

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: 2446339 Nova Scotia Ltd. v. AMJ Campbell Inc., 2007 NSSC 12

Date: 20070112

Docket: SH 194818, SH 196783

Registry: Halifax

Between:

2446339 Nova Scotia Limited and Michael Savoy

Plaintiffs

v.

AMJ Campbell Inc. and Bruce Bowser

Defendants

AND

Darryl Amirault

Plaintiff

v

AMJ Campbell Inc. and Bruce Bowser

Defendants

DECISION

Judge: The Honourable Justice K. Peter Richard

Heard: November 27, 28, 29, 30,31, December 4, 5, 6, 7 8
11, 12, 13, 14, 19, 20 in Halifax, Nova Scotia

Counsel: Robert G. Belliveau, Q.C. Gavin Giles,for the Plaintiffs
Scott Norton, Q.C. ,James Chipman, and Erin Hardy,
Articling Clerk, for the defendants

RICHARD, J.

The Actions

[1] These two actions involve almost identical factual situations and for this reason an order was granted that they be tried together.

[2] In the first action the Plaintiffs 2446339 Nova Scotia Limited (6339) and Michael Savoy (Savoy) seek general damages for breach of contract, being the Partnership Agreement (the Agreement) between 6339 and the Defendant AMJ Campbell Inc (AMJ) and in addition seeks exemplary and punitive damages for the “unlawful and underhanded manner” in which the Agreement was terminated. The claim against the Defendant Bruce Bowser (Bowser) is damages for “intentionally interfering” with the contractual relationship which existed between 6339 and AMJ.

[3] The Defendants seek by counter-claim alleged breach of the obligations of 6339 and Savoy under the agreement and seek return of partnership property, an accounting of expenses, general, aggravated and/or punitive damages. The

Defendants also seek a declaration that AMJ is entitled to exercise its rights under S. 7.03(b) of the Agreement.

[4] In the second action the Plaintiff Darryl Amirault (Amirault) alleges that the defendants, in breaching the Agreement did cause Amirault to suffer damages and he claims damages in lieu of notice, general, exemplary and punitive damages, associated costs relating to the termination of his employment and costs of this action on a solicitor-client basis.

The Parties.

[5] 2446339 Nova Scotia Limited is a limited company, 85% of which is owned by another limited company, 2447407 Nova Scotia Ltd. This limited company is, in turn, jointly owned by two holding companies - MS Holdco and TM Holdco which are owned respectively by plaintiff Michael Savoy and by Tim Moore. The balance of the 15% shares of 6339 are held by John McAdams (10%) and Theresa Barletta (5%). 6339 and Camvec (predecessor of AMJ Campbell Inc) have equal ownership in the so-called Montreal Partnership (AMJ Montreal) which operated the AMJ business in Montreal.

[6] **Michael Savoy** has had a long history of involvement in the trucking industry having started in 1974 as a driver. He worked for Tim Moore in Toronto and Barrie, Ontario. After several moves within the industry, including Montreal, Calgary and St. Catherines, he moved to Halifax where he purchased, in partnership with Tim Moore, the Halifax franchise of AMJ. In 1994, again in partnership with Tim Moore, and using 6339 as the ownership vehicle, he took a 50% interest in the Montreal Partnership with AMJ owning the other 50%. It is the Montreal Partnership which is the focal point of this action. Savoy is presently associated with Premier Van Lines in Dartmouth N. S.

[7] **Darryl Amirault** has been a warehouseman and driver in the trucking industry and in 1992 he joined the Halifax franchise of AMJ. In 1993 he became a partner in the Halifax branch and in 1994 was appointed General Manager, a position which he held until 2005. He is presently associated with Premier Van Lines in the Dartmouth operation and is also Executive Vice President of Premier in its Toronto office. His immediate superior is Savoy.

[8] **AMJ Campbell Inc** is a Canadian company with its head office in Mississauga, Ontario which has had several mutations over the years, including the name CanVec. The company is a commercial and household moving company and has branch offices, partnership offices and franchise offices throughout Canada.

[9] **Bruce Bowser** is the President and Chief Executive Officer of AMJ. He joined the company, at the invitation of Tim Moore, then the CEO of AMJ and Arthur Walker, Chairman of the Board. in 1992. He began as Manager of a section of the Mississauga branch and in 1997, was appointed Executive Vice President and Chief Operating Officer. In September 1999 Bowser was appointed President and COO by the Board of Directors and this was followed in 2000 with the appointment, again by the Board to President and Chief Operating Officer.

[10] It is important to have some appreciation of the relationship between Bowser and Tim Moore. After his appointment in 1992 Bowser described his relationship with Moore as a “good relationship” and the two of them worked and traveled together and were very amicable. Upon Bowser’s appointment in 1999 he said that Moore became very agitated and upon hearing of the appointment said “over my dead body”. This is not disputed. Bowser, who expected Moore to be pleased and

supportive was quite shocked by Moore's negative reaction. The previous amicable relationship deteriorated to one of near hostility.

The Players

[11] In addition to the parties to this action there are several very significant players whose presence and involvement had substantial impact on the events leading up to this litigation.

[12] **Tim Moore** (Moore) is generally regarded as the founder of the present AMJ. Under his management the company grew from 2 to 42 offices across Canada. In 1984 AMJ joined Atlas Van Lines and at the present AMJ accounts for about 60% of Atlas business. In about 1988 Moore sold 70% of his interest in AMJ to Vector but retained his position as President and CEO. Camvec was created by the merger of several companies including Vector and AMJ. In 1997 Moore was appointed Chairman and CEO of AMJ and then in September 1999 he decided to reduce his direct activities with AMJ and was appointed Advisory Chairman. His relationship with AMJ Chairman Arthur Walker and his successor Wayne MacLeod appears to have deteriorated over the next couple of years and his

position as Advisory Chair was terminated in December 2002. He retained financial interest in the Halifax and Montreal AMJ franchises as well as at least one other. In his evidence Moore painted himself as a “hands on operator” who had good people skills and who ran the business more on a consensual than autocratic manner.

