

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *ALPC Housing Solutions Inc. v. Martin*, 2019 NSSC 42

**Date:** 20190314

**Docket:** Hfx.446514

**Registry:** Halifax

**Between:**

ALPC Housing Solutions Inc., a body corporate

Plaintiff

v.

Kris Martin and Jacques Martin

Defendants

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**LIBRARY HEADING**

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**Judge:** The Honourable Justice C. Richard Coughlan

**Heard:** October 31, 2018 in Halifax, Nova Scotia

**Written Decision:** March 14, 2019

**Subject:** Equity – Equitable Relief - Accounting

**Summary:** Ms. Martin breached her fiduciary duty to ALPC, a company of which she was a director, by repurchasing a property the opportunity for which arose as a result of her position as a director, without making full disclosure to ALPC and obtain consent from ALPC. Mr. Martin was liable for his involvement in the breach.

Mr. and Ms. Martin were to pay ALPC the difference between the amount for which the property was sold and the amount to repurchase the property, less appropriate amounts paid toward debts of ALPC, expenses property incurred in connection with the lottery or Maria Sancho.

**Issue:** (1) What is the amount to be paid to ALPC?

**Result:** Mr. and Ms. Martin are to pay ALPC the sum of \$324,127.39.

***THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION.  
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<b>Decision</b>
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**Written Decision:** March 14, 2019

**Counsel:** J. Walter Thompson, Q.C. for the Applicant  
Jamie D. MacNeil for the Respondents

Coughlan, J.

[1] I found Kris Martin breached her fiduciary duty to ALPC Housing Solutions Inc. (ALPC), a company of which she was a director, in connection with the sale of real property owned by Ms. Martin and her husband, Jacques Martin, to Bryony House for use in a fundraising lottery and the repurchase of the real property from the lottery winners. The opportunity came to Ms. Martin as a result of her position as a director of ALPC and she did not make full disclosure about the repurchase to ALPC and obtain consent for it.

[2] Jacques Martin had knowledge of facts which would put a reasonable person on notice of the possible breach of fiduciary duty and I found him personally liable for his involvement in Kris Martin's breach of fiduciary duty.

[3] Mr. and Ms. Martin were to pay ALPC the difference between the amount for which the real property 205 Willowhill Ridge, Waverley, Nova Scotia, was sold for the lottery and the amount paid to repurchase the property, less appropriate amounts paid by Ms. or Mr. Martin toward debts of ALPC, expenses properly incurred in connection with the lottery or Maria Sancho.

[4] Ms. and Mr. Martin were to account for the difference between the amount for which 205 Willowhill Ridge was sold for the lottery and the amount paid to

repurchase the property, together with a detailed statement of the amounts they claim should be deducted from the amount to be paid to ALPC.

[5] The parties were unable to agree on the amounts to be paid to ALPC and a hearing was held to determine the amount, if any, to be paid. This decision deals with the amount to be paid to ALPC.

[6] After adjustments for taxes the property at 205 Willowhill Ridge was sold by Ms. and Mr. Martin to the Halifax Transition House Association (Bryony House) for \$1,149,102.75.

[7] Ms. and Mr. Martin repurchased the property from the lottery winners for \$631,783.60. This leaves a balance of \$517,319.15 the subject of the accounting.

[8] At the time of the sale Mr. and Ms. Martin paid their solicitor's fees of \$1,373.05 which is to be deducted from the amount paid to ALPC.

[9] At the time of the sale of the property to Bryony House, the Martin's lawyer paid \$676,807.31 to the Toronto-Dominion Bank as payment of the outstanding amount on the Martins' Line of Credit Mortgage on 205 Willowhill Ridge. Mr. and Ms. Martin did not close the line of credit once the payment was made by their lawyer. Instead they kept the mortgage and used it in the financing of their repurchase of the property.

[10] The mortgage/line of credit is irrelevant to the difference between the amount for which they sold the property and the amount at which they repurchased it. No deduction from the amount due to ALPC is to be made in relation to the payment of the mortgage.

[11] ALPC agrees Ms. Martin should be reimbursed for the following expenses she incurred on behalf of ALPC:

\$2,627.61 for a computer maintenance contract and general office supplies from Staples

\$141.44 UPS

\$83.42 Registrar of Joint Stock Companies

\$250.00 insurance on Eastern Passage property

\$565.30 legal fees Bacchus & Associates

\$207.00 Minute Man Press

\$900.00 loan to ALPC

\$400.00 payment to 3214106 Nova Scotia Ltd.

\$437.26 bank fees and charges.

The above total \$5,612.03 which is to be deducted from the amount paid to ALPC.

[12] Ms. Martin paid \$6,900.00 for a retainer for ALPC's Cleopatra Project Eastern Passage community branding and marketing design. The retainer was paid by a cheque for \$1,900.00 payable to Vitali Training and a cheque payable to

Aaron Bihari in the amount of \$5,000.00. The \$6,900.00 is to be deducted from the amount paid to ALPC.

