

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

**GULED WARSAME and SHELLI SAREEN on their own behalf and on
behalf of all members of UNITE HERE Local 75**

Plaintiffs

and

**DAVID SANDERS, ASHLEY HAYES, RAFUNZEL KORNGUT AND ALLAN PACE
on his own behalf and on behalf of all members of THE TORONTO HOSPITALITY
EMPLOYEES UNION – CSN (THEU-CSN)**

Defendants

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Court File No. CV-24-00000869-0000

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EMPLOYEES UNION – CSN (THEU-CSN)**

Defendants

NOTICE OF MOTION

The Plaintiffs will make an Urgent Injunction Motion to a Judge on June 6, 2024 at 10:00 a.m., or as soon after that time as the Motion can be heard.

PROPOSED METHOD OF HEARING: The Motion is to be heard

[X] In person;

at the following location:

Superior Court of Justice, 85 Fredrick Street, Kitchener, ON, N2H 0A7

THE MOTION IS FOR

- (a) An Order dispensing with service of this Notice of Motion and any Motion Record or, in the alternative, an Order abridging service of this Notice of Motion and any Motion Record required;

- (b) An Order authorizing the Plaintiff, Guled Warsame, to bring this proceeding on behalf of all members of UNITE HERE Local 75 (“Local 75”);
- (c) An Order authorizing the Plaintiff, Shelli Sareen, to bring this proceeding on behalf of all members of Local 75;
- (d) An Order that the Defendant, Allan Pace, be named as representative of all members of the Toronto Hospitality Employees Union (“THEU-CSN”);
- (e) An interim and interlocutory injunction restraining the Defendants and – in the case of THEU-CSN, its directors, officers, employees, agents, servants, or representatives, or anyone acting under their instructions – and anyone aiding or assisting the Defendants from disclosing any Confidential Information and intellectual property (as defined below);
- (f) An interim and interlocutory injunction restraining the Defendants and – in the case of THEU-CSN, its directors, officers, employees, agents, servants, or representatives, or anyone acting under their instructions – and anyone aiding or assisting the Defendants from using, directly or indirectly, the Confidential Information and intellectual property for their own purposes or for any purpose at all;
- (g) An interim and interlocutory injunction requiring the Defendants and – in the case of THEU-CSN, its directors, officers, employees, agents, servants, or representatives, or anyone acting under their instructions – and anyone aiding or assisting the Defendants, to immediately deliver to the Plaintiffs all property, equipment, documents and data belonging to the Plaintiffs;

- (h) An interim and interlocutory injunction requiring the Defendants and – in the case of THEU-CSN, its directors, officers, employees, agents, servants, or representatives, or anyone acting under their instructions – and anyone aiding or assisting the Defendants, to immediately deliver up to the Plaintiffs the Confidential Information and without limiting the generality of the foregoing, any and all documents and/or records, emails and any other property belonging to the Plaintiffs that is in the Defendants' power, possession or control, including any copies thereof regardless of how they are stored (including any copies stored in hard copy, electronically, optically, magnetically, or otherwise);
- (i) An interim and interlocutory injunction directing the Defendants and – in the case of THEU-CSN, its directors, officers, employees, agents, servants, or representatives, or anyone acting under their instructions – and anyone aiding or assisting the Defendants, to permanently delete and destroy any and all Confidential Information and intellectual property, which has been saved and/or stored on any computer, laptop, hard drive, cellular phone, or any other electronic device within their power, possession or control, and to furnish a sworn statement confirming the deletion or destruction; or, in the alternative, an Order directing the Defendants to instruct a third party authorized by the court to do so, at their expense;
- (j) An Order that each Defendant prepare and provide to the Plaintiffs within seven (7) days of the date of this Order, a sworn statement describing the nature and location of the Confidential Information and intellectual property which is presently in their care, power, or control, and describing their Defendants' activities with the Confidential Information and intellectual property prior to and subsequent to the cessation of these individuals' employment with the Plaintiffs;

- (k) An Order that each Defendant submit to examinations under oath within twenty (20) days of the delivery by the respective Defendant of the aforementioned sworn statements;
- (l) Costs to be fixed and payable forthwith;
- (m) Such further and other Relief as to this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE

- (a) The Plaintiff/Moving Party, Guled Warsame is a proper representative of the members of Local 75;
- (b) The Plaintiff/Moving Party, Shelli Sareen is a proper representative of the members of Local 75;
- (c) Local 75 is the exclusive bargaining agent for its members in respect of their employment with a range of employers in Ontario;
- (d) The Defendants are former employees and agents of Local 75 and their new employer, THEU-CSN;
- (e) The Defendants are engaged in a campaign to “raid” Local 75 bargaining units by convincing Local 75 members to join THEU-CSN;
- (f) The Defendants and/or the THEU-CSN are contacting members of Local 75 using information, data, and/or documents that is the property of Local 75 and/or its members. The Defendants have no right to access, keep, save, disclose, or otherwise use this information, data, and/or documents;

- (g) The aforesaid information, data, and/or documents is fully described in the Statement of Claim in the within proceedings and is defined therein (and herein) as “the Confidential Information and intellectual property”;
- (h) On May 27, 2024, the Plaintiffs/Moving Parties commenced the Action styled above by way of Statement of Claim for, *inter alia*, permanent injunctions and other permanent remedies, including remedies that would prohibit the Defendants from using the Confidential Information and intellectual property;
- (i) In the meantime, the Plaintiffs, Local 75, and/or members of Local 75 will experience harm that is irreparable in nature if the Defendants, *inter alia*, are not restrained from using the Confidential Information and intellectual property;
- (j) The balance of convenience favours granting these Orders;
- (k) The Plaintiffs have undertaken to abide by any order concerning damages that the Court may make if it ultimately appears that the granting of the injunctive relief sought by this motion has caused damage to the Defendants, or any of them, for which they ought to be compensated by the Plaintiffs;
- (l) This Honourable Court has inherent and residual jurisdiction to remedy the aforesaid irreparable harm by granting the injunctions and other requested Orders pending the resolution of the final disposition of the underlying action by the Court;
- (m) Sections 101 and 104 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;

- (n) Rules 1.04(1), 2.01, 3.02(1), 12.07, 12.08, 37, 40, and 44 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 19; and,
- (o) Such further and other grounds as counsel may advise and this Honourable Court deems just.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Motion:

- (a) The Statement of Claim and any other Pleadings (if any) exchanged in this proceeding;
- (b) This Notice of Motion;
- (c) The Affidavit of Shelli Sareen, sworn May 28, 2024
- (d) The Affidavit of Josh Cuasay, sworn May 27, 2024;
- (e) The Affidavit of Medhin Ghebre, sworn May 28, 2024;
- (f) The Affidavit of Thomas Wimalendra, sworn May 27, 2024;
- (g) The Affidavit of Karen Dublin, sworn May 28, 2024;
- (h) The Affidavit of Mahen Krishnamoorthy, sworn May 28, 2024;
- (i) The Affidavit of Monica McKenzie, sworn May 28, 2024;
- (j) Affidavit of Abdalla Idris, sworn May 28, 2024;
- (k) The Affidavit of Melaku Seyoum, sworn May 28, 2024; and,

- (1) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

May 29, 2024

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