

## DAVID WINER - LIST OF CASES

- 1) JCS Contracting & Marketing Ltd. v Amigos Development Inc. et al 2023 ONSC 7168 (SCJ). Successfully resisted a motion for a Certificate of Pending Litigation. The equities did not favour granting a CPL, in part, because of the delay of the plaintiff in seeking a CPL.
- 2) *AB v FB* et al - oppression remedy/shareholder dispute. Mr. Winer successfully resisted a claim after a lengthy trial, for reinstatement by a Director who voluntarily resigned;
- 3) *Plewes v. Chaudhry* 2023 ONCA 371; Mr. Winer successfully resisted an appeal from a trial judgment. The Court of Appeal affirmed the trial decision, holding that the purchaser did not sustain damages. The property had both residential and commercial components. The issue was the allocation and liability for HST;
- 4) *Deschênes v. 767905 Ontario Limited et al* 2022 ONSC 5343 (SCJ); Mr Winer successfully obtained a prescriptive easement over private roads in a subdivision, where continuous use, for more than 50 years, was established;
- 5) *Etedali v. Didi-Peri Mgt. Inc.* 2022 ONSC 2184 (SCJ); whether employee resigned or was terminated; whether conduct of employer was oppressive to minority shareholder/employee.
- 6) *Plewes v. Chaudhry* 2022 ONSC 919, 2022 CarswellOnt 2461, [2022] GSTC 19 (SCJ). At trial, Mr. Winer successfully defended the claim of a purchaser seeking damages from a vendor pursuant to an undertaking to re-adjust. Property had both residential and commercial components. The issue was calculation and liability for HST. The purchaser suffered no damages and therefore the vendor had no obligation to re-adjust.
- 7) *Baker v Baker* - CV-20-648279 - an unreported decision of Justice Vella dated February 3, 2022, in Chambers, respecting consequences of opposing affiant failing or refusing to be cross-examined.
- 8) *Corpfinance International et al ats Marino* – 2022 ONSC 0116. Mr. Winer successfully resisted an application brought pursuant to s. 140(3) of the *Courts of Justice Act* in which a vexatious litigant was denied leave to commence a fresh action.
- 9) *Weslease 2018 Operating LP v. Eastgate Pharmaceuticals Inc.* 2021 ONCA 743 (CA). Mr. Winer successfully resisted an appeal from a judgment respecting a commercial equipment lease deficiency, and enforcement of a general security agreement.
- 10) *AB v FB* et al – CV-18-602114 – an unreported decision of Justice Myers dated October 20, 2021, concerning the unavailability of partial summary judgment

(where only one defendant moves for summary judgment) in the face of a pending trial.

11) *Ozcan v. Fleetwood* - CV-21-654848 – unreported decision of Justice Suganasiri dated October 8, 2021. Mr. Winer successfully argued and obtained the refund of a large deposit from an aborted commercial real estate transaction. Financing condition not met. APS was null and void. Conduct of purchaser attempting to fulfil financing condition is not measured to the standard of perfection. Good faith efforts made. Vendor raised argument for first time in responding factum that entire deposit ought to be forfeited. This was not advanced by a counter-application. It is fundamental to litigation proceedings that lawsuits be decided within boundaries of the pleadings.

12) [2200334 Ontario Inc. v. Landmark Vehicle Leasing Corp.](#) 2021 ONSC 5657; 2021 CarswellOnt 13032; 337 A.C.W.S. (3d) 277, (Div.Ct.); leave to appeal refused at M52879 released April 5, 2022 – Mr. Winer successfully appealed a trial decision resulting in the trial judgment being overturned in favour of Mr. Winer’s client. The Divisional Court agreed that an impermissibly registered, non-possessory, RSLA lien is defective and cannot be a valid and enforceable charge on funds paid into Court to bond off the said lien. The Court of Appeal refused to grant leave to appeal;

13) [743584 Ontario Inc. v. Lac Otelnuik Mining Ltd.](#) 2021 ONSC 5255 (SCJ) responded to a motion to stay application in favour of arbitration;

14) *Power Estate v. Power* – Court File No. CV-21-244-00; unreported decision of Justice McSweeney granting Certificates of Appointment to Estate Trustees on this contested hearing in which the respondents sought to pass over the named estate trustees;

15) [Afzal v. Patel](#) 2021 ONSC 4706 (SCJ); Mr. Winer successfully obtained an order varying a peremptory timetable and successfully obtained an order compelling an adverse party to attend for cross-examination on a hard fought motion;

16) [Weslease Operating LP v. Eastgate Pharmaceuticals Inc. et al](#) 2020 CarswellOnt 15859, 2020 ONSC 6464 (SCJ); Mr. Winer successfully obtained judgment on a motion for summary judgment respecting amounts owing under a commercial equipment lease; Mr. Winer earlier obtained *ex parte* orders for the interim recovery of personal property.

