

Citation: Restauronics Services Ltd. et al. v. Forster et al.
2001 BCSC 922

Date: 20010622
Docket: C960400 &
S005210
Registry: Vancouver

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

No. C960400
Vancouver Registry

**RESTAURONICS SERVICES LTD.,
FORSTER FOOD SERVICES (1992) LTD. AND
TOWN SQUARE FOOD SERVICES LTD.**

PLAINTIFFS

AND:

**ARTHUR FORSTER, ERLINDA V. NICOLAS,
NATHAN KUSHNIR AND WESTCANA SERVICES INC.**

DEFENDANTS

AND:

***No. S005210
Vancouver Registry***

ARTHUR FORSTER

PLAINTIFF

AND:

**RESTAURONICS SERVICES LTD.,
FORSTER FOOD SERVICES (1992) LTD. AND
TOWN SQUARE FOOD SERVICES LTD.**

DEFENDANTS

**REASONS FOR JUDGMENT
OF THE
HONOURABLE MR JUSTICE RALPH**

Counsel for Restauroincs Services Ltd. et al.

Joseph C. McArthur and
Michael Howcroft

Counsel for the defendant
Arthur Forster

Jacy Wingson and Alex Kask

Counsel for Erlinda v. Nicolas and Westcana
Services Inc.

Nazeer T. Mitha and
Nicole Howell

Date and Place of Hearing/Trial:

November 14-16, and
November 20-24, 2000 and
January 24, 25 and 29, 2001
Vancouver, B.C.

[1] On February 24, 1995, Restauroincs Services Ltd. ("Restauroincs") purchased the shares of Mr. William Forster and his three sons in Forster Food Services (1992) Ltd. Arthur Forster, the defendant in the first action and plaintiff in the second, is one of William Forster's sons. Restauroincs also purchased the shares of Town Square Food Services Ltd. and Forster Food Services (Calgary) Ltd., all of which were owned by Mr. William Forster.

[2] At the time of the sale of shares, both Restauroincs and the Forster companies were engaged in the business of providing food services in institutional settings. Acquisition of the Forster companies offered Restauroincs an opportunity to expand its business more substantially into British Columbia. Restauroincs carries on business in most parts of Canada and has its head office in Toronto. In 1995 it was the fourth largest institutional food business in Canada but did not have extensive business in British Columbia.

[3] These actions arise out of circumstances connected to the sale and purchase of the Forster shares and were joined for the purposes of trial. The defendant, Mr. Kushnir, passed away in 1996. No steps have been taken in respect of the claim against him or his counterclaim and the action did not proceed as against him. Subsequent to the purchase of shares, Forster Food Services (1992) Ltd. was amalgamated with Restauroincs. Throughout this decision I will refer to the plaintiffs collectively as "Restauroincs".

[4] At the time of the share purchase agreement Mr. Arthur Forster, held a 15% interest in Forster Food Services (1992) Ltd., and was also employed as the Vice-President of Operations for the Forster companies. One of the district managers of Forster Food Services (1992) Ltd. was the defendant, Ms. Nicolas, who reported to Arthur Forster. Ms. Nicolas is the sole shareholder and director of Westcana Services Inc. ("Westcana") and she was dismissed from her employment with Restauroincs in July 1995.

[5] Restauroincs' claims against Mr. Forster, Ms. Nicolas and Westcana, are that they breached duties not to use confidential or proprietary information belonging to Restauroincs. In particular, the allegations relate to the provision of food services to the Burnaby Correctional Centre for Women ("BCCW"), one of the institutions served by Restauroincs. In October 1995, however, the contract to provide food services to BCCW was awarded to Westcana.

[6] Mr. Forster's and Ms. Nicolas' claims against Restauroincs are that they were wrongfully dismissed from their employment.

[7] The share purchase agreement provided that Arthur Forster would be paid \$381,000 for his shares. The agreement also contained a restrictive covenant set out in eight paragraphs. Each

vendor of shares covenanted that for a period of five years he would not be engaged in the business of providing food services "within British Columbia, Alberta and within a 100 mile radius of any regional or branch operations of the Purchaser".

