

Case Name:

Woodley v. Edwards

Between

Bruce Woodley and Jeanette Woodley, plaintiffs, and
Ken Edwards, Karen Edwards, Diversified Building Services
Inc., Diversified Rental Services Inc., Diversified
Specialty Services Inc. and Diversified Display Services
Inc., defendants

[2002] O.J. No. 5085

Court File No. 99-CV-162552

Ontario Superior Court of Justice
Ewaschuk J.

Heard: September 30-November 6, 2002.

Judgment: December 11, 2002.

(52 paras.)

Company law — Actions against corporations and directors — Action for oppressive conduct — When available (incl. time for) — Oppression, prejudice or disregard of interests — Order for compensation.

This was an application by Woodley for an order to rectify oppressive conduct by Edwards. The parties started a window cleaning business together in 1977 called Diversified Building. The business expanded. Diversified Rental was incorporated to include rental of tables, skirting for sidewalk sales and the installation of Christmas decorations at malls. Woodley and Edwards were equal shareholders in Diversified Building and Rental. Edwards formed two new companies, Diversified Display and Diversified Specialty, with Sebanek to manufacture and install Christmas decorations for the Eaton Centre. This job was already done by Diversified Rental. Edwards eventually told Woodley about the two new companies, but did not explain the full ramifications of the company or the magnitude of the project with the Eaton Centre. Woodley wished to terminate his relationship with Edwards and rejected offers to become involved in the new companies. Both parties thought they had reached an agreement to sever their relationship as of October 31, 1995, but each had a different idea of what the basic terms of the agreement were. As a result of the purported agreement, Woodley assumed all of the Diversified Building accounts and Edwards assumed all of the Diversified Display and Diversified Specialty accounts. Woodley argued that Edwards misappropriated business opportunities that belonged to Diversified Building and Rental and breached his fiduciary duty to those existing companies by diverting those opportunities to the newly created companies.

HELD: Application allowed. Woodley was entitled to one-half the profits generated by Diversified Display and Specialty until October 31, 1995 when they parties ceased to be partners. He was entitled to be the sole shareholder in Diversified Building and Edwards the sole shareholder in Diversified Rental. Diversified Building or Rental could have done the installation of Christmas decorations at the Eaton Centre. By not offering the increased installation business to Diversified Building or Rental, Edwards breached his fiduciary duty to his companies. Edwards did not make full fair and frank disclosure of the extent of the business opportunities to Woodley.

Statutes, Regulations and Rules Cited:

Business Corporations Act, R.S.O. 1990, c. O-5, s. 248, 248(1).

Fraudulent Conveyances Act, R.S.O. 2000, c. F. 29, ss. 2, 3.

Counsel:

James F. Diamond and Messod Boussidan, for the plaintiffs.

Benjamin Salsberg, for the defendants, Ken Edwards, Diversified Building Services Inc., Diversified Rental Services Inc., Diversified Specialty Services Inc., and Diversified Display Services Inc.

Ernst Ashurov, for the defendant, Karen Edwards.

1 **EWASCHUK J.**— This lawsuit concerns the break up of the business relationship between two antagonistic brothers-in-law and involves their financial greed, particularly on the part of the principal defendant, Ken Edwards, the more astute and duplicitous of the brothers-in-law. The plaintiff Bruce Woodley, the other brother-in-law, was an equal principal shareholder with Ken Edwards in two private companies, known as Diversified Building and Diversified Rental.

2 The brothers-in-law started a window cleaning business in 1977. The business, which soon became Diversified Building, used booms and other techniques to clean high-rise apartments and commercial buildings. The business expanded to the staging of fashion shows at malls and later to the rental of tables and skirting for sidewalk sales at malls. It was necessary to incorporate Diversified Rental in 1980 to handle the rental aspect of the business as well as to do the installation of Christmas decorations at the malls.

3 In addition to the Diversified companies, the brothers-in-law also indulged in the purchase of real property on a private basis, although they used Diversified funds to make the mortgage payments on those properties.

