

SUPREME COURT OF NOVA SCOTIA

Citation: *JB Technologies Inc. v. Independent Armoured Transport Atlantic Inc.*,
2014 NSSC 101

Date: 20140314

Docket: Hfx No. 293446

Registry: Halifax

Between:

JB Technologies Inc.

Plaintiff

v.

Independent Armoured Transport Atlantic Inc.

Defendant

DECISION

Judge: The Honourable Justice Gerald R. P. Moir

Heard: February 24, 25, 26, and 27, 2014

Counsel: Peter L. Coulthard, Q.C. and Alexander Grant for the plaintiff
Tim Hill, Q.C., Meghan Russell, and Myriam Guefel for the
defendant

Moir J.:

Introduction

[1] The fact finding in this case requires elaboration, and it wants explanation in light of the evidence. But, the basic facts are compelling.

[2] Forty thousand dollars belonging to JB Technologies Inc. of Ontario was deposited to the credit of Independent Armoured Transport Atlantic Inc. at a credit union in Halifax. There was talk of a loan. There was talk of a trust. There is no suggestion this was a gift.

[3] For about a year, Independent Armoured Transport used the \$40,000 to acquire cash to fill, and keep filled, some ATMs on Prince Edward Island. When a customer got cash from one of these machines, a credit went back to Independent's account at the credit union. Authorized access to computerized systems allowed Independent to track the cash every working day. Every day the exact amount of \$40,000 could be seen by totalling the cash remaining in the PEI machines, the amount in transit, and the amount settled back from the machines into the credit union account.

[4] The ownership and management of Independent Armoured Transport changed. It now says that the \$40,000 was lent to, or invested in, a related company. It says it did not agree to anything concerning the \$40,000. The problem with this theory is that the following facts have been proved:

- The \$40,000 went to Independent Armoured Transport's account.
- Independent used the cash exclusively to supply the PEI machines.
- All transactions in the machines settled back to Independent's account at the credit union.
- The \$40,000 was with, and remained with, Independent Armoured Transport when ownership and management changed.

A Transaction in the Background

[5] JB Technologies seeks to recover what is said to have been a loan, and interest on the loan. It is a private company controlled by Mr. Jesse Boudreau of Ottawa. On September 2, 2005, JB Technologies advanced \$40,000 to a Mr. Richard Morse and Mr. Morse deposited \$40,000 to the credit of Independent Armoured Transport, a company that, at the time, was operated by Mr. Jesse Boudreau's brother, who owned half the shares. A year later, the brother, Mr.

Donald Boudreau, sold his half interest to his partner, who decided there had never been a \$40,000 loan.

[6] To get the full picture we have to look at \$75,600 advanced by Mr. Jesse Boudreau personally a couple weeks before the \$40,000 transaction. Mr. Boudreau does not seek to recover the \$75,600. He wrote it off years ago. As I said, we are looking at this subject to get the full picture.

[7] JB Technologies is a software development company. It is an Ontario company. It has been in business since 1999. Mr. Jesse Boudreau is a resident of Ottawa, where the company has its office.

[8] Mr. Boudreau had a large amount of capital, which was safely put away in low paying investments, GICs. His brother Donald, who lives and works in Halifax, solicited an investment in Bullion Investments Inc., which was seeking to also operate automatic teller machines in the Maritime provinces, mostly outside of Halifax.

[9] Mr. Donald Boudreau got into the armoured car business in 1994. He formed Independent Armoured Transport with his equal partner, Lawrence Conrad. Customers thought well of their armoured vehicle services, and the partners were encouraged to open another business in a related field.

[10] The two men incorporated Independent Security Services Atlantic Inc. and offered security guard services. Eventually, Mr. Boudreau managed Independent Armoured Transport, and Independent Security Services was managed exclusively by Mr. Conrad. He managed the security business and education for both armoured transport and security.

[11] The two partners managed the two businesses separately. Information passed casually, and they met once a year over the financial statements, but otherwise neither was required to involve the other in business decisions. One could, for example, bind the corporation he managed to a contract without getting the consent of the other.

