

CITATION: *Shaver-Kudell Manufacturing Inc. v. Knight Manufacturing Inc.*,
2024 ONSC 6086

OTTAWA COURT FILE NO.: CV-13-57031

DATE: 2024/11/01

SUPERIOR COURT OF JUSTICE – ONTARIO

RE: SHAVER-KUDELL MANUFACTURING
INC.

Plaintiff

AND

KNIGHT MANUFACTURING INC., LUCY
SHAVER, DUSKO BALLMER and
ALEXANDER KNECHT

Defendants

BEFORE: Madam Justice S. Corthorn

COUNSEL: Charles Hammond, for the plaintiff corporation (responding party)

Lucy Shaver, self-represented defendant (moving party)

No one appearing for the defendants, Knight Manufacturing Inc.,
Dusko Ballmer, and Alexander Knecht

HEARD: August 6, 2024, by videoconference

ENDORSEMENT

Introduction

[1] The parties to this proceeding have been in litigation for more than a decade. The plaintiff corporation (“Shaver-Kudell”) manufactures metal sleeves, used for the repair of ball bearings in electric motors. Shaver-Kudell is one of less than a handful of metal sleeve manufacturers worldwide.

[2] Neil Shaver is the controlling mind of Shaver-Kudell. The defendant, Lucy Shaver, is Neil Shaver’s sister. Lucy was Shaver-Kudell’s first employee and, over time, a key employee. She worked for Shaver-Kudell for 23 years. The defendant, Dusko Ballmer, was Lucy’s spouse at the material time.

[3] In 2012, Lucy left the employ of Shaver-Kudell. In the same year, Lucy and her then spouse, Mr. Ballmer, became employees of the defendant corporation (“Knight Manufacturing”). Knight Manufacturing was founded in 2012 by the other individual defendant, Alexander Knecht. Knight Manufacturing is another of the manufacturers of metal sleeves worldwide.

[4] Shaver-Kudell commenced this proceeding in 2013. In the proceeding, Shaver-Kudell alleged that,

- the tooling and manufacturing process it uses to manufacture metal sleeves involves trade secrets;
- the defendants committed a breach of confidence and misappropriated Shaver-Kudell’s trade secrets regarding that process; and
- Lucy committed a breach of confidence, or a breach of her duty of good faith, by using her knowledge of Shaver-Kudell’s customer list, shortly after leaving the employ of Shaver-Kudell, for the purpose of soliciting customers for Knight Manufacturing.¹

[5] After a multi-week trial in 2018, solely on the issue of liability, R. Smith J. found in favour of Shaver-Kudell on each of those three issues: *Trial Decision*, at paras. 65, 86, and 102. Also in 2018, R. Smith J. found the defendants jointly and severally liable for Shaver-Kudell’s costs of the liability trial.² The defendants were ordered to pay Shaver-Kudell costs in the amount of \$390,521, plus interest at the rate of three percent per year.

[6] As of late 2018, the issue of the damages to which Shaver-Kudell was entitled had not been adjudicated. By 2023, the parties had agreed that the assessment of Shaver-Kudell’s damages would be determined by a motion for summary judgment.³

[7] In July 2023, Shaver-Kudell and Lucy entered into minutes of settlement, pursuant to which the former’s claims for damages against the latter were resolved in their entirety.⁴

¹ *Shaver-Kudell Manufacturing Inc. v. Knight Manufacturing Inc., et al.*, 2018 ONSC 5206 (“*Trial Decision*”), at para. 5.

² *Shaver-Kudell Manufacturing Inc. v. Knight Manufacturing Inc.*, 2018 ONSC 6895.

³ *Shaver-Kudell Manufacturing Inc. v. Knight Manufacturing Inc. et al.*, (March 15, 2024), Court File 13-57031 (Ont. S.C.) (“*Endorsement*”), at para. 7.

⁴ *Endorsement*, at para. 14.

[8] The terms of the settlement require Lucy to transfer to Shaver-Kudell, ownership of her residential property, located at 6050 Spring Creek Road in Summerstown, Ontario (“the Property”).⁵ The terms of the settlement include that Lucy was to complete the transfer of the Property by October 6, 2023.⁶

[9] Lucy failed to complete the transfer of the Property by the October 6, 2023 deadline. Shaver-Kudell brought a motion, pursuant to r. 49.09(a) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, to enforce the terms of the settlement. That motion was heard by McVey J. in March 2024; McVey J. granted the relief requested by Shaver-Kudell.