4 The Defendant Ken Edwards eventually tired of the window cleaning and related businesses and wanted to expand his commercial horizons. In 1994, the Eaton Centre approached him in his capacity as manager of Diversified Rental and offered him an opportunity to be involved in the manufacture of Christmas decorations for the Centre. Eventually, Mr. Edwards approached Vladimir Sebanek with an offer to the latter to be involved with Mr. Edwards in the manufacture of Christmas decorations. Mr. Sebanek agreed and Mr. Edwards then formed two new companies, Diversified Display and

Diversified Specialty. Mr. Edwards incorporated the former for the manufacture of Christmas decorations and the latter for the installation of Christmas decorations, a job already done by Diversified Rental, of which Mr. Woodley was an equal principal shareholder with Mr. Edwards.

5 By 1994, the plaintiff Bruce Woodley had become depressed by, amongst other causes, the antics of his more aggressive and more ambitious partner, Mr. Edwards. Mr. Woodley desperately wanted out of their relationship, which had driven the more timid and more anxious Mr. Woodley to come under the professional care of a psychiatrist.

6 Mr. Edwards eventually told Mr. Woodley about Diversified Display and Diversified Specialty. However, Mr. Edwards did not tell his equal partner of the full ramifications of the proposed companies and, in particular, he did not tell him about the Eaton Centre project and its magnitude. Mr. Edwards made his partner various offers to join the proposed companies and Mr. Woodley rejected these offers.

7 Mr. Woodley had previously seen a lawyer for professional advice but eventually tried to negotiate with his shrewder partner in an attempt to reach an agreement as to the termination of their relationship.

8 This lawsuit deals with the principal questions of whether an agreement to separate the business association of the brothers-in-law was ever reached and whether Mr. Edwards' conduct toward Mr. Woodley was oppressive within the meaning of s. 248(1) of the Ontario Business Corporations Act, R.S.O 1990, c. 0-5.

JUNE 23, 1995 PROPOSAL

9 By June of 1995, Mr. Woodley had unsuccessfully approached Mr. Edwards several times with a view to reaching an agreement to separate their business affairs. On June 23, 1995, Mr. Woodley submitted another proposal, albeit badly drafted. Mr. Edwards purported to accept the draft but added three pages of financial terms as part of his counter-offer. Mr. Woodley accepted the changes to the first two pages of his proposal, but did not accept the added terms on the additional three pages authored by Mr. Edwards.

10 Both Mr. Woodley and Mr. Edwards testified that they had reached an agreement. In fact, no agreement was ever reached inasmuch as each partner's version of the agreement differed on fundamental terms. They were never ad idem. However, they did agree on one fundamental term, namely that two-thirds of Diversified Building would go to Mr. Woodley and that Mr. Edwards would have all of Diversified Rental.

11 As well, the partners also agreed that the proposed agreement was to close on Oct. 31, 1995. Both assumed that they had reached an agreement, though each had a different idea of what the basic terms of the agreement were. After the proposed closing date, Mr. Woodley assumed all of the Diversified Building accounts and Mr. Edwards assumed all of the Diversified Rental accounts and all of the Diversified Display and Diversified Specialty accounts. Litigation soon ensued, including various motions as well as this subsequent trial.

CORPORATE OPPRESSION

12 Section 248 of the Ontario Business Corporations Act, *supra*, provides that a complainant may apply for an order to rectify oppressive conduct by a director. The plaintiff Bruce Woodley is both a shareholder and director of Diversified Building and Diversified Rental and thus has standing to apply for an order against the defendant Ken Edwards, who is also a director of the two companies.

13 The conduct complained of must be "oppressive or unfairly prejudicial or unfairly disregard" the interests of the complainant or some other person. Generally, bad faith or lack of probity in the impugned conduct proves "oppression", though neither is necessary to establish it. See *Brant Investments Ltd. v. KeepRite Inc.* (1991), 3 O.R. (3d) 289 (C.A.).