[13] Presently, Moore is back into the moving business with Premier Van Lines, a company which he formed in 2005. He has interests in commercial real estate, a restaurant, condominiums and is President of Premier Estates, an executive residential suites company which has operations across Canada. In cross-examination Moore said that he spends 6 days a week looking after his Premier and other business interests.

[14] The pervasive influence and involvement of Moore in the events leading up to this litigation is almost palpable. There is no question in my mind that Moore was a major influence throughout the material times. Indeed, and at the risk of sounding flippant I would suggest that if this was a musical show, then Moore would clearly be the “choreographer”. Moore was the first witness to give evidence

for the plaintiffs and even as a non party he was present in court throughout the entire 14 days, being absent occasionally for one or two hours at a time.

[15] **Doug Auld** is the president of Atlas Van Lines (Canada) Limited which is a wholly owned subsidiary of the U. S. Parent company. He dealt directly with Tim Moore and subsequently with Bruce Bowser. He has a continuing relationship at this time with Bowser. That relationship was very rocky at the outset due, in no small part to Bowser's persistence in trying to buy out Atlas Canada and make it a part of the AMJ organization. Auld gave the impression that he regarded Bowser as overbearing, aggressive, persistent and at times petulant. Their relationship deteriorated to a point where Auld wrote a lengthy report to his U.S. associates in which he stated that "Bruce Bowser clearly has an agenda that does not include Atlas Van Lines". In the same report he suggested that immediate termination (of the Atlas/AMJ agreement) would not be an unreasonable solution. However, it seems that once the issue of the purchase of Atlas Canada was taken "off the table" the relationship seemed to stabilize. Auld described the present relationship as "stronger" and the two companies renewed their contract for a further 20 years as of the Spring of 2005. It appears that in the normal course of business the companies have disagreements "as a general rule" which is quite understandable

since they each look to the same revenue sources and compete, within the context of their agreement, to get their fair “piece of the pie”. The involvement of Auld and Atlas Van Lines (Canada) in the substantive issues to be resolved at trial is peripheral at best.

[16] There were a group of witnesses called by the plaintiffs for the purpose of providing some sense of context or historical relationship for the substantive issues at trial. In my view, their evidence was of questionable value either from a probative or relevant aspect. Indeed, defense counsel, in summation, rather indelicately, but albeit accurately, referred to these witnesses as “Bowser bashers” . . . **Shirley Sveda**, an employee of Atlas Van Lines, described Bowser as passionate, aggressive and persistent and on at least one occasion was “very rough”. She described her present relationship with Bowser as “excellent”. **Robert Clark** , a vice president of Atlas Van Lines described an incident involving Imperial Oil which Bowser became very upset with. **Fred Haladay**, also a vice president with Atlas Van Lines described an incident with Bowser in which the latter became very agitated and threatened to have Haladay fired. Apparently, Bowser later apologized for the incident to Doug Auld. Haladay said that they have since “mended fences” and get along quite well. **Ricky Amposa**, a former

accountant with AMJ Toronto is presently associated with the Brampton branch of Premier Van Lines. He said that he liked Moore but found Bowser to lack cordiality and the ability to mix with his staff. Amposa made some serious allegations regarding Bowser, such as hiring a personal trainer with company funds, inordinately high expenses, rental of aircraft and having work done on his home at company expense. There were no records, such as expense accounts or credit card statements introduced at trial to substantiate these allegations. **Velma Neal** is presently employed with Premier Van Lines and had been Assistant Corporate Secretary for AMJ. She alleged that Bowser had “many vehicles” and had also had the company purchase appliances for his home. She was very annoyed with Bowser’s expense account claims and refused to sign cheques for these. Again, none of these extravagant allegations were documented, which, if accurate, could have been readily done. **Terry Moore**, a brother of Tim Moore, was the manager of the Calgary branch of AMJ which was 75% owned by the Toronto head office. He was critical of Bowser’s management style which he described as dictatorial. He was one of the dissident franchisees who joined with Amirault in the aborted attempt to unseat Bowser. More about that later. **Kim Boydell** is presently manager of Premier Executive Suites in Toronto and prior to this she had been in the employ of AMJ since 1980. When with AMJ she had been in sales and

then became Executive Assistant to Tim Moore and later to Bowser. She described Bowser's style as authoritarian and dictatorial and related incidents involving Cutler, the Vice President Finance which were demeaning and bullying. In later testimony Cutler categorically denied these incidents. Boydell was also involved in preparing and circulating numerous announcement coming from the CEO. **Michael Warnick** was an AMJ franchise holder in Kitchener/Waterloo until the expiration of his agreement on April 1, 2005. He is presently franchised with Premier Van Lines. He described Bowser as dictatorial and dogmatic and he wanted him replaced as President and CEO of AMJ. He apparently had a good relationship with Moore whom he said was nurturing (his word), loyal helpful and very approachable. **Cheryl Thayer** is presently associated with Premier Executive Suites in Montreal but had previously been employed by AMJ Montreal for about 18 years. She described Amirault as supportive and "an inspiration" as manager of the Montreal branch. **Jennifer McNaughton** was a sales representative with the Montreal office of AMJ and she was very supportive of Amirault as manager of that branch. She left that employment due to a change in the remuneration scheme which was introduced under Bowser. Apparently the change was from salary + commission to straight commission and the majority of the sales staff resigned in protest to that change.

