

Court of Queen's Bench of Alberta

Citation: Obi Agbarakwe Professional Corporation v. Condominium Corporation No. 0726502, 2011 ABQB 286

Date: 20110427
Docket: 1003 20873
Registry: Edmonton

Between:

Obi Agbarakwe Professional Corporation o/a Millwoods Law Office

Applicant Lawyer

- and -

Condominium Corporation No. 0726502

Respondent Client

**Reasons for Judgment
of the
Honourable Mr. Justice Donald Lee**

[1] This application is as a result of a reference from the Review Assessment Officer after a reviewing conducted on March 3, 2011. The reference made by James Christensen Review Officer to the Court seeks direction with respect to the following questions:–

1. Relative to the services detailed in the Applicant Lawyer's invoices to the Respondent Client - was Condominium Corporation No. 0726502 the Applicant's "Client"?
2. If the answer to the above question is "Yes", what were the terms of any retainer agreement, if any, entered into by the parties?

[2] The Respondent “Client” submits that it was not the Lawyer’s “Client”; nor did it instruct the Lawyer to perform the services described in the invoices, and it did not enter into any form of Retainer Agreement with the Lawyer or his law firm.

[3] The Lawyer acknowledges that the Condominium Corporation Board Members initially consisted “mostly” of investors (the “Developers”) who had utilized his services to condominiumize an apartment building. The present Condominium Corporation Board Members now challenging the Lawyer’s entitlement for compensation for his legal services are however for the most part different from those who initially retained him.

[4] The Lawyer however submits a Retainer Agreement dated June 2, 2008 signed by Brendan Ihejirika, Penny Eleweke and Emmanuel Morah on behalf of Condominium Corporation 0726502. The Lawyer submits that he continued to be retained and to provide legal services for the Condominium Corporation until the Spring of 2010. The Lawyer ceased to act at that time largely due to the filing of a lawsuit by M, Neville and J.L.Wescott, who were participants in the Review Hearing.

[5] The present Condominium Corporation Board Members contend that the Lawyer was never retained by the Condominium Corporation; that the Lawyer’s June 2, 2008 Retainer Agreement misrepresents who the clients truly were i.e. the initial investors; and that the signatures on the Retainer Agreement are forgeries.

[6] It is further submitted by the present Condominium Corporation Board Members that the Lawyer agreed to provide legal services to the “Developers” for free, or in exchange for Condominium fees on his own unit located in the Condominium Complex.

[7] In 2006 the Developer through 126589 Alberta Ltd. purchased an apartment building intending to convert it to a condominium. In August 2007 the Developers retained the Lawyer Obi Agbarakwe Professional Corporation operating as Millwoods Law Office (the “Lawyer”) for the purpose of refinancing their condominium property and to assist with the sale of the individual units. On or about May 2008, after the refinancing and when the Investors were about to start selling the units, the Lawyer deposes that he advised the Investors to create a Condominium Board, which they did. The Condominium Board comprised of Emmanuel Morah (President), Chiemeka Brenda Ihejirika (Treasurer) and Penny Eleweke. The Lawyer contends that this Condominium Board retained his services for the Condominium Corporation, and that as an Officer of the Court the Lawyer states that they all signed his Retainer Agreement.

[8] The Lawyer alleges that he provided legal services to the Condominium Board with respect to various matters until March 2, 2010, when he ceased to act for the Condominium Corporation. The Lawyer provided statements of account to the Condominium Corporation totalling approximately \$12,000.

[9] The Lawyer argues that the Condominium Corporation signed a Retainer Agreement with him, and that he provided legal services based on that Retainer Agreement to various members

of the Board of the Condominium Corporation, who are not amongst the Developers. The Lawyer provided services and invoiced the Condominium Corporation, which never questioned the Lawyer's representation until the day of the Review and Assessment. It is submitted that the Condominium Corporation, and not the Developers, was the client of the Lawyer for the services billed. The Condominium Corporation accepted the services of the Lawyer regardless of whether it was the Lawyer's client or not, and therefore the Condominium Corporation is liable for the invoices presented by the Lawyer.

[10] The Condominium Corporation claims that it did not retain the Lawyer or his Professional Corporation, and that its Officers never signed the Retainer Agreement. Even if a retainer could be implied or otherwise found, no instructions were provided to the Lawyer to perform the services outlined in the invoices, and the Condominium Corporation further questions the quality of any services provided.

Analysis

Was There a Condominium Corporation in Existence at the Time of the Retainer Agreement?

[11] The Condominium Corporation first registered a Board of Directors with the Land Titles Office on May 11, 2010. At that time the Condominium Corporation changed its registered office for service from the Investors' address to its own current registered office.