17) [RE: DEL Equipment Inc.](#) 2020 ONCA 555, 2020 CarswellOnt 12523 (CA); motion for leave to appeal to the Court of Appeal from a decision of a judgment in the context of the *Companies’ Creditors Arrangement Act*.

18) [2200334 Ontario Inc. v. Landmark Vehicle Leasing Corp.](#) 2019 ONSC 7532 (SCJ); 2019 CarswellOnt 21114 (SCJ); 11 PPSAC (4<sup>th</sup>) 273; 313 ACWS (3d) 417; application under *Repair and Storage Liens Act*. Whether an invalid RSLA lien is a charge on funds paid into court to bond it off. Mr. Winer successfully argued an

appeal resulting in this decision being overturned;

19) [Reuveni v. Chief Building Official for Toronto](#) , 10-31-1551 - 2019 ONBCC 31 (CanLII) (Building Code Commission); successfully obtained approval for laneway house despite opposition from City and Fire Department;

20) [Craft Acquisition Corp. v. City of Toronto et al](#) 2019 ONSC 3636; (2019) 146 O.R. (3d) 407 (SCJ Div. Ct.); statutory stated case concerning interpretation of recent ambiguous legislation; statutory interpretation;

21) *Landmark Vehicle Leasing Corporation v. Muccio* SC-12-95211, a decision of Deputy Judge Besunder, wherein Mr. Winer successfully resisted a motion by a defendant to attempt to set aside a default judgment;

22) [Craft Acquisition Corp. City of Toronto et al](#) 2019 ONSC 1151 (SCJ Div. Ct.); test for granting intervener status in Stated Case to interpret legislation before the Divisional Court;

23) [J.A.L. Developments Ltd. v. Residences of Spring Hill Inc. et al](#) 2019 ONSC 1132 (SCJ) costs of contested motion; Mr. David Winer of Kagan Shastri LLP, in part, argued successfully that where there were two sets of counsel, costs should be reduced accordingly due to the potential for duplication

24) [J.A.L. Developments Ltd. v. Residences of Spring Hill Inc. et al](#) 2019 CarswellOnt 605, 2019 ONSC 177 (SCJ), test on motion under Rule 21 to strike pleadings; Mr. David Winer of Kagan Shastri LLP argued that documents referred to in the impugned pleading are properly before the Court on such a motion;

25) *Craft Acquisition Corp. v. City of Toronto et al* 2018 CarswellOnt 22497 (SCJ Div Ct), procedural decision respecting Stated Case from the Local Planning Appeal Tribunal

26) [TSCC No. 2256 v. Paluszkiewicz](#) 2018 ONSC 2329; 2018 CarswellOnt 5694 (SCJ); Mr. Winer and partner, Mr. Shastri, successfully resisted an application brought by a condominium corporation seeking leave to appeal from a decision of an Arbitrator. Leave to appeal will only be granted on a question of law where the importance justifies an appeal and where the issues will significantly affect the rights of the parties. The Court agreed that the questions raised were not questions of law or alternatively, they would not significantly affect the rights of the parties;

27) [The Corporation of the Town of Richmond Hill v. Elginbay Corporation et al](#) 2018 ONCA 72; 139 O.R. (3d) 321; 2018 CarswellOnt 1643; 14 C.E.L.R. (4th) 250; 288 A.C.W.S. (3d) 178; 72 M.P.L.R. (5th) 1 (CA); appeal from decision of Ontario Divisional Court; whether decision of Ontario Municipal Board respecting statutory interpretation was reasonable in the circumstances;

