, at 438 Wilson Avenue, owned by Veronica Douse. Mr. Forgione’s company, Drain Sense Plumbing & Drain Ltd., was engaged to do work at these premises. Officer Stubbings attended the premises on December 4, 2014.

He testified that, after interviewing Ms. Douse, he determined that approximately 30% of the work agreed upon had been completed. There was no written

October 20, 2016

contract however to determine what work was, in fact, agreed upon. He relied on what Ms. Douse had told him. Officer Stubbings testified that he did not contact Mr. Forgione.

Officer Stubbings took photographs of the work which included a large trench around the exterior of the building. Ms. Douse provided him with a copy of a money order, paid Mr. Forgione, dated August 16, 2014 in the amount of \$10,000 made out to Drain Sense Plumbing & Drain Ltd.

Officer Stubbings determined what sort of licence would be required for the type of job involved at 438 Wilson Avenue and laid one charge of Building Renovator No Licence against Drain Sense Plumbing & Drain Ltd. That charge was withdrawn due to a technical error.

38 Henning Avenue

Another request for assistance to MLS came on or about July 24 2013, from Mr. X, the owner of the property at 38 Henning Avenue. The complaint was in regard to a waterproofing job contracted to Mr. Forgione (operating as Drain Source Drain Services Ltd.), which Mr. X alleged was never completed. Officer Stubbings did not attend the premises to investigate the complaint. He spoke to Mr. X on the telephone and provided advice about getting documentation to pursue the matter civilly, namely a Quality Survey and a License Status letter from MLS. Officer Stubbings had no further involvement in this matter; however, he testified that Mr. X sued Mr. Forgione in Small Claims Court on or about August 2013. Neither did Officer Stubbings have any involvement in this Small Claims Court matter.

Witness #3 Veronica Douse

Ms. Douse, the owner of 438 Wilson Avenue, testified at the hearing. Ms. Douse contacted the City after a dispute with Mr. Forgione. Ms. Douse does not reside at 438 Wilson Avenue but owns the property which contains approximately 9 apartment units. Her real estate agent recommended Mr. Forgione to her, shortly after she purchased the property. She was in need of some plumbing work and weeping tile around the exterior of the building. Ms. Douse hired Mr. Forgione to complete the repairs. There was no written contract, just a verbal agreement. The contract price was \$15,000, with \$10,000 to be paid at the outset and \$5,000 when three quarters of the work was completed. There was a disagreement between Ms. Douse and Mr. Forgione as to what was specifically agreed to. Ms. Douse paid Mr. Forgione \$10,000 as evidenced by the copy of the money order provided.

A dispute ensued whereby Ms. Douse withheld the remaining \$5,000. She wanted Mr. Forgione to complete the parging, tarring and installing a platon system. She testified that Mr. Forgione never returned to finish the job. Ms. Douse testified that she kept calling Mr. Forgione but he never came back. She had to hire another contractor to finish the work as water was leaking into the basement due to the large trench left around the exterior of the building. She testified that the second contractor charged her \$28,000 to finish the job and that

October 20, 2016

she is still making payments on that amount. She also stated, under cross examination from Mr. Forgione, that she obtained another quote for the same job for \$60,000 for both of her buildings but that his quote was much cheaper.

EVIDENCE OF Vincenzo Forgione

Mr. Forgione testified that he has worked as a contractor for over 35 years. He lives with his wife, three kids, mother-in-law and dog and is the sole income support. His wife helps him with his businesses.

Mr. Forgione is the holder of 2 City licences that allow him to do renovation and drain work. He operates two companies: Drain Source Drain Sense Ltd and Drain Sense Plumbing & Drain. He testified that his work is excellent and meets all building and city codes and standards. He testified that he will not work for free and he often encounters clients who will not pay him the full price of the job. When a disagreement such as this occurs, he walks away from the job leaving the work unfinished until a payment is made. He testified that he could not afford to pay outstanding by-law conviction fines but that he would like to try to pay what is owed over time.

In regard to 438 Wilson Avenue, he testified that the contract was only for weeping tiles and stone. It did not include parging, tarring or installing a platon system. He stated that no one would do all of that work for \$15,000 and referenced that the quotes Ms. Douse obtained suggest the market price for such a job is much higher. It is uncontroverted that Ms. Douse paid him the \$10,000. When he dug out three quarters of the building Ms. Douse was to pay him the additional \$5,000 but she insisted that he do the parging, tarring and install a platon system. He stated that it was not what they agreed. He testified that he covered the trench with plywood (not shown in the photographs taken by Officer Stubbings) and left the job until he received the remaining amount owed to him. He testified that he knew he wouldn't receive the remaining \$5,000 but that he would have come back to finish filling in the trench if he had received the \$5,000. He testified that he didn't want to take this job in the first place because he knew it wasn't worth the money. He reiterated that he often encounters clients who want him to "work for free".