Mr. Arthur Forster's employment with Restauronics

[8] Prior to the purchase and sale of the Forster companies on February 24, 1995, Mr. Manfred Doblinger, the chairman of Restauronics, proposed to Mr. Forster that he become an employee of Restauronics after the sale. It was Mr. Forster's evidence that, while he did not so advise Mr. Doblinger, he did not wish to accept a position because of indications that in the proposed position he may be required to terminate two employees of Forster Foods (1992) Ltd. He informed his father of his concern. In a subsequent telephone discussion with Mr. Doblinger, Mr. Forster was told that his continued association with the company was an integral part of the purchase and sale and that his role after the sale would be an important one. Mr. Forster testified that he was informed a number of times by Mr. Doblinger that it would be "business as usual" after the sale. Mr. Forster said that this gave him a level of comfort sufficient to accept employment with Restauronics. He assumed that he was "going to be running the show". In his evidence at trial, Restauronics' Vice-President, Finance, Mr. Kelley, stated that his company "saw that Art's position was critical to the transition" and made it a condition of the sale that he stay on with the company.

[9] On February 22, 1995, Mr. Doblinger wrote Mr. Forster providing him with an offer of employment as Vice President, Operations - Western Canada at an annual salary of \$90,000. The salary was approximately \$30,000 more than Mr. Forster had been earning. While the offer did not contain a job description, it did contain a condition that Mr. Forster would be required to give two months notice of any resignation and that Restauronics could terminate his employment on two months notice. It also required Mr. Forster to agree to a "Non-competition and non-solicitation agreement" that would be in force for 12 months following termination of his employment. Mr. Forster accepted the position and agreed to both requirements.

[10] It was Mr. Forster's evidence that following the completion of the sale on February 24, 1995, a series of events occurred in his employment which placed him in the position of "putting out fires". He said that he was required to present to the district managers who reported to him employment contracts containing a two-month termination clause and the same non-competition and non-solicitation provision which he had signed. This was highly upsetting to the district managers who had not been bound by such provisions before and had a chilling effect on his working relationship with them. When Mr. Doblinger agreed to pull back from that requirement, Mr. Forster said that the company then introduced psychological testing to the district managers which they refused to take.

[11] Mr. Forster said that further upset was created with district managers and others by the introduction of detailed reporting requirements which were more extensive and more frequent than those required of district managers by the Forster companies. He stated that there were also complaints from some clients that required him to meet with them and seek to accommodate their concerns.

[12] It was Mr. Forster's evidence that when he made recommendations to meet the concerns that were arising, his advice was not accepted. He also expected to receive training on the systems of Restauronics but did not receive it. In his view the philosophy of the new owners was entirely different from the pre-sale philosophy of the Forster companies and he no longer had a

"family-type relationship" with the district managers. He characterized the post-sale structure as anything but "business as usual" and said that he felt betrayed.

[13] On March 14, 1995, Mr. Forster tendered his resignation to Mr. Gourley, Restauronics' Vice-President for Western Canada. He confirmed his resignation in a letter dated April 10, 1995, with his last day of employment to be May 12. Mr. Gourley acknowledged the resignation in a letter dated April 19, 1995, in which he reminded Mr. Forster of his obligations under the purchase and sale agreement and the employment agreement. Mr. Forster was offered an option of working on special projects until May 15 or taking paid leave. He chose paid leave. On May 9 Mr. Forster wrote to Mr. Gourley and stated that he considered himself to have been constructively dismissed by Restauronics and, under the circumstances, not bound by the restrictive covenant or the non-competition obligation.

[14] On June 15, 1995, Mr. William Forster wrote to his son with respect to any intent that Mr. Arthur Forster might have to bid on projects that former clients might ask him to bid on. Mr. William Forster feared that Restauronics might think that he was involved in such efforts and would decline to pay him the balance of the proceeds for the sale of his shares. As a result, William Forster warned Arthur Forster that should Restauronics take such action, he would seek indemnification from his son.

[15] After Mr. Forster left Restauronics he worked part time in his father's restaurant in 1995 and applied for work in occupations unrelated to the institutional food services business. In October 1995 he (and Ms. Nicolas) was offered a position as a sales representative to sell rethermalization equipment for Grand Cuisine Systems Inc. It was Mr. Forster's evidence that he made two sales and earned a commission from that work but the work did not develop further.

[16] In February 1997 Mr. Forster was offered a position as district sales manager for a company whose business included food services. Because Mr. Forster was concerned that the work might be considered a breach of his restrictive covenant, his solicitor wrote to the solicitors for Restauronics seeking their approval. It appears that no reply was received by his solicitor and Mr. Forster did not undertake the position.

