

COURT OF QUEBEC

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTREAL
Civil Division

No: 500-22-197543-120

DATE: November 25, 2015

PRESIDED BY THE HONOURABLE DAVID L. CAMERON, J.C.Q.

HUBMAR INTERNATIONAL INC.
Plaintiff

vs.

DAVID SABBAH
and
BORIS KRANCBERG
and
9201-4984 QUÉBEC INC.
Defendants

JUDGMENT

[1] The Plaintiff, Hubmar International Inc. (" Hubmar "), a manufacturer of diffusers of essential oil vaporisers and aromatherapy accessories, sues the Defendants, David Sabbah, Boris Krancberg and 9201-4984 Québec Inc. (" Québec Inc. "), for the reimbursement of \$ 7,323.41, representing the purchase price of computer and lab equipment and software sold by Québec Inc. to the Plaintiff, for damages of \$ 2,000 representing lost time and additional expenses, as well as \$ 2,500 for extrajudicial legal fees.

[2] The property sold is tendered back, in the fashion of an action in resolution of sale.

[3] The two individual Defendants are being treated as being solidarily liable to reconstitute the purchase price.

[4] The Defendants deny there is any ground for the reimbursement of the price of the equipment, deny any fault on their part, and contest the claim for reimbursement of extrajudicial costs.

[5] Mr Sabbah claims payment of one week of unpaid salary in the amount of \$ 198.

[6] The Defendants also make a solidary claim for a condemnation of \$ 4,000 described in the Amended Defence as extrajudicial legal fees incurred as a result of the Plaintiff's action, a proceeding the Defendants assert is without legal foundation.

[7] A backdrop to these claims was a relationship between David Sabbah personally and the Plaintiff, whereby Mr Sabbah was engaged to provide certain design services in relation to the Plaintiff's product. The services related to the development of new electronic circuits for use in one of the Plaintiff's aromatherapy diffusers to meet certain production objectives and to respond to certain safety concerns.

[8] The Plaintiff alleges that David Sabbah and Boris Krancberg made untrue representations concerning the capacity of Québec Inc. to provide the appropriate hardware and software, and that, in reliance on these representations, the Plaintiff agreed to purchase from Québec Inc., the computer hardware, software, and other elements of the sale, that were to be used as design tools by Mr Sabbah to carry out the work contemplated.

[9] The Plaintiff alleges as well that Mr Sabbah misrepresented himself as having the necessary qualifications and skills required for the design project.

[10] Plaintiff's allegation is that Mr Sabbah was not qualified to do the intended work, that he misrepresented himself as being an engineer, when, as it turns out, he is not a member of the Order of Engineers of Quebec, and, that as a matter of fact, he did not carry out any meaningful work at the time when he was in the Plaintiff's employ.

[11] The Plaintiff asserts that Mr Krancberg participated in these misrepresentations.

[12] Finally, The Plaintiff asserts that, despite the Defendant's representations, Québec Inc. did not include in the sale the necessary software licences to run the applications that would be useful in the engineering design work.

[13] The combined effect of these allegations is to assert that the Plaintiff is entitled to remit the equipment purchased and to be reimbursed the sale price, not only by the vendor, Québec Inc., but also by the two individual Defendants.

[14] After the case was taken under advisement, the Court allowed a motion brought by the Plaintiff brought to reopen the hearing. An additional hearing was held to hear

evidence about Mr Sabbah's guilty plea before the Court of Quebec, Criminal and Penal Division, on two distinct counts of infraction of article 22(2) of the *Engineers Act*, CQLR c. I-9 and article 32 of the *Professional Code*, CQLR c. C-26.

[15] The relevant part of the *Engineers Act* reads as follows:

DIVISION V
PENAL PROVISIONS
1992, c. 61, s. 345.

Illegal practice. Penalty.

22. Any person not a member in good standing of the Order who:

[...]

(2) assumes the title of engineer alone or qualified, or makes use of any abbreviation of such title, or of any name, title or designation which might lead to the belief that he is an engineer or a member of the Order.