[12] In the first four years, Independent Armoured Transport's business involved the transportation, and to some extent management, of cash needed by retailers and institutions. Early in 2004, it got involved in the operation of automatic teller machines, starting with twenty-five ATMs. Two and a half years later, the ATM business involved eighty machines.

[13] When a customer uses an ATM away from his or her financial institution, a \$1.50 service charge is deducted from the customer's account. Some of this goes to the person who hosts the machine at a shop or other location, some goes to the

person who supplies the cash and maintains the machine, and some is kept by the customer's financial institution. In Independent Armoured Transport's case, twenty-five cents was paid to the supplier of the cash, twenty-five cents was paid for transportation to, and filling of, the machine, and fifteen cents was paid to the transporter for administration.

[14] So, the usual circuit for Independent Armoured Transport started with loading cash from its vault and from Credit Union Atlantic onto an armoured vehicle. The vehicle took the cash to the ATMs, and Independent's employees topped up the cash. The balance was put back into the vault. These transactions were carefully documented and reconciled.

[15] The cycle continued when the customer made a withdrawal. This was handled through a computerized switch system, which, among other things, credited the withdrawal to an account at the credit union used exclusively for Independent Armoured Transport's supply of cash.

[16] Independent could monitor the flow of cash through the machines, and the payment of transaction fees, using a software program called Calypso. The program allowed Independent to monitor individual machines, or groups of

machines, daily. It was precise. Until at least July of 2006, the monitoring and reconciling was meticulous.

[17] Mr. Richard Morse is a salesman. He promoted ATMs for lease, lease purchase, or sale. He started working for an Alberta company called Vencash Capital Corp. in 2000. It was his job to look for potential ATM locations and promote to, and negotiate with, the merchant at, or owner of, the location. He acquired a few machines in his own right.

[18] It is not easy for a small operator to obtain financing for the cash inventory, known as vault cash, needed to run a successful ATM business. Mr. Morse incorporated Bullion in June of 2005 to service machines he was promoting in Cape Breton, New Brunswick, the Annapolis Valley, plus two in Halifax. The promotion went like this: investors would put in about \$10,000 each, in exchange the investors would acquire the right to purchase a Vencash ATM, part of the invested funds would be used for cash inventory, part of the owners fees would go toward the purchase price, in five years the investors should recoup the invested fund and each own an ATM that was in production.

[19] Donald Boudreau was an officer of Bullion. Through him, Independent Armoured Transport got involved in two businesses with Bullion, then a third. The \$40,000 advance had to do with the third.

[20] In the first instance, Independent provided vehicles and personnel to service some of Bullion's machines. An account at the credit union belonged to Vencash Financial, which was related to Vencash Capital. Cash drawn on that account was loaded onto Independent Armoured Transport vehicles. It was delivered to Bullion machines. Transactions settled back to the Vencash account, and Independent invoiced for its service.

[21] In this case, vault cash stayed in the control of Vencash, never entering the Independent Armoured Transport circuit and never being credited to its account.

[22] In the second instance, Independent supplied its own cash to Bullion machines. This business covered several machines in the Annapolis Valley and the two in Halifax. The cash came from Independent's vault or from the credit union, debited to Independent's vault cash account. Transactions settled back to that account. This circuit was separately tracked and reconciled every working day.

[23] We will come to the third Independent/Bullion business later.

[24] In June of 2005, Mr. Jesse Boudreau had substantial capital from the sale of part of his software business. He was obliged to spend much of his time integrating the business that had been sold into the operations of the purchasing company. So, he had little time to manage the capital.

[25] The capital was all in GICs. Safe, boring, but not requiring my time, Mr. Boudreau said when he testified.

[26] As I said, Mr. Jesse Boudreau's brother Donald solicited an investment in Bullion. Jesse Boudreau put in \$70,600 personally.

[27] At first, Donald Boudreau sent Jesse Boudreau a proposal along the lines of the promotion described earlier. Mr. Jesse Boudreau found this to be conceptual. It lacked the financial rigour one would expect in a prospectus, such as financial projections. The investor decided not to allocate the money to that kind of deal.

