

CITATION: Goldentrust Development Inc. v. Chen, 2025 ONSC1670
COURT FILE NO.: CV-23-709591
DATE: March 14, 2025

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Goldentrust Development Inc. v. Zhiming Chen, Yi Niao Li and Equitable Bank;

BEFORE: ASSOCIATE JUSTICE C. WIEBE

COUNSEL: Peng Zhang, *principal of Goldtrust Development Inc. (“Goldentrust”)*;
Junqing Ren, *lawyer of record for Goldentrust*;
Patrick Colquhoun *for Zhiming Chen and Yi Niao Li*;

HEARD: March 10, 2025.

REASONS FOR DECISION

[1] The plaintiff, Goldentrust, brings this motion for an order granting it leave to have its principal, Peng Zhang, represent Goldentrust in this proceeding. The motion is opposed by Zhiming Chen and Yi Niao Li (together “the Owners”).

Background

[2] The following facts are evident from the motion material. The underlying action concerns a claim for lien of \$275,620.63 that Goldentrust registered on November 3, 2023 on the title to the Owners’ residential property concerning construction work it did on that property. On November 14, 2023, using lawyer Gregory Govedaris, Goldentrust commenced this action purporting to perfect its lien. On January 25, 2024 the Owners served a statement of defence and a counterclaim claiming \$1,953,000 in damages for gross overcharging, deficiency correction costs and costs to complete. The Owners’ allege also that Goldentrust misled them as to Tarion coverage.

[3] On May 14, 2024 Mr. Govedaris moved to be removed as lawyer for Goldentrust. The motion was unopposed. Associate Justice Robinson granted the order which, as required, gave Goldentrust thirty days from service of the order to retain a new lawyer or get an order granting it leave to be represented by a non-lawyer, failing which the defendants could move to dismiss the action. Goldentrust failed to comply with the removal order.

[4] On August 7, 2024 the Owners moved before Associate Justice Eckler for an order dismissing the action because of the non-compliance with the removal order. Due to late uploading and Mr. Zhang’s statement that Goldentrust was about to hire a new lawyer, Her Honour adjourned the motion.

[5] The motion came before me on October 15, 2024. At this time Mr. Zhang appeared and, as indicated in my endorsement, stated that “Goldentrust had re-retained its old lawyer, Greg Govedaris.” I noted that Goldentrust’s supporting evidence was “dubious.” Mr. Govedaris was not present and a text from him that Mr. Zhang produced was unclear. As a result, I adjourned the motion to October 21, 2024 to allow Mr. Govedaris to appear with instructions.

[6] On October 21, 2024 Mr. Zhang appeared, however, with a different lawyer, Mr. Ren. Mr. Ren candidly conceded that Mr. Zhang talked with Mr. Govedaris no sooner than October 18, 2024, namely three days after the October 15, 2024 appearance. In my endorsement, I therefore stated that “it is highly likely that Mr. Zhang misrepresented the plaintiff’s legal representation to me on October 15, 2024.” Mr. Ren said that Mr. Govedaris told Mr. Zhang that he, Mr. Govedaris, would be re-retained if Goldentrust could not find another lawyer. Mr. Ren said he was retained on October 20, 2024. Because of this retainer, I dismissed the Owners’ dismissal motion, but ordered that Goldentrust pay the Owners \$6,000 in costs in thirty days due to its longstanding breach of the removal order.

[7] Goldentrust did not pay the ordered costs. The Owners brought a motion returnable before me on February 3, 2025 seeking a dismissal order due to Goldentrust’s violation of my costs order.

[8] On February 3, 2025 Mr. Zhang appeared with Mr. Ren. Mr. Ren said he wanted to be removed as the lawyer for Goldentrust. Mr. Zhang said he wanted an order giving Goldentrust leave to be represented by Mr. Zhang. Neither Messrs. Ren nor Zhang filed motion material. The costs order was still not paid. I adjourned the Owners motion to March 10, 2025 to give Goldentrust a last chance to pay. I scheduled the two motions by Messrs. Ren and Zhang for the same time period on March 10, 2025 in the event the costs were paid.

