

CITATION: De Bartolo v Initiatives Canada Corp., 2025 ONSC 3250
COURT FILE NO.: CV-1504521-00SR
DATE: 20250606

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

Antonio De Bartolo

Plaintiff

Self-Represented

– and –

Initiatives Canada Corporation, PAC
Protection Corporation, and Roberto
Mattacchione (also known as Robert
Mattacchione or Rob Mattacchione)

Defendants

Alex Flesias, for the defendants

HEARD: May 29, 2025

REASONS FOR JUDGMENT

THE HONOURABLE JUSTICE RANJAN K. AGARWAL

I. INTRODUCTION

[1] Initiatives Canada Corporation retained Antonio De Bartolo to provide legal services. ICC didn't pay its bills. ICC and PAC don't oppose judgment. Antonio alleges that

ICC's principal, Roberto Mattacchione, agreed to pay ICC's debt and ongoing legal fees.

- [2] I must decide whether Roberto is personally liable for ICC's debt. I find there's no contract between Roberto and Antonio and no enforceable guarantee from Roberto. As a result, Antonio's claim against Roberto is dismissed.

II. BACKGROUND

- [3] The plaintiff Antonio De Bartolo was a tax lawyer. He represented himself at trial.

- [4] The defendant Roberto Mattacchione is the sole officer and director of the defendants Initiatives Canada Corporation and PAC Protection Corporation. ICC and PAC were part of Insured Giving Donation Program, a tax incentive program. ICC was the promoter. PAC was the insurance provider for donors.

- [5] CRA denied the tax credits claimed by program donors. In November 2013, ICC retained Antonio to represent donors filing appeals to the Tax Court of Canada. Robert Kepes, another lawyer, was holding substantial funds in trust as a legal defence fund for program donors. Roberto told Antonio that Kepes would transfer funds to Antonio for his fees. But no one paid Antonio.

- [6] Antonio provided legal services to ICC until February 2015. In total, Antonio invoiced ICC for \$90,938.80. PAC paid a retainer of \$10,000 in November 2013.

Setting off the retainer, there has been an outstanding balance of \$80,938.80 since then.

[7] The action was started in October 2015. The defendants defended the claim and counterclaimed for \$100,000. Pleadings closed in December 2015. The parties settled the counterclaim before trial.

[8] Antonio and Roberto adduced evidence by affidavit. They were cross-examined. Each party made oral argument.

[9] Roberto served a request to admit in March 2025. Antonio didn't respond. As a result, under the *Rules of Civil Procedure*, r 51.03(2), he's deemed to admit the truth of the facts:

- Roberto never entered into a retainer agreement with Antonio
- Roberto was never invoiced for the work performed by Antonio

III. ANALYSIS AND DISPOSITION

[10] There are two issues in dispute:

- (a) is there an oral contract between Antonio and Roberto; and
- (b) did Roberto guarantee ICC's debt.

A. Is there an oral contract between Antonio and Roberto? No.

- [11] Antonio argues that after ICC failed to top up his retainer, Roberto agreed, in person and by email, to pay Antonio's fees. Antonio argues that these communications created an oral agreement between him and Roberto such that Roberto must pay the debt.
- [12] A contract is formed where there is an offer by one party accepted by the other with the intention of creating a legal relationship, which is supported by consideration. See *Ethiopian Orthodox Tewahedo Church of Canada St. Mary Cathedral v Aga*, 2021 SCC 22, at para 35. Thus, an enforceable agreement has five elements: offer, acceptance, consideration, certainty of essential terms, and an intention to create a legal relationship.
- [13] Determining whether a contract is formed is assessed on an objective standard. How does each party's conduct appear to a reasonable person in the position of the other party? See *Ethiopian Orthodox*, at para 35. In deciding whether or not a contractual relationship existed, the court must examine the factual matrix between the parties. See *Bowman v Ontario*, 2021 ONCA 795, at para 10.
- [14] Assessing whether the parties intended to create legal relations doesn't turn on their subjective views or understanding. It doesn't matter that one party may have had no intention to enter a legally-binding contract. Rather, what matters is whether their conduct was such that a reasonable person would conclude that they intended to be

bound. That includes considering the nature of the relationship among the parties and the interests at stake. See *Ethiopian Orthodox*, at paras 37-38.