[16] This must be read in conjunction with the article 32 of the *Professional Code*¹:

32. No person shall claim in any manner to be an advocate, notary, physician, dentist, pharmacist, optometrist, veterinary surgeon, agrologist, architect, engineer, land-surveyor, forest engineer, chemist, medical imaging technologist, radiation oncology technologist or medical electrophysiology technologist, denturologist, dispensing optician, chiropractor, hearing-aid acoustician, podiatrist, nurse, acupuncturist, bailiff, midwife, geologist or chartered professional accountant, or use one of the above titles or any other title or abbreviation which may lead to the belief that he is one, or initials which may lead to the belief that he is one, or engage in a professional activity reserved to the members of a professional order, claim to have the right to do so or act in such a way as to lead to the belief that he is authorized to do so, unless he holds a valid, appropriate permit and is entered on the roll of the order empowered to issue the permit, unless it is allowed by law.

The prohibition relating to the use of any titles, abbreviations or initials mentioned in the first paragraph or in an Act constituting a professional order extends to the use of such titles, abbreviations and initials in a feminine form.

[17] The Defendants make a very precise allegation in the re-amended Defence and Cross-demand of June 16, 2013 that "[...] David Sabbah never represented himself as a member of the Ordre des ingénieurs du Québec [...]" and that "[...] the Plaintiff's representative filed an unjustified complaint to the Ordre des ingénieurs du Québec".

[18] The Plaintiff alleges that Mr Sabbah held himself out as an engineer, that he is not and that a complaint to the Ordre des ingénieurs du Québec has been initiated while

¹ *Professional Code* (CQLR, c. C-26).

the Defendants assert that he never made such an assertion and the complaint is therefore unjustified.

[19] One rather significant part of this evidence on issue of a business card (P-9) where Mr Sabbah present himself as:

David Sabbah, ECET
Design Engineer
SQ.
4281 de la Savane
Montréal, Qc H4P 1T6

The business card also has the logo SM, a reference to Québec Inc.

[20] The *Avis de jugement* that is now in issue in the Motion relates to two counts on which Mr Sabbah pleaded guilty :

- Le ou vers 8 décembre 2011, au 5875 Cavendish à Montréal, sans être membre en règle de l'Ordre des ingénieurs du Québec, a pris le titre d'ingénieur en faisant suivre son nom du titre « Design Engineer » sur une carte professionnelle, commettant ainsi l'infraction décrite à l'article 22(2) de la *Loi sur les ingénieurs* (L.R.Q. c. I-19) et à l'article 32 du *Code des professions* (L.R.Q. c. C-26) se rendant passible des sanctions prévues à l'article 188 du *Code des professions*.
- Le ou vers 24 janvier 2012, à Montréal, sans être membre en règle de l'Ordre des ingénieurs du Québec, a pris le titre « Electronic Design Engineer » dans un courriel adressé à Madame Maria A. Correa de l'institution financière HSBC, commettant ainsi l'infraction décrite à l'article 22(2) de la *Loi sur les ingénieurs* (L.R.Q. c. I-9) et à l'article 32 du *Code des professions* (L.R.Q. c. C-26) se rendant passible des sanctions prévues à l'article 188 du *Code des professions*.

[21] The first count is directly relevant, because it relates to a business card bearing exactly the same expression: " Design Engineer ". The second count is about the use of a similar and more precise expression: "Electronic Design Engineer". The dates of the infractions to which Mr Sabbah pleaded guilty are contemporaneous to the facts of the case. The guilty pleas were made on May 29, 2013. The re-amended Defence and Cross-demand is dated June 16, 2013, another instance of temporal proximity.

[22] We will deal in greater depth with the impact of the evidence concerning these guilty pleas below.

[23] The pleas led to a fine of \$ 1,500 on each of the two counts.

[24] In our case, Mr Sabbah admits in the proceedings that he is not a member of the OIQ, but he denies that he made any representation to the effect that he was. It is on that basis that he, along with the other Defendants, alleges that the complaint made to the OIQ is without merit.

[25] He would downplay the impact of the admission by starting that qualified technicians have an occupational overlap with true Professional Engineers, as they are known in other jurisdictions, and the title is therefore not important, or he would assert that enterprises that design products do not need to have an engineer member of the Order working on their designs because the standards associations such as the CSA and UL can be called upon to certify products as being properly designed.

