CITATION: Cameron v. Sumac Community Worker Co-operative Inc., 2012 ONSC 5586
GUELPH COURT FILE NO.: 126/12
DATE: 2012-10-03

ONTARIO

SUPERIOR COURT OF JUSTICE

CENTRAL WEST REGION

BETWEEN:	)	
	)	
PETER CAMERON	)	Shannon Cole, for the Plaintiff
	)	
Plaintiff	)	
	)	
– and –	)	
	)	
SUMAC COMMUNITY WORKER CO-OPERATIVE INC. and PLANET BEAN INC.	)	Paula Boutis and Shelina Ali, for the Defendants
	)	
Defendants	)	
	)	
	)	
	)	**HEARD AT GUELPH:** September 24, 25, 26, 28 and October 1, 2012

LANGDON J.

History

[1] The plaintiff, Peter Cameron, is a founding member of the defendant, Planet Bean Inc. He worked for Planet Bean Inc. from 2001 until September 2007. After that, he became a member and an employee of Sumac Community Worker Co-operative Inc., (Sumac Co-operative). In September 2007, Sumac Co-operative contracted his services back to Planet Bean Inc. He was dismissed February 25, 2009.

[2] The defendant, Planet Bean Inc., is an Ontario Business Corporation engaged in the business of buying and selling coffee at wholesale and retail. It was incorporated December 20, 2001.

[3] The defendant, Sumac Community Worker Co-operative Inc., is a co-operative corporation incorporated under the *Co-operative Corporations Act* of Ontario, R.S.O. 1990, c C. 35. It was incorporated May 19, 2005.

[4] Beginning in September 2007, the employees of Planet Bean Inc. became members and employees of Sumac Co-operative. Sumac Co-operative then began to contract those employees out to the defendant, Planet Bean Inc. The plaintiff, Peter Cameron, was a founding member of the co-op. He was a member of the board of directors and an officer of the co-op, as well as being an employee of it. He was also a member of the Planet Bean Inc. board of directors, and its treasurer.

[5] Since 2007, Planet Bean Inc. has acquired all its employees through Sumac Co-operative. It pays Sumac Co-operative, for the services of its employees, a sum roughly equivalent to the wages that Sumac Co-operative pays to them. Thus, since 2007, Sumac Co-operative's employees work day-to-day for Planet Bean Inc., and take direction from Planet Bean Inc., but are in law employees of Sumac Co-operative. Sumac Co-operative currently has no significant source of income except for providing employees to Planet Bean Inc. Hence, it is more or less in a revenue-neutral situation.

[6] The employee-employer relationship between the member/employee of a co-operative corporation, (co-op), and the corporation, is very different from the traditional relationship between a simple corporate employer and its employee. The principal difference is that the co-op employee is not merely an employee of the corporation, but is also a part owner of the corporation that employs him. In the case of these small corporations, all the employees were members of the co-op and of the board of directors both of Sumac Co-operative and of Planet Bean Inc.

[7] A principal difference between the two corporations is that Planet Bean Inc., as an ordinary commercial corporation, passed resolutions or by-laws by voting shares. The larger the shareholding, the larger the potential voting influence of the shareholder. Sumac Co-operative, as a co-operative corporation, was composed of members, each of whom held one voting share. Each member had only one vote.

[8] Sumac Co-operative and Planet Bean Inc. had interlocking boards of directors.

[9] The founding members of Planet Bean Inc. had invested various sums of cash into Planet Bean Inc. In return, they had received either Class A shares or Class B shares, both classes being par value $100.00, redeemable, non-voting shares carrying a cumulative dividend. A shares have priority over B shares as to the dividend rate of interest, and payment, and redemption.

[10] The founding members of Planet Bean Inc. had also invested unpaid time and effort in Planet Bean Inc. before it began its operations. In return for these initial contributions of "sweat equity", Planet Bean Inc., has undertaken to issue, but has not yet issued, a specified number of Class B shares to each of them. Their initial contributions of time and effort were valued at $25.00 per hour.

