

CANADA / JUDGMENT

Knowlan v. Trailmobile Parts & Services Canada Ltd.

2006 BCSC 337

COURT

Supreme Court of British Columbia

DECIDED

28 February 2006

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2006 BCSC 337 Knowlan v. Trailmobile Parts & Services IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Knowlan v. Trailmobile Parts & Services Canada Ltd. 2006 BCSC 337 Date: 20060228 Docket: S035020 Registry: Vancouver Between: Stephen Knowlan Plaintiff And: Trailmobile Parts & Services Canada Ltd./ Pieces et Services Trailmobile Du Canada Ltee. Defendant Before: The Honourable Mr. Justice Curtis Reasons for Judgment Counsel for the Plaintiff Lawrence N. Robinson Counsel for the Defendant M.J. (Peggy) O'Brien Date and Place of Trial: February 20-23, 2006 Vancouver, B.C.

- [1] Stephen Knowlan seeks damages for wrongful dismissal from his position as parts manager for Trailmobile Parts & Services Canada Ltd. at its branch in Burnaby, British Columbia.
- [2] Trailmobile Parts & Services Canada Ltd. is a federally incorporated company engaged in the business of selling trailer parts throughout Canada. It is a subsidiary of an American company which also has a division which manufactures Trailmobile trailers. Historically, Trailmobile Parts & Services Canada Ltd. operated a full services branch at its premises on an eight-acre lot in Burnaby selling new and used trailers and providing parts and services.
- [3] Mr. Knowlan began his employment with Trailmobile in December 1984 at 21 years of age. He began as a parts person in a unionized position, paid an hourly wage. His duties were those of a general labourer, including picking parts to fill customer orders and delivering parts to customers in the Greater Vancouver area. He continued in that position until 1997 when he was promoted to the non-unionized position of parts supervisor, having supervisory responsibilities over the parts departments and employees, at a salary of \$3,300 per month. In 1998, Mr. Knowlan was promoted to Parts Manager for the B.C. branch and his salary increased by \$6,000/year. His responsibilities in that position included, the operation of the parts department, supervision of staff including consultation on hiring, firing and discipline, staff training, inventory control and customer relations.

- [4] In the years following Mr. Knowlan's promotion to Parts Manager, Trailmobile closed the trailer sales and the service departments such that by 2003, the B.C. branch operated strictly as a retailer of trailer parts.
- [5] In 2003, Mr. Knowlan was earning a salary of \$55,296.24 per annum, in addition to which he was entitled to paid vacation and other benefits. In June of 2003, Trailmobile decided to close its Burnaby branch and to rely on a dealer network to sell its trailer parts. On June 4, 2003, Mr. Knowlan was advised by telephone that the branch would be closing August 4, 2003. A package of termination letters had been forwarded earlier to Mr. Iacutone, the branch business manager, for release, following the telephone call. There was no termination letter directed to Mr. Knowlan. There is disagreement in the evidence as to whether Mr. Knowlan was offered another position in the employ of the company during the telephone call of June 4th, however by e-mail of June 6th from Mr. Dean Varro, his immediate supervisor, Mr. Knowlan was offered a position as a dealer representative "to establish and service a Trailmobile dealer network starting with Vancouver area to set up and work closely with new dealer accounts and calling on existing fleet and dealer accounts in the region to maintain and grow Trailmobile presence", Mr. Knowlan said that he did not regard the offer as a genuine one, but simply as one designed to avoid having to pay him severance pay.
- [6] Discussion about closing the Burnaby branch and going to a dealer network had taken place prior to June 4, 2003 and Mr. Knowlan was aware that there was a possibility of that happening. The branch was situated on a large eight-acre site which had once housed the full service dealership - a site that was much too large and uneconomic for a parts retail store. For that reason, there had also been discussion of possibly moving the dealership to a better location. Mr. Knowlan appears to have given brief consideration to becoming a Trailmobile dealer himself prior to the June 4th notification. He testified that during the June 4th phone call, it was suggested to him he might become a dealer. It is clear from the letter of reference provided for Mr. Knowlan by Trailmobile, and the evidence of Dean Varro, his supervisor in Mississauga, and Paul Eacrett, the General Manager, that Mr. Knowlan was a very valued employee whose services the company would prefer to retain in some manner, either as a continuing employee or as a dealer. It is also clear that upon being advised of the impending closure of the branch, Mr. Knowlan immediately began to act upon the possibility of becoming a Trailmobile dealer.
- [7] On June 6th, 2004, two days after the announcement of the branch closing, Mr. Knowlan sent the following letter on Trailmobile letterhead. June 6, 2003 To all my Local Suppliers As you may have already heard, effective Aug. 04, 2003, the Trailmobile Parts operation in Vancouver will be shut down. This is not due to financial reasons. Trailmobile Parts Canada is exploring the possibilities of a dealer network throughout British Columbia and Alberta, therefore choosing to close the Vancouver branch. I would like to take this opportunity to thank each of you for the support you have shown Trailmobile and myself while I have been Parts Manager. I have enjoyed working with each of you and hope that this will continue. I

