

Docket: 2011-2035(IT)G

BETWEEN:

1069616 ALBERTA LTD.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

Motion dealt with by Written Representations

Before: The Honourable Justice Wyman W. Webb

Agent for the Appellant: Terry Steinkey
Counsel for the Respondent: Valerie Meier

ORDER

Upon motion by the Appellant for an Order entitling Terry Steinkey to represent the Appellant in this appeal;

And upon reading the submissions made by the parties;

The Motion is granted, without costs, and Terry Steinkey is entitled to represent the Appellant in this appeal.

Signed at Ottawa, Canada, this 15th day of September 2011.

“Wyman W. Webb”

Webb J.

Citation: 2011TCC431
Date: 20110915
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BETWEEN:

1069616 ALBERTA LTD.,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR ORDER

Webb J.

[1] The Appellant brought a Motion to request that Terry Steinkey, who is not a lawyer, be permitted to represent the Appellant in its appeal. Subsection 30(2) of the *Tax Court of Canada Rules (General Procedure)* ("*Rules*") provides as follows:

(2) Where a party to a proceeding is not an individual, that party shall be represented by counsel except with leave of the Court and on any conditions that it may determine.

[2] In *Soneil International Ltd. v. The Queen*, 2008 TCC 148, 2008 DTC 3344, [2008] 5 C.T.C. 2699, I reviewed the history of this subsection of the *Rules*. This subsection of the *Rules* has been amended twice since it was first introduced, with the most recent amendment having been made on June 14, 2007. This amendment removed the requirement for "special circumstances". However, despite the removal of the requirement for "special circumstances" by this amendment, counsel for the Respondent still relies on the decision of Muldoon J. of the Federal Court in *Kobetek Systems Ltd. v. The Queen*, [1998] F.C.J. No. 16. In that decision, Justice Muldoon was reviewing Rule 300(2) of the *Federal Court Rules* and stated as follows:

3. The pertinent current rule is 300(2), thus:

300(2) A corporation shall be represented by a solicitor in all proceedings in the Court, unless the Court, in special circumstances, grants leave to the corporation to be represented by an officer of the corporation.

So, the applicant must demonstrate special circumstances.

4. The jurisprudence helps to define such special circumstances....

...

6. From these cases the following factors appear to be relevant to the determination of whether special circumstances exist: whether the corporation can pay for a lawyer; whether the proposed representative will be required to appear as advocate and as witness; the complexity of the legal issues to be determined (and therefore whether it appears that the representative will be able to handle the legal issues) and whether the action can proceed in an expeditious manner.

[3] Therefore Justice Muldoon was determining the factors that would be relevant in determining whether “special circumstances” exist for the purposes of a rule that required “special circumstances” to exist before a corporation should be permitted to be represented by a person who is not a lawyer. Since subsection 30(2) of the *Rules* has been amended to delete the requirement for “special circumstances”, the cases dealing with the meaning of “special circumstances” and what factors should be examined to determine if “special circumstances” exist are no longer applicable.

[4] In my opinion, the cases that should be reviewed are those from a jurisdiction which has a rule which is the same as the current version of subsection 30(2) of the *Rules*. Rule 15.01(2) of the *Ontario Rules of Civil Procedure* provides as follows:

A party to a proceeding that is a corporation shall be represented by a lawyer, except with leave of the court.

[5] This rule is the same as subsection 30(2) of the *Rules* in relation to corporations, except that subsection 30(2) of the *Rules* also allows a Judge of this Court to impose additional conditions. Therefore the criteria that are to be examined in determining whether a corporation should be permitted to be represented by someone other than a lawyer under subsection 30(2) of the *Rules* should be the same as those examined by the Courts of Ontario where Rule 15.01(2) of the *Ontario Rules of Civil Procedure* has been in effect for more than 20 years.

[6] In *419212 Ontario Limited v. Astrochrome Crankshaft Toronto Limited*, [1991] O.J. No. 918, 3 O.R. (3d) 116, Master Sandler of the Ontario Court (General Division) stated as follows:

13 One of the factors to be taken into account in deciding whether to grant leave to a corporation to act without a solicitor is the internal situation of the corporation, and whether the person seeking to represent the corporation in court is a senior representative of the corporation who has been duly authorized by the board of directors, who themselves are properly elected. Another is the nature of the action and the issues, and whether it would be seriously unfair to the opposite party to have the case presented or defended by a non-solicitor. Another factor is whether the proposed corporate representative will be able to properly carry out the duties of a litigant under the rules.

