

COURT OF QUEBEC

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL
Civil Division

N° : 500-22-185088-112

DATE : September 19, 2012

BY THE HONOURABLE ELIANA MARENGO, J.C.Q.

DIMITRIOS (JAMES) BAGIOTAS
Plaintiff

v.

RICHARD FIGIEL
and

NICK FAZZARI

and

VINCE FAZZARI
Defendants

JUDGMENT RENDERED FROM THE BENCH

The written version of this judgment contains some minor modifications.

[1] **GIVEN** the evidence;

[2] **WHEREAS** plaintiff is a chartered accountant;

[3] **WHEREAS**, according to the preponderance of evidence, a contract for professional services intervened between plaintiff, codefendant Richard Figiel and codefendant Vince Fazzari (hereinafter collectively "the codefendants") in February of 2008, with a view to prepare a business plan for the obtention of a small business loan for a start-up operation called Restaurant Bisi;

[4] **WHEREAS**, as admitted by codefendants, plaintiff executed his mandate (exhibit P-5), and the requested loan of \$245,000.00 was effectively disbursed as a result of his services;

[5] **WHEREAS** codefendant Vince Fazzari also admitted that plaintiff disclosed his fixed fees of \$7,500.00, to him, before executing the mandate;

[6] **GIVEN** codefendants' promises to pay, as well as cheques P-3 and P-4;

[7] **WHEREAS**, according to codefendants, there is no *lien de droit* between themselves and plaintiff;

[8] **WHEREAS** they claim that the other contracting party was Restaurant Bisi's operating company, 9195-4909 Quebec Inc., which was incorporated April 7, 2008 and which went bankrupt on January 27, 2010;

[9] **WHEREAS**, however, plaintiff convinced the Court, by a preponderance of evidence, that he made it abundantly clear to codefendants, at the outset, that he was entering into a contract with them and not with the company to be incorporated;

[10] **GIVEN**, furthermore, art. 320 of the *Civil Code of Quebec* which states :

"320. A person who acts for a legal person before it is constituted is bound by the obligations so contracted, unless the contract stipulates otherwise and includes a statement to the effect that the legal person might not be constituted or might not assume the obligations subscribed in the contract." (which is not the case here);

[11] **WHEREAS** plaintiff executed his professional and contractual obligations vis-à-vis codefendants; but codefendants failed to execute theirs and to pay the price of the professional services rendered;

[12] **WHEREAS** plaintiff executed his mandate for the benefit of and as requested by codefendants;

[13] **GIVEN**, furthermore, s. 2100 and 2108 C.C.Q.;

[14] **WHEREAS**, however, there is no evidence that defendant Nick Fazzari was party to the above contract;

WHEREFORE THE COURT HEREBY:

GRANTS plaintiff's introductory motion in part;

SENTENCES Richard Figiel and Vince Fazzari jointly and severally to pay plaintiff the sum of \$8,465.63, plus legal interest and the additional indemnity provided for in s. 1619 C.C.Q. from the date of service of the action;

THE WHOLE with costs;

DISMISSES plaintiff's motion against Nick Fazzari, with costs.

ELIANA MARENGO, J.C.Q.

M^e Tom Markakis
De Louya Markakis
Lawyers for plaintiff

Richard Figiel, Nick Fazzari and Vince Fazzari

Date of hearing : September 19, 2012