

Executive Committee - Pave 1 and its alleged relationship to Sebastian Corbo: Executive Meeting of August 20th

From: "Mark E. Geiger" <mgeiger@blaney.com>
To: "exc@toronto.ca" <exc@toronto.ca>
Date: 08/18/2014 3:38 PM
Subject: Pave 1 and its alleged relationship to Sebastian Corbo: Executive Meeting of August 20th
Attachments: image001.jpg; image006.jpg; Executive Committee Letter Aug 18 2014.pdf

Attention Jennifer Forkes:

I am Marc's partner (also a Mark but a K as opposed to a C). He is unable to attend on Wednesday.

I will be appearing before the Committee along with our client, John Corbo, on Wednesday. As I have outlined in the letter attached, the actions that the City is contemplating (and have already taken by letter of today's date re another contract with Pave 1) are, in our very clear opinion, contrary to the *Ontario Human Rights Code* (the Code) for reasons more particularly set out in the attached letter. I would very much like the opportunity to discuss this with you prior to the meeting, and possibly to give the case law I refer to in the letter to your solicitors so that the committee can get proper advice before taking steps that would amount to a violation of the Code.

I clearly understand why the City wants nothing whatever to do with any entity with which Sebastian Corbo is associated. However, as I say in the letter, you cannot punish the son for the sins of the father and in Ontario, doing so is in fact a violation of the Code. A fairly recent Supreme Court of Canada decision (*Bv. Ontario (Human Rights Commission)* 2002 SCC66) sets out in greater detail why these actions would constitute a violation of the Code and more recent OHRT cases apply the principles set out therein. Mr. John Corbo was completely unaware of his father's actions and is both embarrassed and disgusted by what he did. Further, his father has no part whatsoever in the activities of Pave 1. Mr. Sebastian Corbo has been punished for what he did – but his son should not be.

At the very least the Committee should obtain appropriate advice before proceeding with this matter.

I would very much like the opportunity to discuss these matters with you prior to the Committee meeting if that is appropriate.

Mark E. Geiger

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August 18, 2014

City of Toronto Executive Committee
10th Floor, West Tower, City Hall
100 Queen Street West M5H 2N2
Attention: Jennifer Forkes

Delivered By Email: exc@toronto.ca

Dear Members of Committee:

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**Re: Tender 202-2014 (the “Tender”)
Proposed Suspension of Pave 1 Construction Ltd. (“Pave 1”)
06 August Purchasing Staff Report (the “Report”)
Item EX44.30**

Marc Kemerer
416.593.2975
MKemerer@blaney.com

We represent John Corbo, the owner of Pave 1. Pave 1 is the lowest bidder for the Tender and should, at law, be awarded the contract.

Instead, at its meeting of 12 August 2014, Executive Committee (“**Committee**”) will have the above-noted Report before it for consideration recommending that:

1. Pave 1, and any “legal entity affiliated by or of the same operating mind” as Pave 1 be suspended from the ability to bid on City contracts; and
2. Pave 1 be by-passed as the lowest bidder for the Tender and that the Tender be granted instead to C Valley Paving.

The basis for these recommendations is that:

1. staff “reasonably assume” that Pave 1 was created solely to circumvent the suspension of IPAC Paving Inc. (“**Ipac**”) in October of 2012 to be able to bid on City contracts. As set out in detail below, this is not correct; and
2. our client has compromised the “integrity of the bidding process” by allegedly failing to provide a “full and consistent response” to Purchasing staff on the issue of any affiliation between Pave 1 and Ipac. This is also not correct as set out below.

We have reviewed the Report with our client and request that Committee and City Council:

1. schedule consideration of the Report for a future meeting of Committee to avoid visiting a procedural unfairness on our client;
2. not suspend Pave 1 from bidding on City contracts; and

3. respect the integrity of the City bidding process by awarding the Tender to Pave 1.

Background

In 2012, City Council permanently suspended Ipac and Sebastian Corbo, John Corbo's father and the then controlling mind of Ipac, from being awarded any City contracts over allegations of fraud that had been. That suspension was aimed solely at Sebastian Corbo. At no time was our client involved in, or aware of, the activities of Sebastian Corbo that led to the permanent suspension.

Prior to the suspension, Sebastian Corbo transferred ownership of Ipac to our client, who at the time of the transfer was only 18 years old. John Corbo had no knowledge of the workings of the company. He did however work hard to understand the construction business and eventually took over control of Ipac in more than name. Sebastian Corbo has no ties now to Ipac.

We are advised by our client that Pave 1 was started in 2012 by our client on his own to allow him to distance himself from his father's conduct. Sebastian Corbo was and is not a part of this business. It has been the intention of our client to remove himself from Ipac once he has addressed a number of corporate matters and overseen the conclusion of Ipac contracts that require he remain involved in them.