In regard to 111 Brampton Road, he testified that all the work he completed was up to building code and standards. This was a full basement renovation "gut job" and unbeknownst to him, Ms. B asked his workers, when he was not present, to add 2 smaller bedrooms during the course of the renovations. This was not part of the contract. His workers complied because, according to Mr. Forgione, Ms. B stated "Vince said it was ok". Mr. Forgione testified that she owed him additional monies for the installation of 2 bedrooms. He testified this happens a lot, again stating that some clients don't want to pay him for the work he does or they want him to work for free. Mr. Forgione testified that the job at 111 Brampton Road was close to completion in that they just had to install the cabinetry.

He testified that he did not attend at the Small Claims Court hearing brought by

October 20, 2016

Ms. B due to illness. A judgment was entered against him, in his absence, and remains outstanding.

When questioned about the by-law charges, leading to the October 2013 convictions, he testified that he didn't know he had to put his licence number on invoices. In regard to the conviction for hiring unlicensed sub trades, he stated "The whole city is working on unlicensed sub trades".

In regard to 38 Henning Avenue, he testified that he subcontracted the work. When an issue arose, he testified that Mr. X would not allow him back on the property. He testified that he went to the Small Claims Court hearing and paid \$6500 into court to resolve the matter. He did not admit any wrongdoing by doing so and simply considered it paying back the money that was owed. He stated, under cross-examination from Mr. Tortell, "When I'm wrong I admit that I'm wrong".

He presented a reference letter, marked as Exhibit 2, from The Residences at Maple Leaf Square as evidence of a satisfied customer. This entailed a large job he completed installing over 1000 tub spouts in 872 units in two towers. The letter commended Mr. Forgione on his professionalism, his competitive pricing and stated that there was not "one single complaint" from the work completed.

Finally Mr. Forgione testified that he wants to run a straight company. In that vein, in his dealing with Officer Stubbings in 2011, he asked him for advice about how to "make things legal: to get all his licences in order. He testified that he took all the necessary steps to put the paperwork through bringing his licences in order on the advice of Officer Stubbings. He also stated that he has been unable to afford to pay the outstanding fines but that he would like to try to arrange a payment plan.

SUBMISSIONS

City's submissions

The City requested that a Building Renovators Licence for Cartwright Custom Renovations Ltd should not be issued. Mr. Tortell, on behalf of the City, stated that there was quite a bit of evidence to suggest that Mr. Forgione was not conducting himself with honesty and integrity. In summarizing the evidence, Mr. Tortell stated that it doesn't pass the "sniff test" and that Mr. Forgione is not an appropriate candidate for a Building Renovator Licence.

The Applicant's submissions

Mr. Forgione's position was that he's always given more than what was asked for. He stated that he conducts himself with honesty and integrity but once again asserted that there are people (clients) who don't want to pay him for the work that he does. He stated that he would like to settle his outstanding fines and that the more licences he has, the more work he can do and that will allow him to better afford to make payments on his outstanding fines.

October 20, 2016

DECISION

Relevant provisions of the Code

2. The *Toronto Municipal Code*, § 545-4, sets out the grounds for denial of a licence.

545-4 Licences, applications and renewals

C. Grounds for denial of licence

1) An applicant for a licence, or for the renewal of a licence, is, subject to the provisions of this chapter, entitled to be issued the licence or renewal, except where:

a. The conduct of the applicant affords reasonable grounds for belief that the applicant has not carried on, or will not carry on, his or her trade, business or occupation in accordance with law and with integrity and honesty; or

b. There are reasonable grounds for belief that the carrying on of the trade, business or occupation by the applicant has resulted, or will result, in a breach of this chapter or any other law; or

c. The applicant is a corporation and its conduct or the conduct of its officers, directors, employees or agents affords reasonable grounds for belief that its trade, business or occupation has not been, or will not be, carried on in accordance with law and with integrity and honesty; or

d. The conduct of the applicant or other circumstances afford reasonable grounds for belief that the carrying on of the business by the applicant has infringed, or would infringe, the rights of other members of the public, or has endangered, or would endanger, the health and safety of other members of the public.