[11] Later, working members of Planet Bean Inc. and of Sumac Co-operative agreed to accept payment of their wages, partly in cash and partly in "sweat equity". The portion of the employees' wages that was not paid in cash, their sweat equity, was tracked by Planet Bean Inc., and later by Sumac Co-operative. The sum accumulated was recorded in the corporations' records *but not on their financial statements. Indeed, there is not even a note to the financial statements that discloses this significant liability.* The value of an individual's accumulated sweat equity I shall refer to as his or her sweat equity credit.

[12] There is controversy surrounding the quantum of the sweat equity accumulated by Peter Cameron.

[13] The unwritten agreement between the employees, on the one hand, and the companies on the other hand, is that holders of sweat equity credit may request Planet Bean Inc. or Sumac Co-operative to issue to them Class B shares, equivalent in value to the value of their sweat equity credit. Planet Bean Inc. has certain corporate liabilities, (the royalty payable to the original Planet Bean Inc. shareholders), that must be discharged before B shares can be redeemed. Naturally, in both corporations, A shares must be redeemed before B shares.

[14] If an employee requests issuance of B shares, the *Income Tax Act* treats the par value of the issued shares as income. The employee who receives his B shares thus must pay income tax on the value of any shares issued to him, even if he receives no cash because the shares are not redeemed. In practice, this tax consequence proves to be a considerable disincentive. To date, no employee has made a request to either company to have B shares issued in recognition of his sweat equity credit.

[15] Both corporations are undercapitalized and have always struggled to maintain sufficient cash flow. Indeed, in the 2008 economic collapse, Planet Bean Inc. almost became insolvent. As a consequence of that financial crisis, the CEO, Byron Cunningham, undertook a review of operations. He concluded that the company was top-heavy with managerial employees and that one of them had to be let go. The board agreed. Eventually, on February 25, 2009, Peter Cameron was dismissed. He was also expelled as a member of Sumac Co-operative. This expulsion was mandated by the articles of incorporation of Sumac Co-operative which require that all members of Sumac Co-operative be employees of Planet Bean Inc. He subsequently brought this suit for wrongful dismissal, for repayment of a loan he allegedly made to Planet Bean Inc. and for payment of his sweat equity credit. The wrongful dismissal and loan parts of the action have been settled.

These proceedings

[16] Peter Cameron sues the defendants for damages "arising from the refusal or neglect of the Defendants to repurchase and repay the share equity and any unpaid dividends on the Class B preference shares owned by the Plaintiff."

[17] Peter Cameron's claim against Planet Bean Inc. is founded on the oppression remedy provided for under Part XVII, s. 248 of the Ontario *Business Corporations Act*, (O.B.C.A.). He pleads that Planet Bean Inc., acting in concert with Sumac Co-operative, has acted oppressively, unfairly and prejudicially to him and has disregarded his interests, by failing to redeem the B shares he earned as sweat equity.

[18] His claim against Sumac Co-operative is founded on ss. 66(6) of the *Co-operative Corporations Act* of Ontario, R.S.O. 1990, c C. 35.

> (6) The co-operative shall purchase from an expelled member, within one year after the member's expulsion becomes final, all the member's shares, other than prescribed shares, in the capital of the co-operative at par value together with any premium and unpaid dividends and shall pay out,
>
> > (a) all amounts held to the member's credit together with any interest accrued thereon; and
> >
> > (b) any amount outstanding on loans made to the co-operative by the member that are repayable on demand by the member together with interest accrued thereon.

[19] The defendant, Planet Bean Inc., pleads first that Peter Cameron has no standing to proceed under the oppression sections of the O.B.C.A. because he is neither a shareholder, nor is he entitled to shares in the corporation. In the alternative, Planet Bean Inc. pleads that it has not acted unfairly or oppressively, toward the plaintiff.

[20] The defendant, Sumac Co-operative, pleads and relies upon ss. 67(1) of the *Co-operative Corporations Act*. It says redemption would cause insolvency.

> 67.(1) A co-operative shall not exercise its powers under subsection 49(3) or section 64 or 66,
>
> > (a) if the co-operative is insolvent or if the exercise of its powers under that section would render the co-operative insolvent; or
> >
> > (b) if such exercise of its powers would in the opinion of the board of directors be detrimental to the financial stability of the co-operative.

