

CITATION: Shaver-Kudell Manufacturing Inc. v. Knight Manufacturing Inc., 2024 ONSC 829
COURT FILE NO.: CV-13-57031
DATE: 2024/02/07

SUPERIOR COURT OF JUSTICE – ONTARIO

RE: Shaver-Kudell Manufacturing Inc., Plaintiff

AND

Knight Manufacturing Inc., Lucy Shaver, Dusko Ballmer and Alexander Knecht,
Defendants

BEFORE: Justice Robert Smith

COUNSEL: Charles Hammond, counsel for the Plaintiff

Defendants, unrepresented

HEARD: January 25, 2024 at Ottawa

REASONS FOR DECISION

[1] The Plaintiff, Shaver-Kudell Manufacturing Inc., (“Shaver-Kudell”) has brought a summary motion against Dusko Ballmer to determine the quantum of damages it has suffered. The Plaintiff has resolved this action against Alexander Knecht and Lucy Shaver. The Defendant, Knight Manufacturing Inc. has been unresponsive to these proceedings since the decision in the liability trial. The Defendants, except for Lucy Shaver, did not attend the motion although properly served.

[2] The Defendants were found liable for breach of confidence and misappropriating Shaver-Kudell’s trade secrets in the liability trial. The damages were to be decided following a decision after the liability trial.

[3] Shaver-Kudell operates a machine shop which manufactures metal sleeves which are used to repair ball bearings in electric motors.

[4] Mr. Ballmer was Lucy Shaver’s spouse and became aware of Shaver-Kudell’s manufacturing process. He is a Swiss trained machinist who used Shaver-Kudell’s design and manufacturing process for a competing machine shop, operated by Knight Manufacturing Inc.

Summary Judgment Motion

[5] Mr. Ballmer has not filed any responding material to oppose this summary motion. Ms. Shaver has filed a factum and made oral submissions at the hearing of this motion. She disagreed with the expert's evidence that Shaver-Kudell had suffered damages in the amount of \$776,000. Her primary reason is the expert's assumption that Shaver-Kudell would have continued to increase the price of sleeves by 5% per year, but for Knight Manufacturing Inc. entering the market using Shaver-Kudell's trade secrets and undercutting its prices by 40%.

[6] In *Hyrniak v. Mauldin*, 2014 SCC 7, the Supreme Court of Canada held that there will be no genuine issue requiring a trial where the evidentiary record provides the judge with evidence necessary to reach a fair and just determination in a process that is timely, proportionate, and affordable.

[7] I am satisfied that the determination of damages suffered by Shaver-Kudell does not raise a genuine issue requiring a trial, especially in circumstances where the motion is not opposed by Mr. Ballmer. The unopposed affidavit evidence of Neil Shaver and the uncontradicted expert report of Mr. McAvoy provide me with the evidence necessary to reach a fair and just determination of the damages suffered by Shaver-Kudell.

Mr. McAvoy's Economic Damages Report

[8] On November 10, 2017, Mr. McAvoy prepared an economic damages report in which he quantified the losses suffered by Shaver-Kudell as a result of the misappropriation of Shaver-Kudell's trade secrets and manufacturing process by Knight Manufacturing Inc. His report was prepared at the request of Shaver-Kudell's former counsel, independently and objectively in accordance with the Practice Standards of the Canadian Institute of Chartered Business Valuators.

[9] Mr. McAvoy has filed a Rule 53 Acknowledgement of Expert's Duty statement. His curriculum vitae indicates that he is qualified and experienced as a chartered accountant and a certified business valuator with the following designations: CA, CPA, IFA, CBV and CFF. He has also prepared reports on economic damages resulting from breaches of contract and from other causes. Mr. McAvoy has worked in the area of business valuations and assessing economic

damages since 1991 and has extensive experience in these areas. Based on Mr. McAvoy's curriculum vitae and his experience, I find that he is qualified as an expert witness in the area of determining a business' economic damages.

What damages has Shaver-Kudell suffered as a result of the misappropriation of its trade secrets by the Defendants?

[10] In his economic damages report, Mr. McAvoy states that in his opinion and based on his analysis, Shaver-Kudell has suffered damages in the amount of \$776,000 as a result of the Defendants misappropriation and use of Shaver-Kudell's trade secrets to compete against it.

[11] To come to this conclusion, Mr. McAvoy assumed that Shaver-Kudell would have increased its prices at 5% per year as it did for the years 2011, 2012, and 2013. He made this determination by reviewing Shaver-Kudell's price catalogue for the above years. Lucy Shaver submitted that Shaver-Kudell may have falsified its price catalogues. I find that her submission in this regard is pure speculation which is not supported by any evidence.

[12] The Defendant, Knight Manufacturing Inc., commenced manufacturing sleeves in competition with Shaver-Kudell in 2014 at a price that was 40% less than Shaver-Kudell's price list. It ceased operations in 2018. Mr. McAvoy calculated the damages based on Shaver-Kudell being unable to increase prices at 5% per year and due to a loss of sales from 2014 until 2018. He calculated the damages at \$36,000 in 2014, \$138,000 in 2015, \$171,000 in 2016, \$268,000 in 2017, and \$163,000 in 2018.

[13] I accept Mr. McAvoy's expert opinion evidence that, on a balance of probabilities, Shaver-Kudell has suffered an economic loss of \$776,000 over the period from 2014 until 2018. These damages were suffered due to the loss of sales to Knight Manufacturing Inc. and an inability to increase its prices by 5% per year as it had in the previous three years as a result of Knight Manufacturing Inc. using Shaver-Kudell's trade secrets and undercutting Shaver-Kudell's prices.

Prejudgment Interest

[14] The Plaintiff claims prejudgment interest at 1.3% per year from March 16, 2012 to the date of the judgment for a total of \$118,292.16 until November 30, 2023 plus \$27.63 per day until the judgment is signed. I grant this amount as a prejudgment interest award.

Disposition

[15] The Defendant, Dusko Ballmer, is ordered to pay \$776,000 to the Plaintiff Shaver-Kudell plus prejudgment interest of \$118,292.16 to November 30, 2023 plus \$27.63 per day until the judgment is signed.

[16] Post judgment interest will accrue at the rate of 5.3% per annum.

Costs

[17] Dusko Ballmer is ordered to pay costs on a partial indemnity basis of \$7,500 plus HST to the Plaintiff.

Mr. Justice Robert Smith

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R. Smith J

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