

Commercial Litigation Insights: Navigating Legal and Ethical Duties in Business Partnerships

May 22, 2024

By Sara Ray Ramesh, Student-at-Law

In a recent decision by the Ontario Court of Appeal, *7868073 Canada Ltd v 1841978 Ontario Inc*, [2024 ONCA 371](#) ("786"), the Court emphasizes the importance of honouring contractual agreements, maintaining fiduciary duties even after leaving a company, and refraining from diverting business opportunities to personal ventures.

Background:

Robert Langlois, an expert in the powder-coating industry, launched two powder-coating business ventures. One of the ventures involved a license agreement with 7868073 Canada Ltd ("**License Agreement**"), which was a worldwide license in perpetuity granting exclusive rights to Mr. Langlois' powder-coating knowledge. Mr. Langlois, along with investors lacking industry experience, formed companies under the License Agreement (which companies were collectively referred to as ACS). Despite investments, the venture failed, and Mr. Langlois began a new venture, Powder Coating Solutions Inc. ("**PCS**"), with new partners, Gary Sugar and Jeffrey Sugar. After learning what Mr. Langlois had done, ACS and others commenced an action against Mr. Langlois ("**ACS Action**"), alleging breach of the License Agreement and Mr. Langlois' fiduciary duties to ACS, among other things. Subsequently, Mr. G. Sugar commenced an action against Mr. Langlois and Mr. J. Sugar for secretly misappropriating PCS' powder-coating business ("**GS Action**").

Regarding the ACS Action, the trial judge ultimately found that Mr. Langlois breached both the License Agreement and his fiduciary duties, with Mr. G. Sugar and Mr. J. Sugar knowingly assisting him. The trial judge ordered disgorgement of profits and costs but capped the liability of some defendants. The GS Action was dismissed as moot. The ACS Action was appealed. The Appellants alleged that the trial judge erred in holding that the License Agreement was valid and enforceable and not terminated, and that Mr. Langlois breached the License Agreement and his fiduciary duties to ACS. The GS Action was also appealed, and the ACS plaintiffs sought leave to cross-appeal the trial judge's costs award.

Findings:

The Court of Appeal dismissed the appeals and rendered the following key findings:

1. **The License Agreement:** Despite Mr. Langlois' arguments that the License Agreement imposed an unlawful restraint of trade, the Court upheld the trial judge's decision on its validity and enforceability. While restraint of trade principles might typically apply to restrictive covenants post-termination, there was no authority that supported their application to the License Agreement prior to its termination or cancellation. Furthermore, the Court found restrictions on competing prior to cancellation or termination reasonable in this case given the business arrangement that was negotiated: Mr. Langlois participated in the negotiations, agreed to the License Agreement's terms, and did not face unequal bargaining power. The Court concluded that even if such principles could apply, the License Agreement was reasonable between the parties and in the public interest. The License Agreement, though broad, was temporally limited and serves the legitimate interests of the

party it favors. Mr. Langlois was also not in a position comparable to that of an employee, where power imbalances require closer scrutiny.

2. **Fiduciary Duties:** The Court also upheld the finding that Mr. Langlois owed the ACS plaintiffs fiduciary duties after leaving ACS due to his role in the company and expertise, despite not holding formal officer or director positions. Leaving ACS did not absolve Mr. Langlois of his fiduciary responsibilities. ACS remained vulnerable to Mr. Langlois, and Mr. Langlois retained power and discretion in relation to ACS by taking with him the knowledge and expertise he licensed to 7868073 Canada Ltd. The Court also held that an email was not enough to absolve Mr. Langlois of his fiduciary duties; the Court found it to be an attempt to mitigate the harm caused.
3. **Misappropriation of Corporate Opportunities:** The Court held that Mr. Langlois diverted business opportunities from his former companies to the new ventures he controlled, violating both his fiduciary and contractual duties.

Key takeaways:

The 786 decision is a crucial reminder of the legal complexities and ethical obligations inherent in business partnerships and highlights the potential legal consequences of breaching one's contractual/fiduciary duties by pursuing competing business ventures. It also serves as a reminder that leaving a company (prior to termination or cancellation in accordance with the terms of the contract) does not automatically absolve one of fiduciary responsibilities if the departing business partner maintains power and discretion because of their knowledge and expertise.

The information and comments herein are for the general information of the reader and are not intended as advice or opinion to be relied upon in relation to any particular circumstances. For particular application of the law to specific situations, the reader should seek professional advice.

WeirFoulds^{LLP}

www.weirfoulds.com

Toronto Office

4100 – 66 Wellington Street West
PO Box 35, TD Bank Tower
Toronto, ON M5K 1B7

Tel: 416.365.1110

Fax: 416.365.1876

Oakville Office

1320 Cornwall Rd., Suite 201
Oakville, ON L6J 7W5

Tel: 416.365.1110

Fax: 905.829.2035