[28] It appears that six hundred of the \$70,600 was supposed to purchase shares. The money was sent in July, before an agreement was in place. It was deposited to the credit of a Bullion operating account, and most of it was immediately withdrawn for vault cash.

[29] Draft agreements were worked on, but, as I said, the proposal was too primitive for Mr. Jesse Boudreau. Instead, Bullion delivered a promissory note to Mr. Boudreau for \$75,588 payable five years after the date of the note, August 15, 2010. There was no provision for interest. The parties say they agreed to twelve percent a year.

[30] Bullion failed a few years later, and Mr. Boudreau wrote off the debt.

The \$40,000

[31] After the \$70,600 was advanced and about the time discussions concerning its treatment as an equity investment or a loan investment were maturing, Bullion was notified that its Prince Edward Island machines were to lose their supply of cash.

[32] There were eight Bullion machines on The Island. The cash was supplied, and the machines were serviced, by two PEI businessmen. They gave notice to Bullion that they were going to get out of the business. Bullion would need \$40,000 to keep the machines from going dry.

[33] This presented Bullion with a number of problems. It did not have \$40,000. It is difficult to get financing for vault cash. Independent Armoured Transport, for

example, was unable to increase its line of credit. If a machine runs dry, customers may stop using it, and the merchant at the location may abandon the machine operator.

[34] Mr. Morse managed Bullion. He took the problem to Mr. Donald Boudreau, who approached his brother.

[35] If one accepts the evidence of Mr. Jesse Boudreau, Mr. Donald Boudreau, or Mr. Morse, the \$40,000 investment was agreed upon as described in the following paragraphs.

[36] Mr. Jesse Boudreau's response was that he had just done a deal with Bullion, he did not want another just then. He would want to see how the first one worked out.

[37] Mr. Morse made calculations for an attractive return on a short-term investment that would, despite the return, leave Bullion with an acceptable profit until a longer term solution could be found. He settled on eighteen percent a year.

[38] Mr. Donald Boudreau proposed that Independent Armoured Transport would control the cash. His brother would lend the \$40,000 to Independent on demand. It would supply the cash for the PEI machines.

[39] For an eighteen percent return on a demand loan, Mr. Jesse Boudreau was prepared to advance the funds. He was not interested in micromanaging the investment. For example, it was not clear to him what involvement Bullion would continue to have.

[40] The brothers recorded their agreement in a “Letter of Understanding – In Trust Funds” dated August 21, 2005 under Independent Armoured Transport letterhead with Mr. Donald Boudreau signing for Independent and Mr. Jesse Boudreau signing for JB Technologies. The letter refers to “funds belonging to JB Technologies (JBT) soon to be held in trust by IATA, domiciled at Credit Union Atlantic”.

[41] The terms in the letter read:

- The total amount of In Trust funds being entrusted to IATA is \$40,000.
- In return for the use of JBT’s funds, IATA will pay 18% per annum, or \$600.00 per month for the period that IAT has possession of JBT’s funds
- The sole purpose of these funds is for cash filling in IATA operated ATMs located in the Maritime Provinces.
- Said funds are not to be used for any other purpose other than to be loaded in the aforementioned ATMs.
- IATA has no interest in the \$40,000 and can lay no claim against these funds for any reason.
- IATA will be responsible for any shortages of these funds while in the account or in transit.
- JBT can demand funds be returned at any time and IATA will be expected to make every effort to return the total amount immediately upon receiving

said request not exceeding 5 business days. Total amount returned will be \$40,000 plus any unpaid interests owing to JBT at the time.

[42] Mr. Morse testified that no deal was made until September 2, 2005. One of four explanations is possible:

- The letter is a fake, as the present owner of Independent Armoured contends.
- The letter was made up after the agreement, and after the advance of money, to record what had been agreed orally.
- The letter is true, as the Boudreau brothers swear, but Mr. Morse only found out later that the brothers were agreeable.
- The letter is true, the parties were waiting for JB Technologies to advance \$40,000, and in the eight years since, Mr. Morse only remembers waiting for the money.