[17] Use of words such as “undemocratic” and “dictatorial” in describing Bowser’s management style seem somewhat out of context. I would suggest that a CEO who managed by consensus would not be very effective. It is also difficult to relate the term democratic to the employer/employee relationship which had its roots in the English law of Master and Servant. Although the harshness of these laws have been somewhat ameliorated over the years by statutes such as Labour Standards Codes and by the common law it remains an area of the law which could hardly be described as democratic or consensual.

[18] **Joe Lopes** is Manager of Blue Bins, a company affiliated with AMJ which supplies all of the needs for moving and packing. He was contacted by Savoy in December 2002 respecting the move to get rid of Bowser. Lopes said he was very nervous about this conversation and contacted AMJ Chairman Walker to discuss it with him. He also called Bowser to discuss the situation. **Jean Martel’s** services were enlisted by Bowser to supervise the Montreal AMJ operation after the decision to remove Amirault and later Savoy. He felt that the thrust of the Amirault and Savoy plot was to unseat Bowser as President and CEO of AMJ. He said that Savoy was aggressively trying to “win “ him over and he felt very

uncomfortable at the meeting. After verbally agreeing to join with the dissidents Martel thought about it over the weekend and then faxed a letter declining the proposal (Ex. 5 Tab 3). **John McAdams** was replaced as manager of the AMJ Montreal operation when Amirault took over. After the termination of Savoy as Manager of Montreal McAdams returned to his position as manager. **Robert Motz** had been hired by Bowser as Chief Financial Officer of AMJ but he left in March of 2003 after the company went private. He said that he lost interest and did not want to become an investor in the company. He described Bowser's management style as being directive rather than collaborative. **Bruce Cutler** is Vice President Finance of AMJ and had been since 1998. He described Bowser's management style as being directive rather than collegial. **Tom Findlay** is presently Vice President of AMJ having moved to that position from being a franchisee in British Columbia. He is one of the franchisees who was contacted by Bowser at the time of the Geosam bid. Apparently he did not get along with Moore and described his style as untrustworthy. He described Moore's conduct at meetings as being acrimonious and dictatorial. Findlay was also a member of the Standards and Ethics Committee and succeeded Amirault as chairman in early 2003.

[19] I have listed the witnesses, and a brief comment above, because much of their evidence did not bear directly on the events which took place in the “Critical Period” set out below. Counsel indicated that much of this testimony was for the purpose of setting a contextual foundation for the actions. Although this may have served such a purpose at trial I feel it would add nothing to this decision to review it in detail here.

The Critical Period - July 2002 through February 2003

[20] Amirault had been associated with the Halifax AMJ operation for a number of years and in 1994 was appointed General Manager. It appears that he was well respected in the industry and had built up many good relationships with other AMJ operators across Canada. The Halifax operation was successful.

[21] During May and June of 2002 Amirault had spoken on several occasions with Savoy and Moore respecting problems at Montreal AMJ. There was a general feeling that the office was being mismanaged under John McAdams and there was a need for a corporate reorganization of that operation. The upshot of these discussions was the offer by Amirault to go to Montreal with the view of

reorganizing the office and put it on a more businesslike basis. It was agreed that Amirault would spend a couple of weeks a month as Manager of Montreal while maintaining his position as Managing Partner of the Halifax operation. It was also agreed that Savoy and Moore would assist in the Montreal operation and each of them would “spell” Amirault for a week each month. McAdams was moved from Manager to Vice President - Sales. It was difficult to discern what title was for real and which was used to impress the customers. I got the general impression that titles, as they appeared on business cards were more for “impression” rather than for denoting a place in the corporate structure. Savoy said that he discussed this move with Bowser who thought it was a good idea and he endorsed it.

[22] McAdams was apprised of these changes and his new role was confirmed in a letter of July 4, 2002 which was signed jointly by Moore, Savoy and Amirault. The letter said in part “You will retain the title of V.P. of Sales, your salary will not be adjusted unless you are unable to reach a sales goal commensurate with your salary”. Amirault commenced his Montreal duties in early July 2002.

[23] Savoy contacted Kim Boydell, Executive Assistant to Bowser to have her prepare an appropriate announcement for circulation throughout the AMJ national

organization. At this time Bowser was vacationing at his summer home. In a draft notice faxed to Bowser for his approval Amirault was referred to as ‘manager’ of the Montreal office and Bowser responded to the fax by saying “looks great to me”. In the announcement which went out the reference was to “general manager” rather than manager. There was much discussion at trial respecting the preparation of these notices and Bowser couldn’t recall having seen or approved it. . I am satisfied that he did see the original draft notice sent to him by Boydell in the form of a fax and received at his summer cottage. It may be that the very routine nature of the announcement and it being received while on vacation could have served make this somewhat forgettable. It was not until the occurrence of later events that this announcement garnered some degree of importance.

[24] During the summer or early fall of 2002 Amirault, with the concurrence of Savoy, ordered the conversion of one of the Montreal offices into a living suite - complete with shower, queen size bed, chair, satellite dish and TV. This was to be for the use of Amirault during his stay at the Montreal office and to avoid the cost of hotel accommodation. Apparently, this expense, circa \$13 to \$15 thousand dollars was not approved by AMJ and became a sore point when conflict erupted culminating in this litigation. I really don’t think very much turns on this and I am

inclined to find that it had very dubious merit but can be relegated to the category of that which “seemed like a good idea at the time”. The construction of this facility does however add some weight to the defendants’s position that Amirault did not intend to move permanently to the Montreal area. He had a home and family in Halifax, although he vaguely suggested that he planned to move sometime in the future.

[25] Much evidence and argument centered around Amirault’s employment status during the short time he was at the Montreal office. Upon taking on this assignment his remuneration was increased by \$25,000 per year. There is no employment record for Amirault either at the Montreal office or in Toronto where records were kept. Montreal was never billed for any portion of Amirault’s salary and he did not pay Quebec taxes or other levies which one would associate with employment status. What the records did show was that Amirault was employed by and paid by the Halifax AMJ franchise operation which, as earlier noted, was owned and operated by Savoy and Moore. After reviewing all of the evidence on this point I feel that the most logical conclusion is that Amirault was in the employ of the Halifax franchise and was on indefinite and part-time loan to AMJ Montreal.