[13] ALPC leased a vehicle used by Maria Sancho. Ms. Martin made lease payments for the vehicle to Ford Credit Canada Company. Ms. Martin is to be credited with the lease payments she made which total \$7,267.94 which is to be deducted from the amount paid to ALPC.

[14] The parties agree ALPC received rebates concerning the vehicles purchased by Bryony House for the lottery. Ms. Martin says the rebates totaled \$13,500.00. Ms. Sancho says the amount of rebates was \$10,000.00 which she used for the support of herself and her family. Ms. Martin submits she should be credited with half the value of the rebates. I disagree. The rebates are an asset of ALPC which may have a claim against Ms. Sancho. However, Ms. Martin is not to be credited with a portion of money belonging to ALPC.

[15] ALPC borrowed \$60,000.00 from Ahmed El Shair and \$50,000.00 from Mike Habib which loans were secured by promissory notes. Affidavits were filed by Messrs. El Shair and Habib stating Ms. Martin personally repaid the amounts borrowed. I find Ms. Martin repaid the loans. Ms. Martin agrees \$25,000.00 from the loans was used to purchase furniture which was sold to Bryony House and subsequently repurchased by Ms. and Mr. Martin. The \$25,000.00 should not be

reimbursed to the Martins. The balance of \$85,000.00 being a debt of ALPC paid by Ms. Martin is to be deducted from the amount paid to ALPC.

[16] ALPC agrees Ms. Martin should be reimbursed for the following payments she made for Maria Sancho's expenses:

\$2,941.77 paid for Ms. Sancho's cell phone

\$3,810.00 for cheques written to Ms. Sancho

\$1,830.25 for Ms. Sancho to take the Nova Scotia Realtor Course

\$1,587.92 for oil and heating bills for Ms. Sancho's residence

\$200.00 for tickets for Vancouver Millionaire Lottery

The above total \$10,369.94 which is to be deducted from the amount paid to ALPC.

[17] Ms. Sancho on behalf of ALPC, agrees Ms. Martin paid certain lottery costs but says these costs were largely paid from the loans by Messrs. El Shair and Habib to ALPC and \$25,000.00 paid by Bryony House to Ms. Martin. The lottery costs in question are as follows.

[18] Bell Media was paid \$74,016.68 for advertising. Ms. Martin says \$31,263.90 of the amount was paid to her by ALPC from the loans from Messrs. El Shair and Habib. Ms. Martin says the remaining \$42,752.78 has not been repaid to



her. I accept Ms. Martin's evidence on this issue. The \$42,752.78 is to be deducted from the amount paid to ALPC.

[19] The sum of \$7,279.19 was paid to JS Print, Aaron Jeffrey's Graphics Design and Advantage Signs and Graphics. The \$7,279.19 was not repaid to Ms. Martin and is to be deducted from the amount paid to ALPC.

[20] A virtual tour of the house was created by MyVisualListings at a cost of \$155.19 which was paid by Ms. Martin and is to be deducted from the amount paid to ALPC.

[21] Ms. Martin paid \$29,358.81 to Tigertel Communications as a media cost for the lottery. She was repaid by ALPC from funds received from Messrs. El Shair and Habib.

[22] Ms. Martin spent \$17,861.80 on radio advertising for the lottery. She has not been reimbursed the \$17,861.80 and it is to be deducted from the amount paid to ALPC.

[23] Ms. Martin paid \$4,014.46 to St. Joseph Digital for advertising for the lottery; \$517.50 to Victorian Custom Trim for wood signs for the lottery; \$388.13 to SNAP Halifax for photograph media; \$316.25 for a booth at the 50 Expo to advertise the lottery; \$43.16 on Facebook advertisements; and \$500.00 to Keloose

for a sponsorship for the lottery. These costs total \$73,828.46. Ms. Martin received \$25,000.00 from Bryony House toward lottery expenses. The \$25,000.00 reduces the \$73,828.46 to \$48,828.46 which it to be deducted from the amount paid to ALPC.

[24] In her affidavit, Ms. Martin deposed she funded the upkeep and maintenance of the house at 205 Willowhill Ridge. She stated the costs included payments for insurance, heat, power, taxes and the alarm. Her husband took care of the outdoor maintenance such as lawn care and snow removal. She did the indoor house cleaning, as required, including sweeping, mopping, dusting, vacuuming etc. Ms. Martin estimated the value of the cleaning services to be \$4,800.00. Ms. Martin stated between November 2013 and November 2014, the value of the maintenance and upkeep including \$4,800.00 for cleaning totalled \$55,684.04. She seeks the deduction of \$55,684.04 from the amount to be paid to ALPC.