The quantum of Peter Cameron's sweat equity credit.

[21] In 2006, the directors of Sumac Co-operative retained a consultant, Russ Christianson, to undertake a classification and pay-scale study of the jobs of the employees of both corporations. He prepared a report (Ex. 1-3). He was to present his report to the board of directors on March 2, 2007. A snow storm prevented him from attending that meeting. The board of directors met to review his written findings on March 19, 2007. Byron Cunningham, the C.E.O., and Peter Cameron had spoken to Christianson about his written report in the interval. Byron Cunningham stated that the conversation was unproductive because Mr. Christianson failed or refused to explain the methodology he used to reach his conclusions.

[22] As Elijah Lederman said in his testimony, when the board of directors reviewed the Christianson report, the "elephant in the room" was that Peter Cameron's job classification was significantly out of sync with his pay-scale rating. The jobs of all employees were classified in terms of difficulty and responsibility on a scale from 310 to 645. On this scale, Peter Cameron's job received a rating of 490, slightly above midline. However, on the recommended pay scale (Ex. 1-7) the salaries ranged from $29,000.00 to $48,000.00 for the CEO. Peter Cameron's pay was set at $45,234.00, just $2,766.00 below the CEO and considerably above what would be a midline salary.

[23] The minutes of that meeting, (Ex. 3-A-4), mentioned the facts, the report, and the conversation with Christianson. They continued:

> Basically we saw the need to break the discussions up into three parts.
>
> 1) Job descriptions and compensation ranges that will be used for going forward. We recognize that people are doing various job combinations at this time due to the size of the organization which will affect their particular compensation.
>
> 2) Compensation for members backdated to September 1, 2006 - one question is how much will be issued in equity shares. ...
>
> There are some issues like the ratio of highest to lowest paid and minimum pay wage that should be relevant for all business enterprises while specific pay ranges in this case are for Planet Bean Inc.

[24] The minutes of the next Sumac Co-operative board of directors meeting, held April 23, 2007, disclose under "6) Committee Updates":

> iv. Elijah moved to accept Russ' current compensation structure at 85% cash. To be retroactive to Sept 1st 2006 when a permanent structure for pay scales can be implemented. ... Carried.

[25] All witnesses agree that the board of directors agreed to accept the Christianson pay scale, on a temporary basis. The issue that arises from the minutes is what was meant by the expression "To be retroactive to Sept 1st 2006 when a permanent structure for pay scales can be implemented."

[26] I have come to the conclusion that this minute must be read in the context of the corporation's financial situation. Not one witness suggested that the meaning of the minutes was that the cash portion of the wages that had been paid to the employees between September 1, 2006 and April 23, 2007, would be adjusted with a resulting retroactive pay raise or adjustment. Everyone knew without discussion that the company simply did not have the cash available for such a luxury. The minute simply

adopted the Christianson pay scale for the purposes of *cash pay going forward*. All employees would now receive in cash 85% of the figures shown on the Christianson scale.

[27] The corollary of this conclusion is that the expression "To be retroactive to Sept 1st 2006 when a permanent structure for pay scales can be implemented." can *only* have had reference to the calculation of sweat equity credits. What was decided at the April 23, 2007, meeting was that the sweat equity credits of each employee, retroactive to September 1, 2006, would be determined on the basis of a pay scale yet to be implemented, (ultimately the internal pay scale), and that, *in the interval between April 23, 2007 and the adoption of the company's internal report on compensation*, sweat equity would, if the need arose, necessarily be based on the Christianson pay scale. In effect, the members of the board of directors, being also the members of the corporation, agreed to accept a pig-in-a-poke, for the purposes of ultimately fixing the value of their sweat equity credits. They had sufficient faith in the board of directors, and the committee it would strike to study the issue, to agree that the as-yet-unknown internal pay scale would govern. Naturally, the as-yet-unknown pay scale would have to be adopted by the board of directors when presented. Thus, some protection against the unknown was built in; the new internal pay scale had to satisfy the majority of the board of directors.