This finding will have some impact on the issue of whether or not Amirault was dismissed from his employment, as is alleged in his Statement of Claim.

[26] Apparently Amirault was making some progress in getting AMJ Montreal on a sounder business footing. He said that he had to dismiss a number of employees including the Operations Manager, Gamble. Gamble by all accounts was a rather irascible fellow given to loud talk and profanity. He was a rather divisive influence. Amirault appeared to be achieving a better relationship with the Montreal staff as evidenced by a number of letters which he sent - Ex.2 Tab 112.

[27] Some deterioration in the relationship among the parties at this time is evidenced by a letter written by Moore, in his capacity as advisory Chairman. Moore explained the letter writing by starting the letter with the comment "I know that you have a distaste for my writing you letters but it seems that it's the only way that I can formalize my thoughts and have them listened to without disagreement or confrontation." The letter goes on to complain of "Atlas bashing", threats to Moore's brother, dictatorial management style, undemocratic and demeaning management style and finally threats to terminate Moore's position as Advisory Chairman. Through Bowser the letter was brought to the attention of

Wayne McLeod, Chairman of the board of AMJ. It prompted a response from McLeod who wrote to Moore on 16 October which stated in part -

Your letter to Bruce is surprising and disappointing. Your role is to provide constructive advice to the President, not to be a disruptive influence. If you have serious particular, supportable issues to raise concerning the senior management, then I would welcome your evidence so that the Board may conduct any required investigation. Bruce, as you are no doubt aware, refutes vigorously your allegations. If you are having direct discussions with franchisees or with Atlas regarding the Company and Bruce, in particular, please cease immediately and respect the role that you are being paid to carry out on behalf of AMJ Campbell Inc.

[28] The Moore letter is somewhat similar in tone and content to the Amirault letter of 17 December (Ex. 1 Tab 19) which will be the subject of later comment. Also, Moore's comments respecting management style being "undemocratic" and "dictatorial is somewhat disingenuous. There is evidence that Moore terminated the employment of numerous employees and issued clear directives to employees and franchisees, such actions being neither democratic nor consensual.

[29] On 8 October 2002 a memorandum issued from Bowser's office respecting a general meeting held in Toronto. That meeting was attended by Amirault as well as many of the AMJ franchisees from across Canada. The main topic for discussion was the state of the relationship with Atlas Van Lines and Bowser said in his memo

- “I believe that the group we have coming together is a good representation of our business and as such I will rely heavily on your opinions and suggestions as we more forward”. There was also recognition at the meeting of problems within AMJ which tended to create somewhat of a restive environment within the organization. At the suggestion of Bowser, a committee was constituted to address these concerns. With the approval of Bowser, Amirault accepted the Chairmanship of this committee which was named the Standards and Ethics Committee (SEC). At a conference call held later in October (Ex 2 Tab 114) “The Committee agreed that the SEC members must ensure that integrity and confidentiality will go hand in hand with any issues brought to the committee”. Amirault said he was overwhelmed by the volume of calls received relating to all sorts of issues involving a “a wide array of the AMJ family”. It does not appear that the SEC met again under the Chairmanship of Amirault.

[30] From this point onward the conduct of Amirault and Savoy is marked with duplicity and deceit. Also, the fine hand of Tim Moore can be sensed in the background. It seems that Amirault, rather than pursue his responsibilities as Chairman of the SEC embarked upon a program to discredit and eventually dislodge Bowser as President and CEO of AMJ. He contacted many Franchisees,

including members of the SEC to enlist their support for a “purge” at head office.

In this endeavor he was careful not to contact any franchisee or SEC members who were known to be friendly to Bowser.

[31] The Geosam Bid - These were frenetic times within the AMJ organization.

On 28 October 2002 a company controlled by George Armoyan, a Halifax area entrepreneur made a hostile takeover bid for the outstanding shares of AMJ. At the time of the bid Armoyan or Geosam owned a substantial number of AMJ shares.

There is evidence that Moore and Savoy had met with Armoyan on several occasions prior to the Geosam takeover bid. At one such meeting Moore gave Armoyan a copy of his letter to Bowser. Moore did say that the meeting with Armoyan was set up by Jim Spatz, another Halifax entrepreneur. In spite of all of this Moore said “I played no part in this at all”. Although they both downplayed the significance of these meetings I am satisfied that their involvement with Armoyan provided some substantial information about AMJ which otherwise would not have been available to Armoyan. Wayne McLeod, Chairman of the Board of AMJ became aware of the Geosam/Moore connection and on 9 December 2002 he instructed counsel to inform Moore by letter of his termination as Advisory Chairman with AMJ.

[32] In the meantime, other things were happening at AMJ. In response to the hostile Geosam takeover bid Bowser was enlisting the help of certain of the AMJ franchise holders and financial institutions to counter the Geosam bid with an “in house” proposal to take the company private. Also, Amirault was soliciting support from some of the more disgruntled franchisees to mount a challenge against Bowser and his management style. These solicitations culminated with the signing, by some 20 of the AMJ franchisees and partners, of basically identical letters (Ex.1 Tab 19) requesting a meeting with the AMJ Board of Directors “to discuss the present state of our franchise organization”. Amirault said that the letter was basically composed by him and that he vetted it through Moore and Savoy merely to “proof-read”. I cannot accept that rather facile explanation . I am more inclined to the view that Moore and Savoy had substantial input into the preparation and contents of this letter, and those to follow. These letters were all dated December 17, 2002 and were addressed to Wayne McLeod, Chairman of the Board. Clearly this group of letters was a frontal attack by the dissidents against Bowser and his management style. One might say figuratively that some 20 swords were drawn and aimed squarely at Bowser’s back At this juncture I am reminded of the fact that Amirault is the same person who accepted the Chairmanship of the Standards

and Ethics Committee which was charged with the task of trying to internally resolve those contentious matters which were causing concern to the franchisees and partners. One might again suggest that Amirault's conduct was a real exercise in duplicity. It is instructive to have the letter, in its entirety reproduced here:

After very strong consideration and reflection, we the undersigned group of franchisees and partners respectfully request that the AMJ Campbell Board of Directors convenes a meeting with our appointed group of representatives by January 6, 2003 to discuss the current state of our franchisor organization.