[43] If one accepts the evidence of Mr. Jesse Boudreau, Mr. Donald Boudreau, or Mr. Morse, the \$40,000 was advanced in accordance with the agreement to solve an emergency as explained in the next paragraphs.

[44] Friday, September 2, 2005 was the beginning of the Labour Day weekend. The two PEI businessmen removed their cash from the eight machines. Mr. Morse testified that they did this without warning and prematurely. Mr. Morse is a better salesman than business administrator, and one must allow for the possibility that the businessmen had become frustrated.

[45] In any case, Bullion had a crisis on its hands, especially at one location near a shopping centre in Summerside where the machine was very busy. Go dry and lose the support of merchants or other location owners.

[46] Mr. Jesse Boudreau agreed to get the \$40,000 to the PEI machines as soon as possible. He banks with the TD. The money had to get to the Independent Armoured Transport account for vault cash at the credit union right away. As everyone knows, a financial institution is reluctant to take a large cheque from a stranger who draws on a different financial institution without getting the cheque certified, taking some other security that is as good as cash, or putting the deposit in suspense until it clears.

[47] Mr. Morse also banks with the TD. He was not a stranger to Credit Union Atlantic. They took his company cheques for vault cash. So, Mr. Jesse Boudreau

agreed to transfer the \$40,000 from JB Technologies' TD Ottawa account to an account Mr. Morse and his wife jointly held at the TD in Halifax.

[48] The money was transferred, and Mr. Morse deposited \$40,000 to the Independent Armoured Transport vault cash account at Credit Union Atlantic.

[49] Mr. Conrad, the current owner of Independent, contends that the \$40,000 debited against the JB Technologies' TD account, credited into the Morses' joint TD account, and debited again that same day from the Morses' account is different money from the \$40,000 credited to his company's vault cash account that very same day. He speculates that \$40,000 went from Mr. Morse to Independent's vault cash account and came out again as vault cash for Bullion, while Mr. Jesse Boudreau's money went to the Morses' joint account so Bullion could also use it.

[50] As will be discussed, this speculation comes up against a number of serious challenges. Not the least of them is the testimony of Mr. Ronald Arsenault.

Use of the \$40,000

[51] Mr. Arsenault joined Independent Armoured Transport shortly after its inception. He worked with Mr. Donald Boudreau, and the two became friends. In

the 2005 to 2006 period, he was the operations manager. He quit on June 27, 2006 when he discovered that Mr. Boudreau was selling out to Mr. Conrad.

[52] Mr. Arsenault's duties as operations manager included keeping track of the treasury, preparing records in relation to it, and maintaining documentary control. Every working day he prepared a reconciliation showing exactly where vault cash had come from and exactly where it was held.

[53] Mr. Arsenault testified that \$40,000 went into the machines on PEI, and the amount for those machines was always restricted to \$40,000. The actual cash was turned over to Bullion employees. Its circulation was independently tracked by grouping the eight PEI machines in Calypso. Eventually a couple of the machines were moved to more profitable locations off The Island, but they were kept in the group of eight to which the \$40,000 was dedicated.

[54] Taking Mr. Arsenault's April 4, 2006 reconciliation as an example, he shows the source of treasury funds as follows:

TREASURY MAKE UP

SOURCE	AMOUNT
Line of Credit	\$ 175,000.00
BDC	\$ 50,000.00
JB Technologies	\$ 40,000.00
Mutual Funds	\$ 25,000.00

Service Fees	\$	2,500.00
Denomme	\$	4,000.00.

And, he shows the disposition of the treasury funds that day as follows:

TREASURY BREAKDOWN

SOURCE		AMOUNT
Coin	\$	9,222.00
Cash	\$	905.00
ECL (On premises)	\$	19,500.00
Cash in ATMS	\$	72,470.00
Cash in Account	\$	44,784.29
Cash in Settlement	\$	49,425.00
Transferred to IAT Cheq	\$	20,000.00
Invested in Bullion	\$	75,000.00
Lost deposit	\$	(3,850.00)
Funds recovered	\$	2,200.00.

