STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OTTAWA

MATERIAL TECHNOLOGIES, INC.,
a Michigan Corporation

Plaintiff,

v File No. 02-43925 CK

JOHNSON CONTROLS INTERIORS, LLC,
a Michigan Limited Liability Company
and CONCEPT INDUSTRIES, INC., a
Michigan Corporation, jointly and severally,

Defendants.

DECISION OF THE COURT

BEFORE THE HONORABLE EDWARD R. POST - Circuit Court Judge - Ottawa County Building - 414 Washington Street - Grand Haven, Michigan 49417
May 10, 2006.

APPEARANCES: DOSS LAW OFFICE
BY: KENNETH W. DOSS P12905
On Behalf of Plaintiff;

THE MILLER LAW FIRM
BY: MARC L. NEWMAN P51393
On Behalf of Johnson Controls;

MILLER, JOHNSON, SNELL & CUMMISKEY, PLC
BY: DAVID J. GASS P34582
On Behalf of Concept Industries.

Reported by: Jill L. Jessup CSR 0242
414 Washington Street
Grand Haven, MI 49417
616 846-8317
May 10, 2006.

THE COURT: This is the opinion of the Court. I reserve the right to edit it as to both content and style, if transcription should become necessary. Materials Technology --by the way, I will refer to the Prince Corporation as JCI rather than to try to shift the nomenclature because of the sale. Materials Technology, Inc. and its principal Harry Rozek sued JCI and Concept Industries to recover damages for breach of a royalty contract. JCI and Concept filed a counterclaim against Rozek seeking damages on a variety of theories. This contentious lawsuit came to trial after an extended and difficult period of discovery sprinkled with volumes of dispositive and procedural motions. The yard-thick Court file is bulging with pleadings and exhibits.

At trial plaintiff presented among other witnesses two who were key. Harry Rozek and Pete Elafros. Testimony by Rozek showed that Harry Rozek was an experienced businessman with a particular experience in automotive fiber products. Rozek discovered a company in Italy that manufacturers machines for producing vertically-lapped fiber material for use in automobile interiors.

Rozek brought that technology to Pete Elafros, who at the time was an employee of JCI, and Elafros' superiors ordered him to investigate the technology and report hack. Elafros reported favorably on the technology and worked on a team that eventually approved moving forward with the VL product.

Originally, the parties contemplated that Rozek would manufacture the VL product and sell it to JCI. That idea morphed into a possible joint venture between JCI and Rozek. Eventually, JCI decided that it would manufacture the VL product in-house and pay Rozek a royalty.

Rozek and JCI signed a consulting agreement that contained embedded within the agreement a royalty agreement. And under the consulting agreements Rozek agreed to work with JCI to discover and develop fiber products for use in automotive applications.
In addition, JCI agreed to pay Rozek an annual consulting fee and a royalty on fiber products developed and improved by Rozek during the course of his consultation with JCI.

Elafros was materially involved in the acquisition of the VL technology by JCI as well as the development of the relationship between Rozek and JCI. Elafros was an important voice, but Elafros was not the sole decision maker at JCI as it relates to VL technology. Decisions were ultimately made by a substrate team and executed by purchasing.

In the summer of 1996 JCI began producing VL material. By November of 1996 JCI decided to farm out some of the VL production to an independent manufacturer, Concept Industries.

At the direction of JCI and with the assistance of Elafros, Rozek negotiated a separate royalty agreement with Concept. By May of 1997 JCI decided to transfer essentially all of the VL product manufacturing to Concept. And by the summer of 1998 JCI completed its transfer to almost all of the fiber product manufacturing to Concept.

Thereafter, Concept paid royalties to Rozek. Concept stopped making royalty payments in March of 2000 when it believed that Rozek had misrepresented the proprietary relationship of the VL process.

Elafros received his first payment from Rozek in 1996 while Elafros was an employee of JCI, and Elafros continued on Rozek's payroll until the fall of 2000.

These facts are uncontested. One, while Elafros was working for JCI Rozek paid him by check made out to Concept Consulting, an alter ego of Elafros.

Two, that Elafros separated from JCI in the fall of 1998, and Rozek paid Elafros by checks payable to TechLink, Inc., an entity wholly owned by Elafros.

Three, neither Elafros nor Rozek ever told anyone at JCI that Elafros was accepting payments from Rozek.

Four, neither Elafros nor Rozek have any of the following. A, work product produced by Elafros for Rozek. B, invoices from Elafros to Rozek. C, time records from Elafros to Rozek.

Number 5, Defendants' Exhibits 1 and 2 are the only records of charges made by Elafros to Rozek, and those were prepared contemporaneously.

Six, while Elafros was employed by JCI, Rozek paid Elafros a total of $73,304.24. Seven, after Elafros left JCI Rozek paid Elafros $208,173.62. Eight, that the total payments from Rozek to Elafros were $282,477.86.

The payment made to Elafros from Rozek for the period of August 1996 until November of 1999 totaled exactly 50 percent of the royalties received by Rozek under the royalty agreement with JCI and Concept.

Demonstrative Exhibits B1 and 120 show the history of charges and payments made by Rozek to Elafros--the charges by Elafros and the payments made by Rozek.

The plaintiff admits the accuracy of the information contained in those exhibits.