Each and every member of our group appreciates the significance of the path that we are embarking on, and we can assure you that our desire to place AMJ Campbell Van Lines back on an appropriate path toward future growth and profitability. The future for all parties is the cornerstone of our mission. The questionable focus and direction of the present management group of AMJ Campbell Inc., has caused the undersigned group to develop a grave concern over the stability and future financial viability of the entity that we have strived to build, and rely on for the continued value of our businesses. The history and culture that has made us so unique in Canadian business, as been lost, as well.

If the environment that presently exists amongst our group were a more positive one, we would have preferred to bring our concerns forward in a totally different format. Unfortunately, we do not believe this to be possible. We as a group strongly believe that this avenue is the only alternative that has been left available to us. Existing management has chosen to ignore and stifle our concerns for far too long.

You will also note that certain names have been left off of this list. This is due to the fact that we believe most of these people are in an extremely vulnerable position with regards to present management, and that it would be unfair to even discuss it with them.

Listed below are some of the more significant issues we feel must be addressed by our Board of Directors. We would greatly appreciate a forum that would allow the franchise family to air its concerns without fear of reprisal.

- * Inability to govern their financial expenditures in a manner conducive with its current financial position.
- * Threats issued to franchisees who for any reason express concerns over new initiatives and ongoing business matters; i.e. U-Move.
- * Dictatorial mentality in dealing with franchisees issues and problems. In particular, the perceived smaller branches have been targeted.
- * Complete lack of support for or loyalty for franchisees.
- * Unprofessional conduct while dealing with Atlas Van lines management and staff.
- * Perceived impropriety in operation and sale of certain franchises.
- * Significant efforts made to create a division amongst the franchisees and partners
- * Verbal threats, using abusive language made to senior management in certain offices.
- * Creating a negative environment to conduct business in, both in franchises and in head office.
- * Inappropriate use of franchise monies i.e., National advertising budget.

* Misuse of marketing strengths, i.e., Royal Bank business.”

[33] It was the strategy of the group not to mail the letters to McLeod but rather to hold them for presentation to the Board when the requested meeting was convened. This meeting was directly requested by Amirault, acting on behalf of the group, in a letter dated December 18, 2002. It is also instructive to have that letter reproduced here in its entirety:

Dear Mr. MacLeod,

With respect to the voicemail that I left for you earlier today, I represent a group in excess of 20 offices, over 50 partners as well as geographically, representing approximately 75% of our national AMJ family. As I also stated, we as a group are neither for nor against the Geosarn bid, however we would not endorse current management in a management take over bid.

After very strong consideration and reflection, our group of franchisees and partners respectfully request that the AMJ Campbell Inc. Board of Directors convenes a meeting with our appointed group of representatives by January 6, 2003 to discuss the current state of our franchise organization.

Each and every member of our group appreciates the significance of the path that we are embarking on, and we can assure you that our desire to place AMJ Campbell Van Lines back on an appropriate path toward future growth and profitability. The future for all parties is the cornerstone of our mission. The questionable focus and direction of the present management group of AMJ Campbell inc., has caused the our group to develop a grave concern over the stability and future financial viability of the entity that we have strived to build,

and rely on for the continued value of our businesses. The history and culture that has made us so unique in Canadian business, has been lost, as well.

If the environment that presently exists amongst our group were a more positive one, we would have preferred to bring our concerns forward in a totally different format. Unfortunately, we do not believe this to be possible. We as a group strongly believe that this avenue is the only alternative that has been left available to us. Existing management has chosen to ignore and stifle our concerns for far too long.

You will also note that during the meeting, we will provide the Board of Directors with signed letters from each member of our group. At that time, you will also recognize that certain names have been left off of this list. This is due to the fact that we believe most of these people are in an extremely vulnerable position with regards to present management, and that it would be unfair to even discuss it with them. We would greatly appreciate a forum that would allow the franchise family to air its concerns without fear of reprisal. I can be reached at 1-900-497-2324 for confirmation and scheduling of the meeting.

[34] Quere - How could this group whose leaders claimed no knowledge of the details of the Geosam bid be “neither for nor against” such a bid. In my view, given the circumstances, this comment is disingenuous.

[35] In any event, McLeod was busy at the time with other things and indicated this in a letter to Amirault dated December 19, 2002. In reply McLeod said in part “AMJ Campbell, its Board of Directors and its management is always open to a constructive dialogue with its corporate partners and franchisees to continually improve our company...” Because of the involvement in the takeover bid McLeod

suggested a meeting in mid-January. It is probable that this letter crossed in the mails with the Amirault letter of December 18.

[36] In the meantime Bowser was not idle. He had put together a buy out package with some other franchisees and partners as well as with a financial institution and had received the stamp of approval from the AMJ Board of Directors. The Board supported the management bid and rejected the Geosam bid and this was all made public in a press release dated December 23, 2002 (details of which are at Tab 151 - Ex.3). The management bid was eventually successful and the company went private in mid-January 2003 with the purchase by the group of all of the outstanding shares of AMJ Inc.

