

Court of King's Bench of Alberta

Citation: Radical Robotics Corp v ACS Automated Cleaning Services Inc, 2025 ABKB 247

Date: 20250331
Docket: 2503 00213
Registry: Edmonton

Between:

**Radical Robotics Corp., Radical Software Corp., Radical Global Corp., and Kos Corp
Automated Solutions Ltd.**

Plaintiffs

- and -

**ACS Automated Cleaning Services Inc., Justin Maurice Vekved, Jon Doe #1, Jon Doe #2,
Jon Doe #3, ABC Corp., DEF Corp., GHI Corp., JKL Corp., MNO Corp.**

Defendants

**Endorsement
of the
Honourable Justice Michael J. Lema**

[1] I heard this matter on the Commercial List on January 8, 2025, following which I granted an Anton Piller order and an interim injunction in favour of Radical Robotics Corp and the other applicants.

[2] On March 18th, I heard a comeback application, which had two parts: first, an application by ACS and the other respondents for an order setting aside both orders and, second, an application by RRC for various relief centered on the evidence (or a subset of the evidence) gathered in the Anton Piller proceeding and how it should be managed.

[3] At the application, both sides agreed that the set-aside application should proceed first. As I recall, only that application was argued. I believe the plan was to get my ruling on it and then decide on next steps, if any were required at all. (If the orders were set aside, the “use of evidence” application would not be needed.)

[4] I reviewed the affidavit of Dustin Kos sworn December 10, 2024 in support of the January 8, 2025 application, the clerk's notes of that application, the transcript of a cross-examination of Mr. Kos on his affidavit conducted by Mr. Chimuk on behalf of the ACS parties on February 5, 2025, and my notes of the March 18th application.

[5] My conclusion on the set-aside application (Anton-Piller-order-wise) is to dismiss it, for these reasons:

1. despite ACS's extensive and forceful attempts on cross-examination to show otherwise, I find that the base procedure manual in question is more than simply a pre-existing manual handed over for free by a third party and retitled for RRC purposes. Instead, I find, for the reasons outlined by Mr. Payne in the hearing on March 18th, that the manual, even if built on the chassis of a pre-existing agreement, represents the product of very extensive work by Mr. Kos and others at RRC, with material value added by that work, yielding a base document containing considerable information about RRC's tank-cleaning technology, systems, and processes;
2. per the Employee Confidentiality and Non-disclosure Agreement signed by Mr. Vekved on October 12, 2021 (Ex G to Mr. Kos's affidavit), Mr. Vekved was obliged to return "any property and Confidential Information [CI] belonging to [RRC]" (para 5). I interpret that obligation, when it comes to electronic information, as obliging Mr. Vekved to delete or otherwise "close the door" on any and all RRC information falling within any Property and CI" he possessed when he resigned i.e. to give up possession of all such information, which I find included the manual in question;
3. in my view, it is immaterial that Mr. Vekved openly and willingly acknowledged having a copy of the manual post-resignation and provided a copy to Mr. Kos. The point is that he should no longer have had the manual at that stage;
4. I find further that possessing the manual gave Mr. Vekved a material advantage in launching (or starting to launch, or preparing for launching) his ACS enterprise;
5. concerning the photo image featured at one point on ACS's website and later removed, I acknowledge the relatively limited and short-term use of the image. But it is one piece of a larger puzzle, as discussed further below;
6. other pieces of the puzzle include:
 - a. Mr. Vekved's non-disclosure of starting or even taking the initial steps of his ACS venture when he left RRC, in contrast to his "spending more time with family" explanation. He was not necessarily obliged to disclose his ACS plans. However, I find that his silence on that front, coupled with the offered explanation, reflects a conscious attempt to conceal his ACS plans which, in concert with the other factors emphasized above and below, sparks a legitimate question about why those plans needed to be concealed;
 - b. the absence of the manual in question from RRC's information systems (per para 107 of Mr. Kos's affidavit). Mr. Kos conceded having no evidence showing that Mr. Vekved was wholly or partly responsible but, in the overall circumstances, I find it is more than a coincidence that the

manual was not found among RRC's other information and documents at the time;

- c. the other "Missing Documents", including "the folder [Mr.] Vekved generally stored documents in during his employment, including emails", per para 109 of Mr. Kos's affidavit, was not crossed on or at least not in any material way. This is another unusual, unexplained marker of something unorthodox happening. In light of all the other clues above and below, I infer that Mr. Vekved continued to have possession of the para 109(a) information post-resignation;
 - d. the communications described by Mr. Kos in para 121(n) of his affidavit, namely, the "Signal" messaging, which I find is another marker of a wish to conceal activities which in turn sparks a concern about the need for concealment;
 - e. the (admittedly mild) attempt at employee solicitation described at para 133 of the Kos affidavit, which was not crossed on;
 - f. the machine-shop ("cut sheet") evidence (para 121(m)), with no cross and no evidence from Mr. Vekved to counter the apparent inference, which I draw, that this order reflects ACS activity centered, at least in part, on using or replicating RRC systems, models, or technology;
 - g. the apparent absence of an explanation for how ACS could announce, per its website and the reported accounts of its connections with prospective customers, an ability to perform the announced kinds of tank-cleaning work and in the ways described as a newly-formed entity i.e. how it could or might have acquired that ability or readiness without building on RRC information, processes, and technology;
 - h. Mr. Kos's evidence about a server for one of the John Does, even recognizing that no such server was located in the execution of the Anton Piller order. In all the circumstances, I infer that this server was present at the reported location at one point; and
 - i. the absence of any "redirected clients" evidence from Mr. Vekved. Per para 104 of Mr. Kos's affidavit, Mr. Vekved told him, on his last day of employment, that "I am sure the odd client will reach out and I will make sure they are redirected to the correct contact." The evidence shows at least one RRC client or prospective client being in touch with ACS, but there is nothing showing any "redirection efforts" by Mr. Vekved.
7. reviewing the submissions made on behalf of RRC on January 8, 2025 in light of the cross-examination, I do not find any material non-disclosures or material misstatements. Rather, I find that the submissions fairly described the assembled evidence and realistically reflected that a material part of RRC's case for the two orders was built on indirect evidence from which inferences could and should be drawn i.e. on top of the procedure-manual and website photo aspect; and

8. overall, I find that the evidence in support of the four Anton Piller factors, which I found sufficient on January 8, 2025, was not materially or otherwise undercut via the cross-examination or the submissions made on ACS's behalf on March 18.

[6] Concerning the interim injunction aspect, I accept ACS's submissions about the overbreadth of the covenants in paras 2(c) and (d) of the Employment and Non-disclosure Agreement and accordingly set aside paras 2(iii) and (iv) of the interim injunction order.

[7] Concerning RRC's application for an order addressing various "evidence management" issues, my understanding is that ACS has or may have submissions or evidence in opposition to some or all of the relief sought.

[8] I will be unavailable from March 30 to April 22. If the parties are unable to agree on the "evidence management" issues, I invite counsel to check with the Commercial Coordinator on available dates once I am back for the hearing of this aspect.

Heard in Edmonton, Alberta on March 18, 2025.

Dated at Edmonton, Alberta on March 31, 2025.

Michael J. Lema
J.C.K.B.A.

Appearances:

Roderick Payne
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for the Plaintiffs

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for the Defendants