[26] His assertion that he did not need to have the title "engineer", because he could do the work without it did not make sense, because he, in fact, used the title in various ways, notably in the business card.

[27] His credibility took a significant blow when he admitted that at the time he wrote a technical report about the Plaintiff's power supply on a particular product, signing with the letters E.C.E.T., he had in fact allowed his accreditation with the relevant professional organisation to lapse. What surprised the Court the most was that he did not admit the harm in continuing to use the title while having failed to maintain his status.

[28] Focusing on the business card on which he used the title " Design Engineer ", this must mean that David Sabbah did not consider that, when he held himself out as a " Design Engineer ", he was not pretending to be an Engineer within the meaning of the body of law to which engineers must respond in the Province of Quebec.

[29] The fact that he nevertheless pleaded guilty and accepted a fine of \$ 1,500 to a count based on the use of that business card, as an application of article 22(2) of the *Engineers Act* and article 32 of the Professional Code takes on a certain importance for evaluating Mr Sabbah's credibility.

[30] At the supplemental hearing, Mr Sabbah's credibility was undermined by his attempts to elude the consequences of his guilty plea.

[31] Before hearing that admission, the Court had understood his position to be that he had certain qualifications and a great deal of experience in another jurisdiction. One way of looking at this is to say that Mr Sabbah considers himself to be a Design Engineer qualified somewhere else and that there is no need for him to comply with Quebec Law, concerning his use of the title "Engineer".

[32] But, it now seemed that he took the importance of qualifications and titles very lightly, using them to his benefit when possible, but denying their true value when confronted with his improper use of them.

[33] Nothing can really be said as to his belief that he can in fact perform the work that electronic design engineers do, i.e. designing electronic circuits. The evidence has not dealt with the level of design work he would, in fact, be allowed to do under Quebec Law. This would have been a question of a very complex nature and would have involved the need for the Court to be instructed on technical issues by experts.

[34] The extrajudicial admissions flowing from the guilty pleas do show that Mr Sabbah, from that point onward, at least, accepted that he may not use the words "engineer" or "design engineer" in describing his qualifications, but it does not shed a great deal of light as to what qualifications he in fact has or the degree to which any experience he had in the past, would have made him ready and able to do the design work he was asked to do in the present case nor whether he would, in law, be infringing the exclusive practice of members of the orders if he did that work.

[35] Given the lack of a recognised status in Quebec for Mr Sabbah, there really is no proof in the file that he has any professional capacities other than his vague affirmation throughout that he is capable of doing the work. The presumption that might otherwise have flowed from his membership in good standing with the professional order is non-existent. This lack of proof of a professional status is the more striking when compounded with his failure to acknowledge the importance of maintaining a professional standing and the duty of a professional to accurately inform the public of his qualifications or the lack thereof.

[36] On the whole therefore, the evidence of the guilty plea does have significant negative impact on Mr Sabbah's credibility as a witness because of his attempts to deny its significance.

[37] The question whether he held himself out as a design engineer, depends both upon the interpretation of the business card and the parties' respective credibility as witnesses.

[38] It is partly a question of semantics: we could ask the rhetorical question: if the business card was meant to state that he was an engineer somewhere else, and not in Quebec, then why would he be using it in Quebec? If the qualifications are not essential to his work, why did he use variations of the title engineer as opposed to simply call himself a designer?

[39] Leaving aside this issue of holding out, it is necessary to look at the evidence as a whole, to see if it is sufficient to ground the Plaintiff's case.

[40] In the Court's view there are sufficient grounds alleged and proved to establish the Plaintiff's case against Mr Sabbah and Quebec Inc. for restitution of the sale price.

[41] Firstly, the materials themselves: a critical element in the package was the software. The licenses were not properly conveyed, so the computer could not be used to run them.

[42] Secondly, the principal consideration for the purchase of the equipment was Mr Sabbah's need of it to perform the services he was to provide. The evidence on the delivery of these services is as follows.

[43] Hubmar and Mr Sabbah engaged in negotiations for the establishment of a partnership for product development involving the incorporation of a new company. These negotiations were never completed.