[9] On March 10, 2025 Mr. Colquhoun confirmed that Goldentrust had wire-transferred the \$6,000 to his firm’s trust account that morning. Also, Goldentrust had served and uploaded material for a motion for an order granting it leave to be represented by Mr. Zhang.

[10] Concerning the Owners’ motion for a dismissal order, Mr. Colquhoun pressed for the order despite Goldentrust’s belated payment of the ordered costs. Because of the compliance, I dismissed the motion. Because the compliance was exceedingly late, I found that the motion was justified and that the Owners deserved costs. Mr. Colquhoun filed a costs outline and argued that the Owners should be paid their full indemnity costs of the motion of \$4,611.81. I found this much too high as the motion was not complicated. I awarded the Owners \$2,000 in partial indemnity costs to be paid by Goldentrust in thirty days.

[11] Concerning the Goldentrust motion, Goldentrust filed an affidavit sworn by Mr. Zhang. The Owners filed a clerk’s affidavit. Mr. Zhang argued the motion. He stated that the basis for the motion was the fact that Goldentrust “is without assets,” cannot afford a lawyer, and has in Mr. Zhang a person with sufficient authority from and control over the company and knowledge of litigation to justify the requested leave. Mr. Ren made a curious admission. He said that his retainer was based on the “advice of a friend” without any monetary commitment from Goldentrust, and that Goldentrust could not pay him going forward.

Non-lawyer representation

[12] Rule 15.01(2) requires that a corporate party like Goldentrust be represented by a lawyer. There are good reasons for that requirement. Non-lawyer representatives do not have the discipline of potential personal liability for litigation decisions or the constraint of a code of professional conduct or insurance for this work; see *Howard v. 1880485 Ontario Inc.*, 2022 ONSC 6136 (CanLII) at para. 11 and *Braysan Properties Inc. v. Muchos et al.*, 2022 ONSC 940 (CanLII), at paras. 38 and 39.

[13] Rule 15.01(2) gives the court discretion to grant a corporate party leave to be represented by a non-lawyer. In *Extend-A-Call Inc. v. Dmitri Granovski et al.*, 2009 CanLII 33047 (ON SC) at para. 19 Justice Boswell outlined the factors to be considered in exercising this discretion:

- a) whether the proposed representative has been duly authorized to represent the corporation in the litigation;
- b) whether the proposed representative has a connection to the corporation;
- c) whether the corporation is a closely held one;
- d) whether the interests of the shareholders, officers, director, employees, creditors and other potential stakeholders are adequately protected by the granting of leave;
- e) whether the proposed representative is reasonably capable of comprehending the issues in the litigation and advocating for the corporation, bearing in mind that this should not be too high a threshold given the fact that the courts abound with self-represented parties with varying skills;
- f) whether the corporation is financially capable of retaining a lawyer, bearing in mind that a denial of leave should not amount to a denial of access to justice; and
- g) whether there is any other relevant factor in the specific circumstances of the case.

[14] Another relevant factor, perhaps falling under (g) above, is the conduct of the proposed representative in the litigation and other claims. The issue is whether that person will act reasonably. What needs to be considered is “problematic” conduct and decisions where the proposed representative has caused the imposition of substantial indemnity costs; see *GlycoBioSciences Inc. (Glyco) v. MAGNA Pharmaceuticals, Inc. (Magna)*, 2024 ONCA 760 (CanLII) at para. 18.

[15] Having considered the evidence, I have decided not to grant the requested leave for the following reasons.

[16] First, Mr. Zhang swears in his affidavit that he is the “sole director and authorized representative” of Goldentrust. As proof, he attaches the Certificate of Incorporation for the company which shows that Mr. Zhang was the initial director and that the corporate head office is Mr. Zhang’s residential address. There is, however, no evidence of the shareholders of the company. While this suggests that the company is closely held, it is not proof of that.

