

**SUPERIOR COURT OF JUSTICE – ONTARIO**

**PROCEEDING UNDER the *Class Action Proceedings Act, 1992, S.O. 1992, C. 6***

**RE:** Tony Martin, Class Member

**AND:**

Claims Administrator, Respondent

**BEFORE:** C. Horkins J.

**COUNSEL:** *Michiel Russell*, for the Class Member

*Anthony Guindon*, for the Claims Administrator

On appeal from the decision of the Claims Administrator dated November 30, 2010

**DECISION**

[1] On August 12 2009, the court issued a judgment (“Judgment”) approving the settlement of this certified class action. The Settlement Agreement that forms part of the Judgment includes a detailed procedure for distribution of the Compensation Fund to Class Members.

[2] The Settlement Agreement provides that the Compensation Fund will be distributed by the Claims Administrator. If the Claims Administrator disallows a claim in its entirety, the claimant is entitled to have a hearing before a judge of the Superior Court of Ontario.

[3] In a letter dated November 30, 2010, the Claims Administrator notified Tony Martin that his claim had been denied. The relevant part of the letter states:

You have submitted two claims in this matter, namely one in your name and one in the name of your wholly owned corporation, On the Money Inc. Please be advised that your corporate claim was allowed and your personal claim was disallowed by the Claims Administrator

[4] Mr. Martin requested a hearing to appeal the Claims Administrator’s decision. I directed that the hearing of his appeal would proceed in writing as required in paragraph 23 of the Judgment.

[5] The reasons for the denial of the claim are set out in the Claims Administrator’s email to Mr. Martin dated December 20, 2010 as follows:

- Schedule B (Distribution of Compensation Fund to Class Members) of the Settlement Agreement provides that the 'division is subject to the limit that no one Class Member may be awarded more than 1% of the net amount of the Compensation Fund'.
- The personal and corporate claims that you submitted in this matter each individually achieved the 1% maximum award.
- You are the author/creator of the subject works that were claimed in both of the aforementioned claims in this matter.

We are of the view that allowing both your claims would result in you receiving a total award in excess of the 1% limit set out in Schedule B and thus, would breach the terms of the Settlement Agreement.

### ***Background Facts***

[6] The Claims Administrator received a claim from Tony Martin and one from a corporation called On the Money Inc (the company). I will refer to the second claim as the "corporate claim". Both claims are dated January 18, 2010.

[7] The company was incorporated on December 1, 1998, pursuant to the Ontario Business Corporations Act. At the time of its incorporation, Anthony Martin of 213 Riverdale Avenue, Toronto, Ontario, M4K 1C4 was listed as a president and director of the company. The mailing address for the company was the same as Tony Martin's personal residence. There is no dispute that Anthony Martin is "Tony Martin" the claimant on this appeal.

[8] In a written assignment dated December 1, 1998, Tony Martin assigned all rights to all of his freelance articles to his company ("the Assignment").

[9] In Tony Martin's Claim Form, he identifies himself as the "Creator of the Works". This is the basis of his claim for entitlement to compensation.

[10] The company submitted a separate Claim Form with Tony Martin's name and contact information. The company states that it is the "Assignee of the Creative Works". This is the basis of the company's claim for entitlement to compensation. A copy of the Assignment is attached to Claim Form.

[11] Tony Martin's claim and the corporate claim seek compensation for the same Creative Works.

### ***Tony Martin's Position***

[12] It is Tony Martin's position that the decision to disallow his claim is not in accordance with the Settlement Agreement. A summary of the reasons for his position follows:

- There are separate procedures for claims submitted by the Creator of the Works and those submitted by the Assignee of the Creator of the Works
- The payment limit of 1% of the net contents of the Compensation Fund applies to each "single claimant". The Creator (Tony Martin) and the Assignee (the company) should each be treated as a single claimant.
- The Claims Administrator has treated the claim of Tony Martin and his company as a single claim. This is unreasonable and inconsistent with the express wording of the claim settlement procedure. The two claims are distinct and should be assessed individually on their own merits.
- The definition of the class draws a distinction between Creators and Assignees. Therefore they should be treated as distinct claims.

### *Analysis*

[13] The standard of review for this appeal is not defined in the Settlement Agreement. I will treat this as a hearing *de novo*.

[14] In order to submit a claim for compensation, the claimant must fall within the Class Definition (Schedule "A" to the Settlement Agreement). The Class consist of three groups:

- (1) The authors or creators (the Creators) of the original literary works or artistic works (the Works)
- (2) Those to whom, a Creator assigned a right to publish or use their Works (the Assignee)
- (3) Where a Creator or Assignee has died, then the estate of the Creator or Assignee (this category is not relevant on this appeal)

[15] Tony Martin created the Works and so he is a Creator. He assigned all rights to his Works to his company on December 1, 1998. As a result the company is an Assignee.

[16] Schedule B to the Settlement Agreement directs how the Claims Administrator will distribute the Compensation Fund. Paragraph 4 of Schedule B defines the goal of the distribution as follows:

The goal is to divide the net amount of the Compensation Fund among Class Members who hold the copyright in Freelancer Subject Works (as defined by the Settlement Agreement) and who submit timely claims pro rata based upon the number of points awarded under the Points System set out in Schedule C. This division is subject to the limit that no one Class Member maybe awarded more than 1% of the net amount of the Compensation Fund

[Emphasis added]

[17] The fact that the Settlement agreement distinguishes between the Creator and the Assignee does not mean that each can claim compensation for the same Works. The distinction is necessary to identify the different groups that may be eligible to seek compensation.

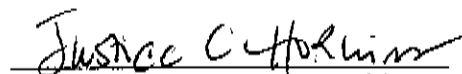
[18] Paragraph 8 of Schedule B explains that the processing of a claim is different depending on whether the Creator or the Assignee seeks compensation. For example if an Assignee submits a claim, then a copy of a written assignment from the Creator must be filed with the Claims Administrator.

[19] It is clear that entitlement to compensation depends on the claimant satisfying the Claims Administrator that he is the Creator or the Assignee of the rights to the Works. Once the rights are assigned, it logically follows that the Assignee (not the Creator) has the right to seek compensation.

[20] Since Tony Martin assigned all of his rights in the Works to his company, he has no right to seek compensation. These rights were assigned to his company. The Claims Administrator has properly evaluated and allowed the company's claim in accordance with the Settlement Agreement.

[21] Finally, I state the obvious. If the Claims Administrator allowed the claims of Tony Martin and his company for the same Works, this would result in double recovery. It would result in a payment for the same Works that is greater than 1% of the net contents of the Compensation Fund. Based on the terms of the Judgment and the Settlement Agreement there is simply no rational basis for allowing this to occur.

[22] The appeal is denied.

  
C. Horkins J.

**Date:** February 22, 2011