am presently exploring the possibility of opening a Trailmobile Parts Dealership myself at a new location within the Lower Mainland. After serious consideration with regards to this undertaking, I believe that with your continued support relating to pricing, discounts, credit limits, extended credit terms of 30 to 45 days, along with the servicing of the accounts this venture promises great success. Trailmobile Vancouver has been an excellent operation, taking into account the poor location and the condition of the property. With the improvements that we are planning in both of those areas, business will continue to thrive. After our many years of dealings I feel confident that you will trust in my commitment to ensure that together we can make this a viable operation in a short period of time. I would appreciate an answer via E-Mail and/or a phone call to discuss any concerns you may have. I would be more than happy to answer any of your questions. These plans are only in the preliminary stages, my decision to pursue this endeavour further is dependent on whether we can expect your full support. Thank you for your consideration to this matter. Yours truly, Steve Knowlan Trailmobile Parts Manager Vancouver Branch

- [8] Mr. Knowlan was not sure at that point whether he would be able to obtain the financing necessary to establish himself as a dealer. On July 5, 2003, Dean Varro provided him with a letter of reference to assist him in his application for financing. That letter stated in part: Steve has been employed by Trailmobile for 19 years, has moved up within the company as parts manager now for 7 years. Steves knowledge as parts manager to operate a profitable department is second to none. Steve know all aspects of the stores operation and what it take to make it successfull. Steves dedication is beyond reproche, long hours 6 days a week in his norm. Steve knows all the nessary key elements to succeed.. -Product -Pricing -Profit - Margin -Management -Customers, well liked and respected in the industry. -Respect from his employees and subordinates.
- [9] On July 8th, Mr. Knowlan sent an e-mail to Mr. Eacrett which read: To: Paul Eacrett Subject: Steve's parts store Hi Paul A picture of my parts store for your information. I would occupy the lower potion of the 2400 sq' showroom and also the 1600 sq' warehouse to the right of that. It's a great spot right on the main street of major truck traffic. We could expect lots of walk in traffic. The lower awning would be mine as well for my name and a Trailmobile dealership sign. Thanks Steve
- [10] Unfortunately however, Mr. Knowlan's application for financing was turned down because of a lack of equity on his part. He wrote to Mr. Eacrett, (who had suspected that might be a problem), July 14, 2003: "I guess you were right Paul, I don't have enough equity for a business loan. Thanks for your patience."
- [11] Mr. Knowlan was not, however, defeated by this setback. He proceeded to look for a partner with sufficient capital and found Mr. Paul Gacina of A1 Paul's Trailer Repairs.
- [12] On July 15, 2003, Mr. Knowlan wrote as follows: July 15, 2003 TO ALL OUR VALUED CUSTOMERS: This is to advise you that our closing date of Aug. 4th has now been tentatively extended to Aug. 15th. We are still actively in the process of setting up our own Trailmobile

parts dealership. We will keep you informed as things progress, in the meantime we are still receiving some stock orders from Toronto & are continuing to fill orders for our customers. Your continued support is greatly appreciated & would like to keep supplying you now and in the future. Thank you again. Yours truly, Steve Knowlan Trailmobile Parts Manager