[28] Some 18 months later, on September 12, 2008, Elijah Lederman and Byron Cunningham presented the internal compensation committee report to the Sumac Co-operative board of directors. It appears as Ex. 3-A-8. This report pegged Peter Cameron's salary, (Acc. Exec/HR), at $32,848.00, a reduction of $12,386.00 per annum. Peter Cameron was very clear in his evidence that he was very disappointed with the new pay scale but, by some minor miracle, he was induced to move the adoption of the new internal scale. The motion carried unanimously. Implementation was "tabled".

[29] Again, no witness suggested that the wages paid in cash between April 23, 2007, and September 12, 2008, would be adjusted retroactively. The company's cash position in September 2008 was even worse than it had been April 23, 2007. If such a cash adjustment had been contemplated, (and I am certain it was not), the corollary of that adjustment would have been that Peter Cameron would have been asked to repay some percentage of the $12,386.00 per annum that he had been "overpaid" in cash under the Christianson pay scale. No witness even remotely suggested that result.

[30] When this acceptance of the new internal pay scale by the board of directors is read in conjunction with the April 23, 2007, resolution, the meaning is clear. In effect, the resolution of September 12, 2008, executed the former resolution of April 23, 2007. The defendants argue that Peter Cameron, as a member/worker of the co-op, is bound by the resolutions of the co-op of which this is one. I agree.

[31] The board of directors, by accepting the new pay scale, unanimously agreed that sweat equity credits, retroactive from September 1, 2006 to September 12, 2008, would be based on the new internal pay scale set by Elijah Lederman's committee. Going forward, employees were to be paid in cash 85% of the compensation reflected in the new scale. Sweat equity going forward would be 15% of the new scale. No other interpretation makes sense in context.

[32] The same minutes disclose the following:

> Equity – John will collate member hours and do the sweat equity calculations. Hourly vs. Salaried – tabled

[33] The minutes reflect very simply that the new wage recommendations were "accepted". The corollary of acceptance was that "John will collate member hours [of sweat equity] and do the sweat equity calculations". These were the only two possible matters outstanding when the new internal scale was accepted /adopted.

[34] The acceptance, even reluctantly on the part of Peter Cameron, of the new pay scale is not surprising in light of the testimony of Elijah Lederman. His evidence makes it clear that the committee members investigated every aspect of the employees' jobs in order to set job classifications. The committee also investigated every aspect of remuneration, in order to set pay scales. As the process wore on, every employee was consulted regarding both aspects of the task. At each stage, Elijah Lederman said every employee "signed off", by which I understand that the employee acknowledged that his concerns had been fully canvassed by the committee members. No one disputed this testimony.

[35] Peter Cameron had immediate second thoughts about his decision to move adoption of the internal pay scales. He sought unsuccessfully to withdraw his motion of September 12, 2008, at the meeting of October 3, 2008. The October 3, 2008, minutes disclose considerable disagreement about how the issue ought to be dealt with. In the ensuing months Peter Cameron sought, again without success, to establish an appeal process from the decision to adopt the internal pay scale retroactively. He then proposed mediation but resiled from that suggestion. He finally succeeded in having the board of directors establish a grievance committee to hear his complaint.

[36] It is significant that Peter Cameron's grievance, (Ex. 1-9), is so comprehensive that, if accepted, it would have required the board of directors to reopen entirely the issues both of job classification and pay scales. Understandably, the grievance committee was unwilling to recommend that the whole process be unwound and begun again from 2006.

[37] The committee heard his grievance and dismissed it, with one exception. The committee agreed to give Mr. Cameron six months' notice of the reduction in pay, i.e., that his cash pay was to be continued at the Christianson scale for six months after the adoption of the internal scale, before the reduction took effect.

[38] During these months, the relationship between Peter Cameron and the other members of the co-op, especially the officers, became strained. At Christmas 2008, just before Byron Cunningham went home to consider which of his management employees he would let go, owing to the 2008 financial crisis, Peter Cameron spoke to him and mentioned that, if he was to be dismissed, he would like to be told straightaway, so that he might possibly consult an attorney to pursue the issue. It seemed clear to me from the testimony of Mr. Cunningham that this implied threat to litigate the issue did not redound to Peter Cameron's benefit, when Mr. Cunningham made his decision.