14 In deciding whether there was oppression, the court must consider the reasonable expectations of the complainant and whether the complainant could have reasonably protected himself from the defendant's conduct. See *Sidaplex-Plastic Suppliers, Inc. v. Elat Group Inc.*, [1995] O.J. No. 4048 (Gen. Div.).

15 The plaintiff Bruce Woodley complains that the defendant Ken Edwards acted against the best interests of the old companies Diversified Building and Diversified Rental and also Mr. Woodley by Mr. Edwards' incorporation of the new companies Diversified Display and Diversified Specialty to do related work to the financial detriment of the old companies. More specifically, the plaintiff Woodley complains that the defendant Edwards misappropriated business opportunities that belonged to Diversified Building and Diversified Rental and breached his fiduciary duty to those existing companies by diverting those opportunities to the newly created companies, Diversified Display and Diversified Specialty, of which Woodley was never a shareholder or director.

16 It is patent from the evidence that Mr. Edwards acquired the opportunity to enter into a contract to manufacture Christmas decorations for the Eaton Centre by reason of his position as director of Diversified Building and Diversified Rental. Vivienne McCuaig, the marketing director at the relevant time of the Eaton Centre, testified that she had dealt with Ken Edwards in respect of the installation of Christmas decorations and that she was pleased with his company's work. She did not know Vladimir Sebanek.

17 It is undisputed that Diversified Building or Diversified Rental could have done the installation of Christmas decorations expected to be generated by Diversified Display and inherited from the defunct Futurama company from which Mr. Sebanek had departed in dispute with his step-mother. By not offering the increased installation business to Diversified Building or Diversified Rental, Mr. Edwards breached his fiduciary duty to his companies.

18 A related issue arises with respect to the manufacturing business. The issue is whether manufacturing of Christmas decorations was sufficiently related to the installation of Christmas decorations so that Mr. Edwards also breached his fiduciary duty to Diversified Building and to Diversified Rental by not offering to them the Eaton Centre and other manufacturing business.

19 I am satisfied that the business of manufacturing Christmas decorations is

sufficiently related in kind to the installation of Christmas decorations that the director Edwards breached his fiduciary duty to Diversified Building and Diversified Rental by not offering them the Eaton Centre and other manufacturing business. See *Canadian Aero Service Ltd. v. O'Malley* (1973), 40 D.L.R. (3d) 371 (S.C.C.). In this case, Mr. Sebanek was out-of-work and desperately needed a job. He was financially vulnerable and most likely would have accepted employment with Diversified Building or Diversified Rental in a supervisory capacity to manufacture Christmas decorations.

20 However, the defendant Ken Edwards contends that he fulfilled his fiduciary duties to Diversified Building and Diversified Rental by making disclosure of the new business opportunities to his co-director and shareholder Bruce Woodley. Mr. Edwards relies on *Peso Silver Mines (P.N.I.) v. Cropper* (1966), 58 D.L.R. (2d) 1 (S.C.C.), as authority for the legal proposition that a director does not breach a fiduciary duty to a company where he exploits a business opportunity that the company has expressly rejected.

21 The defendant's submission as to the state of the law is correct. However, the defendant did not make full, fair and frank disclosure of the extent of the business opportunities to Mr. Woodley. He never told Mr. Woodley about the Eaton Centre contract and the substantial sum of money to be gained from that contract alone. Furthermore, Mr. Edwards did not offer Mr. Woodley an equal partnership in Diversified Specialty inasmuch as Mr. Edwards proposed that he would retain a veto so that he would have full control over the company's affairs. As well, Mr. Edwards only offered Mr. Woodley 15% of the shares in Diversified Display. Those offers were unreasonable and did not justify Mr. Edwards' failure of his duties to Diversified Building and Diversified Rental to have offered them the manufacturing business and the installation business relating to Christmas decorations. Thus, Mr. Woodley is entitled to a remedy to rectify Mr. Edwards' oppressive conduct.

