

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

WESTFAIR FOODS LTD.

PLAINTIFF

AND:

UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION,
UNITED FOOD AND COMMERCIAL WORKERS UNION, LOCAL 1518,
UNITED FOOD AND COMMERCIAL WORKERS UNION, LOCAL 2000, AND
CLIFFORD EVANS

DEFENDANTS

AFFIDAVIT OF ANDREW W. SMITH

I, Andrew W. Smith, of the City of Vancouver, in the Province of British Columbia, Executive, MAKE OATH AND SAY THAT:

1. I am Vice-President, Labour Relations, of Loblaw Companies Ltd., a company incorporated under the laws of Canada, and as such I have responsibility for the direction of Labour Relations for all subsidiary companies, including the Plaintiff, a company which carries on business primarily within the Provinces of Manitoba, Saskatchewan, Alberta and, most recently, in', the Province of British Columbia. In such position, I have personal knowledge of the facts hereinafter deposed to, save and except where stated to be on information and belief and where so stated, I verily believe them to be true.

2. This Affidavit is made in support of the Plaintiff's application for an interim ex parte injunction in this action, and I Have read the Writ of Summons herein and the allegations set forth in that document are, to the best of my knowledge and belief, true.

3. The Plaintiff, Westfair Foods Ltd., ("Westfair"), has carried on business as a food wholesaler and retailer in an Extra Food store in northwestern Ontario, and in the Provinces of Manitoba, Saskatchewan, and Alberta, for many years, and has operated a number of retail stores in the Prairie provinces, including the Extra Food store referred to herein, and a number of real Canadian Superstore outlets (the "Superstores").

4. In the Summer and early Fall of 1988, Westfair had formulated plans to begin operations in British Columbia, in the following chronological order, commencing in January 1989:

- (a) Extra Food - Capri Shopping Centre at Kelowna, British Columbia;
- (b) real Canadian Superstore distribution centre - Southeast Marine and Prince Edward Street
- (c) real Canadian Superstore - Metrotown, Burnaby, British Columbia;
- (d) real Canadian Superstore - Southeast Marine and Prince Edward Street, Vancouver, British Columbia;
- (e) Extra Food store - Seven Oaks Shopping Centre, Clearbrook, British Columbia;
- (f) real Canadian Superstore Lougheed Highway at Schoolhouse Road,
- (g) real Canadian Superstore - Grandview Highway, at Rupert Street, Vancouver, British Columbia;
- (h) real Canadian Superstore - King George Highway, at 74th Avenue, Surrey, British Columbia.

5. It has been one of my primary responsibilities to negotiate collective agreements with various Locals of the Defendant International over the past eight years, at the various real Canadian Superstores in the Prairie Provinces. Prior to 1980, I was on staff in the Labour Relations Department of a related company to the Plaintiff in British Columbia, which was involved in the negotiation of collective agreements with the Defendant, United Food and Commercial Workers Union, Local No. 1518, ("Local 1518"), and United Food and Commercial Workers *Union, Local No. 2000*, ("Local 200011"). In the latter case, I have had direct involvement in the negotiation and administration of collective agreements on behalf of our subsidiary company, Kelly Douglas and Company Limited, with Local 2000.

6. During the course of my dealings with other locals of the Defendant International, particularly in the Province of Alberta, I was able to negotiate collective agreements with the Alberta Local of the Defendant International, which took into account the special needs of collective agreements, which would be applicable to large combination stores like the real Canadian Superstores. My experiences with the Defendants Local 1518 and Local 2000 in the Province of British Columbia lead me to conclude that those Locals would not be suitable for the negotiation or administration of collective agreements which would apply to our Extra Food stores and real Canadian Superstores in the Province of British Columbia. I therefore began to take steps in the late Fall of 1988 to see if I could arrange matters with the Defendant International as such that Westfair would not be required to negotiate with the Defendants, Local 1518 and Local 2000, and would not be subject to the administration by those Locals of any collective agreement pertaining to the Extra Food stores to be opened in the Province of British

Columbia, or the real Canadian Superstores to be opened in the Province of British Columbia.