[17] Second, and most importantly, there is no evidence of the core Goldentrust assertion that it is without assets and cannot afford a lawyer. In his affidavit, Mr. Zhang states that Goldentrust has “financial difficulties” and that it cannot afford a lawyer as a result. As proof, he attaches a March

27, 2024 Corporation Income Tax Assessment issued by Canada Revenue Agency (“CRA”) in relation to Goldentrust for its tax year ending June 8, 2023. The document shows that Goldentrust was assessed as having \$0 tax liability for that tax year. This document does not prove that Goldentrust has “financial difficulties.” There is no evidence as to why there was \$0 tax liability for 2023. It could be because of financial difficulties. It could also have been because the company arranged its affairs in such a way as to avoid tax and is otherwise quite solvent and with assets. In any event, it is not evidence of Goldentrust’s current financial circumstances.

[18] In *DM Urban-Scape Property Developments Ltd. v Body Blitz Spa East Inc. et al*, 2014 ONSC 1616 (CanLII) at paras. 7 to 11 Master Albert faced a similar motion and a similar assertion that the subject corporate party could not afford a lawyer. The evidence in support was nothing but the bald assertions of its president. He also refused to produce supporting evidence such as financial statements and tax returns. She drew the inference from this that the corporation had the financial means to retain a lawyer. Goldentrust has the onus to establish grounds for leave. I similarly find Mr. Zhang’s unsubstantiated assertion of Goldentrust’s impecuniosity reason enough for inferring, on the contrary, that Goldentrust has the wherewithal to retain a lawyer. I draw that inference.

[19] Third, what is most troubling about this evidence is that Mr. Zhang seems not have understood what the CRA assessment document meant and what he needed to do to prove the alleged corporate impecuniosity. When asked about this in argument, he had no explanation for his evidence. The same could be said about Mr. Zhang’s insufficient evidence about Goldentrust’s alleged status as a closely held corporation; Mr. Zhang did not understand what had to be proven. Furthermore, when asked in argument as to his experience in litigation matters, Mr. Zhang began producing information orally he said proved he had been granted leave by the court to act for Goldentrust in other cases. None of this information was in the evidence. This all bodes poorly for Mr. Zhang’s ability to represent Goldentrust properly in this case, which has considerable evidentiary complexity concerning accounting, deficiencies and costs to complete.

[20] Fourth, the history of this litigation, as described above, also shows a troubling propensity on the part of Mr. Zhang not to conduct himself reasonably. Under Mr. Zhang’s direction, Goldentrust grossly breached two court orders, the Robinson removal order and my costs orders. Furthermore, and most importantly, on the first return date for the Owners’ motion for a dismissal order due to Goldentrust’s breach of the removal order, October 15, 2024, Mr. Zhang chose to mislead the court about having hired Mr. Govedaris. In fact, Mr. Zhang had not only not retained Mr. Govedaris at that time, Mr. Zhang had not even talked with Mr. Govedaris about the matter. That was done three days later. Then, it appears Mr. Zhang compounded this misconduct by getting Mr. Ren retained on October 20, 2024 under dubious terms that now appear to be no more than a subterfuge to get Goldentrust past the Owners’ dismissal motion on October 21, 2024. This history indicates that Mr. Zhang will not be honest with the court going forward and will not abide by legal requirements. This is a serious concern.

[21] While there is no doubt that Mr. Zhang is connected to Goldentrust and appears to have authorization from Goldentrust to act in this case, the above noted concerns must determine the result. I find that Goldentrust has the wherewithal to retain a lawyer. Also Mr. Zhang would not properly represent Goldentrust and would not act reasonably. Indeed, allowing Mr. Zhang to represent Goldentrust would invite confusion, misbehavior and delay on the part of the plaintiff. This cannot be countenanced.

[22] I, therefore, deny the Goldentrust motion.

[23] Concerning costs, the Owners served, filed and uploaded a costs outline that shows \$4,482.15 in full indemnity costs, \$3,875.28 in substantial indemnity costs and \$2,689.29 in partial indemnity costs. Goldentrust served, filed and uploaded no costs outline.

[24] If the parties cannot agree on costs, written submissions on costs must be served. The Owners must then serve and file written submissions on costs of no more than one page on or before March 19, 2025. Goldentrust must serve and file responding written submissions on costs of no more than one page on or before March 24, 2025. I will then render my decision on costs.

DATE: March 14, 2025

ASSOCIATE JUSTICE C. WIEBE