- 28) [\*Niagara Peninsula Conservation Authority et al v. Smith\*](#) 2017 ONSC 6973, 2017 CarswellOnt 19098 (SCJ); responded to a motion under s.137.1 of the *Courts of Justice Act* (anti-SLAPP legislation) brought by defendant in the context of a defamation action. Once the defendant shows that impugned speech was on a matter of public interest, the onus shifts to plaintiff to establish there are grounds to believe that the action has substantial merit and there is no valid defence (and that the relative harm favours allowing the action to proceed);
- 29) [\*Gottlieb v. Malone Given Parsons\*](#) 2017 ONCA 757 (CA); 2017 CarswellOnt 15093; [2017] O.J. No. 5057 (CA); 82 RPR (5th) 70; 283 A.C.W.S. (3d) 629. Mr. David Winer successfully resisted an appeal brought by the plaintiff from a judgment dismissing its action as being barred by operation of the *Limitations Act*;
- 30) *Morris et al v. Khadr*, 2017 ONSC 4297 (SCJ); [2017] O.J. No. 3676 (SCJ); 2017 CarswellOnt 10935; 281 ACWS (3d) 156; 415 D.L.R. (4th) 534; *mareva* injunction; evidence of dissipation must be clear. This was a high profile case in which David Winer of Kagan Shastri LLP was widely quoted in the press;
- 31) [\*Khulaqhi v. Khulaqhi\*](#) 2017 ONSC 4106 (SCJ), 2017 CarswellOnt 20884 (SCJ); Mr. David Winer of Kagan Shastri LLP, successfully obtained judgment on an Application to enforce a pre-action settlement; the Court concluded that Applicant did not repudiate settlement by bringing court proceedings;
- 32) *Al Kulaqhi v. Al Khulaqhi*, 2017 ONSC 4367, as to costs; Mr. David Winer of Kagan Shastri LLP, successfully argued and obtained costs on a substantial indemnity basis where the result at trial was more favourable than the amount contained in the settlement offer;
- 33) [\*665750 Ontario Inc. v. Atlantic Towing Inc. et al\*](#) 2017 ONSC 4140 (CanLII); 2017 CarswellOnt 10876 (SCJ); [2017] O.J. 3687, 281 A.C.W.S. (3d) 540, and [2017] O.J. No. 3688; 2017 CarswellOnt 10875; 2017 ONSC 3905; 281 A.C.W.S. (3d) 544; Mr. David Winer of Kagan Shastri LLP successfully argued that a trial judge had the discretion to receive fresh evidence prior to issuance of final judgment; 2017 ONSC 6699 as to imputation of HST in circumstances of deemed sale;
- 34) [\*Unicorr Limited v. Malone Given Parsons\*](#) [2016] ONSC 7350 (SCJ); (2016) CarswellOnt 18866 (SCJ); [2016] O.J. No. 6181; 273 ACWS (3d) 865; 82 RPR (5th) 47; (SCJ); Acting for the defendant, Mr. David Winer of Kagan Shastri LLP, successfully obtained summary judgment, on a hard fought motion, dismissing an action where the plaintiff commenced action for professional negligence outside of the applicable limitation period. The plaintiff was found to have sufficient facts to have discovered the claim more than 2 years prior to commencement of the action;
- 35) [\*HMI v. Index Energy et al\*](#) 2016 ONSC 5126; [2016] O.J. No. 7165; 2016 CarswellOnt 21773 (SCJ); complex construction lien dispute; successfully resisted attempt to impose consolidated arbitration

36) *The Corporation of the Town of Richmond Hill v. Elginbay Corporation* (2016) 133 O.R. (3d) 686, [2016] O.J. No. 4637, 2016 CarswellOnt 13958, 2016 ONSC 5560, 269 A.C.W.S. (3d) 566, 402 D.L.R. (4th) 476, 4 C.E.L.R. (4th) 98, 54 M.P.L.R. (5th) 224 (SCJ – Div.Ct.); responded to an appeal from a decision of OMB capping payments for cash in lieu of parkland;

37) *The Corporation of the Town of Richmond Hill v. Elginbay Corporation et al* [2016] ONSC 1673 (SCJ – Div.Ct.) responded to a motion for leave to appeal;

38) *The Corporation of the Town of Richmond Hill v. Elginbay Corporation* [2015] ONSC 4979; [2015] O.J. No. 4164 (SCJ – Div. Ct.) test for party seeking leave to intervene as a friend of the Court;

39) *The Corporation of the Town of Richmond Hill v. Elginbay Corporation* [2015] ONSC 4981 (SCJ – Div. Ct.). Successfully resisted motion for leave to introduce fresh evidence on motion for leave to appeal. Appellant sought to introduce fresh evidence as to purported public interest of proposed appeal;

10) *Paluszkiewicz v TSCC No. 2256*; [2015] O.J. No. 6055 (SCJ) motion to enforce order of Arbitrator; residential condominium dispute;

40) *Landmark Vehicle Leasing Corporation v. Mister Twister Inc.* [2015] ONCA 545; [2015] O.J. No. 3888; 257 ACWS (3d) 224 (CA). Also cited in *CED Evidence v 1.5.(c)*. Mr. David Winer of Kagan Shastri LLP successfully resisted an appeal. Trial judgment affirmed:

- a) Written notice of assignment of lease pursuant to the *Conveyancing and Law of Property Act* not required for an equitable assignment; and
- b) Collateral Fact Rule concerning evidence by way of cross-examination at trial not offended when witness' credibility is tested through cross-examination, without re-opening own case.