- [13] Mr. Knowlan began his discussions with Paul Gacina shortly after July 14, 2003. Mr. Gacina was not happy with the prices charged by Trailmobile for their parts which he considered to be too high. On or about July 22, 2003, Mr. Gacina and Mr. Knowlan who shared a 65%/35% interest in the business venture they were selling up made application to become a dealer in Wabash trailer parts. Wabash is another trailer part wholesaler which is in competition with Trailmobile. Trailer parts dealers do not have to deal solely in the parts of one wholesaler, however, Trailmobile's practice, which I infer was known to Mr. Knowlan was that they required their dealers to provide major support for their products, such that they would not establish as a dealership a business which was also a dealer for a major competitor such as Wabash. Clearly, as of the time Mr. Knowlan and Mr. Gacina applied to become a Wabash dealer, Mr. Knowlan was at the very least contemplating the possibility of competing against Trailmobile, whose parts prices his majority partner considered to be too high. Mr. Knowlan has not produced documents evidencing the application, or dealership agreement with Wabash, if they exist, so that the date of this decision is not corroborated by documentary evidence. However, in cross-examination, he did agree that July 22nd "sounds right" for the date of the application to Wabash. At the same time, negotiations concerning the possibility of becoming a Trailmobile dealer were ongoing, the point of contention being pricing.
- [14] When the closing announcement was made, Trailmobile had instructed Mr. Knowlan to reduce its parts inventory as much as possible, and to sell its assets. Inquiries were made of the possibility of sales to other businesses.
- [15] On August 8, 2003, Mr. Knowlan, using Trailmobile letterhead wrote as follows: TO ALL OUR VALUED CUSTOMERS: We are pleased to announce that effective August 15th Steve Knowlan and Trailine Trailer Parts Ltd. will be taking over the day to day operations of the parts department of Trailmobile Parts & Service Canada Ltd. Trailine will be moving to the new location at:- 10304A- 120th Street, Surrey, B.C. V3V 4C1. New Phone #604-582-4888 and new fax #604-582-4880. These new numbers will be in operation as of Aug. 19th. Trailine has purchased most of the inventory and will move it to our new location. The rest of the inventory will be sold off at a reduced dollar effective immediately. If you are interested in this inventory call me at the Trailmobile's Burnaby store @ 604-299-2661. The Trailine store is currently being renovated to accommodate us and we are moving in on the week of August 25th with hopes of opening up on September 2nd. Sante, Dennis, Patrick & myself will all be there to serve you, as we have done so in the past. We will carry over all of our accounts, but will ask you to update your credit information, at a later date. At this point I would like to thank each and everyone of you for the support you have given both myself and Trailmobile over the years and I hope that I can continue to serve you in the future. My commitment of offering quality products at competitive pricing will not change and I will be

making some immediate improvements in those areas. I only ask for your patience with the transition period. If you need parts or have any concerns during this period, please do not hesitate to call me at anytime and I will do my very best to accommodate you. Contact numbers are listed below. Once again, thank you for your understanding in this matter.

Steve Knowlan: · Work Phone #604-299-2661; Cell #604-760-2420 Home #604-451-4082 Yours truly, Steve Knowlan Trailmobile Parts Manager

- [16] I note the letter states that "Steve Knowlan and Trailine Trailer Parts Ltd. will be taking over the day to day operations of the parts department of Trailmobile Parts & Services Canada Ltd. Trailine will be moving to the new location at ..." Unlike the earlier letters of June 5th, and July 5th, this letter does not refer to setting up a Trailmobile dealership. The logical inference is that when Steve Knowlan wrote this letter while still in the employ of Trailmobile, having applied to be a Wabash dealer on July 22nd, he was well aware that his new business, which he was representing as carrying on the "day to day operations of the parts department of Trailmobile Parts & Service Canada Ltd." was in fact going to be competing with his old employer.
- [17] On August 11, 2003, an e-mail was sent to Trailmobile concerning sale of the branches' inventory and assets as follows: Hello Paul and Dean We have sent a parts listing and revised evaluation report to you in Friday's courier. You will notice that I have taken any LP parts and transferred them back into the TM inventory because these are parts that I purchased from PDC. We have gone through the inventory and highlighted the parts that we do not want. Steve will send back LP parts to suppliers like Holland, Phillips, Peterson etc in hopes that the re-stocking charge if any will be minimal. We have (2) offers we would like you to consider. Offer #1
- 75 cents on the dollar for any Trailmobile parts
 - full cost value of any LP parts
 - all assets eg. Truck, forklift, computers, scale, pallet jack, compressor. small hand tools, shelving, racks, ladders, parts bins, office equipment, etc. would be no charge for these items. Offer #2
 - 75 cents on the dollar for both Trailmobile and LP parts
 - \$7500.00 for all assets as listed above Both of these offers are for only the parts that we want. Currently there is about 79,000 worth of parts that we do not want. Steve will continue to contact customers and suppliers to see if he can sell these parts. Please respond as soon as possible so that we can proceed with our business plans. Thanks Paul Gacina Trailine Trailer Parts Ltd. Steve Knowlan