[17] In April 1997 Mr. Forster was finding it difficult to get employment and Ms. Nicolas offered him employment with Westcana. He accepted the offer and worked on a part-time basis for Westcana through to March 1999. He denied, however, that he had participated in any way in Ms. Nicolas' and Westcana's successful bid on the BCCW contract in 1995. It was Mr. Forster's evidence that he had no contact with Ms. Nicolas between May 1995 when he left Restauronics and October 1995 when Westcana obtained the BCCW contract.

[18] In September 1997, Mr. Forster assisted Ms. Nicolas in preparing a proposal on behalf Westcana to provide food services to the British Columbia Institute of Technology (BCIT). In the proposal Mr. Forster was referred to as a "principal" of Westcana. It was his evidence that he did not contact anyone at BCIT about the proposal. The bid was not successful and the contract was awarded to Restauronics.

Ms. Nicolas' employment with Restauronics

[19] Ms. Nicolas is a dietitian and obtained a Bachelor of Science degree in foods and nutrition in 1962. She commenced employment at Forster Food Services in 1986, starting as a consulting dietitian and then becoming a district manager responsible for a number of units. Ms.

Nicolas left for a one-year period in 1991 and returned in 1992. Throughout the time of her employment with Forster Foods, Ms. Nicolas also carried on a dietetic consulting business. Some of the consulting was done by her and some by dietitians sub-contracted by her. The gross revenue from the consulting business in 1995 was approximately \$40,000. Forster Foods was aware of Ms. Nicolas' consulting business as, in time, was Restauronics.

[20] In early 1995 Ms. Nicolas' primary duties as district manager entailed overseeing a number of units including hiring unit managers, carrying out performance evaluations of staff and supervising the performance of the units. BCCW was one of the units overseen by Ms. Nicolas. Ms. Nicolas was not directly involved in the preparation of bids on food services contracts but she did take part in the development of menus, scheduling plans and other information which might form part of a proposal. Her salary was \$52,000 and she reported to Arthur Forster.

[21] After the purchase of the Forster shares by Restauronics Ms. Nicolas continued to report to Mr. Arthur Forster. When Mr. Forster left, Ms. Nicolas reported to Mr. Gourley. On July 18, 1995, Ms. Nicolas was given a letter signed by Mr. Gourley. Ms. Nicolas was informed that the number of units for which she would be responsible was being increased from nine to sixteen. She was also advised that she would be required to sign a "non-competition and non-solicitation Agreement" and an "Employment Terms Agreement". Included in the Employment Terms Agreement was a provision that Ms. Nicolas would "work exclusively on behalf of the company" and a provision that the company could terminate her employment without cause on two months' notice. Included in the non-competition agreement was a provision that she could not be engaged in institutional food employment for a period of 12 months after termination of her employment.

[22] Ms. Nicolas was concerned that none of these provisions had been part of her employment contract to that point. The next day she informed Mr. Knox, the president of Restauronics, that she would not sign either agreement.

[23] Two days later it was necessary for Ms. Nicolas to take a two-week medical leave which was approved by Mr. Gourley. On August 3, 1995, Ms. Nicolas received a letter at home dated July 26, 1995, advising her that, because she had not accepted "the offer" presented July 18, her employment would be terminated October 7. Ms. Nicolas was instructed that she would be expected to carry out all of her duties to the end of her notice period. The unit managers who reported to her, however, were instructed by Restauronics to report to another manager.

[24] Ms. Nicolas' medical condition continued and on August 10 her orthopedic surgeon advised that she would require a further two months away from work. Ms. Nicolas offered to make herself available to assist her employer and on a date in the first half of August Mr. Gourley asked her to attend a meeting at BCCW with him. The purpose of the meeting was to discuss the renewal of the BCCW contract for the next year. The contract was for a three-year term but could be cancelled on 60 days' notice.

[25] Prior to the meeting Ms. Nicolas advised Mr. Gourley that the price would be a critical element in the meeting and recommended that he offer to hold the price at its current year level rather than seek the increased renewal price provided for in the contract. The BCCW representatives sought the reduced price and Mr. Gourley advised them that he would need to consider the matter.