41) *Ivest Properties Limited et al v. 2355907 Ontario Inc. et al*; [2014] ONSC 4916 (SCJ), a decision of Mr. Justice M.A. Garson; Mr. David Winer and Mr. Ira Kagan of Kagan Shastri LLP, successfully moved to set aside a noting in default and a Certificate of Pending Litigation (“CPL”). Defendant intended to defend throughout. Moving party has obligation to make full and fair disclosure on *ex parte* motion. Failure to make full and fair disclosure will result in *ex parte* CPL being set aside;

12) *Govan Brown & Associates v. Equinox Holdings Inc. et al* [2014] O.J. No. 3092, 2014 ONSC 3924 (S.C.J.), 33 C.L.R. (4th) 78; 242 A.C.W.S (3d) 21, 2014 CarswelOnt 8856; David Winer and Rahul Shastri of Kagan Shastri LLP successfully resisted an application to discharge construction lien on basis that the lien allegedly did not comply strictly with the requirements under the *Construction Lien Act*;

42) [\*Landmark Vehicle Leasing Corporation v. Mister Twister Inc.\*](#) 2014 ONSC 1436, [2014] O.J. No. 1895 (SCJ); successfully obtained judgment at trial against lessees for lease-end obligations; [2014] ONSC 5029 (SCJ) as to costs;

43) [\*Weidelich v. De Koning\*](#) (2014) 122 O.R. (3d) 545 (C.A.); 2014 ONCA 736 (C.A.); 384 D.L.R. (4th) 332; 62 R.P.R. (5th) 58; 246 A.C.W.S. (3d) 914; successfully resisted appeal. Trial judgment affirmed.

In a widely reported decision, David Winer and Rahul Shastri successfully argued and the Court of Appeal affirmed that a party may encroach into right of way if:

- a) The right of way is a private right of way; and
- b) The encroachment does not substantially interfere with the use of the right of way, as intended and set out in the original grant.

44) [\*Weidelich v. De Koning\*](#) [2013] ONSC 7486 (CanLii), 2013 CarswellOnt 16955; [2013] O.J. No. 5544 (S.C.J.); 39 R.P.R. (5th) 261; 235 A.C.W.S. (3d) 1122; successfully resisted application alleging that encroachment interfered with use of a private right of way. Owner of a private right of way may encroach into right of way (even permanently) providing that the encroachment does not substantially interfere with the use of the right of way, as intended in the grant;

45) [\*Guttman v. Dube\*](#) [2013] ONSC 6284 (CanLii), [2013] O.J. No. 4564 (SCJ); and (2013) ONSC 7573; application to permit accountant to finalize financial statements; dispute concerning post-closing adjustments; availability of defences of waiver and relief from forfeiture;

46) [\*McCull v. McCull\*](#) [2013] ONSC 5816 (CanLii), [2013] O.J. No. 4378 (SCJ); contested application for appointment of Estate Trustee During Litigation;

47) [\*2256598 Ontario Inc. v. World Bowl Entertainment Inc. et al\*](#) 2013 ONSC 3097 (CanLii), [2013] O.J. No. 2402 (SCJ), application by commercial tenant to enforce exclusive use covenant;

48) [\*Global Learning Group Inc. v. Eskasoni First Nation\*](#) (2013) 115 O.R. (3d) 558, [2013] ONCA 325 (CanLii), [2013] O.J. No. 2244, 2013 CarswellOnt 5883 (C.A.), 2013, 228 A.C.W.S. (3d) 693, 16 B.L.R. (5th) 190, [2013] G.S.T.C. 103; and (2013) CarswellOnt 9793; (2013) ONCA 364 ([2013 ONCA 364](#)), as to costs; Mr. David Winer of Kagan Shastri LLP, successfully resisted an appeal from an unreported decision of Madam Justice Stewart arising from an Application for the interpretation of a contract under Rule 14. Mr. Winer successfully argued that the words “inclusive of HST” did not entitle a First Nations Band a corresponding discount where the Band is not subject to pay tax. Referenced in Halsbury’s Laws of Canada – Contracts, at HCO 104;

49) [\*Kolios et al v. Vranich\*](#) [2012] ONCA 269 (CanLII), [2012] O.J. No. 1799 (C.A.) appeal from motion to stay action pending arbitration;