[10] At para. 39 of the *Endorsement*, McVey J. made the following order:

- The minutes of settlement entered into by Shaver-Kudell and Lucy in 2023 shall be enforced;
- Lucy shall, no later than 45 days following the date of the release of the *Endorsement*, transfer ownership of the Property to Shaver-Kudell; and
- If Lucy fails to transfer the Property to Shaver-Kudell within the stipulated period, Shaver-Kudell may bring the matter before Justice McVey to request a vesting order.

[11] Lucy did not transfer the Property to Shaver-Kudell within the stipulated period. Shaver-Kudell’s motion for a vesting order is scheduled to proceed before McVey J. on December 16, 2024.

[12] The parties were before me on August 6, 2024, on the return of a motion brought by Lucy. The documents filed on the motion are (1) a “notice of motion to request release from transfer of property from Lucy Shaver to Shaver-Kudell Mfg Inc”, (2) a confirmation of motion prepared by Lucy, and (3) a factum on behalf of Shaver-Kudell. Lucy did not deliver a supporting affidavit or a motion record.

[13] At the outset of the hearing, Lucy requested an adjournment of the motion. The adjournment was not granted. Brief oral reasons were given, with written reasons to follow. This endorsement includes the court’s (a) written reasons for refusing the adjournment request, and (b) reasons on the substantive aspects of Lucy’s motion.

⁵ *Endorsement*, at para. 14.

⁶ *Endorsement*, at para. 15.

The Request for an Adjournment of the Motion

[14] The notice of motion is dated April 29, 2024. The documentary evidence upon which Lucy therein says that she intends to rely is limited to the following three documents, each of which is described as an “Exhibit”:

- A request (correspondence with Shaver-Kudell’s counsel) that Shaver-Kudell accept payment in lieu of a transfer of the Property;
- A real estate agent’s appraisal of the market value of the Property; and
- Communication from Shaver-Kudell’s counsel, informing Lucy that Shaver-Kudell will not accept a monetary payment in lieu of a transfer of the Property.

[15] The Shaver-Kudell factum is dated June 4, 2024 and was served on Lucy on that date.

[16] In her confirmation form, dated July 30, 2024, Lucy states that the motion will proceed for a hearing of her request for release from the transfer of the Property. Lucy identifies that the presiding judge on the motion will be referred to three documents. The documents are those listed in the notice of motion and described in para. 14, above.

[17] At the outset of the hearing on August 6, 2024, Lucy requests an adjournment of her motion. In support of that request she submits that she requires time to carry out “additional preparation” and because of “unforeseen circumstances”. Lucy informs the court that the “unforeseen circumstances” are restricted to her wish to prepare and deliver an affidavit in support of her motion. The preparation of an affidavit is the “additional preparation” she wishes to carry out.

[18] Lucy acknowledges that she prepared an affidavit in response to the Shaver-Kudell motion heard by McVey J. in early 2024 (i.e., the motion to enforce the terms of the settlement). Lucy submits that is the only occasion, through the more than ten years of litigation, for which she was required to prepare an affidavit. She does not understand “when or where” she is required to rely on affidavit evidence.

[19] Lucy has been involved in this litigation for at least ten years. By the spring of 2024, when she was preparing her materials for her motion, she had seen at least one moving party motion record—the Shaver-Kudell motion record for the motion to enforce the terms of the settlement. That motion record provided Lucy with an example of the materials required for a moving party’s record. In addition, as of the spring of 2024, Lucy knew that the way to respond to a motion record was by delivering affidavit evidence.

[20] Guidance regarding the participation of self-represented individuals in the litigation process is available from the Canadian Judicial Council adopted the “Statement of Principles on Self-represented Litigants and Accused Persons” (“the Statement”). That document was adopted by the Canadian Judicial Council in 2006. The Preamble to the Statement includes the following passage: “**Therefore**, judges, court administrators, members of the Bar, legal aid organizations, and government funding agencies each have responsibility to ensure that self-represented persons are provided with fair access to and equal treatment by the court” (emphasis in original).

[21] Section A of the Statement addresses the promotion of the rights of self-represented litigants to access to justice. The following principle is set out in Section A: “Judges, the courts and other participants in the justice system have a responsibility to promote opportunities for all persons to understand and meaningfully present their case, regardless of representation”.

[22] Section C of the Statement summarizes the “Responsibilities of the Participants in the Justice System”. The governing principle set out therein is, “All participants are accountable for understanding and fulfilling their roles in achieving the goals of equal access to justice, including procedural fairness.” Section C provides guidance for judges, court administrators, members of the bar, and self-represented litigants.

[23] Section C of the Statement sets out three specific expectations of self-represented persons:

1. Self-represented persons are expected to familiarize themselves with the relevant legal practices and procedures pertaining to their case.
2. Self-represented persons are expected to prepare their own case.
3. Self-represented persons are required to be respectful of the court process and the officials within it. Vexatious litigants will not be permitted to abuse the process.