Perhaps the pivotal issue in this lawsuit is whether and to what extent Rozek claimed that VL technology was proprietary when he brought it to JCI. On that issue the testimony of Elafros is essential, because Elafros more than any other person was materially and continuously involved in the entire transaction between JCI and Rozek relating to VL technology.

Therefore, the exact nature of the business relationship between Elafros and Rozek is important, and the defendants and the Court are entitled to know the truth about that relationship.

Rozek testified under oath at his deposition and at trial. He also signed interrogatories and affidavits under oath. Rozek's trial and deposition testimony are as follows: One, Rozek hired Elafros to work part-time on weekends on projects related to JCI. Two, at trial Elafros testified that he paid Rozek an hourly rate of $75 per hour while Elafros was an employee of JCI and $150 an hour after Elafros left JCI. Rozek said that Elafros submitted oral invoices and that Rozek paid without further documentation. Rozek made payment when he had money available.

Three, Rozek testified unequivocally that payments to Elafros were unrelated to royalties received from JCI and Concept. And, four, Rozek could not offer --could offer no explanation for the fact that payments to Elafros totaled exactly 50 percent of the royalties received from JCI and Concept through November of 1999.

Here is the proposition that Rozek asked this Court to accept. That Rozek hired Elafros to work on projects unrelated to JCI over a three-year period, and that's the period I am focusing on, while Elafros was an employee of JCI, and agreed to pay Elafros on an hourly rate plus expenses. That Elafros periodically billed Rozek for hours worked and expenses incurred. That the periodic billings by Elafros equaled exactly 50 percent of the amount received in each royalty check or series of checks received by Rozek from JCI or Concept. After three years of this arrangement the total amount billed equaled exactly 50 percent of the royalties Rozek received from JCI and Concept.

The mathematical probability of events occurring as claimed by Rozek are so remote as to defy logic and common sense. The infintesimally small possibility that Rozek's claims are true, coupled with the attendant, unlikely business practices of no invoices, no work product no records of work performed, renders it a certainty that Rozek's testimony and that of Elafros is false.

With the exception of the wild testimony of the occasional desperate criminal defendant, I can say that I have never in my 33 years of practicing law, 15 years as a trial lawyer and 15 years as a trial Judge, heard more clearly perjured testimony than that of Rozek and Elafros as it relates to the business relationship between them.

The unwaivering boldness with which the testimony was offered is nothing short of appalling. Even confronted with the overwhelming, undisputable forensic accounting offered by the defense, Rozek continued to maintain that payments to Elafros were unrelated to royalties that he received from JCI.

Even a cursory survey of the payments made to Rozek and the subsequent payments to Elafros establishes beyond a reasonable doubt that Rozek deliberately and knowingly lied about his business relationship with Elafros. Clearly, Rozek agreed to pay Elafros 50 percent of the royalties Rozek received from JCI or Concept. Whether that is characterized as a partnership or kickback is irrelevant.

Those lies may be found in Rozek's discovery responses, affidavits and deposition testimony as well as his trial testimony.

It is equally clear that Rozek conspired with the material witness, Pete Elafros, to solicit and offered perjured testimony.

Maybe deception and misdirection have a place in the business world, but there is no room for perjured testimony in a Court of law. The most important tool that we have in the fact finding process is a requirement that people who take the witness stand offer truthful testimony, and the

Court must rigorously safeguard the integrity of the fact finding process.

An equally important principle, however, is the one that everyone ought to have their day in Court. Defendants asked this Court to dismiss plaintiff's claim and deny plaintiff his day in Court as a penalty for offering perjured testimony and knowingly providing false discovery responses.

To deny plaintiff his day in Court is the ultimate sanction and must be used only with the utmost of restraint. Even plaintiff's counsel in his responsive papers acknowledges that the Court has the inherent power and the authority granted by court rule, specifically MCR 2.302(E)(2), to dismiss the action where a plaintiff knowingly offers perjury or provides deceptively false discovery answers.

Before taking such drastic action certain conditions would have to be met. One, that the perjury and false statement must be clear and unequivocal and must be made intentionally and with the intent to mislead in flagrant violation of the applicable court rules and standards of maintaining basic integrity in a court of justice.

The testimony and statements must be untrue to the extent that no reasonable person could find otherwise. The deponent ought to be given the chance to correct the record when confronted with evidence of perjury, and the perjury must be on a material issue that is important to how the case is decided.

Each of those conditions has been met in this case. I cannot think of a more deserving case for employing the ultimate sanction than the one before the Court. Plaintiff's perjury is clear and not subject to multiple interpretations.

Plaintiff has been given a repeated opportunity before and during trial to testify truthfully and rectify the fraud that he is attempting to perpetrate on the Court.

Even after being confronted with the smoking gun, indeed the smoking cannon, that was the forensic accounting, plaintiff steadfastly chose the path of deception, defying and utterly repudiating his oath. This cannot stand.

The Court finds that plaintiff Rozek deliberately lied in his discovery responses and during his Court testimony on material issues, that the perjury is so offensive that the plaintiff has forfeited his right to have this Court adjudicate his claims against the defendant.

Plaintiff's claim against the defendant are, therefore, dismissed with prejudice, and the defendants are entitled to their costs and attorney fees necessitated by the fraud. I am, also, placing the parties on notice that I am referring this matter to the prosecuting attorneys' office for investigation of criminal perjury charges.

I will see counsel in chambers.

MR. NEWMAN: Thank you, Your Honor.
(proceedings concluded}