The total of source funds was \$296,500, but the disposition totals \$289,656.29. These balances are reconciled by “Lost deposit” and “Funds recovered”, which pertain to a loss of cash in a motor vehicle accident, plus credit union service fees of \$5,193.71.

[55] If one accepts that the \$40,000 in cash for the PEI machines was settling back to Independent Armoured Transport, then the \$40,000 showing as “JB Technologies” is accounted for in the first six lines under “Treasury Breakdown”

and not in the \$75,000 “Invested in Bullion”. Mr. Arsenault testified that the JB Technologies \$40,000 had nothing to do with the \$75,000 invested in Bullion.

Sell Out/Buy Out

[56] By the spring of 2006, Mr. Donald Boudreau and Mr. Conrad were dissatisfied with their business relationship. The solution was for one to buy out the other. After some negotiations, the likely outcome was that Mr. Conrad would buy Mr. Boudreau’s half interest in the two Independent companies.

[57] There is a document in evidence that was typed on June 6, 2006 and titled “Letter of Intent and Interim Agreement to Purchase the Shares of Independent Armoured Transport Inc. and Independent Security Services Atlantic Inc.” It is undated and unsigned. Mr. Boudreau claims there must be a signed version, but he seems to base his testimony not on recollection but on his belief that a preliminary agreement was necessary to the sale. Mr. Conrad recalls seeing a document like this one.

[58] The credit we can give this document, which was prepared by the lawyer for both sides, is that it shows what the parties were discussing for a deal during May

or June, 2006. It would be unsafe to conclude, on the evidence given, that it had actually been signed.

[59] Under the draft agreement, \$300,000 was to be paid by a numbered company for Mr. Boudreau's shares, \$150,000 on closing and \$150,000 ninety days later. As of September 7, 2006, documentation had not been signed. Nevertheless, the joint lawyer was able to confirm, on that date, "the transactions were completed as of June 30, 2006". Mr. Boudreau had \$150,000 of the purchase price "with final payment due on or before October 21, 2006". The lawyer provided a closing agenda.

[60] So, the parties had gone ahead and partly performed what looks to have been an oral contract. Some terms crept into the discussion in the two months after the draft agreement typed on June 6, 2006 and before the lawyer's letter of September 7, 2006. Mr. Boudreau was to agree not to compete inside of two hundred miles of Halifax, and he was to take over some machines outside the radius or, at least, at agreed locations in New Brunswick and on Prince Edward and Cape Breton islands. Therefore, Mr. Boudreau had to clear Independent Armoured Transport's vault cash out of the eight "PEI" machines and replenish it with cash from his new company.

[61] Mr. Conrad put two employees in charge of the ATM business when the agreement for purchase and sale of Mr. Boudreau's shares was partly performed at the end of June 2006. According to Mr. Arsenault, the \$40,000 was circulating through the JBT grouping at that time. His approach to tracking had not changed. If his evidence is accepted, the \$40,000 was fully accounted as being cash in the eight ATMs, cash in transit to them, and credits settling back to the account at the credit union.

The Eight Machines After June 30, 2006

[62] Mr. Boudreau and Mr. Conrad's company signed an agreement at the end of October 2006. It was made effective as of June 30, 2006. So, the parties had functioned under some sort of oral contract or contracts for four months.

[63] Mr. Arsenault and Mr. Boudreau personally removed Independent Armoured Transport's cash from the eight machines and stocked them with cash belonging to Mr. Boudreau's new company. Their testimony is supported by a receipt.

[64] On November 6, 2006, Mr. Conrad signed a receipt acknowledging delivery to him by Mr. Boudreau of "Vault cash collected from NB ATMs that was settling

into IATA's Treasury account." Despite the reference to "NB", this receipt is for cash from the eight machines, one of which had been relocated to New Brunswick.

