

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:)	
)	
JOROBIN INVESTMENTS LIMITED)	Mr. William D. Dunlop and Mr. Justin
)	Robinson, counsel for the Applicant
)	
)	
Applicant)	
)	
- and -)	
)	
)	
PETER LUKOSIUS, CAROL LUKOSIUS,)	Mr. Charles P. Criminisi, counsel for the
991895 ONTARIO INC., and SAM'S)	Respondents Peter and Carol Lukosius
AUTO CENTRE)	Mr. Richard Wellenreiter, counsel for the
)	Respondents 991895 Ontario Inc., and
)	Sam's AutoCentre
)	
Respondents)	
)	
)	
)	HEARD: August 8, 13, 2003

WHITTEN J.

RULING AS TO COSTS

[1] A ruling of this court released September 2nd, 2003 granted an interim prohibitory injunction to the Applicant, Jorobin Investments Limited and prohibited Peter and Carol Lukosius from entering into a lease with Sam's Auto Centre in contravention of the restrictive covenant contained in the lease between the Lukosius' and Jorobin Investments Limited. Furthermore, the Lukosius', the landlords, could not allow continued possession of unit 1245, the adjacent unit to Midas (Jorobin Investments), in contravention of the restrictive covenants of that lease.

[2] The only outstanding issue was that of costs. Jorobin and the Lukosius' have resolved that issue between themselves. Part of that resolution contained an assignment to the Lukosius'

of any liability for the costs of Jorobin by Sam's Auto Centre and 991895 Ontario Inc. This latter issue has not been addressed in the latest correspondence or submissions on behalf of Sam's Auto Centre and 991895 Ontario Inc., and should be within 30 days of the date of this ruling. That further submission will no doubt require evidence of the costs sought by the original applicant Jorobin.

[3] Returning to the issue of costs between the Lukosius' and Sam's Auto Centre and 991895 Ontario Inc., the following is noted:

- (1) Sam's Auto Centre had signed an offer to lease which clearly stated that the use "*would not conflict with the uses carried out by other tenants of this property*"
- (2) The use engaged in by the Midas franchise, Jorobin, would be patently obvious
- (3) By letter dated August 12, 2002 from the law firm of Mackesy, Smye representing the landlord, Sam's Auto Centre was put on notice that its use conflicted with that of Jorobin. Furthermore, Sam's Auto Centre was invited to reconsider the future of the lease. There was no executed lease at this point, presumably what existed was a de facto, month to month lease
- (4) Sam's Auto Centre continued with its occupancy and its contravening use beyond the letter referred to in paragraph (3) above.

[4] Certainly, Sam's Auto Centre could have reduced its usage of the unit in question or simply relocated. Instead, the decision to "*brazen it out*" appears to have been made on the behalf of Sam's Auto Centre. Therefore, under the circumstances, especially the limited usage in the offer to lease, the conduct of Sam's Auto Centre, although possibly made for reasons associated with the potential cost of relocating, was reckless and foolhardy, the very antithesis of what one would expect of a business decision where normally an entity moves "*to cut its losses*".

[5] Accordingly, there will be no order as to costs as between Sam's Auto Centre (991895 Ontario) Inc. and the landlords, the Lukosius'.

[6] As previously mentioned, as for the contribution of Sam's Auto Centre towards the costs due to Jorobin Investments Ltd., there is a need for further submissions to be made within 30 days.

Dated at Hamilton, this 4th day of June, 2004

WHITTEN J.

Court File No. 02-7412

O. S. C. J.

BETWEEN:

JOROBIN INVESTMENTS LIMITED

Applicant

-and-

**PETER LUKOSIUS, CAROL
LUKOSIUS, 991895 ONTARIO INC.,
and SAM'S AUTO CENTRE**

Respondents

RULING AS TO COSTS

Released: June 04, 2004

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