50) [\*Severnwoods Construction Inc. v. Aiello\*](#) [2012] ONCA 164 (CanLII), [2012] O.J. No. 1144 (C.A.) successfully resisted appeal from unreported decision of Mr. Justice Penny enforcing a settlement under Rule 49. The settlement contemplated a release from the contractor in exchange for payment from the homeowner. The homeowner insisted on a form of release which would have expanded the terms of the settlement and made the contractor liable for direct contracts entered into by the homeowner. Mr. David Winer of Kagan Shastri LLP successfully argued that the settlement did not contemplate or require such a broad release. The Court of Appeal affirmed the decision of the motions judge;

51) [\*2200608 Ontario Ltd. o/a Duffy's v. Registrar of Alcohol and Gaming Commission\*](#) [2012] O.L.A.T.D. No. 241; public interest hearing. Although there was strong public opposition, Mr. David Winer of Kagan Shastri LLP, successfully argued that the objectors had not met the onus required of them and therefore the Board issued a liquor licence for outdoor facilities subject to certain conditions;

52) [\*Landmark Vehicle Leasing Corporation v. 2229919 Ontario Ltd. et al\*](#) - [2011] ONSC 7711 (CanLII), [2011] O.J. No. 6019 (S.C.J.), [2012] O.J. NO. 170, [2012 ONSC 408](#) as to costs. Mr. David Winer was completely successful in moving to set aside the fraudulent sale of vehicle under the *RSLA*;

53) *Escubedo v. Corbett* – unreported decision of Ontario Landlord and Tenant Board dated December 12, 2011 bearing file No. TSL 21339-11. Mr. David Winer of Kagan Shastri LLP successfully moved to terminate a tenancy under *Residential Tenancies Act*; Landlord required unit in order to undertake major renovations;

54) *Landmark Vehicle Leasing Corporation v. Marino et al*, [2011] ONSC 7141, Court File No. CV-08-366010 – decision of Madam Justice Thorburn; trial under *Fraudulent Conveyance Act* – Mr. David Winer of Kagan Shastri LLP successfully obtained judgment at trial setting aside conveyance of home from one spouse to another in an attempt to frustrate creditors; once showing is made that transfer was *prima facie* fraudulent, onus shifts to transferor to demonstrate that transaction was *bona fide*;

55) [\*Pech Estate v. Kircos et al\*](#) [2011] O.J. No. 1810; [2011] ONSC 2510 (S.C.J.) production motion; contested estate proceeding – successfully argued that documents relating to personal finances of attorney under a POA ought to be produced during the impugned period;

56) [\*Pech Estate v. Kircos et al\*](#) [2011] ONSC 27669 (CanLii), costs of contested motion were ordered to be paid in the cause;

57) [\*Landmark Vehicle Leasing Corporation v. Marino\*](#) [2011] O.J. No. 1156, [2011] ONSC 1671 (CanLII), (2011) CarswellOnt 1771, 199 A.C.W.S. (3d) 791 (S.C.J.). Mr. David Winer of Kagan Shastri LLP successfully obtained an order declaring Respondent a vexatious litigant. This decision is now widely cited as to the applicable test and appropriate *indicia* that must be considered when considering the declare someone a vexatious litigant;

58) [\*Landmark Vehicle Leasing Corporation v. Marino\*](#) [2011] O.J. No. 2958, [2011] ONSC 8028, (2011) CarswellOnt 5858, 204 A.C.W.S. (3d) 269, (S.C.J.), Mr. David Winer of Kagan Shastri LLP successfully argued that the Court has wide discretion and a range of remedies when fixing costs on a vexatious litigant application;

59) [\*JPM Express Inc. v. 2092889 Ontario Inc. et al\*](#) [2010] O.J. No. 3427 (S.C.J.); possessory lien of truck under the *Repair and Storage Liens Act*;

60) [\*Registrar, Alcohol and Gaming Commission of Ontario v. Wrong Bar Inc.\*](#) 2010 CanLii 81051; 2010 OAGCD 287 (AGCO) – public interest hearing; successfully obtained increase capacity for licenced facility. This application was strongly resisted by the City of Toronto (Councillor Gord Perks) as well as local area residents. Mr. Winer successfully obtained the increase in capacity despite the vigorous opposition. [2010 CanLII 36822](#) and [2010 CanLII 36824](#) as to procedural orders;

61) [\*Re: Andy Pool Hall\*](#) 2010 OAGCD 215 (AGCO) – public interest hearing to remove conditions from liquor licence;

62) [\*Pravtchev v. Kostadinov\*](#) [2010] CarswellOnt 145, [2010] O.J. No. 145 (S.C.J.) ; priority between non-bankrupt spouse and third party as to after acquired asset;