[26] A second meeting was held about ten days later at which Mr. Gourley advised the BCCW representatives that the contract renewal price was fair and a price concession would not be made. As provided for in the contract, BCCW then gave Restauronics 60 days notice of cancellation of the contract and a formal Request for Proposal to provide the catering service was issued by the British Columbia Purchasing Commission.

[27] Ms. Nicolas made a decision to submit a proposal on behalf of Westcana and submitted it on September 25, 1995. Restauronics also submitted a proposal. Of the four proposals submitted, only the proposals of Restauronics and Westcana met the Purchasing Commission's mandatory requirements. The cost per meal in each designated category was lower in the Restauronics proposal than in the proposal made by Westcana.

[28] The Request for Proposal was a lengthy and detailed document calling for lengthy and detailed information from proponents. The proposals were required to be presented in a prescribed format. The evaluation process used a weighted scoring to assess proposals. Restauronics weighted score was 69.05%. Westcana's weighted score was 80.23%. A contract was awarded to Westcana and it began providing its service to BCCW in November 1995.

[29] Ms. Nicolas gave detailed evidence and was extensively cross-examined on the manner in which she developed her BCCW proposal. The evidence covered the steps she took to contact suppliers, to determine menus and quantities and to determine labour costs from other dietitians. She testified that she contacted an insurer to determine benefit costs and an accountant to determine labour costs per meal. She added 5% to her costs as an allowance for profit and management remuneration.

[30] Ms. Nicolas said that she did not have any Restauronics material before her in preparing the proposal and she did not consult with or discuss the proposal with Mr. Arthur Forster. She denied that the letters "A", "D" and "L" in the margins of her working copy of the BCCW Request for Proposal indicated the persons responsible to develop the noted items and, in particular, that "A" stood for Arthur Forster and "L" for Linda Nicolas. In cross-examination she agreed that she had been unable to produce any working papers she had used in the preparation of the BCCW proposal.

[31] Ms. Nicolas was asked a series of questions about the costs per meal she proposed compared with the costs per meal contained in Restauronics contract with BCCW made in September 1994. Westcana's proposed contract price of \$3.89 per meal for the secure unit using inmate assistance for year one of the three-year proposal beginning in October 1995 was identical with Restauronics' first year price in the 1994 contract. Westcana's proposed price of \$6.54 per meal for the open living unit without inmate assistance for year one of the proposal was also identical with Restauronics' first year price in the 1994 contract. Ms. Nicolas said that this occurrence was a coincidence and that the calculation to arrive at these costs per meal was based upon a different assumption of the average number of meals per day from those used in the 1994 contract costs per meal.

[32] Ms. Nicolas did not deny that she relied on her knowledge and experience with Forster's to estimate the number of staff that would be needed to provide service to BCCW. She said that "price per meal" is a system that can be applied to a food service operation generally and it does not draw upon a fixed formula that is akin to a scientific formula. Ms. Nicolas acknowledged that she also relied on both her background knowledge on how to address the

issues in the Request for Proposal and on her experience gained in the provision of food services to BCCW.

[33] Ms. Spick, Restauronics' unit manager at BCCW in 1995, testified that at some point in September 1995 Ms. Nicolas informed her of her intention to submit a proposal for the catering service at BCCW. Ms. Spick said that in August she had provided Ms. Nicolas with a document setting out the staffing needs and scheduling for the BCCW unit.

[34] On October 30, 1995, Ms. Spick signed a memorandum prepared by Mr. Keith Kerr of Restauronics. In the memorandum Ms. Spick advised Mr. Kerr that she had been informed by Ms. Nicolas in a telephone conversation that Art Forster would be helping Ms. Nicolas with her plans, menus, and food and labour costs in the proposal to be made by Westcana. While the memorandum also states that in the same call Mr. Forster came on the telephone and asked if she would work for Ms. Nicolas, Ms. Spick denied that she had spoken to Mr. Forster. She said that she had advised Mr. Kerr that the memorandum was incorrect in this respect and was told that it was not important. The memorandum was not changed.