7. To further the objectives described above, I contacted the Defendant, Clifford Evans, who was known to me to be the Vice-President and Canadian Director of the Defendant International. The Defendant, Clifford Evans, was based in Toronto, Ontario. This meeting between myself and the Defendant, Clifford Evans, took place on the 9th of November, 1988 in my office at 22 St. Clair East, in the City of Toronto, in the Province of Ontario. Before this meeting, I had had intermittent discussions with the Defendant, Clifford Evans, in which I had voiced Westfair's refusal to enter into any agreement to voluntarily recognize either the Defendant, Local 1518, or the Defendant, Local 2000, for any of its Extra food stores, real Canadian Superstores, or distribution centers to be opened in 1989 and onwards in the Province of British Columbia.

8. On the 9th of November, 1988, Mr. Clifford Evans, acting in his capacity as Vice-President and Canadian Director of the Defendant International, proposed that, in return for a voluntary recognition by the Plaintiff by virtue of a Collective Agreement to be negotiated immediately between the Defendant International and Westfair, the Defendant International would not require the Plaintiff to deal with the Defendants, Local 1518 and Local 2000, in the Province of British Columbia, but, rather, would arrange for the creation of a new Local of the Defendant International to be known as "Local 777". On the 10th day of November, 1988, it was agreed by myself for the Plaintiff in the Province of British Columbia, and the Defendant, Clifford Evans, acting as a Vice President and Canadian Director of the Defendant International, that the Defendant, Clifford Evans, would take all necessary steps to have the Defendant International issue a new Charter for a new Local of the Defendant International in British Columbia, which would have exclusive jurisdiction over all employees of the Plaintiff in the Province of British Columbia, at their Extra Food stores, and their real Canadian Superstores, to be opened in 1989 and onwards in the Province of British Columbia.

9. Between November 10, 1988 and January 12, 1989, I participated in a series of negotiations with the Defendant, Clifford Evans, with the result that, on January 12, 1989, I signed a Collective Agreement, along with the Defendant, Clifford Evans, which Collective Agreement is now produced and shown to me and marked Exhibit "All to this my Affidavit.

10. Following the execution of the aforesaid Collective Agreement, covering the Plaintiff's operations in British Columbia, the Defendant International issued a Charter to a new Local of the Defendant International in British Columbia, which was called "Local 777". On February 8, 1989, the Plaintiff opened the first of its

stores in the Province of British Columbia, being an Extra Food store at the Capri Shopping Centre, in Kelowna, British Columbia. On February 9, 1989, the Plaintiff entered into a Collective Agreement in terms similar, if not identical, to the Agreement appended as Exhibit "A". That Collective Agreement was presented by Local 777 to the employees of the Kelowna Extra Food store, and ratified by a majority Vote of the employees on February 12, 1989. Prior to the ratification vote, Local 777 had made application for certification to the Industrial Relations Council for the employees at the Extra Food store in Kelowna, and that certification was issued by the Industrial Relations Council on February 7, 1989

11. The Plaintiff then began to hire employees for its Metrotown real Canadian Superstore, which was opened on March 28, 1989. After February 12, 1989, the Defendant Locals 1518 and Local 2000, through their officers, Lief Hanson and Brooke Sundeen, respectively, began to criticize the Collective Agreement entered into at the Extra Food store in Kelowna, and its extension pursuant to the Collective Agreement to the Metrotown real Canadian Superstore. This criticism included references in the media to the Defendants, Local 1518 and Local 2000, seeking to have the Defendant International somehow avoid the Collective'- Agreement which had been signed with Local 777. On or about March 28, 1989, I obtained a copy of a letter dated March 28, 1989, from William H. Wynn, International President of the Defendant International, to Mr. Gilbert M. Witlock, acting President of Local 777. That letter is now produced and shown to me and marked Exhibit "B" to this my Affidavit.

12. Following March 28, 1989, the Defendant, Clifford Evans, made a number of efforts to secure changes to the Collective Agreement that had been agreed to and ratified the Extra Food store in Kelowna, as it applied to the real Canadian Superstore in Metrotown. As a result of the these entreaties, I instructed our Industrial Relations manager in Vancouver, Mr. Bruce Kent, to negotiate further with Local 777 with respect to the real Canadian Superstore at Metrotown, and some significant improvements in wage rates were agreed to. Those changes were incorporated into the Collective Agreement which applied to the real Canadian Superstore at Metrotown, which Agreement was ratified by a majority vote of employees at the real Canadian Superstore at Metrotown, and the distribution centre on Marine Drive, in Vancouver, British Columbia.