63) [\*McCormick v. McCormick\*](#) [2010] O.J. No. 32, [2010] CarswellOnt No. 31 (S.C.J.) – successfully obtained order for change of venue for trial;

64) [\*Royal Bank of Canada v. Ward\*](#) 2009 CanLII 57451, [2009] O.J. 4300 (S.C.J.) - priority dispute; entitlement to surplus funds as between bankrupt estate, discharged bankrupt, deceased estate and mortgage insurance company; [2009 CanLII 72105](#) [2009] O.J. 5602 (S.C.J.) as to costs;

65) [\*Muscillo v. Bulk Transfer Systems Inc. et al\*](#) [2009] O.J. No. 3061, [2009] CanLII 38508 (S.C.J. Cmmrl List); oppression; shareholder remedies; deadlock; wind up; valuation date and [2009 CanLII 49898](#) and [2009] CarswellOnt. 5642 as to costs;

66) [\*Metroland Printing Publishing & Distributing Ltd. v. Bertucci et al\*](#) [2009] O.J. No. 2929 (S.C.J.), [2009] CarswellOnt 4059; 1179 ACWS (3d) 341 (SCJ); personal liability of principal of company for company debt, where company did not notify world at large that they were dealing with a limited liability company;

67) [\*Darland Construction Inc. v. Rooflifters LLC.\*](#) [2009] O.J. No. 1263, [2009] CanLII



13617, [2009] CarswellOnt No. 1618, (2009) 76 C.P.C. (6th) 339, (2009) 84 C.L.R. (3d) 299 (Ont.S.C.), test for setting aside default judgment,

68) [\*Darling Construction Inc. v. Rooflifters LLC\*](#), 2009 CanLII 55319, 90 C.L.R. (3d) 194 (2009), [2009] O.J. No. 4155, [2009] CarswellOnt 5995 (S.C.J.). Mr. David Winer of Kagan Shastri LLP, successfully obtained summary judgment on a hard fought motion where defences raised were a sham;

69) [\*Darling Construction Inc. v. Shiff\*](#) [2010] ONSC 734 CanLII, [2010] CarswellOnt 569, [2010] O.J. No. 415 (S.C.J.), 90 C.L.R. (3d) 200 (2009). Mr. David Winer of Kagan Shastri LLP successfully argued and obtained a cost award against principal of company, personally;

70) *Levine v. Inwentash* [2009] O.M.B.D. No. 30 (O.M.B.) – motion for removal of solicitor from record for conflict of interest;

71) [\*767269 Ontario Ltd. v. Ontario Energy Savings LP et al\*](#) 2007 CanLII 34843; [2007] O.J. No. 3211 (S.C.J.); [2007] O.J. No. 3511 (S.C.J.) [as to costs](#); affirmed at [2008 ONCA 350 \(CanLII\)](#) and at 2008 CarswellOnt 2497, 165 A.C.W.S. (3d) 836, and [2008] O.J. No. 1711 (Ont.C.A.); Mr. David Winer of Kagan Shastri LLP successfully obtained a declaration setting aside “negative option” renewal of contract for supply of electricity together with a refund of amounts paid in excess of legislated rate. On appeal the Court of Appeal agreed that the appellant could not raise a new argument on appeal that had not been sufficiently canvassed at trial. This case is now widely cited for this proposition that new arguments on appeal will not be considered (unless sufficiently canvassed at trial). This case was reported by Mark Bonokowski of the *Toronto Sun* in the September 21, 2007, edition of the newspaper.

72) [\*Re: Oliveira\*](#) 2008 CanLII 91830 (ON AGC) and at [2008] O.A.G.C.D. No. 388, Public Interest Hearing, successfully obtained licence despite local residents’ opposition;

73) [\*Re: Andy Pool Hall\*](#) [2008] O.A.G.C.D. No. 299, Public Interest Hearing concerning outdoor facilities; successfully obtained licence for outdoor facilities (with conditions) despite strong opposition;

74) [\*Registrar \(AGCO\) v. Da Factory Inc.\*](#) [2008] O.A.G.C.D. No. 199, Public Interest Hearing, successfully obtained licence despite local residents’ opposition;

75) [\*Machtiger v. Miroshnikov\*](#) 2007 CanLII 13511 and at [2007] O.J. No. 1537 (S.C.J.), Mr. Winer successfully resisted a motion for the removal of counsel and summary judgment;

