

COURT OF APPEAL FOR ONTARIO

CITATION: Harvey v. Bingemans Inc., 2023 ONCA 110

DATE: 20230215

DOCKET: C70966

Fairburn A.C.J.O., Doherty and Pardu JJ.A.

BETWEEN

Shaun David Harvey

Applicant (Appellant)

and

Bingemans Inc., Mark Lawrence Bingeman and Waterloo Region Police Services Board

Respondent (Respondent)

Shaun David Harvey, as self-represented

Mark A. Radulescu, for the respondent, Bingemans Inc. and Mark Bingeman

Erin Kadwell, for the respondent, Waterloo Region Police Services Board

Heard and released orally: February 13, 2023

On appeal from the orders of Justice M. Gibson of the Superior Court of Justice, dated June 30, 2022 and August 30, 2022.

REASONS FOR DECISION

[1] The outcome of this application turned on whether the relationship between the appellant and Bingemans was as a licensee and licensor, or as a tenant and landlord. This is essentially a question of contractual interpretation. The answer to that question required a consideration of the language of the licensing agreement and the other documents related to that agreement, considered in the context of the evidence relating to the relationship between the parties and the nature of the property.

[2] The language of the License to Occupy and the terms of the related documents make it absolutely clear that the relationship between the applicant and Bingemans was a relationship of licensor and licensee. The language was, of course, agreed upon by the parties when they entered into the agreement. Not surprisingly, the application judge came to that conclusion. His reasons explain to the parties exactly why he did so.

[3] The appeal as against Bingemans is dismissed.

[4] Turning to the appeal in respect of the Waterloo Region Police Services Board, we can deal with that matter briefly.

[5] On the findings of the application judge, which are fully supported, the appellant breached the terms of the licence. Bingemans was entitled to revoke the licence. He was asked by Bingemans to leave the property and refused to do so.

He was therefore a trespasser. Accordingly, the police had reasonable grounds to arrest the appellant and remove him from the property.

[6] The appeal against the Waterloo Region Police Services Board is also dismissed.

[7] Costs will go in the amount of \$7,000 to the respondent, Bingemans Inc. and Mark Bingeman, and costs in the amount of \$6,000 will go to the Waterloo Region Police Services Board, all-inclusive.

“Fairburn A.C.J.O.”

“Doherty J.A.”

“G. Pardu J.A.”