

# COUNSEL SLIP

COURT FILE

NO.: CV-19-615977-00CL

DATE: February 24, 2020

NO. ON LIST 3

TITLE OF PROCEEDING

Kozlo, N. et al vs Lamb, J. et al

COUNSEL FOR:

- PLAINTIFF(S)  
 APPLICANT(S)  
 PETITIONER(S)

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JUDICIAL NOTES:

Unopposed.

Feb 24/20

This is an application wRT the sale of shares in Nexvs by "Fred" to "Lamb", longtime business partners. The Apps are the ETs of Fred, who is now deceased.

There are 2 preliminary procedural issues. First is the complete disregard by Lamb of this court's process, orders and the Rules. He did not attend for examination, produce documents, appoint new counsel or file a notice of intent, respond to Apps' counsel, file materials or attend today. The only step he has taken was to file an affidavit on Aug 15/19. Under the circumstances, I am striking his affidavit under Rules 34.15(1)(c), 15.04(9) and 60.12.

The second is the relief sought on an application - damages. I questioned counsel as to whether that can be done. He brought to my attention the case of DINK Properties Inc v 2296608 Ontario Inc, 2017 ONCA 961 in which the CA <sup>appeared to have</sup> upheld ~~had~~ no issue w/ an award of damages on an application, although it took issue with the assessed amount. In TMT Hygiene Service Corporation v Aces Capital 2018 ONSC 1572, Monahan I questioned the ~~was~~ ability of the court to award damages on an application and out of an abundance of caution directed the

that issue be dealt with as a trial of an issue. In this case, there are no material facts in dispute as the App is unopposed. I see no reason not to deal w/ damages as part of the App as the most practical procedure. However, if there is any question about this court's jurisdiction to do so, I am treating the App as having proceeded to a trial of an issue under rule 38.10(b) (which, <sup>trial</sup> of course, is unopposed).

With respect to the merits of the App/claim, the record is overwhelming that Lamb's conduct towards his former partner was unconscionable, amounted to undue influence, was deceitful & as well oppressive. Fred was induced to sign over his shares on the basis of misrepresentations as to the financial status of Nexus; Fred's potential exposure as a shareholder; and the terms of the sale to SSG. Fred was cognitively impaired when Lamb exerted pressure on him to sign over his shares on an urgent basis; without a chance to seek legal advice, and for no cash or other apparent consideration. Lamb called a sh meeting when Fred was on vacation unilaterally removed him as a director & reduced his salary, and his conduct in filing a proposal for Nexus in Dec 2017 then wiped all assets from Nexus' balance sheet.

The Apps are entitled to damages for Fred's deceit, oppressive & unconscionable conduct. I am awarding \$293,867.76, being 26.5% of the \$1,108,935 value of Nexus re its 2017 financials, being the best available information this court has, given Lamb's failure to attend examination. I award PJI of \$915.96 from Oct 18/17 to today. While I decline to award punitive damages, I am prepared to award substantial indemnity costs to the Apps. Lamb has put them to great expense; has thumbed his nose at the court's process; has required the Apps to try to chase him down; has failed to produce information to quantify damages; & has not participated in this process for the last 6 months altogether.

Judgment to go as signed by me.