[39] On October 10, 2008, Elijah Lederman presented his suggested sweat equity framework. (Ex. 3-A-10). He dealt with:

> ...Founders Part 1 [sweat equity], start of business to November 2005 which has been committed [already committed], Founders Part 2 [sweat equity] - November 2005 to September 2006, Original Seven Part 1 – September 2006 to September 2008 – calculated at the difference between the approved pay scale and pay taken [in cash], and Original Seven Part 2 – September 2008 to approx June 2009 calculated at the difference between the approved pay scale and pay taken [in cash].

[40] The original four members absented themselves from the vote and the motion dealing with the founders' sweat equity passed. The effect of this motion as interpreted by the board of directors was that the sweat equity credit for Peter Cameron from September 2006 to September 2008 would be calculated retroactively, based on his downward revised salary of $32,848.00, rather than on his salary actually in-pay during this interval, of $45,234.00. This resulted in significant reduction in the sweat equity he would have earned under the Christianson pay scale, the scale that governed, in fact, when the work was done.

[41] There can be little doubt that in an ordinary employee-employer relationship, the employer would not be able *unilaterally* to reduce pay retroactively for work that had been completed and paid for. That part of the employment contract is an executed contract and cannot be revisited unless both parties agree. *Wright v. Wright*, 2010

ONCA 102, at paragraphs 29 – 31. Moreover, an amendment to the fundamental terms of an agreement requires mutual consent. (*Wronko v. Western Inventory Service Ltd.*, 2008 ONCA 327, at paragraph 41, O.C.A.)

[42] However, when Peter Cameron moved the adoption of the new pay scale, and when the board of directors unanimously accepted it, his consent was obtained. It was recorded in the minutes. Thereafter, all that Peter Cameron sought, in his various proposals, was to find a method of rescinding the agreement he made. He ultimately accepted the proposal to deal with his concerns by way of the grievance procedure. This netted him some success, but not in the area of sweat equity credits. Having accepted and participated in the process of grievance, Peter Cameron cannot argue that it should not bind him.

[43] The parties are agreed that if Peter Cameron is to have his sweat equity calculated based on the revised internal pay scale his sweat equity credit owed by Planet Bean Inc. is: (Ex. 3-C-2.)

Undertaking:	$59,800.00
Dec. 2005 to Aug. 2006	$16,800.02
Sept. 2006 to Sept. 2007	$ 3,581.65
Add Sumac Co-operative Liability	$ 3,638.34
Grand Total:	$83,820.01

[44] The parties also agree that if Peter Cameron is to have his sweat equity credit calculated based on the Christianson pay scale then his credit is: (Ex. 4)

Undertaking:	$ 59,800.00
December 2005 to August 2006	$ 16,800.02

Sept. 2006 to Sept. 2007	$ 11,820.59
Sept. 2007 to Sept. 2008	$ 12,173.93 (owed by Sumac Co-operative)
Sept. 2008 to February 2009	$ 4,526.75 (owed by Sumac Co-operative)
Grand Total:	$105,121.29

[45] I conclude that Peter Cameron is bound by the resolution he moved. The sweat equity credit to which he is entitled is $83,820.01.

What is the precise legal character of the agreement regarding sweat equity credit?

[46] When employees complete their work for a pay period and are paid, the relationship between them and the employer/corporation is one simply of creditor and debtor. The company owes the employee his agreed wages and normally would be obliged to pay them in full.

[47] Here, the employees agreed to accept payment the wages not paid in cash in "sweat equity". The agreement is that the employee will forego immediate payment of the debt and accept, in lieu thereof, the promise or undertaking of the company to issue to the employee B shares *when the employee asked for them.* The rider, "when the employee asked for them" is a significant, and I think, fundamental term of the agreement. If the company issued shares without request, it could impose a significant income tax burden on the employee without warning.

[48] The corollary of this condition is that an employee, who has not asked for his B shares to be issued, cannot in equity be considered to be a shareholder because he has not fulfilled the conditions that entitle him to shares until he has made the request.