Pave 1 has bid on, and been awarded City contracts without any controversy over the past two years. The work of Pave 1 on these contracts has earned praise from City staff (see attached letter of reference). Accordingly, when Pave 1 submitted a bid for the Tender, John Corbo had no reason to believe this would lead to the possibility that Pave 1 could be suspended from bidding on City contracts.

As our client was the lowest bidder on the Tender, he rightfully understood that the Tender would be awarded to Pave 1, which has no connection with Sebastian Corbo. He was therefore surprised to receive correspondence from City Purchasing on 14 July 2014, Clarification No. 1, requesting confirmation that Pave 1 is not (a) affiliated with Ipac, and (b) "in any way owned, directed or controlled by Sebastian Corbo".

In this context, our client understood that, by "affiliated", City staff were asking whether Pave 1 was subordinate to, or a subsidiary of, Ipac. Accordingly, our client responded on 17 July 2014 to advise that Pave 1 is an "independent organization" not "owned or operated" by Ipac. In that correspondence, our client further advised that Pave 1 is "not in any way owned, directed or controlled by Sebastian Corbo". The connection with Sebastian Corbo was what City staff were seeking confirmation on.

In response, staff wrote back that day to request clarification on whether our client was the President of Ipac in 2009. Our client wrote back immediately to state that he has been listed as the President of Ipac since 2000 and to again confirm that, as Ipac and Pave 1 are

distinct corporate entities, they were not affiliated in the sense that Ipac is not “a parent or holding company of Pave 1”.

While this information should have been sufficient for staff to conclude that our client was not circumventing the suspension of Ipac, staff sent our client a Clarification No. 2 request on 25 July 2014 asking whether (a) Ipac was still a corporation, and (b) Sebastian Corbo is currently involved in Ipac and Pave 1.

On behalf of our client we replied to the Clarification request on 28 July 2014 (attached) to:

- a. confirm, as our client had done openly on 17 July, that he is the sole owner and president of both Ipac and Pave 1;
- b. make it clear that Sebastian Corbo was not involved with Pave 1; and
- c. set out our client’s undertaking that he would not employ or subcontract City work to Sebastian Corbo.

We were then advised by City legal staff that Purchasing were concerned about the “affiliation” between Ipac and Pave 1 and that staff would likely be recommending that Pave 1 be suspended and the City by-pass the Tender bid of Pave 1. We repeated the same confirmations to Legal that John and Sebastian Corbo are different people and that the sins of the father should not be visited on the son.

The Report was prepared prior to 1 August 2014. We have been requesting a copy of same since 1 August to adequately respond to its contents, particularly since, as Purchasing staff were made aware, the writer was going on holiday as of 11 August. The Report was not however provided to us until this past Wednesday 13 August. This puts our client at a significant disadvantage as I am not able to fully respond to the Report’s allegations or to appear before Committee to present our response on behalf of our client.

Pave 1 Requests

1. It is not fair or reasonable for the Committee to be considering a Report that was not provided to counsel for John Corbo until he was away on holiday. In any event, the provision of one week’s notice to respond is not sufficient particularly given that our client’s livelihood is at stake.

We therefore request that consideration of the Report be postponed to a later date of Committee or the Public Works and Infrastructure Committee.

If Committee is to proceed with its consideration of the Report on 20 August:

2. The Report is not correct in its assumption that Pave 1 was created simply to circumvent the prohibition on Ipac from bidding on City contracts. Pave 1 has been recognized by City staff as a *bone fide* contractor not tied to the past

conduct of Sebastian Corbo. Pave 1 is a distinct entity from Ipac, which our client intends to relinquish control of as soon as possible.

Moreover, staff are absolutely not correct when they claim in the Report that our client did not provide them with a full and consistent explanation of any “affiliation” between Ipac and Pave 1. As set out above, our client was completely clear with staff when asked whether he was the president and sole shareholder of both companies. He clearly made the point as well that both companies are separate corporate entities. Neither is a subsidiary of the other, which is the specific question staff were asking.

It is clear that the actions now being taken or contemplated by the City are as a result of the conduct of Sebastian Corbo. Ipac was named in the suspension because it was controlled by Sebastian Corbo. The actions of Sebastian Corbo were the only reason for the suspension. John Corbo was entirely unaware of these actions and had no participation in them. Sebastian Corbo has no involvement whatsoever with Pave 1. Therefor the actions contemplated by the City with respect to Pave 1 are based entirely on the fact the John Corbo is Sebastian son.