[65] The cash totalled \$8,940. Also, Mr. Boudreau's new company paid \$2,560 for cash used during the transition period. According to Mr. Boudreau, the bulk of the \$40,000 had settled back to the account. The receipt acknowledges as much, despite Mr. Conrad's present position that the \$40,000 settled back to Bullion.

Suspicious

[66] *Disappointment with amount recovered.* Mr. Conrad formed the belief that he would recoup much of what he had paid for Mr. Boudreau's shares from cash returns. Nothing in the evidence explains this belief. The price was for half the guard service business and half the retail armoured transport business, as well as half the ATM business.

[67] With the return of only \$8,980 and the failure of Bullion, Mr. Conrad lost all confidence in Mr. Donald Boudreau. And, his animosity toward Mr. Morse was palpable when Mr. Conrad testified.

[68] Treasury reconciliations were not regularly prepared by Independent Armoured Transport in the months after Mr. Conrad took over, and before the

receipt. The evidence does not support a finding that Independent diligently controlled cash in circulation after June 30, 2006. It is impossible to find a real basis for Mr. Conrad's disappointment.

[69] *Opinions of an accountant.* The longstanding CA for the Independent companies formed certain opinions that are before me as hearsay. He did not testify.

[70] One such opinion is expressed by way of handwritten notes on a reconciliation similar to the ones Mr. Arsenault used to prepare. This one is dated July 31, 2006 and it is signed by Mr. Donald Boudreau and Mr. Conrad. The signatures are for the purpose of establishing source and location of funds as of that day, for use when the parties got around to closing the share purchase.

[71] The notes were added by the accountant afterwards. The amount for "Invested in Bullion" was \$90,054.95. For reasons that are not explained, the accountant subtracts from that number source funds from the JB Technologies, Denomme, and Investors lines. In effect, the \$40,000 attributed to JB Technologies in the source column is set off against the Bullion line in the location column. Nothing in the evidence justifies this.

[72] The accountant swore in an affidavit for a summary judgment motion, which was entered at trial, “According to the records of IATA, the \$40,000 in question was received from Richard Morse, for credit to Bullion.” No such company record was produced in evidence at trial.

[73] Finally, the 2006 year-end statements for Independent Armoured Transport do not show a \$40,000 liability to JB Technologies. The statements were prepared after Mr. Boudreau’s departure by the same accountant who earlier determined to set off JB Technologies against Bullion.

[74] When he testified, Mr. Conrad often referred to these opinions as justifying his position on issues or explaining his dismissal of appeals for payment. The evidence does not support any of the opinions. Indeed, they appear to have been reached in error.

[75] *Interest payments.* Mr. Jesse Boudreau produced two Independent Armoured cheques for \$600 marked “VOID” and two that had been deposited to Mr. Boudreau’s account. He said that he was very busy with the transition of parts of his software business to the new owners and neglected to deposit the first two cheques. They were returned because they were stale-dated when he finally got

around to them. The other two were successfully deposited for March and April 2006 interest payments.

[76] After April 2006, the interest was paid by direct deposit until Mr. Conrad took over Independent Armoured Transport, according to Mr. Jesse Boudreau. There is some evidence that there was a period in which Bullion kept up the payments. Mr. Jesse Boudreau rejects that or does not recall it. He says there were no payments after Mr. Conrad took over.

[77] Mr. Conrad's position is that the voided cheques are fakes and the other two were made when he and Mr. Donald Boudreau were discussing purchasing each other's shares. That way, if Mr. Conrad was the one doing the buying, his brother could fraudulently produce the cheques to bolster the faked agreement of August 21, 2005.

[78] At discovery, Mr. Conrad undertook:

To verify if there are any other cheques to JB Technologies from IATA in existence which have not been hitherto produced. And, if they are in existence, to provide them.

In redirect, Mr. Conrad's attention was drawn to counsel's report on this undertaking. "My client is not aware of any other cheques to JB Technologies from IATA other than those hitherto produced."