[49] A further necessary term of the unwritten sweat equity agreement is that if the corporation were financially able to issue and redeem B shares, the corporation could discharge its sweat equity liability to the employee, by deciding to issue the shares

without a request, and by then redeeming them straightaway. In such a case the employee would have the cash to meet his income tax liability. An employee might also possibly place B shares into his RRSP, within the limits prescribed in the *Income Tax Act*, and thus defer his tax liability, at least in part. On the evidence before me, it is clear that neither corporation was or has been in a position to volunteer the issuance and redemption of B shares.

[50] Examining the legal character of this agreement, produces the result that the company has agreed, in effect, that employees who hold sweat equity, hold an option to acquire B shares equivalent in value to the value of their sweat equity credit. Paragraph 9.01 of By-Law No 1. of Planet Bean Inc. authorizes the board of directors to grant such options. I do not have the by-laws of Sumac Co-operative but consider it a safe assumption that the Sumac Co-operative board of directors possesses similar powers.

[51] This option to acquire shares might conveniently be regarded like a warrant to purchase shares, though such a warrant, like company shares, would not be transferrable without the corporation's consent. I do not know, but suspect, that if the corporation (either Planet Bean Inc. or Sumac Co-operative) issued documents (share-purchase warrants) to evidence the sweat equity agreement it has with its members, such an issuance, though not of shares in specie, would likely attract income tax liability as if shares had been issued.

[52] However, I can and do conclude that Peter Cameron is, in equity, the holder of an option or warrant to acquire B shares in both companies equivalent in value to his sweat equity credits. He has fulfilled all the conditions to be granted his option or warrant. He need not make a request, as he would need to in order to become the beneficial owner of B shares.

The claim against Planet Bean Inc.

A. Does Peter Cameron have standing to seek the oppression remedy?

[53] Section 245 of the O.B.C.A. provides:

> "complainant" means,
>
> (a) a registered holder or beneficial owner, and a former registered holder or beneficial owner, of a security of a corporation or any of its affiliates,
>
> (b) a director or an officer or a former director or officer of a corporation or of any of its affiliates,
>
> (c) any other person who, in the discretion of the court, is a proper person to make an application under this Part.

[54] While, I cannot conclude that Peter Cameron, as merely a holder of sweat equity credit, is in equity a shareholder of the corporations, I believe that I can rule, and I do rule, that he is in equity a holder of options/warrants to acquire B shares. Hence, he is the beneficial owner of "a security" of the corporations, and has standing as a complainant under ss. 245(a).

[55] Moreover, Peter Cameron is a former director and officer of the Planet Bean Inc. This qualifies him as a complainant under ss. 245(b).

[56] Peter Cameron is also a creditor of the corporations in respect of his unpaid wages. This provides him with standing as a complainant under ss. 245(c) of the O.B.C.A.

[57] If I err in concluding that Peter Cameron has standing as a beneficial owner of a corporation security under ss. 245(a), or as a creditor under ss. 245(c), I would nevertheless conclude, based on the totality of his relationship with these companies, that the proper exercise of my discretion under ss. 245(c) qualifies him as a complainant.

[58] Thus, I have jurisdiction to consider if the corporations have "oppressed" him within the meaning of s. 248 of the O.B.C.A.

Did Planet Bean Inc. "oppress" Peter Cameron?

[59] Section 248 of the O.B.C.A. provides relief to a complainant where, by an act or omission, by the carrying on of its business or affairs, or by the exercise of its powers, a corporation achieves a result:

> that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of any security holder, creditor, director or officer of the corporation...

[60] I am bound to say that I can find nothing in the actions of the Planet Bean Inc. board of directors that I could consider to be oppressive to Peter Cameron. He has been dealt with in precisely the same way as every other owner/employee of the company. It is true that his was the only salary that was reduced as a result of the internal study. But that was *the result* of a process that was undertaken in a scrupulously fair-minded and even-handed way by the board of directors, with full membership concurrence. The result of the study affected him in a unique way, but the study was not undertaken or pursued with the least hint of unfairness or bias. I am bound to say that Peter Cameron might well have foreseen the result of the study, (and perhaps he did), since it was so obvious in the Christianson report, a year and a half earlier, that his pay scale was quite far out of sync with his job classification.