The Tribunal did not find that there was enough evidence presented to meet the statutory grounds for a denial of a licence in this matter. The Tribunal was not convinced that Mr. Forgione acted without honesty or integrity. The panel based its decision on the fact that the by-law convictions refer to a single client incident that took place in 2010. The evidence does not show any other by-law convictions or *Criminal Code* charges in Mr. Forgione's 35 year history as a contractor. The panel took note of this and had no other evidence of convictions to show that Mr. Forgione did not carry on his business in accordance with the law. The Tribunal accepted Mr. Forgione's evidence that he has taken steps to bring all his licences into compliance. Mr. Forgione has two other City licences in addition to the one that is subject of this application.

The evidence in regard to the Small Claims Court judgment in favour of Ms. B was that this was a judgment made in Mr. Forgione's absence. That being so, the Tribunal was not prepared to draw the inference that there was any wrongdoing on the part of Mr. Forgione, or that he acted without honesty or integrity in his dealings with Ms. B.

The panel had little information about the other Small Claims Court matter except for Mr.

October 20, 2016

Forgione's uncontroverted evidence that he paid \$6500 into court to settle this matter. The panel viewed this as an act of good faith and not an admission of wrong doing.

In regard to 438 Wilson Avenue, the Tribunal favored the testimony of Mr. Forgione over that of Ms. Douse. The Tribunal believed Mr. Forgione as he was consistent in his evidence, stating over and over, that the contract price of \$15,000 was solely for weeping tile and stone. We found support for Mr. Forgione's position (that the \$15,000 was intended to pay for only part of the work) in the fact that another company quoted Ms. Douse a price of \$60,000 for the full job, and that the company which finished the job charged her \$28,000. While we did not feel that Ms. Douse was intentionally misleading the Tribunal, we believed that she was under a misapprehension about what the contract was for. There was clearly a miscommunication about the scope of the job. We were not prepared to find that the miscommunication was due to any lack of honesty or integrity on the part of either Ms. Douse or Mr. Forgione. We note that a written contract signed by both parties would have helped to alleviate the misunderstanding that existed regarding the scope of the job.

In reaching our decision, we applied the Tribunal's mandate, set out in part in the Toronto Municipal Code, § 545-3.B(3), subsection (c):

Have regard for the need to balance the protection of the public interest with the need for licensees to make a livelihood.

Mr. Forgione's testimony that he was the sole financial support of his household was uncontradicted. He correctly stated that, although he holds other licences, if granted this licence, he can undertake further work.

The Tribunal was not without some concerns that Mr. Forgione and/or his companies had been the subject of by-law charges and convictions, and of Small Claims actions by dissatisfied clients. Further, we were troubled by his statement that the "whole city works on unlicensed sub trades." While we did not find that all of this, taken together, provided sufficient grounds for denial of licence, particularly when considered against Mr. Forgione's long record of working as a contractor in the city, we were of the view that to ensure public protection, the licence issued to Cartwright Custom Renovations Ltd. should be placed on probation, with conditions, for a period of time. Further, we were very concerned that by-law fines had remained outstanding for a long period of time, and wished to impose a condition to address this.

Accordingly, for the reasons outlined above, the Tribunal ordered that the Building Renovator Licence issue to Cartwright Custom Renovations Ltd, subject to the following conditions

1. The licence will not issue until Mr. Forgione pays the outstanding fines located on page 6 of report No. 6115; or satisfies Municipal Licensing Standards that he has entered into an agreement with the appropriate court house to repay those fines in the form of a payment plan;
2. Immediately upon being issued, the licence will be placed on probation for a period of three (3) years to commence on October 20, 2016;

October 20, 2016

3. During the probationary period, if Cartwright Custom Renovations Ltd. or Mr. Fiorgione, in his personal capacity, incur any new charges and/or convictions under the *Toronto Municipal Code* or the Criminal Code, they must notify Municipal Licensing and Standards, in writing, within three (3) business days, which can be done in one of the following ways:
 - In person at 850 Coxwell Avenue, Toronto, Ontario M4C 5R1
 - Via regular mail to : 850 Coxwell Avenue, Toronto, Ontario M4C 5R1
 - Via email to mlsconditionreporting@toronto.ca; or
 - Via fax at 416 392-3102

4. During the probationary period, if Municipal Licensing and Standards has concerns with any new charges or convictions those matters and report No. 6115, and any updating material, shall be brought back before the Tribunal for a full hearing.

Originally Signed

Daphne Simon, Chair
Panel Members, Moira Calderwood and Cezary Paluch concurring

[Reference: Minute No. 169/16]

Date Signed: November 17, 2016