[15] Antonio and Roberto agree on the essential facts. Though Roberto couldn't remember the details of some of the meetings that Antonio testified about, it was over 10 years ago. These meetings were important to Antonio—he was trying to secure payment of a ballooning debt. They were less important to Roberto—the meetings were about many things, including the appeals and the unpaid invoices. It's not surprising that Antonio has a better memory of the meetings.

[16] Antonio relies on nine emails and five interactions between him and Roberto:

Date	Event
November 8, 2013	ICC retained Antonio.
November 11, 2013	PAC paid \$10,000 retainer
November 25, 2013	Invoice #693 for \$7932.60
December 10, 2013	Antonio told Roberto that the retainer was depleted, and he would stop working on the donors' appeals if he didn't receive funds from Kepes "by next week". Roberto said he would "personally" pay Antonio if Antonio didn't get a cheque from Kepes. Roberto also said that he wanted his money back once Antonio got the cheque from Kepes.
December 20, 2013	Roberto told Antonio that Kepes would be sending a cheque by December 23 rd . He encouraged Antonio to keep working on the donors' appeals because he would pay Antonio personally.

Date	Event
January 9, 2014	<p>Antonio emailed Roberto that he hadn't received funds from Roberto or Kepes, and he had stopped working on the files until he got paid.</p> <p>Roberto responded: "No problem Tony you will receive the funds on Monday, either from Robert Kepes or myself directly. If the funds are provided by me directly then i [sic] will expect repayment of those and the initial retainer when Robert Kepes forwards the funds."</p>
January 20, 2014	Invoice #801 for \$58,947
January 27, 2014	<p>Antonio emailed Roberto—he had stopped working on the files, but filing deadlines were "fast approaching".</p> <p>Antonio resumed working on the donors' appeals.</p>
February 12, 2014	Antonio emailed Roberto reminding Roberto of his suggestion to pay the account personally.
February 13, 2014	Antonio emailed Roberto again, advising that Antonio had stopped working on the donors' appeals.
February 18, 2014	Invoice #837 for \$8639
March 3, 2014	Antonio emailed Roberto again, advising that if Antonio wasn't paid then he would move to remove himself as lawyer of record on the donors' appeals
June 1, 2014	Roberto and Antonio met at a Starbucks. Roberto said that either he or Kepes would pay Antonio "later that month". Antonio said he would continue working on the appeals that he had filed, but he would not file any new appeals until he was paid.
Mid-June 2014	Roberto contacted Antonio to say that Roberto would personally pay Antonio "during the first week of July 2014" but he should refund him once Kepes transferred funds to Antonio.

Date	Event
November 24, 2014	<p data-bbox="638 268 1013 302">Invoice #1016 for \$8305.50</p> <p data-bbox="638 338 1279 449">Antonio and Roberto met at Roberto’s office. Roberto said that he anticipated paying Antonio “within the next two weeks”.</p>
February 2, 2015	<p data-bbox="638 491 1349 602">Antonio emailed Roberto, telling him that if Roberto didn’t pay the invoices by February 9th, Antonio would get off the record.</p> <p data-bbox="638 638 1360 787">Roberto responded: “...I had told you that you would receive some form of payment (partial) if I was advancing funds and full payment if Kepes was advancing.”</p> <p data-bbox="638 823 1354 934">Antonio replied that if Antonio didn’t receive payment in full by February 6, 2015, he would get off the record.</p>
August 14, 2015	<p data-bbox="638 974 1013 1008">Invoice #1128 for \$7114.70</p>

[17] Antonio argues that all the elements of a binding contract are present:

- on December 10, 2013, Roberto offered to pay Antonio’s fees personally
- Antonio accepted Roberto’s offer, and continued working on the donors’ appeals
- Antonio provided Roberto consideration in the form of continued work on the donors’ appeals

- the essential terms (i.e., hourly rate, scope of services) mirrored the retainer agreement, with the additional term that Antonio would reimburse Roberto when Kepes transferred money to Antonio
- a reasonable person would conclude that Roberto intended to be bound by his promise to pay Antonio's fees

[18] I have great sympathy for Antonio's position. He was a sole practitioner. He had been retained to litigate 30 appeals. He was told there was a legal defence fund to pay his bills. He charged over \$90,000 just to file the appeals. This would be lucrative work when the appeals went to a hearing. He continued doing the work because he felt professionally obliged to do so. Moreover, by January 2014, he was owed over \$50,000. He was in the unenviable position of cutting his losses, or continuing to trust Roberto, which included moving the files along at further cost.

[19] But there's no enforceable contract here. First, there's no offer. An offer is a "complete statement of the terms" on which the offeror is "prepared to deal", made with the intention that it be open for acceptance by the offeree. See *Richter v McKeachie*, 2009 BCSC 288, at para 30.

[20] In December 2013 and January 2014, Roberto was, at most, offering to top up Antonio's retainer until Kepes transferred monies from the legal defence fund. From the beginning of the retainer, Alberto knew that ICC and PAC weren't paying his fees—the monies were coming from the legal defence fund managed by Kepes. A

reasonable person, hearing Roberto's words or reading his emails throughout the relationship, would understand that, at most, Roberto was offering to bridge Antonio until Kepes transferred the money.

[21] Second, there was no unequivocal acceptance by Antonio. In Antonio's February 12, 2014, email, he described Roberto's offer as a "great suggestion". A reasonable person wouldn't conclude that Antonio now saw himself in a contractual relationship with Roberto.

[22] Two facts bolster these conclusions. First, into 2015, Antonio continued to believe that Kepes would be transferring funds to pay his bills. There's references to a document that Roberto was to send Antonio to facilitate payment from Kepes. If Antonio thought he had an agreement with Roberto, there'd be no reason to pursue payment from Kepes right to the end of the retainer. Second, all of Antonio's invoices were addressed to ICC. If Antonio believed that, as of December 2013, he had a contract with Roberto, the rest of the invoices should've been addressed to Roberto.

[23] At bottom, the only agreement was between Antonio and ICC, and all parties understood that Kepes would be paying Antonio's fees from the legal defence fund. When Kepes didn't transfer the funds, Roberto suggested he would conditionally pay the invoices. But he never did, and his proposal never crystallized into a contract.

Antonio kept doing legal work on the strength of this suggestion, but Antonio's actions show that he always believed that ICC or Kepes would pay his bills.

B. Did Roberto guarantee ICC's debt?

[24] The *Statute of Frauds*, RSO 1990, c S.19, s 4, requires a guarantee to be in writing to be enforceable. See *Entry Point Investments v Invis Inc.*, 2015 ONCA 701, at para 10.

[25] For the same reasons there's no oral contact, I'm not persuaded that Roberto guaranteed ICC's debt. In any event, the guarantee was oral. Thus, it's not enforceable.

IV. CONCLUSION

[26] Antonio's action against Roberto is dismissed. I order and adjudge that ICC and PAC pay to Antonio the sum of \$80,938.80, and the amount of \$49,062.67 for prejudgment interest. This judgment bears interest at the rate of 6 percent per year.

[27] The parties will engage in meaningful discussions and negotiations respecting the costs of this trial. If they can't resolve costs, any party seeking costs will serve, file, and upload to Case Center costs submissions (1000 words), any relevant offers to settle, and their bill of costs by June 12, 2025, 4pm. The other party's responding

submissions (1000 words) will be served, filed, and uploaded to Case Center by June 16, 2024, 4pm

Agarwal J

Released: June 6, 2025