[12] The *Condominium Property Act*, R.S.A. 2000, c. C-22 defines a Board under section 28, and section 28(5) sets out the requirement that:—

(5) A corporation shall, within 30 days from the conclusion of the corporation's annual general meeting, file at the land titles office a notice in the prescribed form stating the names and addresses of the members of the board.

[13] Technically the Directors of the Condominium Corporation are those registered as required under the *Condominium Property Act* with the Land Titles Office. Without registration, any person or persons claiming to be the Board would lack the full legal authority to act on behalf of the Condominium Corporation.

[14] Pursuant to section 29(1) of the *Condominium Property Act*, when a developer registers a condominium plan, it has within 90 days of the date that 50% of the units are sold OR 180 days of the date that the first unit is sold, whichever is sooner, to convene a meeting of the Condominium Corporation at which a Board shall be elected.

[15] In this particular matter, no official turn over meeting occurred and the first set of Directors legally registered at the Land Titles Office was on May 11, 2010. Accordingly if anyone had the authority, or ostensible authority, to retain counsel relating to the common

property, it was the Investors until such time as a turn over meeting occurred and a legal Board of Directors was duly registered.

[16] Furthermore our Court of Appeal in *Condominium Plan No. 8222909 v. Francis*, 2003 ABCA 234 stated the following at paragraphs 39 and 40:–

39 The indoor management rule states that persons dealing in good faith with a corporation are entitled to assume that prescribed formalities have been met. However, this rule does not apply to bodies formed by statute: *Hollenberg v. British Columbia Optometric Association* (1967), 61 D.L.R. (2d) 295 at 307, at para. 3 (S.C.). Further, the Act does not contain any saving provision such as that found in s. 19 of the *Business Corporations Act*, *supra*. Finally, if the decision in *York Condominium Corporation No. 162 v. Noldon Investments Ltd.* (1977), 1 R.P.R. 236, (Ont. H.C.J.) applies to irregularities respecting condominium corporation contracts, I decline to follow it. However, that decision nonetheless emphasizes the importance of formalities when the developer is in control, as was the case when the rebate by-law was passed.

40 I agree that there is an added importance to ensuring that formalities are met while the developer is in control. Compliance with formalities serves as an additional protection to purchasers of units in the development, as it serves to avoid secret by-laws and agreements that may only surface when the corporation is turned over to the purchaser board, or some time later when the developer turns over the corporate documents to the owner board.

[17] Accordingly at the time of the alleged retainer, I conclude that no legally registered Board of Directors of the Condominium Corporation actually existed.

Did the Non-Legal Board Actually Retain Mr. Agbarakwe, and Did It Authorize Any Services Be Performed?

[18] The Lawyer has provided a copy of a Retainer Agreement which was allegedly entered into and signed by the Board of the Condominium Corporation. The Condominium Corporation now questions the authenticity of the signed Retainer Agreement and Resolutions as contained in the Lawyer's Affidavit. The Condominium Corporation submits that the signatures found on the signature page of the Retainer Agreement are completely and incredulously identical to those found on the two other documents which contain the Resolution of the Directors of the Condominium Corporation as to persons authorized to sign cheques, drafts, and other documents not required to be signed under corporate seal; as well as the Resolution of the Directors appointing the Lawyer as legal counsel.

[19] It is submitted that the signature page to the Retainer Agreement is a much lighter contrast than that of other pages of the Retainer Agreement, and that contained within the whole

of the documents upon which they were allegedly affixed. It is submitted that the horizontal line on which the signatories allegedly signed the document are not parallel with the baseline of the text as would be expected, even on a copy of the original.

[20] Further two of the persons who are allegedly signatories on the signature page have sworn Statutory Declarations that the Condominium Corporation never retained, authorized or passed any resolution which appointed Mr. Agbarakwe as counsel to the Condominium Corporation. The three signatories to the Retainer Agreement are the spouses of those who are the Shareholders in the Developers' company. The address presented on all invoices and statements is that of Mr. Brendan Ihejirika, principle contact for the Developers, whose wife is also a Shareholder with a large interest in that corporation.

[21] In other words the Condominium Corporation is submitting that Mr. Agbarakwe's Retainer Agreement is in fact a forgery notwithstanding that as an Officer of the Court Mr. Agbarakwe claims that the signatures on the Retainer Agreement are authentic and legitimate.