SIDEWALK SALES

22 Mr. Woodley and Mr. Edwards acted criminally in pocketing cash sales of various rental items, particularly from the rental of tables and skirting for sidewalk sales, at various malls. Approximately 90% of the customers paid cash for the rentals and the two partners would divide the cash equally and not declare it to Revenue Canada as corporate or personal income.

23 Mr. Woodley testified that he stopped taking his share of the illicit moneys as of 1991. On the other hand, Mr. Edwards and Ms. Edwards both testified that Mr. Woodley always took his share until he departed as of Oct. 31, 1995. I reject their testimony and accept that of Mr. Woodley on this matter with qualification. Various witnesses testified that Mr. Woodley did take a share of cash proceeds after 1991. While I do not accept all of that evidence, I do find that Mr. Woodley did take his illicit share on the odd occasion after 1991, although I keep in mind that Mr. Edwards was a major cause of Mr. Woodley's depression and that the latter attempted to stay away from Mr. Edwards and the office after 1991. I accept Mr. Woodley's claim to one-half of the moneys, which I fix at \$136,850 but would reduce that amount by 15% for sums accepted occasionally during that period. With the reduction, this amounts to \$116,322. I am also satisfied that no further reduction is necessary for operating expenses inasmuch as employee salaries and

vehicular costs have already been deducted by Diversified Rental. In the end, the plaintiff Bruce Woodley is entitled to \$116,322 in respect of sidewalk sales.

24 I have kept in mind the principle of *ex turpi causa* but have decided to exercise my discretion to prevent the worst of the two offenders, the defendant Ken Edwards, from profiting from his criminal wrongdoing, which continued long after as his partner, the plaintiff Bruce Woodley, had ceased to participate in that misconduct. I also keep in mind that Mr. Woodley made a voluntary disclosure of his wrongdoing to Revenue Canada, whereas Mr. Edwards never has.

ALLEGED FRAUDULENT CONVEYANCES

25 There are three alleged fraudulent conveyances, either of real or personal property, including money, in this case. One conveyance involves Mr. and Mrs. Woodley and the other two involve Ken Edwards and his former wife, the defendant Karen Edwards.

26 Section 2 of the Fraudulent Conveyances Act, R.S.O. 2000, c. F.29 essentially provides that "Every conveyance of property ... made with `intent to defeat, hinder, delay or defraud creditors' is void as against such persons and their assigns."

27 Section 3 provides that the transfer is not void if the property is "conveyed upon good consideration and in good faith to a person not having at the time notice or knowledge" of the fraudulent intent of the transferor.

28 The burden lies on the party alleging the fraudulent intent to prove it and that intent may be inferred from the surrounding circumstances, particularly the presence of so-called "badges of fraud." See *Twyne's Case* (1601), 3 Co. Rep. 80. Where the transferee of the property gives good consideration, the transfer is void only if the transferee, as well as the transferor, had the intent (or knowledge of the other's intent) to defraud either general or specific creditors. In other words, both parties to the conveyance must have the fraudulent intent or, at least, one must have the intent and the other knowledge of the fraudulent intent of the other party. Where the transferee of the property does not give good consideration, the transfer is void if the transferor alone had the intent to defraud either general or specific creditors, even though the transferee did not have that intent or knowledge of the transferor's intent.

(i) Woodley Transfer

29 On March 13, 1996, the plaintiff Jeanette Woodley took title in a matrimonial home in her sole name. The proceeds for the purchase of the matrimonial home came from the sale of a previous matrimonial home held in joint tenancy with her husband. Having sold their prior home on January 4, 1996, the Woodleys purchased the new home for a lower price on January 11, 1996. The agreement of purchase and sale of the new matrimonial home indicated that Mrs. Woodley was the sole purchaser.