13. Following the ratification on April 3, 1989 above, I was asked by Mr. R.J. Currie, President of Loblaw Companies Ltd. in Toronto, to attend a meeting with the Defendant, Clifford Evans, and a Bill Alwell, who identified himself as a Director of Collective Bargaining of the International Union in Washington, D.C., U.S.A. That meeting took place on April 12, 1989, at the offices of Loblaw Companies as aforesaid. At that meeting, Mr. Currie and myself were told by the Defendant, Clifford Evans, and Bill Alwell, that, unless Westf air was prepared to amend the aforesaid Collective Agreements in the

Province of British Columbia by deleting the renewal language, amending the excluded positions in the agreement and deleting a letter establishing the circumstances under which a pay increase could be implemented, the Defendant International would take the following three steps:

(a) Remove the Charter of Local 777 and "dissolve the Local Union";

(b) Merge the members of Local 777 with Locals 1518 and Local 2000;

(c) Transfer the Collective Agreement which was applicable to Extra Foods in Kelowna and, real Canadian Superstores at Metrotown, and real Canadian Superstores distribution centre at Marine Drive, to Local 1518 and Local 2000; and

(d) "Disclaim interest" in any future stores referred to in the Letter of Understanding attached to the Collective Agreement signed the 10th day of February, 1989.

The aforesaid Defendant, Clifford Evans, and Bill Alwell, demanded that the Plaintiff provide an answer by the close of business on April 17, 1989. I clearly understood that, unless the Plaintiff capitulated to the demands being made, the Defendant International, would take whatever steps necessary to prohibit Local 777 from carrying out its contractual obligations to the Plaintiff, and force the Plaintiff to deal with Local 1518 and Local 2000, contrary to the oral agreement reached on the 10th day of November, 1988.

14. The Plaintiff has received no notice from Local 777 that it is anything but ready to complete its contractual obligations contained in the Collective Agreements referred to above.

15. I know that the Defendant, Clifford Evans, is today in the City of Vancouver, and I believe, on the basis of the information received to date that, when the Plaintiff tells the Defendant, Clifford Evans, it will require the Defendant International to live up to its contractual commitments, the Defendant, Clifford Evans, will immediately take the steps referred to above against Local 777, thereby causing irreparable harm to the Plaintiff, and its relationship with and Collective Agreement with Local 777. I believe that the Defendants, Local 1518 and Local 2000, are now poisoned in attitude towards the Plaintiff, and the Plaintiff will have insurmountable difficulties in maintaining industrial peace and harmony with its employees if they are suddenly thrust into local trade unions in the Province of British Columbia which have publicly declared that they are opposed to the terms of their Collective Agreement aforesaid, negotiated in good faith by the Plaintiff with Local 777.

16. Today, at approximately 3:40 p.m., I was advised by the said Clifford Evans, and verily believe that he has, by facsimile, received a letter from William Wynn, the President of the Defendant

International to "stop the Charter of the Local Union". This was clearly meant to refer to the Local 777 described above.

17. I have examined the Constitution of the Defendant International now produced and shown to me and marked Exhibit "C" and cannot find any provision allowing the dissolution of a local union in the circumstances herein.

18. The Plaintiff is prepared to give, and herewith does give, an undertaking as to damages, should an interim ex parte injunction in this matter be issued, and the Plaintiff's claim is dismissed at trial, or at any other interlocutory proceeding taken in connection with this matter. I am authorised by the Plaintiff to give the undertaking described above as a senior executive of its parent company responsible for the Labour Relations pertaining to the Plaintiff's business in the Province of British Columbia and elsewhere.

ANDREW W. SMITH

SWORN BEFORE ME at the City of
Vancouver, in the Province of
British Columbia, this 17th
day of April, 1989.

A Commissioner for taking Affidavits
within British Columbia