76) *Eileen Roofing Inc. v. Wang* [2007] CarswellOnt 3479 (Ont.S.C.Div.Ct.) – costs of *Anton Piller* motion; successfully obtained and enforced an *Anton Piller* order (which is akin to a civil search warrant) and then successfully obtained a large cost award;

77) [\*BMO Nesbitt Burns Inc. v. TD Waterhouse Investment Services\*](#) [2006] O.J. No. 2074, [2006] CarswellOnt 3166, 148 A.C.W.S. (3d) 627 (S.C.J.), injunction, enforceability of non-solicitation agreement; successfully resisted injunction to restrain an investment advisor from working for a competitor. This case was reported in the *Dow Jones Newswire* on June 7, 2006;

78) [\*Registrar \(AGCO\) v.1708432 Ontario Inc. o/a Allegro Café\*](#) [2007] O.A.G.C.D. No. 303; Application for liquor licence; allegations of fronting;

79) *Re: Ola Restaurant*, [2006] OAGCD, 373 Public Interest Hearing under the Liquor Licence Act;

80) *Re: Juke Box Live* [2006] OAGCD 222, Liquor Licence Act, public interest hearing; important precedent set that applicant cannot be prejudiced by misdeeds of previous licence holders;

81) *Levitt Lightman v. Scott*, [2005] O.J. No. 5860 (S.C.J.), motion to strike Order for Assessment of Solicitors of Account;

82) *2055502 Ontario Inc. v. MTCC No. 963*, 2005 CarswellOnt 3416 and [2005] O.J. No. 2383 (S.C.J.) – suitability of oppression remedy action under the *Condominium Act* on the Commercial List – Mr. Winer successfully argued that matter should be admitted to the Commercial List;

83) *Dorsey & Whitney LLP v. RNH Holding Ltd.* [2005] O.J. 1195 (S.C.J.), successfully resisted application by non-lawyer seeking leave to represent corporate defendant;

84) *Morrison Financial Services Inc. v. D'Andrade*, [2005] O.J. 5514 (S.C.J.), Rule 21 motion to strike claim against director as showing no reasonable cause of action;

85) *Re: Andy Pool Hall*, [2004] O.A.G.C.D. 76, Public Interest Hearing; opposition from local residents;

86) *Morrison Financial Services Limited et al v. UBX Corporation et al* [2004] O.J. No. 3285 (S.C.J.). Mr. David Winer of Kagan Shastri LLP successfully obtained an injunction on behalf of a creditor in soft receivership to restrain defendant from disseminating negative comments to customers of debtor corporation;

87) *Re: Peekaboos Gentlemen's Club* [2004] O.A.G.C.D 109 (A.G.C.O.) – hearing before AGCO to remove condition on liquor licence – whether change in circumstances permitted removal of condition;

88) *Doolam et al v. Sukul et al*, [2004] O.J. 2875 (S.C.J.) – motion to consolidate proceedings;

- 89) [\*Visram v. Hirji\*](#) [2004] O.J. 1047 (S.C.J.) – motion to strike pleadings;
- 90) [\*Chapman v. Falconer\*](#) [2003] CanLII 64210 (Ont.S.C.) – Bills of Exchange, Enforceability of Promissory Note;
- 91) *Industrial Technical Services v. Top Coat Metal Finishers Inc.*, [2003] O.J. 5729 (S.C.J.) successfully obtained judgment at trial. Goods sold and delivered, fitness and quality of goods, availability of set off;
- 92) *Dick Engineering Inc. v. Thermo Tech Waste Systems Inc.* [2003] O.J. No. 5132 (S.C.J.) – motion to appoint lien trustee under the *Construction Lien Act*. Successfully obtained order compelling examination of principal of defendant (examining party has *prima facie* right to examine representative of its choice);
- 93) *Kleiner et al v. Canadian Young Judaea et al*, [2003] O.J. No. 5131 (S.C.J.); Damages flowing from unilateral termination of contract, whether termination justified. Mr. Winer acted for a summer Camp which expelled a camper on suspicion of drug use;
- 94) *Re: T.M. Sidewalk Café*, [2003] O.A.G.C.D. No. 800 (A.G.C.O.) – modest penalty imposed where licensee had otherwise unblemished record;
- 95) *Re: In the Matter of an Unnamed Engineer* (2002) PEO Gazette, V. 21 No. 5 (A.P.E.O.) - disciplinary proceedings against a professional engineer;
- 96) *Children's Aid Society of the Region of Peel v. Brampton, City of* [2002] O.J. 4502 (S.C.J.), [2003] C.C.S. 431 – application to quash by-law;
- 97) *Gamble et al v. McCormick*, [2002] O.J. 2694 (S.C.J.), [2002] C.C.S. 17261, costs of contested estate dispute. In this case we successfully argued that the Court should depart from normal rule (that costs are paid out of the estate) and obtained a cost award personally against the defendant;
- 98) *Gamble et al v. McCormick*, [2002] O.J. 930, [2002] C.C.S. 19041 (S.C.J.), 2010 CarswellOnt 31, 2010 ONSC 74, 184 A.C.W.S. (3d) 664 – trial; successfully resisted will challenge; competency and undue influence;
- 99) *Sunlife Trust Company v. Hellerman*, [2001] O.J. 1421, [2001] C.C.S., 16250 (S.C.J.) – successfully obtained an order for security for costs on a contested motion. Court applied same analysis as to a motion for summary judgment. Once the moving party establishes that it comes within the ambit of Rule 56, the responding party has an obligation to “put its best foot forward” in response to the motion;
- 100) [\*Canpark services Ltd. v. Imperial Parking Canada Corp.\*](#) (2001), 56 O.R. (3d) 102, [2001] O.J. 3915 (S.C.J.), 108 A.C.W.S. (3<sup>rd</sup>) 636, and 2001 CanLii 28004. Mr.