[44] The only work that Mr Sabbah was actually engaged to perform was for the design and testing of the electronics for a new and improved version of an existing unit. There were specific cost-reduction objectives in mind. The redesign would require the writing of a technical report as well as laboratory testing. Mr Benamor states that in the first meeting he had with Mr Sabbah, he asked him if he could do the " engineering " and " design " and write the report necessary, and Mr Sabbah stated that he could.

[45] Hubmar prepared an employment agreement (D-3) which was never signed. The Defendants produced it, nevertheless, as an exhibit and they confirmed that it stipulated accurately the work to be done by Mr Sabbah, one day per week.

[46] Implicitly, the rate of pay is also confirmed at weekly rate of \$ 198 (\$ 10,296 per year) to be up for review in three months.

[47] An office was prepared as a work space to redesign the electronic components of the vaporizer, and Mr Sabbah submitted a list of his needs for equipment, including " Engineering work station 6 core [...]" with certain software and instrumentation, notably "Windows 7 Ultimate" and Ultium Designer 10". The list included, as well, certain instrumentation.

[48] According to Mr Benamor's testimony, Mr Sabbah proposed obtaining the equipment through Mr Francberg's company, because he could obtain a good price. Mr Benamor remembers, referring to a manuscript note he wrote on spreadsheet detailing the equipment, that the seller Mr Sabbah proposed was 9201-4984 Quebec Inc. Mr Benamor recalls that several of these items were to be obtained at half price as is indicated on the spreadsheet.

[49] Mr Benamor signed off on the document to give Mr Sabbah " full authority" to purchase the equipment.

[50] An order was prepared and authorized (P-3) and the products were purchased. The total of the purchase order is \$ 6,311.56 but the bill is for \$ 6,525.41, because it includes an additional item, a monitor screen.

[51] There is an additional invoice and payment for \$ 198.91.

[52] Once the equipment was in place, Mr Sabbah worked over the period from January 16, 2012 until mid-February.

[53] Mr Benamor was travelling in December 2011 as was his custom. When he returned to Montreal in the first week of January, Mr Sabbah began coming in once a week to set up his work station and began his activities.

[54] A meeting was set up in the third week of February with Mr Benamor, Mr Sabbah and a consultant, Luc Blanchette. The design work on the exterior shell of the equipment had advanced, and it was time to take stock of the progress of the design of the PCB, the miniature circuit board that had to be reconfigured.

[55] Hubmar was thinking of a fairly quick time-frame, a question of weeks.

[56] Mr Benamor testifies that Mr Sabbah spoke at the meeting of the impossibility of meeting a short-term-time objective for the design work he was to do. There work was " in his head but he had not put it on paper ". Clearly, Mr Benamor lost confidence at that point in Mr Sabbah's abilities and his willingness to get on with the work and to commit to the accomplishment of the design's objectives.

[57] The second meeting occurred between Mr Benamor and Mr Sabbah at which, according to Mr Benamor's testimony, Mr Sabbah refused to work under the supervision of the consultant Blanchette.

[58] This led quickly to a loss of confidence.

[59] After the dismissal, Mr Benamor attempted to get the equipment up and running.

[60] The equipment, substantially, could not be used, among other things because the version of Ultium that had been installed or the work station was a trial version useable only for a limited period. To purchase an actual licence to use the software would represent an additional significant expense.

[61] There were also problems with the operating system, Windows Ultimate. Because Hubmar had not been provided with proper licences, the obligations of the seller were not substantially performed.

[62] On the basis, therefore, of the serious discrepancy between the materials promised in the sale and those actually provided, the purchaser is well founded in seeking the resolution of the sale.

[63] The misrepresentations concerning the status of Quebec Inc. as an authorized seller of this software are also a serious failure to perform on the part of Québec Inc., sufficient to justify the remedy of resolution.

[64] Finally, the principal considerations of Hubmar purchasing the workstation, the operating system and applications were to equip David Sabbah to carry out the design work contemplated.

[65] An important aspect of that consideration was the belief that Mr Benamor had gained from his discussions with Mr Sabbah, that he had the necessary qualifications, namely that pertaining to electronic engineering, to carry the project forward to fulfilment.

[66] The Court rejects Mr Sabbah's assertion that he did not hold himself out to be an engineer. His allegation in paragraph 14 of the Amended Defence is that he never claimed to be a member of the OIQ.