- [18] Mr. Knowlan testified that Trailine Trailer Parts Ltd. was incorporated about mid-August 2003. The certificate of incorporation was not put into evidence for which reason the precise date is not documented. The August 11, 2005 letter however describes Paul Gacina and Steve Knowlan as doing business as Trailine Trailer Parts Ltd. The new business name Trailine Trailer Parts tends to suggest a continuing relationship with Trailmobile Parts & Service Ltd.
- [19] Pursuant to invoices dated August 14, 2003, Mr. Knowlan's new business Trailine, purchased \$134,444.40 of the Trailmobile inventory at 80% of the usual dealer costs, namely \$107,555.53 (plus tax), and assets, including a pickup truck, fork lift, scales, etc for \$5,000. A computer not included in the asset sale, was given to Mr. Knowlan and his business by Trailmobile. This was an older computer containing, along with other information, Trailmobile's entire list of customers. It is reasonable to conclude that at the time this information was released to Mr. Knowlan Trailmobile believed Mr. Knowlan's new business was going to be working for it as their new dealer. This is what Mr. Varro and Mr. Eacrett testified they believed to be the case. A business would have to be incompletely managed to willingly gift their customer list to a known competitor.
- [20] The Trailmobile branch closed its doors on August 15, 2003. Mr. Knowlan had been permitted to spend some of his time in the latter part of his employment establishing his new business, and although he was paid by Trailmobile up to August 22, 2003, his last date of actual work for the company was August 15.
- [21] Mr. Knowlan wrote the following letter to Trailmobile suppliers, August 15, 2003: TO ALL OUR VALUED SUPPLIERS Please find attached our customer credit application to you. As you know, Trailmobile Parts & Service is closing its doors in Burnaby, B.C. Steve Knowlan, formerly the Parts Manager of Trailmobile, and Paul Gacina of A1 Paul's Trailer Repairs will be opening another parts distribution store in Surrey, B.C. under the name of "Trailine Trailer Parts Ltd." As Trailine Trailer Parts is a new company, we realize that there will not be any references available, therefore we are providing you with Bank references and Trade references applicable to A1 Paul's Trailer Repairs. If you have any questions or concerns, please do not hesitate to call me on my cell (604-760-2420) or @ Trailmobile (604-299-2661) or you can call Paul Gacina at A1 Paul's Trailer Repairs (604-882-8627) You can rest assured that keeping our accounts in a current position with you at all times will be a priority with us. At this point I would like to take this opportunity to thank you for your support over the years while at Trailmobile and look forward to doing business with you for many years to come. Yours truly, Steve Knowlan Partner @ Trailine Trailer Parts Ltd.
- [22] The new business Trailine opened its doors at its new location on or about September 3, 2003. Mr. Knowlan testified that he personally had not advised Trailmobile to that point that the new business was opening as a Wabash dealer. He testified that in late July, Dennis Martineau of Trailmobile had phoned him to ask him what was going on and "I told him I was not the controlling partner and I gave him Paul Gacina's numbers". Mr. Knowlan testified that Mr. Gacina told him that he advised Trailmobile that the new business was not going to be its dealer. The logical inference is that when Mr. Knowlan told Mr. Martineau to

call Mr. Gacina, he was well aware at the time of the situation but chose not to reveal it to his employer. Mr. Gacina was not called as a witness and there is no evidence other than hearsay that Trailmobile were advised that Trailine was going to be in competition with it until after Trailine opened for business. The circumstances of the sale of assets and inventory and the transfer of the customer list all support the inference that Trailmobile was completely unaware that it was assisting in setting up a competing company.

- [23] Mr. Varro testified that he first learned that Trailine had set up a competing business in the first week of September 2003 when he phoned Mr. Knowlan and suggested he must be running out of parts and asked where the parts order was. He described his reaction to being told the parts had been ordered from another dealer as going "about 6' in the air". This evidence sounded believable at the time Mr. Varro gave it and considering all the circumstances I accept it as accurate.
- [24] In the result, I find that Stephen Knowlan, while employed as the parts manager for Trailmobile Parts & Service Canada Ltd. without informing his employer of what he was doing, set about to establish himself and his new business partner in competition with his employers, and in doing so used his employment, position, knowledge and access to customer information while in the employ of Trailmobile in the interest of himself and his new business and against the interest of his employer which was paying him at the time.
- [25] The result of these actions rebounded significantly to the advantage of Mr. Knowlan. Although he did not draw a pay cheque from his new business for the first seven months, he began to draw a monthly salary of \$5,400 in April 2004 (exceeding his Trailmobile salary) and his new company showed retained earnings of \$94,328 in which Mr. Knowlan would hold a 35% interest. Mr. Knowlan acknowledged he received a dividend from his company in 2004 but did not say how much. He now earns an income considerably in excess of that which he had at Trailine. If what he was paid and retained in his company throughout the 20-month period of notice claimed is calculated, it is at least arguable he suffered no loss whatsoever. The results for Trailmobile have been otherwise - it has not succeeded in reclaiming its market share and has lost a good deal of money, estimated to be \$200,000 per year.
- [26] The law clearly establishes that an employee can be denied damages in lieu of notice if just cause for termination is discovered after the employment ends. In the circumstances of this case, there was very clearly just cause for Trailmobile to terminate Mr. Knowlan's employment; the cause being that in late July and August 2003 he was using his position as Parts Manager to set up a new business in competition with his employer.
- [27] Mr. Knowlan's claim for damages for wrongful or constructive dismissal cannot succeed on these facts and is dismissed. "V.R. Curtis, J." The Honourable Mr. Justice V.R. Curtis

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/06/03/2006bcsc0337.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/kowlan-v-trailmobile-parts-and-services-canada-ltd-2006>

Prepared on 30 October 2026 · Esheria