[7] In *Lamond v. Smith*, [2004] O.J. No. 3255 Justice J. W. Quinn of the Ontario Superior Court of Justice stated as follows:

9 There are cases holding that granting leave under subrule 15.01(2) should not be encouraged. However, I do not see why such an admonition need apply to small, one-man companies.

10 Other cases have expressed concern about whether granting leave under subrule 15.01(2) would be unfair to the other party or parties who then would be opposed by a non-solicitor. With respect, I do not consider this to be a material consideration. Invariably, when one of the litigants in a civil action is self-represented, there is a substantially increased burden not only upon the remaining parties but upon the court. This is now a fact of life.

11 It also has been held that the court should have regard for whether the proposed representative of the corporation will be able to fulfill his or her duties under the Rules of Civil Procedure. I must distance myself from such a proposition. In an era when self-represented litigants abound, it does not make sense to worry whether Mr. Smith is capable of carrying out the responsibilities of a litigant. Absent proven mental incompetence, his intelligence and litigious capabilities, in my view, are quite irrelevant.

...

13 Mr. DeLorenzo submits that it has not been suggested that the corporate defendant is unable to pay for a lawyer. This is correct. And, indeed, it appears that a lawyer already is in the picture, so to speak, as evidenced from the quality of the materials filed by Mr. Smith. Mr. DeLorenzo relies upon *92417 Canada Ltd. v. Bank of Montreal et al.* (1984), 45 C.P.C. 149, [1984] O.J. No. 2248 (Ont.Mast.), as authority for the proposition that a corporation may be represented by a non-lawyer where it will be unable to seek the remedies to which it is entitled because it is unable to obtain the necessary funds to hire counsel. Impecuniosity may be one reason why leave should be granted in a motion under subrule 15.01(2), but it is not a necessary reason. **Frankly, I do not see why the ability or inability to afford a**

lawyer should be a relevant factor. The court would not question a self-represented individual about his or her finances and I fail to appreciate why the matter should be different with corporations. Some people and companies may think that they have better things to do with their money than to pay lawyers. They may be right; they may be wrong.

...

15 The historical reluctance of trial courts to grant leave to a corporation to be represented by a non-lawyer has little merit in the case of a small, one-man company.

(emphasis added)

[8] In the case of *Mirashrafi v. Circuit Center*, [2007] O.J. No. 2373 Master J. Haberman of the Ontario Superior Court of Justice stated as follows after referring to the above decision of Justice Quinn:

9 Quinn J. concluded by stating that the court's historical reluctance to grant leave to a corporation to be represented by a non-lawyer had little merit in the case of a small, one man-company. While Circuit Centre in a "2-person" company and not particularly small judging by its operating line of credit, I fail to see why the same principles should not apply here. Mr. Javdan's personal interests clearly appear to coincide with those of the corporate defendant and he is in a position to bind Circuit.

[9] Master J. Haberman also stated that:

14 On the basis of the foregoing, I find that the financial status of the corporation is not a relevant factor.

[10] In this particular case the Appellant has two shareholders - Terry Steinkey and Robert Steinkey. The relationship between the two shareholders is not disclosed. I agree with the comments of Justice Quinn and Master Haberman that for closely held companies the owners of the companies should be permitted to represent the companies in proceedings before the Court. Since Terry Steinkey is one of the owners of the Appellant (of which there are only two owners) she should be permitted to represent the Appellant.

[11] As well, the financial information for the Appellant and whether the Appellant could pay for a lawyer is not relevant. As noted by Justice Quinn, the financial information is not relevant for individuals who are allowed to represent themselves without counsel. If Terry Steinkey and Robert Steinkey would have been carrying on business through a partnership, they could represent themselves without the necessity

of disclosing any of their financial information or whether they could pay for a lawyer. So why should this information be relevant for closely held corporations that will be represented by their owners?

[12] As a result, the Motion is granted and Terry Steinkey is entitled to represent the Appellant in this appeal. As the Appellant did not ask for costs in this Motion, no costs will be awarded. (*Canada (Attorney General) v. Pascal*, 2005 F.C.A. 31).

Signed at Ottawa, Canada, this 15th day of September 2011.

“Wyman W. Webb”

Webb J.

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STYLE OF CAUSE: 1069616 ALBERTA LTD. AND
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PLACE OF HEARING:
DATE OF HEARING:
REASONS FOR ORDER BY: The Honourable Justice Wyman W. Webb
DATE OF ORDER: September 15, 2011

Agent for the Appellant: Terry Steinkey
Counsel for the Respondent: Valerie Meier

COUNSEL OF RECORD:

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