[67] The fact is that he used the expression "Design Engineer" on his business card, which also has the logo "SQ" used by Québec Inc. He also used the expression "Electronic Design Engineer".

[68] He was using, on his own behalf, and with reference to Québec Inc. a combination of words that would be perceived by a reasonable person as being indicative of a professional status of Engineer. In fact, he was not even a recognized technician in Québec, not being a member of the relevant professional order, and he had allowed whatever membership he had in Ontario to lapse.

[69] Québec Inc. allowed him to do this. Boris Krancberg confirmed in his testimony that, as sole shareholder and director of Québec Inc., he gave a completely free reign to Mr Sabbah to engage in the business of setting himself up to make sales on behalf of Québec Inc.

[70] Having given, through this permissiveness, such unlimited authority to him, Québec Inc. and Boris Krancberg cannot now take the position that Mr Sabbah did not act with their consent when he held himself out to have a professional standing that he did not.

[71] The text found on the home page of the web site operated by Québec Inc. (P-22) in 2012 illustrates the propensity to use references to engineering lightly: "SQ is a design and engineering firm with front end solutions for digital medical charting and imaging [...]".

[72] The current website, designed after the guilty plea, has removed such references, an implicit admission that they were inappropriately made in the earlier version of the website.

[73] The reliance of answer on these false assertions is also a sufficient reason for resolution of the contract.

[74] The amounts paid with respect to the equipment tendered back totals \$ 6,525.41.

[75] Having permitted Mr Sabbah to make these false assertions in a contractual context, Mr Krankberg committed a fault toward persons dealing with Quebec Inc. through Mr Sabbah. In the present case the Plaintiff relied upon these qualifications when it accepted Mr Sabbah's representations about his own capacity to do the work and about the appropriateness and sufficiency of the equipment and software sold.

[76] By committing this fault, Mr Krancberg becomes liable for the monetary loss including the restitution of the sale price and damages.

[77] The claim for \$ 2,000 for lost time and inconvenience is reasonable given the disruption of the Plaintiff's project and is a modest amount.

[78] While it is true that Hubmar did not pay for one of the days Mr Sabbah ostensibly worked, given the failure on his part to provide work of any value to Hubmar and his fault in the formation of the contract, his Cross-Demand will be dismissed.

[79] The Defendants' claim for extra-judicial costs is also dismissed, as is the part of the Plaintiff's case relating to extra-judicial costs. This is not a case of abuse of procedure by either party.

BY THESE REASONS, THE COURT:

GRANTS the Plaintiff's action;

PRONOUNCES the resolution of the sale of equipment and software mentioned in the purchase order described as:

- 1 Metex 9150 Lab instrument (frequency counter/signal generator power supply/digital meter);
- 1 A Engineering workstation 6 core, 6GB, 120GB SSD, 500GB HDD Nvidia Quattro;
- 1 A Mastercraft Digital Multimer;
- 1 A Dell Monitor S2409W 24", Fast refresh.

GIVES ACT to the tender of the said equipment by the Plaintiff to the Defendant 9201-4984 Quebec Inc.;

CONDEMNS the Defendants solidarily to pay the Plaintiff the sale price of \$ 6,525.41 with interest at the legal rate and the additional indemnity calculated from the date of default, April 13, 2012;

PERMITS the Defendant 9201-4984 Québec Inc. to take delivery of the said equipment at the Plaintiff's premises upon payment of the said amount of \$ 6,525.41 with interests and costs;

CONDEMNS the Defendants solidarily to pay the Plaintiff damages for lost time and inconvenience in the amount of \$ 2,000;

REMAINS seized of the matter to resolve any problem related to the restitution of the equipment, either party being permitted to bring the matter to the Court by notice of presentation;

DISMISSES the Cross-Demand of the Defendant David Sabbah;

THE WHOLE with costs.

DAVID L. CAMERON, J.C.Q.

Me Jay Turner
OIKNINE & ASSOCIÉS
Attorneys for Plaintiff

Me Mihai Evi
Me Karine Pelletier
DUPUIS PAQUIN
Attorneys for Defendants

Dates of hearing: June 12, 13 and 19, 2014, January 14, 2015 and June 26, 2015