[79] However, before the counsel's report was shown to him on redirect, Mr. Conrad could not recall looking for cheques in the amount of \$600 or looking in account statements for \$600 debits. When asked on cross if Independent Armoured Transport went through the process required by the undertaking, Mr. Conrad said, "I guess we didn't."

[80] Of course, I accept that Independent Armoured Transport told its counsel that it was not aware of any other cheques to JB Technologies. However, I do not believe it made an effort to find \$600 cheques or \$600 debits. On the evidence before me, I find there may have been more interest payments than those represented by the two stale-dated cheques and the ones in March and April of 2006.

[81] *Letterhead.* Mr. Conrad maintains that the letterhead on the August 21, 2005 letter agreement does not look like standard Independent Armoured Transport letterhead. This is put forward as a reason to conclude that Mr. Jesse Boudreau and Mr. Donald Boudreau colluded to create a fake document.

[82] I see no significant difference between the letterhead on the August 21, 2005 letter agreement and that on other Independent Armoured Transport correspondence that is in evidence.

[83] *Memo line.* Another piece of evidence put forward to support the accusations of faking documents, and lying about a loan, is the memo line on Mr. Morse's cheque for \$40,000. It reads, "Investment Funds JB Technologies". There was nothing on the memo line when it was delivered to the credit union.

[84] The suggestion is that the memo line was fraudulently added to the cheque to support the fake agreement and the lies. Mr. Morse is accused of making it seem as though an investment in Bullion was a loan to Independent Armoured Transport.

[85] Mr. Morse explained that the cheque was drawn on a personal account he shared jointly with his wife, and when the cashed cheque was returned he felt he should make a record of what it was for. The explanation seems to me to be both more mundane and more believable than the cloak and dagger theories advanced by Mr. Conrad.

[86] *Use of a middle man.* Mr. Morse and Mr. Donald Boudreau were both involved in Bullion. The \$40,000 may have been given to Mr. Morse personally

because it was for Bullion, in which Mr. Jesse Boudreau had just invested \$70,600, rather than for Independent Armoured Transport.

[87] The explanation about the need for fast transfer from a bank account in Ottawa to a credit union account in Halifax makes sense. Mr. Conrad's theory about the colossal coincidence of \$40,000 disappearing into Bullion on the same day as \$40,000 was credited to Independent Armoured Transport requires rejection of the testimony of Mr. Jesse Boudreau, Mr. Donald Boudreau, and Mr. Morse. Further, if the theory were to survive the coincidence, it would just come up against the testimony and documents of Mr. Arsenault about what happened to the \$40,000.

[88] *Mr. Conrad in the dark.* There are two parts to this ground for suspicion. Firstly, if the deal with Mr. Jesse Boudreau created a liability of Independent Armoured Transport, it was not discussed with the half owner, Mr. Conrad. Secondly, Mr. Donald Boudreau concealed the liability when his shares were sold to Mr. Conrad's company. The first is not remarkable. The second is not true.

[89] Both Mr. Donald Boudreau and Mr. Conrad testified about the independence of their management of, respectively, the armoured transport business and the security services business. They did not have to talk to each other. The businesses

were conducted by separate companies. Mr. Boudreau, acting alone, could bind the armoured transport company. Mr. Conrad, acting alone, could bind the security services company. Therefore, there was nothing remarkable about Mr. Conrad not knowing much about the Bullion investment, a JB Technologies loan, or the cash in the eight machines.

[90] Turning to the second allegation, the draft agreement typed on June 6, 2005 includes “IATA/ISSA to return Investor Cash from the ATMs – JB Technology \$40,000.00 and Carol Denomme \$10,000.00.” Obviously, Mr. Conrad, Mr. Boudreau, and their lawyer discussed Independent Armoured Transport having a liability to JB Technologies in the amount of \$40,000 that was being used in ATMs.

[91] When the lawyer tried to get the parties to formalize an agreement that was already largely performed, he wrote “It is my understanding that the parties have been working on ... the return of investors cash with regard to the ATMS ...”. And, he included “Return Investors Cash re: ATMs” on the closing agenda.