S. 10 of the *Ontario Human Rights Code* (the Code) defines family status as:

“family status” means the status of being in a parent and child relationship

S. 3 provides that every person is free to contract on ‘equal terms’ without discrimination based on ... family status.

S. 11 also provides for ‘constructive discrimination’ where a discrimination is not on its face, discriminatory on a prohibited ground, but amounts to discrimination where it results in a person in an identified class being discriminated against.

It is clear that the actions contemplated with respect to Pave 1 are, at least in part, if not entirely because of the relationship between John and his father. As such, in our opinion, they would be clearly contrary to the provisions of the Code and expose the City to potential action either before the Courts (pursuant to s. 46.1 of the Code), or an application to the Ontario Human Rights Tribunal (the OHRT). I am happy to provide recent case law, including a decision of the Supreme Court of Canada, recently applied by the OHRT in advance of any such meeting if that would be helpful to you or your legal counsel. Both cases find prohibited discrimination in circumstances analogous to those in this fact situation.

In these circumstances, we urge the Committee to reconsider the actions contemplated, and already taken. While we understand the justifiable concern the City could have with any dealings with Sebastian Corbo, or any entity affiliated with him, that does not, in our respectful submission, justify

discrimination against his son or entities entirely controlled by his son, and such actions would be in contravention of the Code. In our society, the sins of the father are **not** visited on the sons.

We therefore request that Pave 1 and its operating mind not be suspended from bidding on City contracts. There is no reasonable basis to do so. Such action constitutes discrimination based on family status and is clearly contrary to the Code.

3. In accepting a bid from Pave 1, the City entered into a contract with Pave 1 for the work, Contract A. Just as there is no reasonable basis for suspending Pave 1 from future contracts with the City, there is no reasonable basis for breaching Contract A.

We therefore request that the City not by-pass Pave 1 as the lowest bidder on the Tender. This is not fair or reasonable and would amount to a breach of contract that would undermine the integrity of the City's bidding process.

Thank you in advance for your consideration of our above requests. Although the writer will not be able to attend at the meeting of Executive on Wednesday 20 August my colleague, Mark Geiger of Blaney McMurtry LLP, will be in attendance at the meeting to further set out the facts and the position of our client.

Yours very truly,

Blaney McMurtry LLP

A handwritten signature in black ink, appearing to read "M. E. Geiger - per", written over the printed name of Marc Kemmerer.

Marc Kemmerer

MPK/mk

c. Client

Executive Committee - FW: Tender No. 202-2014, Clarification No. 2

From: "Mark E. Geiger" <mgeiger@blaney.com>
To: "'exc@toronto.ca'" <exc@toronto.ca>
Date: 08/18/2014 4:08 PM
Subject: FW: Tender No. 202-2014, Clarification No. 2
Attachments: image001.jpg; image006.jpg

ATTENTION: Jennifer Forkes

This e mail is referred to in the letter I sent earlier re Pave 1 and the Executive Committee meeting for August 20th. I neglected to attach it to the letter in my last e mail.

From: Marc P. Kemerer
Sent: July 28, 2014 2:45 PM
To: 'pvasquez@toronto.ca'
Cc: 'john@pave-1.com'; 'vmariya@toronto.ca'; 'mpiplica@toronto.ca'
Subject: Tender No. 202-2014, Clarification No. 2

Dear Ms. Phillips/Ms. Vasquez:

We represent John Corbo, who has forwarded your letter of 25 July 2014 to us for reply. Our reply is further to Mr. Corbo's 17 July 2014 correspondence with Patricia Vasquez of your office on this issue of clarification and to my conversation and follow up correspondence of last Thursday with Val Mariya of your office.

Our client advises us as follows:

1. He is the sole owner and president of IPAC. He is also the sole owner and president of Pave 1.
2. Pave 1 has not received any loans of money or equipment from Sebastian Corbo or any firms controlled by him.
3. Pave 1 has previously subcontracted some small labour work to Sebastian Corbo. At that time, our client was not aware that Sebastian Corbo was the subject of a permanent suspension by the Qty, he understood that the suspension was temporary and would not be a further issue for the Qty.
4. Our client undertakes not to employ or subcontract Sebastian Corbo or entity controlled by Sebastian Corbo on any Qty work now and in the future, including for the work covered by Tender No. 202-2014.

I want to note that, in speaking with our client, John Corbo is now very aware of the severity of the sanction against Sebastian Corbo, and would not do anything to jeopardize his relationship with the Qty or to undermine the business reputation of the Qty or the public's confidence in the Qty's procurement process. He has received very positive feedback from Qty staff with respect to his work on previous Qty tenders and looks forward to continuing to provide the Qty with this high level of service.

We trust the above is satisfactory for Qty Purchasing and that the award of the Tender to Pave 1 will proceed. If you require any further information please do not hesitate to contact me.

Thank you,

Marc Kemerer

Marc P. Kemerer

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