[25] ALPC agrees Mr. and Ms. Martin should be reimbursed \$40,841.02 made up of the following:

Insurance	\$ 4,305.40
Heat &Power	\$ 7,154.81
Eastlink	\$ 1,772.81
Taxes	\$ 8,000.00

Mortgage Interest	\$19,200.00
Security Alarm	<u>\$ 408.00</u>
Total:	<b>\$40,841.02</b>

[26] ALPC says the other expenses claimed snow removal, lawn care and house cleaning are claims for services Mr. and Ms. Martin performed personally. ALPC says it never agreed to pay for this routine care and there is no accounting for it other than the Martin's estimate of value and the expenses were not properly incurred.

[27] Mr. and Ms. Martin were the owners of the property. As owners they had the obligation to maintain their property; as would any owner of real property. However, ALPC agrees the \$40,841.02 should be reimbursed. The \$40,841.02 will be deducted from the amount paid to ALPC. The remaining \$14,843.02 of the amount claimed will not be deducted.

[28] Ms. Sancho rented a house at 6 Capistrano Drive, Dartmouth, Nova Scotia, from Ms. Martin's uncle Mike Habib. Ms. Martin said the monthly rent was \$1,700.00. Ms. Sancho said the rent was \$1,600.00 a month and attached to her affidavit what purports to be a "Rent to Own Contract" showing the monthly rent to be \$1,600.00. I find the monthly rent to be \$1,600.00.

[29] Ms. Martin said she made three lump sum payments totalling \$6,600.00 to Mr. Habib for rent payments Ms. Sancho failed to make. Ms. Martin did not provide copies of cheques or receipts as evidence of the payments. Ms. Sancho agrees Ms. Martin paid Mr. Habib \$5,200.00 toward the rent.

[30] I find Ms. Martin paid Mr. Habib \$6,600.00 toward Ms. Sancho's rent of 6 Capistrano Drive and that amount is to be deducted from the amount paid to ALPC.

[31] Ms. Sancho rented 51 Celtic Drive, Dartmouth, Nova Scotia at a monthly rent of \$950.00. Ms. Martin paid Ms. Sancho's rent for the period April 1, 2013 to October 2014 for total payments of \$18,050.00. Ms. Martin also paid a water bill of \$300.00. The \$18,350.00 is to be deducted from the amount paid to ALPC.

[32] After Ms. Martin stopped paying the rent the landlord sued Ms. Martin and Ms. Sancho and obtained judgment against them for \$5,562.71. Another judgment was obtained by the landlord against Ms. Martin for \$1,616.05. Ms. Martin paid the judgments as well as \$100.00 to discharge them. Ms. Martin is to recover these amounts totalling \$7,278.76 which is to be deducted from the amount paid to ALPC.

[33] Ms. Martin says Canada Mortgage and Housing Corporation (CMHC) provided ALPC with \$17,000.00 toward its Eastern Passage Cleopatra project which money Ms. Sancho kept personally. Ms. Martin says she should be credited with half of that money as she was an equal partner of ALPC. The letter Ms. Martin introduced as evidence of the payment from CMHC deals with a grant to ALPC of \$10,000.00 not \$17,000.00. In any event, the grant was to ALPC and it is an asset of the company. No deduction for the CMHC grant will be made from the amount to be paid by Mr. and Ms. Martin to ALPC.

[34] Ticket sales for the lottery were made at the property. The accounting firm Deloitte accounted for the receipts from ticket sales. The accounting found that total cheque batches, which includes money orders and cash, totalled \$137,915.00. How much of that sum was cash is not specified. Ms. Martin agrees with the Deloitte accounting.

[35] Ms. Martin says she received cash from ticket sales that was not used for direct expenses right away and deposited the cash in the lottery bank account.

[36] Ms. Sancho agreed some lottery expenses were paid with cash from ticket sales. She received receipts for these expenses from Ms. Martin and gave them to Bryony House. Ms. Sancho received a listing of the receipts from Bryony House which totalled \$40,510.56.

[37] Exhibited to Ms. Sancho's affidavit was a list of what she said was a summary of cash deposits made to Bryony House lottery bank account totalling \$52,175.00. This listing contains deposits shown in the copy of the deposit book for cash deposits exhibited to Ms. Martin's affidavit. It appears \$52,175.00 of cash ticket sales were deposited.

[38] When the \$40,510.56 and \$52,175.00 are deducted from the Deloitte figure of \$137,915.00 that leaves \$45,229.44 unaccounted. In an e-mail from Laurie Ehler, then executive director of Bryony House, to Ms. Sancho dated February 10, 2015, Ms. Ehler stated it appeared there was approximately \$40,000.00 of unaccounted cash sales. Ms. Martin did not account for the missing \$45,229.44. I find the unaccounted cash sales are \$45,229.45. The amount due to ALPC shall be increased by \$45,229.45 to account for the unaccounted cash sales.