30 Later, on February 8, 1996, Mr. Woodley was notified by Royal Trust, his creditor, that he and Mr. Edwards owed it \$245,758 in respect of their joint personal mortgage on rental property in Ayr, Ontario, and that, if the money was not paid within 10 days, legal proceedings would be commenced against them. Mr. Edwards had falsely led Mr. Woodley to believe that he had taken care of the outstanding debt.

31 On March 29, 1996, Mr. Woodley directed his solicitor to pay the net proceeds of the purchase and sale of the two homes to Mrs. Woodley. It is this direction that resulted in her receiving a further \$38,330 in cash, which represented Mr. Woodley's share of the surplus from the sale of the former matrimonial home.

32 As for the purchase of the new matrimonial home, I am satisfied that Mr. Woodley decided, with his wife's concurrence, that title should be taken in her name only in order to shelter himself from future creditors. On January 11, 1996, the date of the purchase, Mr. Woodley had no knowledge that Mr. Edwards had not fulfilled their mortgage obligations in respect of the Ayr property. That is the relevant date for the determination of Mr. Woodley's intent, or lack thereof, to defraud creditors. It is not fraudulent for a businessman to dispose of his property so as to prevent future creditors from reaching that property so long as the transferor does not intend to defraud his general or specific creditors at the time of the disposition of the property. See *Genereux v. Carlstrom*, [2002] O.J. No. 1841 (S.C.J.).

33 However, by March 29, 1996, Mr. Woodley had knowledge of his liability in respect of a large amount of money owing to Royal Trust. On that date, he transferred his half-interest in the surplus balance of the proceeds of the sale of the prior matrimonial home to his wife. I find that, on that day, he had the intent to defraud Royal Trust of his debt to it. At that time, Mrs. Woodley gave no consideration for Mr. Woodley's half-interest in the surplus from the purchase and sale of the matrimonial homes. Thus, that part of the transfer was fraudulent and void and, therefore, Mrs. Woodley owes Mr. Woodley \$38,330, which is available for set-off inasmuch as she is also a party to this lawsuit.

34 The tale does not end there. Royal Trust obtained judgment against Messrs. Woodley and Edwards, but Mr. Edwards alone paid off the debt to Royal Trust by later buying its judgment against him and his partner. Mr. Edwards bought the judgment through the vehicle of another private company, Newtec Print & Copy Inc. That company now sues Mr. Woodley for the full amount of judgment. I note that Mr. Edwards is described as a party to the assignment even though he is not referred to as the assignee in the document.

35 Newtec Print & Copy Inc. is entitled to judgment against Mr. Woodley. However, it is patent from the terms of the assignment, itself, that one of Mr. Edwards' primary purposes in buying the judgment was to gain a legal advantage against Mr. Woodley. By August 23, 1999, when Newtec Print & Copy bought the judgment, the Woodleys and the Edwards were in litigation and it was obvious that the Edwards would owe the Woodleys a considerable sum of money as a result of the litigation. Mr. Edwards thus devised the stratagem of buying the judgment through the company so as to prevent the set-off of the amount owing by Mr. Woodley on the judgment as against the amount the Edwards would owe the Woodleys. Newtec Print & Copy Inc. had no legitimate business purpose of its own in buying the judgment. That stratagem constitutes a sham and is too clever by a half. I find that Newtec Print & Copy acted as agent for its principal shareholder in buying the judgment to stave off execution against him in his personal capacity. It holds the judgment in trust for Mr. Edwards personally. Alternatively, I would pierce the

corporate veil of Newtec Print & Copy and also find that it holds the judgment in trust for Mr. Edwards personally. See *Meditrust Healthcare Inc. v. Shoppers Drug Mart*, [2002] O.J. No. 3891 (C.A.), at para. 31.