[22] While I conclude that there is certainly some reasonable and considerable suspicion surrounding the authenticity and legitimacy of the signatures on the Retainer Agreement, it is not necessary to definitively make a ruling on that point because amongst other things the evidence demonstrates that no instructions from the Condominium Corporation were provided to the Lawyer to perform any of the alleged legal services. The Lawyer's complete file appears to contain no telephone notes, no meeting notes, or any specific instructions from the Condominium Corporation, other than some comments in an email from the principle contact for the developers Brendan Ihejirika to review a set of bylaws which were provided to Mr. Agbarakwe.

[23] Furthermore even if the signatories were authentic and legitimate, and Mr. Agbarakwe was retained, this occurred before the Condominium Corporation had been turned over to the owners, and the unit owners should not be held responsible for those accounts.

[24] The evidence is also clear that on a number of occasions Mr. Agbarakwe indicated that his services to the Investors and/or the Condominium Corporation, were free of charge. For example on page 18 of Mr. Agbarakwe's Affidavit, he states in an email dated March 2, 2010 as follows:-

. . .I have repeatedly offered my assistance legally, free of charge to help you set things in order. However, successive administrations have rebuffed my offer. I can no longer continue to represent the Association free of charge. If you require my assistance in this matter or other matters, I will require a retainer of \$5,000.00.
....

[25] Additionally in Mr. Agbarakwe's own Affidavit in support of this application, he states the following in an October 26, 2009 email:-

Dear Mr. Aloko:

Further to our meeting with regards to the above noted matter, find attached, letter to Emery Jamieson LLP in reply to theirs and find below, correspondence between me and Ms. Webb which I referre [sic] to. I would require a retainer of \$1000.00 to continue with this matter. I intend to deman [sic] indemnification [sic] from Ester Webb and possibly from Mrs. Neville if she acted as president of the Condo Board. I also want to meet with the Board, in order to provide you free legal advice on how to organize the affairs of the Corporation.

Thank you

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[Underlining Added]

[26] I conclude that while services were likely provided to the Developers, from the above emails any offer for services to the Condominium Corporation were either not accepted, or if accepted, were provided free of charge by Mr. Agbarakwe.

[27] Even if a legitimate Retainer Agreement was found to exist in this matter with the Condominium Corporation, it appears that the majority of work billed for by Mr. Agbarakwe was either deficient or incomplete. I agree with the Condominium Corporation's position that the bylaws drafted by Mr. Agbarakwe, for which the Condominium Corporation was invoiced \$1,800 are not compliant with changes in the *Condominium Property Act* which took place well before the 2000 Alberta Legislative Consolidation. The Statute sections referenced in the bylaws drafted by Mr. Agbarakwe refer to the Act as it was in 1980.

[28] On June 6, 2008 Mr. Agbarakwe charged the Condominium Corporation for obtaining a Certificate of Incorporation, however a Condominium Corporation being a creature of statute created by the *Condominium Property Act* once registered at the Alberta Land Titles Office would not be eligible for such a corporate certificate.

[29] The Condominium Corporation also correctly points out certain deficiencies in Invoice 669, and Invoice 248 from Mr. Agbarakwe's file. Additionally Mr. Agbarakwe states in his current Affidavit dated April 1, 2011 that he ceased to act for the Condominium Corporation on March 2, 2010, whereas a large portion of Invoice 669 is attributed to a 4 hour meeting

purportedly held with the Condominium Corporation in April 2010, after Mr. Agbarakwe ceased to act.

Conclusion

[30] It is thankfully not necessary for the Court to definitively determine the authenticity of the signatures on the alleged Retainer Agreement and Resolutions regarding Mr. Agbarakwe's appointment as counsel, because even if the Retainer Agreement existed, the Condominium Corporation had no Board of Directors legally capable of retaining Mr. Agbarakwe's services, and Mr. Agbarakwe cannot show that he received any instructions to perform any work from the Condominium Corporation.

[31] Accordingly the Condominium Corporation is entitled to an Order declaring that it was not the client of Mr. Agbarakwe as there was no Condominium Corporation in existence at the time of the alleged Retainer Agreement, and in any event the Condominium Corporation did not provide any instructions to Mr. Agbarakwe for the work that he says was performed. The Condominium Corporation is therefore not responsible for any amounts as invoiced by Mr. Agbarakwe.

[32] The Condominium Corporation is entitled to party and party costs of this application, and those related to the Review/Assessment before the Taxing Officer.

Heard on the 19th day of April, 2011.

Dated at the City of Edmonton, Alberta this 26th day of April, 2011.

Donald Lee
J.C.Q.B.A.

Appearances:

Obi Agbarakwe
Millwoods Law Office
for the Applicant Lawyer

Jonathon L. Wescott
Emery Jamieson LLP
for the Respondent Client