[39] Ms. Martin says she paid her nephew Carlo Zinati to sell tickets for the lottery at 205 Willowhill Ridge at the rate of \$10.00 per hour. She believes she paid Mr. Zinati \$4,800.00 in cash.

[40] Mr. Zinati deposed an affidavit stating his aunt Kris Martin advised him he would be paid \$10.00 per hour for selling tickets. Exhibited to the affidavit was what Mr. Zanati said was a copy of his scribbler in which he recorded his time worked at the lottery. In paragraph 10 of his affidavit Mr. Zinati states: "I do not

recall the method in which I was paid but I believe it was cash. I am certain I was paid in full for all my recorded time”.

[41] Mr. Zinati does not set out the amount he was paid. He does not recall how he was paid, but believes it was cash. Ms. Martin did not obtain a receipt for Mr. Zinati for any payment to him. I have no confidence the \$4,800.00 claimed was paid. No deduction will be made for the alleged payment to Mr. Zinati.

[42] Ms. Martin claims \$14,400.00 for the approximately 1440 hours she spent at the house during the lottery. There is no basis for that amount to be deducted from the amount to be paid to ALPC.

[43] Reimbursement is sought by Ms. Martin for loans alleged to have been made to Ms. Sancho by Julie Sharpe and Mary Zinati totalling \$8,500.00, and \$200.00 loaned to Ms. Sancho by Ms. Martin’s son Alex. Ms. Martin says she paid the loans thinking she would be reimbursed fully. Ms. Sancho denies Julie Sharpe, Mary Zinati or Alex Martin ever loaned her money. There is no evidence from Ms. Sharpe, Ms. Zinati or Ms. Martin’s son Alex concerning the alleged loans. I am not satisfied the loans were made nor is there any reason the \$8,700.00 should be deducted from the amount to be paid to ALPC.

[44] Ms. Martin claims \$21,315.00 which she estimates she paid for numerous other items for Ms. Sancho's personal benefit which were never reimbursed such as clothing, a plane ticket that was never used, bunk beds for her child, gas for her car and cash when she needed some extra help. No evidence of these claimed expenses, except for Ms. Martin's estimate, was produced. There will be no deduction for the \$21,315.00 claimed.

[45] In the brief filed on behalf of Mr. and Ms. Martin it is submitted Ms. Martin should be credited \$64,403.70 as follows:

As a result, to sustain Ms. Sancho's living, Ms. Martin paid \$64,403.70 out of her own pocket to provide Ms. Sancho with a salary. Therefore, Ms. Sancho was paid a salary of \$64,403.70 while Ms. Martin was paid nothing. If a full and proper accounting is to be done, this payment of salary should be included. If Ms. Sancho's personal expenses were paid for out of ALPC funds by way of salary, Ms. Martin as an equally contributing partner, if not more so, should be entitled to at least the same salary of \$64,403.70.

[46] There is no justification for Ms. Martin to be credited with the amount claimed as salary. The monies Ms. Martin established she paid for the benefit of Ms. Sancho are being deducted from the amount paid to ALPC.

[47] In summary, the amount Mr. and Ms. Martin are to pay to ALPC is calculated as follows:

Sale price of property	\$1,149,102.75
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**Less**

Price property repurchased	\$ 631,783.60
Legal fees	\$ 1,373.05
Agreed expenses for ALPC	\$ 5,612.03
ALPC Cleopatra branding and marketing design	\$ 6,900.00
Car lease payments	\$ 7,267.94
Portion of loans to Messrs. El Shair and Habib to be reimbursed	\$ 85,000.00
Amount agreed re: Ms. Sancho expenses	\$ 10,369.94
Lottery costs to be reimbursed	\$73,828.46
Less funds from Bryony House	<u>\$25,000.00</u>
<b>\$48,828.46</b>	\$ 48,828.46

Agreed costs re: upkeep of property	\$ 40,841.02
Expenses re: Capistrano property	\$ 6,600.00
Rent and water bill re: Celtic Drive	\$ 18,350.00
Payment of judgments re: Celtic Drive	<u>\$ 7,278.76</u>
	\$278,897.95

**Plus**

Unaccounted cash ticket sales	<u>\$ 45,229.44</u>
	<b>\$324,127.39</b>

[48] Kris Martin and Jacques Martin are to pay ALPC Housing Solutions Inc. the sum of \$324,127.39 being the difference between the amount for which the real property 205 Willowhill Ridge, Waverley, Nova Scotia was sold for the lottery and the amount paid to repurchase the property, less appropriate amounts paid by Ms. or Mr. Martin toward debts of ALPC, expenses properly incurred in connection with the lottery or Maria Sancho.

[49] If the parties are unable to agree, I will hear them as to costs.

J.