[24] The fact that Lucy is a self-represented litigant does not give her *carte blanche* to ignore the *Rules of Civil Procedure* or the rules of evidence and expect that she will be given indulgences from the court. As noted by the Court of Appeal for Ontario, at para. 142 of the decision in *Beazley v. Johnston*, 2024 ONCA 430, a party’s status as a self-represented litigant “does not permit the court to overlook the deficiencies in [their] case.”

[25] Lucy had ample time, from the spring of 2024, when she served her notice of motion, and prior to the return of her motion, within which to take the steps necessary to understand what was required of her in terms of materials on her motion and to ensure that the requisite materials were before the court. In all of the circumstances, she was not entitled to an indulgence from the court in the form of an adjournment of her motion.

[26] I turn to the substance of the motion.

The Property Must be Transferred

[27] Lucy did not file an affidavit in support of her motion. Shaver-Kudell did not respond with any affidavit evidence. Shaver-Kudell chose to rely on a factum. Lucy’s motion is dismissed because of the lack of any evidence to support Lucy’s entitlement to the relief requested.

[28] In any event, there is no legal basis for the relief Lucy seeks on the motion. In several paragraphs in the *Endorsement*, McVey J. addresses the conduct of Shaver-Kudell’s counsel in his dealings with Lucy when negotiating the terms of the minutes of settlement. For example, McVey J. speaks of the “clear terms” in which Shaver-Kudell’s counsel explained to Lucy that if she entered into the minutes of settlement, she would not be entitled to keep the Property.⁷ As another example, McVey J. describes counsel’s tone, when initially communicating with Lucy, as “respectful, factual, and non-threatening”.⁸ Summarizing counsel’s communication style, McVey J. says that counsel “consistently addressed [Lucy] with respect and patience.”⁹

[29] The Statement stipulates that members of the bar are “expected to be respectful of self-represented persons and to adjust their behaviour accordingly when dealing with self-represented persons”. Members of the bar are to avoid using complex legal language in their communication with self-represented persons. From the *Endorsement*, it is clear that Shaver-Kudell’s counsel met the standard expected of a member of the bar when dealing with a self-represented litigant.

[30] If Lucy was unhappy with the outcome of the motion before McVey J., then it was open to Lucy to appeal the decision on that motion. Lucy chose not to do so. It is not open to Lucy to address her decision not to appeal that decision by bringing the motion now before the court.

[31] Shaver-Kudell has been in litigation for more than a decade. It is entitled to see an end to its claims against Lucy. Shaver-Kudell chose to settle its claims against Lucy rather than pursue those claims to summary judgment. There is no basis upon which to interfere with Shaver-Kudell’s rights, as determined by McVey J. earlier in 2024, to pursue a vesting order regarding the Property.

Disposition

[32] Lucy’s motion is dismissed.

⁷ *Endorsement*, at para. 11.

⁸ *Endorsement*, at para. 29.

⁹ *Endorsement*, at para. 31.

[33] Lucy's motion was poorly-prepared, ill-conceived, and entirely unsuccessful. Shaver-Kudell is entitled to its costs of the motion, on the partial indemnity scale (as per Shaver-Kudell's request).

[34] Shaver-Kudell is content to have its costs of this motion determined at this time or in the context of the motion for a vesting order.

[35] The costs outline filed on the return of the motion includes contradictory information as to the fees claimed. On the first page of the document, the partial indemnity fees claimed are listed as \$3,915. Yet, on the second page of the document, the partial indemnity fees identified for the motion are \$661.50.

[36] Rather than require Shaver-Kudell to deliver a further costs outline for the purpose of this motion, the task of fixing the quantum of the partial indemnity costs to which Shaver-Kudell is entitled for this motion is reserved to McVey J. following the hearing related to the vesting order. In my view, that is a cost-efficient approach to the issue of the costs to which Shaver-Kudell is entitled on this motion.

[37] In the event the motion for a vesting order does not proceed, Shaver-Kudell shall deliver a revised costs outline, clarifying the amount of costs, on the partial indemnity scale, it is seeking. That revised costs outline shall be served on Lucy, filed with the court (together with an affidavit of service) in the usual manner, and identified as intended for my attention. I shall then fix the quantum of costs on the partial indemnity scale to which Shaver-Kudell is entitled from Lucy for this motion.

[38] I dispense with the requirement for Shaver-Kudell to obtain Lucy's approval, as to the form and content of the draft order submitted to the court for signature regarding the dismissal of Lucy's motion.

Date: November 1, 2024

Madam Justice S. Corthorn

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Defendants

ENDORSEMENT

Madam Justice Sylvia Corthorn

Released: November 1, 2024