[61] In short, the results of the two resolutions of April 23, 2007, and September 12, 2008, operated *unfortunately* for Peter Cameron but did not operate *unfairly*. What happened was that Peter Cameron saw the value of his sweat equity set at a certain level while the Christianson pay scale was in effect. He then saw his sweat equity decrease in value when the internal pay scale went into effect. Is that not precisely the kind of fluctuation in value that any investor risks when he or she invests in "equities", through any medium?

[62] Peter Cameron is not entitled to relief under s. 248 of the O.B.C.A.

Must Sumac Co-operative redeem Peter Cameron's sweat equity credit?

[63] Peter Cameron is in the same position *qua* Sumac Co-operative as he is in relation to Planet Bean Inc. He is not a shareholder and is not the beneficial owner of shares. He is the beneficial owner of an option/warrant to acquire B shares.

[64] Section 66(6) of the *Co-operative Corporations Act*, (see paragraph 18), obliges the corporation to purchase "all the member's *shares*" from the member within a year of expulsion. Peter Cameron has no shares. The section is no comfort to him.

[65] If I err in this conclusion, in the light of the evidence I have heard as to the company's financial position, it is clear beyond controversy that redemption of Peter Cameron's "shares" would render the corporation insolvent. Hence s. 67(1)(a) mandates that Sumac Co-operative not purchase Peter Cameron's "shares".

[66] Sumac Co-operative's financial statements for 2010 (Ex. 2-23) disclose earnings for the fiscal year of $6,874.00. That number is positive only because of a tax loss carried forward. The same statements show that the corporation has negative retained earnings of ($17,147.00). Its cash balance at the end of 2010, was $379.00. Its total assets are $52,462.00. How, one asks, could Sumac Co-operative lay hands on over $80,000.00 in order to redeem B shares?

[67] In addition, the share structure of Sumac Co-operative as to A shares and B shares are essentially the same as that of Planet Bean Inc. For me to order redemption out of order, so that B shares were first redeemed, would be oppressive to the holders of A shares. It would deprive them of their priority. For me to make an order to pay damages for breach of contract would simply be to order indirectly what I cannot order directly.

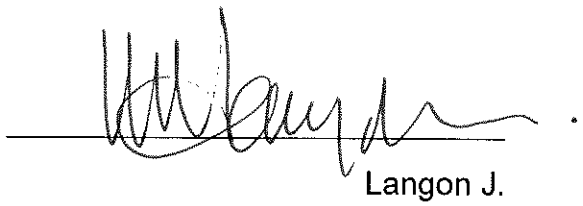
[68] The action is dismissed.

Afterthought

[69] While I possess no expertise and have no evidence in this case as to the application of generally accepted accounting principles, I do express some concern that the significant liability of the corporations for sweat equity credits of all its members is not reflected in the balance sheet or otherwise in the financial statements of the corporations. It does not even seem to warrant a footnote. The failure to disclose this liability in the financial statements, even as a footnote, might be seen as deceptive, for instance, to a lender whose decision to lend might be based on the financial statements.

[70] Another concern I see is that the whole relationship of the members/shareholders, on the one hand, and the employees, on the other, around the issue of sweat equity is *based purely on an unwritten agreement*. There is now little likelihood that a suit might be brought against the corporations in respect of the issuance of shares. However, if such a suit were later brought, and if all the holders of sweat equity credit had previously left the corporations, a board of directors might defend such a suit by pleading a two-year limitation period. It seems to me that the corporation and the members can guard against such a possibility by recognizing the sweat equity credits in the financial statements, annually. Such a recognition would serve as an annual acknowledgment of the liability, and would thus preserve the hard-earned sweat equity credits for owner/workers, even after they might have left the employ of the corporations.

[71] I may be spoken to as to costs.



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BETWEEN:

PETER CAMERON

Plaintiff

– and –

SUMAC COMMUNITY WORKER CO-OPERATIVE INC. and PLANET BEAN INC.

Defendants

REASONS FOR JUDGMENT

Langdon J.

Released: October 3, 2012