Issues

[35] The following issues must be decided:

1. Was Mr. Arthur Forster constructively dismissed from his employment?
2. Was Ms. Nicolas wrongfully dismissed from her employment?
3. Did Ms. Nicolas
 - a) breach duties of good faith, fidelity and confidence owed to Restauronics,
 - b) breach a fiduciary duty owed to Restauronics,
 - c) unlawfully interfere with Restauronics' economic and contractual relations,
 - d) conspire to injure Restauronics,
 - e) act as an accomplice to Mr. Forster's breach of fiduciary duties?
4. Did Mr. Forster
 - a) breach his obligations under the restrictive covenant in the share purchase agreement,
 - b) breach his employment agreement with Restauronics,
 - c) breach a fiduciary duty owed to Restauronics,
 - d) conspire to injure Restauronics?
5. Is Westcana vicariously liable?

6. What is the measure of damages if liability is found on any of the above?

Was Mr. Forster constructively dismissed?

[36] In *Farquhar v. Butler Bros. Supplies Ltd.*, [1988] 3 W.W.R. 347, (B.C.C.A.) defined constructive dismissal at pp. 349-350:

A constructive dismissal occurs when the employer commits either a present breach or an anticipatory breach of a fundamental term of a contract of employment, thereby giving the employee a right, but not an obligation, to treat the employment contract at an end.

[37] It is Mr. Forster's position that Restauronics had given him a number of job expectations and assurances that were captured under the phrase "business as usual". In spite of the assurances, he says that Restauronics proceeded to make a number of changes to the operation of the business in which he had no part or of which he had no prior knowledge. The changes included the presentation of new employment contracts to employees of which he was advised just prior to their presentation. He was also not advised of Restauronics' efforts to administer psychological tests to employees, a move that was highly upsetting to district managers who reported to him.

[38] In addition Mr. Forster says he was not consulted about a number of changes to existing operating systems and was not provided with training related to his position although he had been advised that he would receive training at the Restauronics' head office in Toronto. In his view this treatment stripped him of his responsibilities and diminished his dignity and the respect of colleagues and clients. It is argued on his behalf that all of these factors amounted to a fundamental change in Mr. Forster's employment and constituted a constructive dismissal. It is this treatment that Mr. Forster says was the reason he submitted his resignation on March 14, 1995.

[39] Counsel for Mr. Forster submitted that the treatment of Mr. Forster was similar to that of the plaintiffs in *Park v. Parsons Brown & Co.* (1989), 27 C.C.E.L. 224 (B.C.C.A.) and *Ally v. Institute of Chartered Accountants (Ontario)* (1998), 37 C.C.E.L. (2d) 212 (Ont. C.A.) in which constructive dismissal was found to have taken place. Both of those cases, however, deal with the alteration of long-standing positions and conduct which constituted a fundamental change to them, a situation which did not exist in the case of Mr. Forster.

[40] In analyzing Mr. Forster's submission it must first be recognized that his employment contract of February 22, 1995, did not specify any of the duties or responsibilities of the position of Vice-President, Operations, Western Canada. Neither Mr. Forster nor Restauronics, in my view, had a detailed understanding of what Mr. Forster's duties or responsibilities would be. Mr. Forster appears to have placed considerable confidence in Mr. Doblinger's statements that after the completion of the share purchase there would be "business as usual" and that Mr. Forster was to be "an integral part of the company". Mr. Forster was, in my view, content to have a senior position in the company that would have the attributes of drawing upon his experience and, in particular, his strengths "in the field".

[41] The sale of shares occurred February 24, 1995. Mr. Forster tendered his resignation March 14, 1995, a very short time after the commencement of his employment. At the time Mr. Forster recognized that there were going to be changes to the systems and controls formerly employed

by the Forster companies. He understood that training would be provided to him. He also acknowledged that he knew there would be a transition period.

[42] Mr. Forster continued to have a supervisory role with the district managers and was called upon to meet with clients, some of whom were upset by the changes occurring with the service being provided. There is little doubt that the carrying out of the role had become unpleasant and it was not what Mr. Forster anticipated, but Mr. Forster met with these groups as a managerial representative of the company and the company recognized that his assistance in that role was important.

[43] Viewed objectively, it is my conclusion that Mr. Forster was offered a senior managerial position in Restauronics at a salary of \$90,000 per year. It was recognized that his duties and responsibilities would not be identical to those in his former position and that there would be a transition period. The phrase "business as usual" does not, in my view, contain sufficient content to identify or represent fundamental terms of the employment contract that were breached by Restauronics. In the brief time Mr. Forster was employed by Restauronics there was a period of transitional turmoil. Mr. Forster bore the brunt of some of that turmoil. In the face of that turmoil Mr. Forster made a decision to resign. While the transition state undoubtedly made his employment situation quite unpleasant, I am not satisfied that Mr. Forster has proven that there was conduct by Restauronics that amounted to a fundamental breach of the terms of his employment. As a result I must dismiss Mr. Forster's claim that he was constructively dismissed.