(ii) Transfer of Ninth Line property to Ms. Edwards

36 On Dec. 9, 1988, Mr. Edwards and Ms. Edwards bought the Ninth Line property, primarily as their matrimonial home, as joint tenants in the amount of \$815,000. About one-third of the property was eventually used as a warehouse for Diversified Rental, though title was never put in its name. Even though Diversified Rental paid its share of the mortgage payments and even though Mr. Woodley had contributed \$175,000, one-half of the estimated value of the Diversified Rental share in the property, Mr. Edwards never did put title of that part of the property in the name of Diversified Rental or in the joint name of himself and his business partner. Of course, he could do neither without a severance of the property. Even though he had repeatedly promised his partner that he would obtain a severance, Mr. Edwards never even made an application for severance. It was yet another of his wily manoeuvres in putting off his more timid and naive partner.

37 After the purchase of the Ninth Line property, the Edwards encountered marital problems because of Mr. Edwards' numerous extra-marital affairs. By 1995, the Edwards had separated. It appears that in May of 1995, the Edwards concluded a handwritten separation agreement by which Ms. Edwards was to receive all of the Ninth Line property in exchange for foregoing any other matrimonial rights. I use the word "apparently" in light of the testimonial unreliability of these two litigants. Mr. Edwards' testimony is totally unreliable and Ms. Edwards' testimony is unreliable in critical parts. Of course, one-third of the Ninth Line was held in trust for Diversified Rental and it has never relinquished its equitable title to the property.

38 By 1998, Mr. Edwards had become delinquent in ensuring that the mortgage payments on the Ayr property were made. Part of that difficulty was due to the fact that Mr. Edwards had pocketed rental cheques for the property instead of depositing them in the Diversified Rental account so as to ensure that it had the funds to make the mortgage payments on behalf of the two partners. On February 8, 1996, both Mr. Woodley and Mr. Edwards were notified by Royal Trust, their creditor, that they owed it \$245,758 in respect of their joint personal mortgage on the Ayr property and that, if the money was not paid within 10 days, legal proceedings would be commenced against them.

39 Finally, on June 22, 1998, Mr. Edwards consented to judgment against him in favour of Royal Trust. On the very same day, he and Karen Edwards, as joint tenants, transferred the whole of the Ninth Line property to Ms. Edwards as sole owner. Mr. Edwards was in possession of the property and remains in possession of the property. It is undoubted that Mr. Edwards' purpose in transferring the property to Ms. Edwards alone was to defeat, hinder, delay or defraud Royal Trust. As for Ms. Edwards, assuming that she had given good consideration and that there was, in fact, a separation agreement, I nevertheless find that she did not act in good faith in conveying her joint interest in the property inasmuch as I find that she had knowledge that Mr. Edwards was acting fraudulently. Ironically, Ms. Edwards remains emotionally and financially dependent on Mr. Edwards notwithstanding their divorce and his philandering. By her complicity in his

fraud, Ms. Edwards also had the intent to defeat, hinder, delay or defraud Royal Trust. That conveyance is void for fraud on the part of the transferors and the transferee.

(iii) Transfer of Main St. Properties

40 During the trial, plaintiffs' counsel received a telephone call from "Deepthroat" about further frauds committed by Mr. and Ms. Edwards. Evidence was then called which established the frauds.

41 On September 1, 2000, Mr. Edwards bought two properties on Main Sts., one in Markham and the other in Stouffville. The combined purchase prices were \$770,000. Mr. Edwards convinced Ms. Edwards to become the principal shareholder in two numbered companies who assumed title to the properties. Ms. Edwards lives as a tenant in one of the properties.

42 The dutiful former spouse frankly conceded in court that she gave no consideration for the properties and that she holds the properties in trust for Mr. Edwards. As for the latter, it is again undoubted that his intent in using the corporate vehicle to assume title to the properties and in using Ms. Edwards as the principal shareholder in the numbered companies was to defeat, hinder, delay or defraud the Woodleys, his potential creditors. I declare that the numbered companies and Ms. Edwards hold the properties in trust for Mr. Edwards.