[37] Upon receipt of the press release Amirault wrote a brief letter to McLeod withdrawing his request for a meeting as set out in his letter of December 18. Amirault said in part, "Given the fact that our main concerns revolved around the present management team and that they now represent complete control of AMJ Campbell Inc., our efforts would be futile at best." To carry through with the metaphor, Amirault's reaction to the press release was tantamount to "falling on his sword". From here on things got quite ugly.

[38] It may be helpful to place the following factual narrative in the proper contractual context. I have taken the liberty of changing CanVec name in the partnership agreement to AMJ as set out in an “ADDENDUM TO PARTNERSHIP AGREEMENT” dated 22 January 2002 and signed by the parties. The Partnership Agreement was executed by the parties as of 1 April 1994. The sections or articles of the agreement which are relevant in this context are:

THIS PARTNERSHIP AGREEMENT (“agreement”) is entered into as of the 1st day of April, 1994, among AMJ, and 2446339 NOVA SCOTIA LIMITED (“Savoy”) sometimes hereinafter collectively referred to as “the Partners” or each of which are individually referred to as “a Partner”, and Mike Savoy.

Section 2.01 - **Appointment of Manager**

- (a) The manager (“Manager”) of the Partnership shall be Mike Savoy. The Manager shall be responsible for the management of the day-to-day operation of the Business (in addition to any other duties as the Partners may decide) and shall:
 - (i) devote substantially the whole of his working time, attention and ability to carrying out his responsibilities as manager of the Partnership or in other capacities acting as a franchisee of or in partnership with AMT;
 - (ii) adhere to the “Atlas” agency agreements and the standards, business procedures and policies established by AMJ and communicated to the Manager from time to time;

- (iii) submit to AMJ all reports and other communication regarding the operation of the Business as AMJ may from time to time request; and
 - (iv) prepare, for submission to the Partners (after consultation with them) not later than 30 days prior to each fiscal year of the Partnership, an annual budget of anticipated revenues, expenses and profitability of the Business (the "Annual Budget") and the related annual business plan.
- (b) AMJ on behalf of the Partnership shall be entitled to immediately terminate the appointment of Manager, provided that any termination shall be subject to receipt of notice as required by Section 7.01 upon:
- (i) the failure by the Manager to perform any of the obligations set out in section 2.01(a) above;
 - (ii) any action by the Manager which would, if an employer-employee relationship existed between the partnership and the Manager, justify the termination for cause at law by the employer of the employee; or
 - (iii) the failure by the Partnership to meet profitability targets of the Annual Budget by 25% in any fiscal year or by 20% in any consecutive two years unless such failure is demonstrated by the Manager to be beyond the reasonable control of the Partnership. Section

7.02 - **Causes of Dissolution**

The Partnership shall be immediately dissolved in the event

- (a) that an event of default has occurred as provided in section 7.01 hereof and the Non-defaulting Partners elect to dissolve the Partnership as provided in Section 7.03(a) hereof;

- (b) Partners holding aggregate Partnership interests in excess of 76% agree to terminate the Partnership;©
- (c) that the Partnership by its terms is terminated;
- (d) of the death of Mike Savoy;
- (e) of the incapacity of Mike Savoy, either mental or physical, which results in his being unable to substantially perform his duties in accordance with this Agreement for a period of six (6) months; or
- (f) of the termination of Mike Savoy's appointment as Manager pursuant to:
 - (i) section 2.01(b)(I) or (ii) hereof; or
 - (ii) section 2.01(b)(iii) hereof.

[39] I note that Article 11 Section 2.01 (b) (ii) purports to establish an employee - employer relationship between the Partnership Manager, Mike Savoy and AMJ on behalf of the Partnership.

[40] The conspiratorial nature of the conduct of Amirault, as detailed above, prompted Bowser to direct that Amirault not return in any capacity to the Montreal AMJ offices. Bowser made this clear to Savoy who was the Managing Partner at the time. Bowser was acting for "AMJ on behalf of the Partnership". By letter of 6

January 2003 Savoy acknowledged Bowser's stand respecting Amirault and said "You seemed to be adamant that he (Amirault) does not return to the Montreal office, which I disagree with." Later in this letter Savoy stated "The only issue you seemed to bring up is that you feel he does not have faith in the leadership of AMJ Campbell Inc, which you referenced by raising the subject of a letter he signed addressed to Mr. Wayne MacLeod on the issue". When questioned about this comment at trial Bowser responded "This is essentially correct."

[41] What follows for the next month are a series of letters and other communications between Savoy and Bowser respecting the status of Amirault. These letters or notes of conversations are set out in Ex.1 - Tabs 24 through 53. The gist of all of this is that Bowser kept insisting that Amirault not return to the Montreal office - and Savoy stating all sorts of reasons why he cannot comply with these requests. My impression of all of this is that Savoy was obfuscating the principal issues and at times being rather "cute" in his responses to Bowser. To use the vernacular, Savoy seemed to be "sandbagging" Bowser. Some examples of this may be illustrative:

1. Tab 25 - Savoy writes - "If you think you have a sound business reason and a legal right to require Darryl to be replaced...". Bowser had been unequivocal in

his reasons for demanding Amirault's removal from Montreal and Savoy was aware of this.

2. Tab 29 - Savoy writes -"I mentioned (in phone conversation) I saw a problem in releasing anyone without cause". Bowser merely wanted Amirault removed from Montreal and presumably since the latter was an employee of the Halifax franchise he could just return there and carry on his Manager's duties there. Bowser stated (Tab 40) "I have never requested that you terminate Amirault's employment outright. Whether you continue to employ him in Halifax is up to you. Our concern is his presence in Montreal" It is difficult to envisage any sustainable legal action arising out of that.