Was Ms. Nicolas wrongfully dismissed?

[44] The determination of this issue calls for an assessment of a number of sub-issues:

1. Is Ms. Nicolas length of employment to be determined by including or excluding her pre-1992 employment?
2. What is the appropriate notice period for terminating Ms. Nicolas' employment?
3. If working notice is given but the length of notice is unreasonable is the contract terminated by Restauronics on the date when notice is given?
4. Did Ms. Nicolas' activity in submitting a proposal for the BCCW contract before her notice period had expired constitute cause for her dismissal?

[45] Ms. Nicolas was first employed by Forster Food Services in 1986. She worked as a regional manager until the fall of 1991 and left to work at her consulting business. She returned to Forster Food Services in a similar role in October 1992 and remained until her termination in 1995. Counsel referred to a number of cases that have considered the treatment of a "gap" in employment. I have considered those cases and in particular **Roscoe v. McGavin Foods Ltd.** (1983), 2 C.C.E.L. 287 (B.C.S.C), **Krewenchuk v. Lewis Construction Ltd.** (1985), 8 C.C.E.L. 206 (B.C.S.C.) and **Koren v. White Spot** (1988), 29 B.C.L.R. (2d) 121 (S.C.). Each of those cases concluded that the total length of employment with the employer should be taken into account notwithstanding an interruption in employment with the employer. In each case, however, the court looked to the presence of some additional factor as a reason for including the earlier employment in the calculation of the employee's length of service. For example, in **Roscoe** the court looked to the fact that the defendant had actively pursued the plaintiff to

return and that the holiday time given to him by the company on his return was based upon a seniority level which ignored the interruption of employment.

[46] There is no evidence of this nature before me and I conclude that Ms. Nicolas' length of employment ran from October 1992.

[47] Counsel for Ms. Nicolas submits that even if the court considers Ms. Nicolas' length of employment to be the approximately 2 1/2 years dating from October 1991, the 2 months notice she was given is not appropriate in her circumstances. Ms. Nicolas was 53 years old when she was dismissed from her employment. She held a middle-management position which also drew upon her professional training and experience as a dietitian. She had responsibilities involving both the supervision and direction of a number of staff and dealing with a number of clients to whom the company's services were provided.

[48] Counsel for Ms. Nicolas and Restauronics referred to a number of decisions which they submitted as providing a guide to the appropriate period of reasonable notice to Ms. Nicolas. Counsel for Ms. Nicolas referred to cases where the employees' length of service ranged from 1 to 3 1/2 years and reasonable notice ranged from 4 to 12 months. Counsel for Restauronics referred to a number of cases which in his submission supported a determination that a rough estimate of reasonable notice is in the range of one month of notice for each year of service. He submitted that the notice given to Ms. Nicolas was reasonable.

[49] In my view the cases referred to by counsel for Restauronics do reflect a rough formula of one month's notice for each year of service, but those cases largely considered the position of longer service employees. It is necessary to recognize, however, that reasonable notice must permit a reasonable length of time to seek new employment. The application of such a "rough rule of thumb" in cases involving short-term employees may not provide a reasonable time to seek new employment (see *Mutch v. Norman Wade Co.* (1987), 17 B.C.L.R. (2d) 185 (S.C.)). On my review of the cases and the circumstances of Ms. Nicolas and subject to the discussion below, I conclude that a reasonable period of notice to Ms. Nicolas is four months.

[50] Because it is argued that Ms. Nicolas competed with her employer while still employed, it is also necessary to determine the date of Ms. Nicolas' termination from Restauronics. Counsel for Ms. Nicolas submit that the date was August 3, 1995, the date on which Ms. Nicolas received the letter notifying her of the termination of her employment. Counsel for Restauronics submit it was October 7, 1995, the date on which Ms. Nicolas was advised her employment was to end.

[51] The argument turns on how an employment contract is to be interpreted when an employer gives notice of termination but the notice period is inadequate and, therefore, unreasonable. In the instant case Ms. Nicolas was given slightly over 2 months notice and reasonable notice has been found to be 4 months.