COUNTERCLAIM

43 The defendant Ken Edwards' counterclaim for specific performance of "his version" of the June 23, 1995 proposal is dismissed on the basis of my finding that the parties never did reach the "same agreement" in respect of their proposals but simply indulged in a series of offers and counter-offers none of which was ever agreed to by both parties. In effect, I find that the plaintiff Woodley was negotiating with himself and that the defendant Edwards had no intention of ever reaching an agreement with his depressed and vulnerable brother-in-law. Instead, Edwards continued to exploit his weaker partner.

PLAINTIFFS' RELIEF

(i) Oppression remedy

44 The plaintiff Bruce Woodley is entitled to an oppression remedy for the lost business opportunities to Diversified Building and Diversified Rental, which were improperly diverted to Diversified Display and Diversified Specialty. Thus, the plaintiff Woodley is entitled to one-half of the profits generated by the new companies from April 1, 1994 until October 31, 1995, when Woodley and Edwards ceased being partners.

45 In respect of Diversified Display, I find that the defendant Ken Edwards owes the plaintiff Woodley one-half of the net income of that company from April 1, 1994 to October 31, 1995, as reflected in Exhibits 5(A)(i) and (k). The amount therefore is \$248,870.

46 In respect of Diversified Specialty, I find that the defendant Ken Edwards owes the plaintiff Bruce Woodley one-half of the net income of that company for the same time period, as reflected in Exhibits 83(a) and (b). The amount therefore is \$9,845.

47 In arriving at both amounts, I have pro-rated them over the pertinent 19 month

period so as to avoid the effect of the patent manipulation of income and expenses by Ken Edwards and Dale Nagy, his latest accountant, much after-the-facts, in varying documents submitted to the court.

48 Finally, I would declare the plaintiff Bruce Woodley to be the sole shareholder in Diversified Building as of October 31, 1995. I would also declare the plaintiff Ken Edwards to be the sole shareholder in Diversified Rental as of October 31, 1995. I would further declare the plaintiff Bruce Woodley to have no ownership in the shares of Diversified Display and Diversified Specialty, even though he is entitled to damages against the defendant Ken Edwards for the latter's conduct in relation to those companies.

(ii) Misappropriated Moneys

49 The defendant Ken Edwards misappropriated moneys from Diversified Building and Diversified Rental and retained moneys owing to his partner for Edwards' own personal interest. Thus, the plaintiff Bruce Woodley is also entitled to the following amounts in respect of the following matters:

(a)	Uxbridge property	\$92,746
(b)	Ninth Line property	\$137,000
(c)	Miscellaneous claims on Schedule "A"	\$81,007
(d)	Sidewalk sales	\$116,322

(iii) Declarations

(a) I find that Karen Edwards holds one-half of the Ninth Line property in trust for Ken Edwards.

(b) I find that Karen Edwards holds the whole of the Main St. properties in trust for Ken Edwards.

NEWTEC'S RELIEF

50 The plaintiff Newtec Print & Copy Inc. is entitled to judgment against Bruce Woodley. However, the amount of the judgment must be set-off against the damages owed by the defendant Ken Edwards to the plaintiff Bruce Woodley.

KEN EDWARDS' RELIEF AGAINST MRS. WOODLEY

51 Mrs. Woodley owes her husband Bruce Woodley \$38,300. I find that this amount of money is available for set-off in respect of the amounts owed between Bruce Woodley and Ken Edwards.

PUNITIVE DAMAGES

52 The plaintiffs move for punitive damages on the grounds of Ken Edwards' criminal

conduct and his contemptuous attitude in wilfully refusing to produce documents. No doubt the defendant Ken Edwards' conduct was high-handed and outrageous. However, inasmuch as the plaintiff Bruce Woodley also indulged in criminal conduct, albeit to a far lesser extent, I decline to award the plaintiffs punitive damages, although Mr. Edwards' conduct and attitude will be taken into account in the assessment of costs.

EWASCHUK J.

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