3. Tab 50 - A very confrontational letter from Savoy to Bowser denying any knowledge of the reasons for Bowser's insistence in keeping Amirault out of Montreal. I am satisfied that Savoy was clearly aware of these reasons and merely chose to skirt around the substantive and clear issue.

4. Tab 39 - In a letter to Bowser dated 28 January 2003 Savoy said, in part, "Your proposed solution that all I have to do is bring Darryl back to Halifax, rather than terminate him, is not realistic. If he is mismanaging things in Montreal as you allege, why would I want him in Halifax." Another example of Savoy trying to cloud the real issue. Bowser said, and I accept, that he never alleged mismanagement.

[42] From this point on the respective positions merely hardened terminating with the debacle at the Montreal office on the weekend of 7 February 2003 (a Friday). On 5 February Bowser, along with the Vice President Frappier arrived at the Montreal office. Bowser circulated a letter to the staff (Ex. 1 Tab 47) in which he stated that Amirault would not be returning to Montreal and that pending resolution of the controversy Jean Martel would assist with the day to day

operations of the branch. Martel is the Vice President of InterMove, a company associated with AMJ. Bowser spoke with all of the staff at that time. On 7 February 2003 Amirault arrived at the office in the company of 2 Montreal bailiffs. The Montreal police were called to the scene but departed when they realized that this was a civil matter. On the instructions of Bowser, Martel had the locks changed on all of the building doors. The following morning Martel found that the locks had been changed again and he could not gain access to the offices. On further instructions Martel had the lock re-keyed for the third time. There was some suggestion of security guards being at the location as well as someone with a camera - although these matters were not firmly established at trial. And even if they had been it would have made little difference in this action.

[43] As a result of these activities AMJ had its counsel draft and deliver an “ultimatum” letter dated 8 February 2003 to Savoy. At page 2 of the letter the following paragraphs appear:

Your recent conduct, including particularly the stunt orchestrated by Mr. Amirault yesterday on your instructions, puts you and 2446339 Nova Scotia Limited in flagrant breach of your contractual and fiduciary duties to AMJ Campbell as a partners. AMJ Campbell has clear grounds to immediately terminate your appointment as Manager of the Partnership for cause, pursuant to Section 2.01(b)(ii) of the Partnership Agreement, thereby dissolving the Montreal Partnership, and to proceed to exercise its right to purchase the fixed assets of the

Partnership for an amount equal to their depreciated net book value, pursuant to section 7.03(b) of the Montreal Partnership.

We hereby demand that you instruct Mr. Amirault to vacate the premises of the Montreal Partnership immediately. If you do so, AMJ Campbell is prepared to sit down with you in good faith, on a without prejudice basis, to discuss whether this matter can be resolved amicably.

If Mr. Amirault has not vacated the premises by 8:00 a.m. on Monday morning, February 10, 2003, AMJ Campbell intends to proceed with the termination of your appointment of Manager and the dissolution of the Partnership as described above, without further notice to you. AMJ Campbell also intends to pursue all other legal remedies as may be necessary to restore access to the premises, evict Mr. Amirault, and avoid further disruption to the business, again without further notice. AMJ Campbell will also seek to recover its resulting legal costs from you personally.

[44] Obviously, this letter provided Savoy very little “wobble” room other than to discuss the future. This was responded to by Savoy with a letter to Bowser, which displayed a somewhat truculent restatement of his position and showed no inclination to “to sit down in good faith...to discuss whether this matter can be resolved amicably”. Predictably, the response by AMJ counsel of 10 February 2003 was to give formal notice of the termination of Savoy’s appointment as manager.

The operative part of the letter is:

You therefore remain in flagrant breach of your contractual and fiduciary duties to AMJ Campbell. As we indicated in our February 8, 2003 letter, AMJ Campbell therefore has clear grounds to immediately terminate your appointment

as Manager of the Partnership for cause, pursuant to Section 2.01(b)(ii) of the Montreal Partnership Agreement, thereby dissolving the Montreal Partnership.

We write to provide formal notice that AMJ Campbell is terminating your appointment of Manager pursuant to Section 2.01(b)(ii) of the Montreal Partnership Agreement, and intends to exercise its right to purchase the fixed assets of the Partnership for an amount equal to their depreciated net book value, pursuant to section 7.03(b) of the Montreal Partnership Agreement. We will be in contact with your solicitor shortly with regard to the purchase arrangements.

[45] This set the stage for the commencement of these legal actions.

[46] As a footnote, the dissident franchisees who were involved in the letter writing (Ex.1 Tab 19) with the exception of very few, were not offered renewal contracts by AMJ and it seems that most of them are now associated, in one way or another, with the various “Premier” enterprises of Tim Moore.

Findings

[47] Darryl Amirault, as I earlier suggested, remained an employee of the Halifax AMJ operation, although he was working in Montreal with the consent and encouragement of Savoy. His position had none of the normal indicia of employment which could lead me to any other conclusion. Amirault was not in the employ of the plaintiff 2446339 nor of the Montreal franchise of AMJ. Therefore, Amirault cannot sustain an action for unjust dismissal or for breach of the Partnership Agreement as alleged in the Statement of Claim. Even if I had found that Amirault was an employee of Montreal AMJ and could sustain an action I would, in the alternative, dismiss the action on the grounds that Amirault was dismissed for just cause. I could think of no conduct more destructive to the employer/employee relationship than that of Amirault in this case. He mounted a direct assault on the management of AMJ and did so in a most duplicitous manner. The events leading up to the letter of 18 December completely destroyed the relationship and provided the defendants, and the Montreal Partnership with solid grounds for dismissal for cause. In view of my findings, I need not consider the question of the appropriate parties to the action as alluded to in correspondence from counsel dated December 27, 2006 and January 4, 2007. In the further

alternative, if I had found that Amirault was entitled to damages for unjust dismissal, his brief time in Montreal would have limited his damages to less than two months' salary. On his return to Halifax AMJ Amirault's salary was not reduced for several months and then only by \$25,000 per year.