[52] Counsel referred to a number of cases including *Cooper v. MacMillan Bloedel Ltd.* (1991), 37 C.C.E.L. (2d) 205 (B.C.S.C.) and *Suleman v. B.C. Research Council* (1990), 52 B.C.L.R. (2d) 138 (C.A.). Although in *Cooper* the court found the termination date to be the date when notice was given, that finding turned on the fact of that the plaintiff was told by his employer that he "was terminated as of right now". He was then provided with what amounted to two options for payment in lieu of notice.

[53] In **Suleman**, Hutcheon J.A. considered the "correct position" to be that described by Lord Denning in **Hill v. C. A. Parsons & Co.** [1971] 2 Ch. 305 (C.A.). At p. 313 of **Hill** Lord Denning stated:

Suppose the master gives the servant only one month's notice when he is entitled to six? What is the consequence in law? It seems to me that if a master serves on his servant a notice to terminate his service, and that notice is too short because it is not in accordance with the contract, then it is not in law effective to terminate the contract unless, of course, the servant accepts it. Just as a notice to quit which is too short does not terminate a tenancy, so a notice which is too short does not terminate a contract of employment.

[54] In essence, the giving of an inadequate notice period by an employer may constitute a fundamental breach of the contract and, as with other fundamental breaches, an employee may choose to accept the repudiation and elect to treat the contract at an end. If that election is not made within a reasonable time the contract does not end and, it follows, that the repudiation date and the termination date are two different events. The employee may, nevertheless seek damages if the notice period is inadequate. I conclude that as Ms. Nicolas did not elect to treat the contract as at an end when the dismissal notice was given, the contract did not terminate until the end of the notice period, October 7, 1995.

[55] Did Ms. Nicolas' activity in submitting to the Purchasing Commission a proposal for the BCCW contract before her notice period had expired constitute cause for her dismissal even though her actions were not known to Restauronics at the time? It is the position of Restauronics that it did. The answer to the question turns on whether between August 3 and October 7, 1995, Ms. Nicolas breached either a fiduciary duty owed to Restauronics or a duty of good faith, fidelity or confidence owed to Restauronics.

[56] The principles for determining the existence and scope of a fiduciary duty in an employment situation were set down in **Canadian Aero Service Ltd. v. O'Malley et al** (1973), 40 D.L.R. (3d) 371 (S.C.C.). This decision and others recognize that directors, senior officers and "key employees" owe such a duty. In **Barton Insurance Brokers Ltd. v Irwin**, (1999), 170 D.L.R. (4th) 69 (B.C.C.A.) Hall J.A. stated at para 40:

In certain circumstances, which I think would be relatively rare, a former employee of less than senior management or directorial status might be found subject to a fiduciary duty for instance a "key employee" finding might serve to found such a duty. But I do not believe that courts should be easily persuaded to find that ordinary employees would be subject to such continuing duties.

[57] Ms. Nicolas was one of six district managers each of whom was responsible to manage a number of units. At the time of the share purchase by Restauronics Ms. Nicolas was the district manager for seven units. In its letter of July 18, 1995, to Ms. Nicolas Restauronics sought to increase the number of units to a "full portfolio" of 16 units. Each unit had its own director and some staff. Ms. Nicolas reported to the Vice-President, Operations, who, in turn, reported to more senior managers.

[58] In its own submission concerning Ms. Nicolas' claim for wrongful dismissal, counsel for Restauronics described Ms. Nicolas as a "mid-level management employee". In addition

counsel stated that, "While she was responsible for fostering close relations with customers on behalf of the company, she was not an executive-level employee."

[59] While Restauronics would have an understandable concern about the knowledge of the company and its operations possessed by Ms. Nicolas, she was not by any means "the whole show" or a "key employee" in the sense in which the cases describe that position. I conclude that Ms. Nicolas was not a "key employee" and that her position was not one that imposed upon her a fiduciary duty to her employer. Ms. Nicolas nevertheless owed a common-law duty of good faith to her employer and occupied a position in which she was party to confidential information.

[60] It is clear that Ms. Nicolas had been asked in July 1995 to sign an agreement which would have obliged her to work exclusively for Restauronics, to agree that her employment could be terminated on 2 months notice, and to agree to a 12-month non-competition clause. When she refused to sign the agreement she was dismissed from her employment with approximately 2 months notice.

