

COURT OF APPEAL FOR ONTARIO

CITATION: Keparutis v. Canamould Extrusions Inc., 2012 ONCA 844

DATE: 20121130

DOCKET: C55387

Laskin, MacPherson and Gillese JJ.A.

BETWEEN

Kestutis Keparutis

Plaintiff (Respondent)

and

Canamould Extrusions Inc., 888804 Ontario Limited, Amadri Cutting Inc., Amadri
Machining Inc. and Ned Santarossa

Defendants (Appellants)

Michael Reid, for the appellants

Marc Munro, for the respondent

Heard and released orally: November 28, 2012

On appeal from the judgment of Justice James A. Ramsay of the Superior Court
of Justice, dated March 21, 2012.

ENDORSEMENT

[1] The appellants, Canamould Extrusions Inc. (“Canamould”) and related
companies and Nedo Santarossa, appeal from the judgment of Ramsay J. of the
Superior Court of Justice dated March 21, 2012. In that judgment, the motion
judge dismissed the appellants’ request for an adjournment of the motion

hearing, granted the appellants' request to amend some of the paragraphs in its Statement of Defence, refused the appellants' request to amend other paragraphs in the same document, and awarded the respondent costs of \$5,000. The appellants appeal the components of this judgment relating to the motion judge's refusal to grant an adjournment and his refusal to allow amendments to some paragraphs in the Statement of Defence.

[2] Canamould is in the business of manufacturing and selling decorative foam moulding pieces for buildings. Between April 2004 and February 2007, Mr. Keparutis performed services for Canamould with respect to fireplace moulding pieces only. There is an agreement in writing for the services provided by Mr. Keparutis for the first two weeks of this period, but no written agreement for the rest of the term.

[3] The services provided by Mr. Keparutis included designing moulds, creating a sculptured three-dimensional casting mould that could be used as the template for the decorative moulding pieces manufactured by Canamould, and advising Canamould's employees regarding the pouring of foam material into the template that he had sculpted.

[4] Mr. Keparutis invoiced Canamould daily for the services he provided after the initial two week period. The majority of the invoices were for \$300 per day.

[5] In February 2007, Canamould informed Mr. Keparutis that his services were no longer required. He commenced an action seeking damages for breach of contract and breach of copyright.

[6] After pleadings and discoveries, after consenting to the action being set down for trial, and indeed on the eve of trial, the defendants sought to amend their Statement of Defence. The motion judge allowed some amendments and refused others. Specifically, he denied leave to plead, *inter alia*, that Mr. Keparutis was an employee of Canamould rather than an independent contractor and that there was a licence permitting Canamould to use Mr. Keparutis' design and template. The appellants appeal these components of the motion judge's order.

(a) The Request for an Adjournment

[7] The appellants contend that the motion judge erred by not granting their request for an adjournment of the motion hearing to cross-examine Mr. Keparutis on his affidavit and to file reply materials.

[8] The granting of an adjournment is a discretionary matter. The motion judge gave reasons for refusing the adjournment. We see nothing in those reasons that would call into question the motion judge's exercise of discretion on this issue.

(b) The Proposed Amendments to the Statement of Defence

[9] The appellants submit that the motion judge erred by not permitting them to amend their pleadings to plead that the respondent was an employee of Canamould, not an independent contractor.

[10] We disagree. In his Statement of Claim, the respondent said that he performed “sculpting and consulting services”. In their Statement of Defence, the appellants accepted this description. Throughout the relationship, the respondent sent invoices to Canamould and remitted GST. We agree with the motion judge that the appellants’ proposed pleading on this issue “does not meet the test for withdrawal of an admission.”

[11] The appellants contend that the motion judge erred by not permitting them to amend their pleadings to include a counterclaim for damages.

[12] We agree with the motion judge that this claim was statute barred by the relevant limitation period and that, in any event, set-off is the appropriate way to deal with potential successful claims by both sides.

[13] Finally, the appellants submit that the motion judge erred by not permitting them to plead that the respondent had assigned his copyright in his mould design to them.

[14] We disagree. The bald pleading on this issue, with no description of any documentation or conduct giving rise to the claim, and on the eve of trial, was properly rejected by the motion judge.

[15] The appeal is dismissed. The respondent is entitled to his costs fixed at the agreed upon amount of \$14,000, inclusive of disbursements and applicable taxes.

“John Laskin J.A.
“J.C. MacPherson J.A.”
“E.E. Gillese J.A.”