[92] The suggestion by Mr. Conrad that the lawyer’s references to returning investors’ cash from ATMs did not relate to a \$40,000 liability to JB Technologies cannot be given credit. The notion is in stark contradiction of the draft agreement.

[93] The final agreement says nothing on this subject. It appears that the issue did not have to be resolved for the sale to be completed. That does not mean Mr. Conrad was kept in the dark. I find he was aware of Mr. Donald Boudreau's position that Independent Armoured Transport owed \$40,000 to JB Technologies. He was aware both before part performance and before final agreement.

[94] *Lack of e-mails about the \$40,000.* There are plenty of e-mails between the brothers about the \$70,600 invested in Bullion. There are none about the \$40,000. The supposed communications were oral or by post. This is put forward as another reason to be suspicious that the \$40,000 was not lent to Independent Armoured Transport.

[95] The theory is advanced that there is too much documentation for the Boudreau brothers to fraudulently turn the \$70,600 investment in Bullion into a loan to Independent Armoured Transport, but the absence of e-mails on the \$40,000 shows they could have misrepresented it. No e-mails, no evident deal, if one finds the letter agreement was faked, the \$40,000 deposit on the same day was coincidental, the memo line on the cheque was fraudulent, interest payments were bogus, and the same \$40,000 was not settling back to Independent Armoured Transport.

[96] There is no history of one brother making investments regularly at the solicitation of the other. There were only two transactions in 2005, and none before. One cannot say what methods of communication would be usual or what would be a departure from the usual.

[97] *Conclusion.* I found Mr. Jesse Boudreau to be a credible witness. I do not believe that he faked an agreement or that he was party to a fabrication by which an investment in Bullion was made to look like a loan to Independent Armoured Transport.

[98] This defence drags Mr. Boudreau inside the management of companies in which he had no authority and no interest in becoming a manager. The animosities between Mr. Conrad and Mr. Donald Boudreau and the dealings between Independent Armoured Transport and Bullion were of no interest to Jesse Boudreau. He had his own business to manage. He invested by way of loan to Bullion and, then a loan to Independent Armoured Transport, only because of his brother's involvement. He was not supposed to concern himself with management indoors.

[99] I also found Mr. Arsenault to be as reliable in testimony as he was in faithfully performing the treasury reconciliations and in tracking vault cash,

including the \$40,000 circulating through the eight machines. The suspicions dissolve when one sees that \$40,000 from JB Technologies was accounted daily by Independent Armoured Transport.

[100] I find that JB Technologies lent \$40,000 to Independent Armoured Transport for the sole purpose of stocking eight ATMs. I find that these ATMs were in known locations. I find that every working day between September 2, 2005 and June 27, 2006 Independent tracked the \$40,000, such that the amount could always be found in Independent Armoured Transport's vault cash account, in transit to the ATMs, or in the ATMs. In short, the \$40,000 in cash acquired through the loan remained in the control of Independent Armoured Transport.

[101] (It does not matter that the homemade agreement that is the letter of August 21, 2005 uses the word "trust". This appears to have been an attempt to assure Mr. Jesse Boudreau that the cash would be on hand to respond to his demand. I doubt that a trust was effectively created. It does not matter. There was a liability.)

[102] I am satisfied that the agreed rate of annual interest was eighteen percent. Interest payments ceased on or before the date of demand, July 6, 2007. Interest was due monthly and principal was repayable on demand.

[103] It is pleaded alternatively that the loan is caught by s. 17(1) of the *Corporations Registration Act*. Subsection 17(1) only applies to contracts made “in connection with any part of its business done or carried on in” Nova Scotia. Clause 2(b) restricts “carry on business” to “the ordinary business of a corporation”. See also, s. 19(j) of the *Interpretation Act*. JB Technologies is in the business of developing software. It does not ordinarily lend money.

[104] The plaintiff will have judgment against the defendant for \$40,000 plus interest at eighteen percent from July 6, 2007. The parties may make submissions about costs in writing, if necessary.

Moir J.