[48] For the above reasons, the action Darryl Amirault v. AMJ Campbell Inc and Bruce Bowser is dismissed.

[49] With respect to the action S.H. No 194818 I must refer again to the partnership agreement. The agreement clearly establishes an employer-employee relationship by virtue of Art. 11 - 2..01 (b) (ii) justifying "the termination for cause at law by the employer of the employee...". I find that Savoy, in consort with Amirault and others, engaged in an ill-fated attempt to undermine the management of AMJ. For reasons stated, this attempt failed. In addition Savoy blatantly defied the direct orders of senior management of AMJ in failing to remove Amirault from the Montreal operation. He further played a major role attempting to frustrate the efforts of senior management to restore order to the Montreal operation. In my view, any one of these facts were sufficient to terminate Savoy's employment for cause. The following passage from *Holder v. Metro Transit Operating Co.*, [1983]

BCJ No 1783 speaks to the matter of deliberate disregard of the directive of a superior:

The plaintiff wilfully and deliberately disregarded the essential conditions of his employment contract by refusing to comply with the orders of his superior, not only once but on numerous occasions over a protracted period of time. The plaintiff knew that his refusal to comply with the direct orders of his superior could result in summary dismissal. He said as much when he indicated that he would seek legal advice. It was a flagrant act of insubordination and consequently the defendant was entitled to dismiss the plaintiff summarily.

21 As Lord Evershed M.R., said in delivering the judgment of the Court of Appeal in *Laws v. London Chronicle (Indicator Newspapers) Ltd.*, [1959] 1 W.L.R. 698 at 700:

“...It is, no doubt, therefore, generally true that wilful disobedience of an order will justify summary dismissal, since wilful disobedience of a lawful and reasonable order shows a disregard – a complete disregard – of a condition essential to the contract of service, namely, the condition that the servant must obey the proper orders of the master, and that unless he does so the relationship is, so to speak, struck at fundamentally.”

22 With regard to a single act of disobedience, the following statement of Lord Evershed M.R., at p. 701 is particularly apposite:

“...I think it is not right to say that one act of disobedience, to justify dismissal, must be of a grave and serious character. I do, however, think (following the passages which I have already cited) that one act of disobedience or misconduct can justify dismissal only if it is of a nature which goes to show (in effect) that the servant is repudiating the contract, or one of its essential conditions; and for that reason, therefore, I think that you find in the passages I have read that the disobedience must at least have the quality that is ‘wilful’: it does (in other words) connote a deliberate flouting of the essential contractual conditions.”

23 Here there was “a deliberate flouting of the essential contractual conditions”.

[50] For all of the above reasons this action is dismissed as against both defendants and the Partnership Agreement was lawfully dissolved under the provisions of Section 7.02 (f).

[51] In the notice of termination the defendant’s invoked their rights under section 7.03 (b):

- (b) Upon the occurrence of any event set forth in section 7.02(a)(b), (c) or (f)(I) hereof, the Partnership shall immediately commence to wind up its affairs and the partners or the remaining Partners shall proceed with reasonable promptness to liquidate the business of the Partnership. Immediately upon any such dissolution, Camvec shall be entitled, at its option within 10 days of becoming aware of such a dissolution, to purchase and if such option is exercised the Partnership shall sell the fixed assets of the Partnership for an amount equal to the depreciated net book value of fixed assets as shown by the most recent monthly financial statement of the Partnership. To the extent the Partnership is not completely liquidated within twelve (12) months from date of the election to dissolve, the remaining asset shall forthwith be disposed of at a public sale. It is understood and agreed that any Partners can purchase at such sale.

- (c) In the event of dissolution of the partnership in accordance with any of the provisions of section 7.02(d), (e) or (f)(ii) hereof, CamVec shall immediately purchase and the Partnership shall sell the fixed assets and goodwill of the Partnership for an amount equal to the sum of:

- (i) the depreciated net book value of fixed assets as shown by the most recent monthly financial statement of the Partnership,

Plus

- (ii) an amount equal to 2.5 times the net earnings of the Business as such appears in the financial statements of the Partnership for its most recently completed twelve month fiscal year; and

Less

- (iii) any amounts owing by Savoy pursuant to subsection 1.02(i)(B)(2) hereof.

[52] The Accounting firm of Price Waterhouse Coopers were retained by the defendants to prepare a valuation of the assets of the Montreal Partnership pursuant to the above section of the Agreement. PWC filed a report entitled "Value of Certain Interests in the Montreal Household Partnership as of February 10, 2003". After a very detailed analysis, including some 39 pages and numerous schedules and appendices a value of \$198,289.00 was placed on the Plaintiff's share of the Montreal Partnership assets. Since the Defendants have successfully invoked their rights under Article 7.03 (b) of the agreement there is no need to consider the very detailed analysis as set out in Ex2 Tab 135 (Revenue Management Limited -

Valuation of Montreal Branch Partnership AMJ Campbell) or the response to that as set out in Ex. 19 (Limited Critique Reply to the Revenue Management Limited Report as prepared by PWC).

[53] The defendants shall have a Declaration, as requested in Para 25 (iv) of the Counter Claim, that AMJ is entitled to purchase the fixed assets of the Partnership for total sum of \$198,289.00, such sum to be remitted forthwith to the Plaintiffs. Clauses (i), (ii) and (iii) of the Counter Claim are dismissed.

[54] No submissions were made with respect to costs. However, Defendant's counsel made reference to a proposed payment into court of the amount set out above but indicated that Plaintiff's counsel had waived this. If there are any further submissions to be made regarding the matter of cost I will hear the parties before 21 January 2007.

Judgement accordingly

K. Peter Richard, Justice