Rahul Shastri and Mr. David Winer of Kagan Shastri LLP successfully obtained an injunction to restrain breach of covenant not to compete. This is a leading case in the enforceability of restrictive covenants. A contractual stipulation that a breach will cause irreparable harm is not binding on the Court but raises, at the very least, a presumption of irreparable harm not easily compensable in damages;

101) *Gavrielides v. MCAP Mortgage Service Corp.* [2001] O.R.H.T.D. No. 83 (Ont. R.H.T.) – obligations of mortgagee in possession;

102) *Canam Enterprises Inc. v. Coles et al* (2000), 47 O.R. (3d) 446, [2000] O.J. 651 (S.C.J.), 95 A.C.W.S. (3d) 362, affirmed at [2000] O.J. No. 4607; 51 O.R. (3d) 481; 194 D.L.R. (4th) 648; 139 O.A.C. 1; 5 C.P.C. (5th) 218; 2000 CanLII 8514; 101 A.C.W.S. (3d) 806; 2000 CarswellOnt 4739 and reversed at [2002] S.C.J. No. 64; [2002] A.C.S. no 64; 2002 SCC 63; 2002 CSC 63; [2002] 3 S.C.R. 307; [2002] 3 R.C.S. 307; 220 D.L.R. (4th) 466; 296 N.R. 257; 167 O.A.C. 1; 24 C.P.C. (5th) 1; 117 A.C.W.S. (3d) 151; motion for summary judgment; successfully argued before Nordheimer J. that claim was barred by operation of *res judicata*, issue estoppel or abuse of process. Affirmed by the Court of Appeal. Although our client was no longer a party and therefore we did not participate, the decision was subsequently reversed at the Supreme Court of Canada (without our participation).

103) *VNB Financial Services Inc. v. Marques*, [2000] O.J. No. 795, [2000] C.C.S. 12558 (S.C.J.) – successfully obtained judgment on a contested motion for summary judgment concerning a motor vehicle loan; defendant attempted to assert that contract was vitiated and relied on the *Frustrated Contracts Act*. Court rejected the defence and granted summary judgment;

104) *RDM Sports Leisure Inc., Receiver of v. Go-Mango Fitness Equipment* [1998] O.J. No. 3253 (Ont.G.D.) – *forum non conveniens*; successfully argued that Ontario was the appropriate jurisdiction for the adjudication of the dispute;

105) *CIBC Trust Corp. v. Mullings* [1996] O.J. 197 (Ont.G.D.), 60 A.C.W.S. (3d) 837 – while an Articling Student, Mr. David Winer successfully argued before a Judge of the Ontario Court (General Division) that the obligation of residential tenant to pay rents to mortgagee in possession after service of a Notice of Attornment of Rents, continues regardless of whether the tenant purportedly prepaid rents to the landlord prior to service of the Notice of Attornment of Rents.

### **David Winer in the Media**

[Omar Khadr received \\$10.5M from Ottawa on Wednesday, government confirms | CBC News](#)

[http://www.thestar.com/news/2007/07/29/lessons\\_from\\_college\\_sts\\_conflict.html](http://www.thestar.com/news/2007/07/29/lessons_from_college_sts_conflict.html)

<http://www.theglobeandmail.com/news/national/licensing-headaches-that-could-drive->

[you-to-drink/article684914/?page=all](http://you-to-drink/article684914/?page=all)