

**CITATION:** Super Channel International Corp. v. Canada (Attorney General),  
2024 ONSC 1439

**COURT FILE NO.:** CV-21-3924

**DATE:** 20240311

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** Super Channel International Corp., Plaintiff

**AND:**

Attorney General of Canada, Defendant

**BEFORE:** The Honourable Mr. Justice R.E. Charney

**COUNSEL:** Thomas Han, Representative for the Plaintiff

Monisha Ambwani, Counsel for the Defendant

**HEARD:** In-Writing

**ENDORSEMENT**

- [1] The Plaintiff, Super Channel International Corp., brings this motion under Rule 15.01(2) for leave to be represented by a non-lawyer, Thomas Han.
- [2] The Plaintiff's claim was served on November 17, 2021. He seeks more than \$2 million damages for breach of contract in relation to the Defendant's decision to reject the Plaintiff's delivery of bunkbeds.
- [3] Rule 15.01(2) provides:
- (2) A party to a proceeding that is a corporation shall be represented by a lawyer, except with leave of the court.
- [4] Mr. Han has sworn an affidavit that states that he is the sole shareholder, officer and director of the corporate plaintiff. He also states that he is a "knowledgeable businessman" who understands government procurement rules and practices from the tendering process to contract management.
- [5] The Defendant opposes the motion on the ground that the Plaintiff has failed to demonstrate any circumstances warranting leave to be represented by a non-lawyer. In particular, the Plaintiff has provided no evidence regarding its financial ability to retain a lawyer.

**Analysis**

[6] The moving corporation has the onus of satisfying the court that leave to be represented by a non-lawyer ought to be granted. In exercising its discretion to grant leave under Rule 15.01(2), the court will consider the following factors:

- (i) Whether the proposed representative has been duly authorized by the corporation to act as its legal representative;
- (ii) Whether the proposed representative has a connection to the corporation;
- (iii) The structure of the corporation in terms of shareholders, officers and directors and whether it is a closely held corporation;
- (iv) Whether the interests of shareholders, officers, directors, employees, creditors and other potential stakeholders are adequately protected by the granting of leave;
- (v) Whether the proposed representative is reasonably capable of comprehending the issues in the litigation and advocating on behalf of the corporation. The Court should not impose too high a threshold at this stage, given that the courts abound with self-represented litigants of varying skills. The proposed representative should, however, be reasonably capable of comprehending the issues and articulating the case on behalf of the corporation;
- (vi) Whether the corporation is financially capable of retaining counsel ...If the refusal to grant leave would effectively bar a corporation from access to justice, this factor should be given considerable weight.

See: *MTCC No. 1049 v. 1127937 Ontario Inc.*, 2023 ONSC 5472, at para. 6, and cases cited therein.

[7] In *Ward v. 1121720 Ontario Ltd. o/a Havcare Investments Inc.*, 2015 ONSC 3873, the Court also considered the following factors:

- a. 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;
- b. 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; and
- c. Whether the proposed corporate representative will be able to properly carry out the duties of a litigant under the rules.

[8] In *Ward*, the Court stated, at para. 5:

The onus lies with the Corporation to justify granting such leave. It is incumbent on the Corporation to put before the court the nature of the Corporation, the financial ability or inability of the Corporation to instruct and retain counsel, and the ability of the individual who will in fact be speaking on behalf of the Corporation.

[9] The Plaintiff takes the position that this is not a complicated contract dispute, and that Mr. Han will be able to represent the corporation. He relies on the decision of Quinn J. in *Lamond v. Smith*, 2004 CanLII 6218, at paras. 9 - 11:

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

Other cases have expressed concern about whether granting leave under rule 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.

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. [footnotes omitted]

[10] Courts are more willing to grant leave when the corporation is effectively the alter ego of the individual allowed to represent it. The more closely held the corporate shares are, the more applicable this principle is: *Leisure Farm Construction Limited v. Dalew Farms Inc. et. al.*, 2021 ONSC 105, at para. 13.

[11] In the present case, the Plaintiff has provided no evidence regarding its financial ability to retain a lawyer. The failure of the moving party to provide detailed evidence that the corporation could not afford a lawyer is not fatal: *Murphy v. Stefaniak*, 2014 ONSC 4396, at para. 10, and is less significant in the case of a one-person corporation.

[12] In the present case, the Defendant has raised real and legitimate concerns about the ability of Mr. Han to properly represent the corporate plaintiff and deal with the issues raised in his Claim. It is apparent from some of the material filed that Mr. Han lacks a complete understanding of the Rules of Civil Procedure. He has had difficulty filing the material

required to support this motion, and it has taken him almost two years and three attempts to do so. The Statement of Claim contains statements that are scandalous, frivolous and vexatious, and will likely have to be dealt with on a preliminary motion. The draft order filed with the Notice of Motion has an incorrect style of cause and seeks relief unrelated to the Notice.

- [13] That noted, I have seen all of these defects in cases where the deficient party was represented by a lawyer.
- [14] Mr. Han will not be doing himself any favour by attempting to represent the corporate plaintiff without a lawyer. He may find it challenging to be both a witness and representative.
- [15] Given that he is the sole shareholder, officer and director of the corporate plaintiff, however, this will be a self-inflicted wound.
- [16] I appreciate that this may increase the litigation costs for the Defendant. Depending on how this litigation proceeds, this may become a very serious issue. Accordingly, I agree with the Defendant's alternative argument that the appropriate order in this case is to grant the Plaintiff's request, without prejudice to the Defendant's right to bring a motion to review, withdraw or impose conditions on this grant, should the circumstances require.

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Justice R.E. Charney

**Date:** March 11, 2024