[61] During the two-month notice period Ms. Nicolas was on sick leave but attended two meetings at BCCW with Mr. Gourley to discuss the renewal of Restauronics' existing contract. The contract was not renewed and the British Columbia Purchasing Commission issued a Request for Proposal on August 3 with a deadline for submission on September 28. Ms. Nicolas submitted a proposal on behalf of Westcana on September 25. Restauronics submitted a proposal on September 28. Ms. Nicolas did not see the Restauronics proposal. In a letter of October 19 the Purchasing Commission advised Ms. Nicolas that Westcana's proposal was successful subject to final contract negotiations. Westcana commenced providing services to BCCW on November 1.

[62] It is Ms. Nicolas' evidence that in preparing her proposal she did not have in her possession a copy of the cancelled Restauronics/BCCW contract or other related material. She agreed that she drew on her knowledge and experience as a dietitian, and her experience at Restauronics including her position as district manager having responsibilities in relation to the BCCW contract. It is clearly suspicious that in carrying out her cost per meal calculations for the proposal Ms. Nicolas arrived at cost amounts in two categories that were identical to two 1994 cost amounts contained in the then existing Restauronics/BCCW contract.

[63] I conclude, however, that Ms. Nicolas did not have the contract or other relevant documents of her employer before her in preparing her proposal but, as a district manager and a person who attended meetings at BCCW with Mr. Gourley, she was aware of at least some of the cost per meal amounts and other information in the contract. Even if she arrived at her cost per meal amounts by an independent calculation, I recognize that her knowledge of the contract prices gave her a checkpoint against which she could assess her calculation.

[64] A more difficult issue is whether Ms. Nicolas' knowledge of pricing and other information concerning BCCW should have precluded her from submitting a proposal. In my view, in spite of the pricing information known to Ms. Nicolas about the BCCW contract, she would not have breached a duty to Restauronics if she had prepared and submitted Westcana's proposal after her employment had ended. She essentially drew upon her knowledge and experience gained before and during her employment to prepare her proposal. She did not have with her her employer's documents and the information she possessed was not of a type that could be characterized as trade secrets.

[65] There are a number of factors that must be considered in determining whether Ms. Nicolas breached a duty of good faith to her employer in submitting a proposal to the Purchasing Commission before the end of her notice period. Ms. Nicolas' situation was unlike that in most reported cases where an employee resigned his or her position to begin immediate competition with the former employer. Ms. Nicolas had already been given a dismissal notice by her employer. The employer did not have cause for dismissing her. Restauronics' contract with BCCW had been cancelled. The Request for Proposal issued by the Purchasing Commission was open to a wide number of proponents and the evaluation of proposals used a weighting system administered by the Purchasing Commission itself. Ms. Nicolas' success was not the result of a direct solicitation of BCCW by her but rather of a proposal which was found to be superior to that of Restauronics.

[66] Counsel for Restauronics referred to three decisions dealing with the duty of an employee while still employed. In **57134 Man. Ltd. v Palmer** (1989), 37 B.C.L.R. (2d) 50 (C.A.) it is to be noted that the defendant resigned his position and during his notice period commenced employment with the defendant company. While still employed he did a number of other things which were seen to be a systematic attack on the employer's business.

[67] In **Woodrow Log Scaling Ltd. v. Halls**, [1997] B.C.J. No. 140 (Q.L.)(B.C.S.C.) the court found two employees of a log scaling company to be in breach of their general duty of good faith to their employer. Over a lengthy period of time while still employed they prepared bids on log scaling contracts and succeeded in their second effort at competing with their employer. In doing so they secured a substantial portion of their employer's business.

[68] In **Cariboo Press (1969) Ltd. v. O'Connor**, [1996] B.C.J. No. 275 (Q.L.)(B.C.C.A.) the court found that the defendant breached his employment duty to the plaintiff company when he continued his employment with the plaintiff after acquiring a secret interest in a competitor.

[69] On my reading of the cases referred to by counsel, a deciding factor in determining whether there has been a breach of an employees duty of good faith both during and after employment is whether, in all the circumstances, there is conduct that can be characterized as unfair to the employer. In addition, the courts have recognized that conduct that amounts only to planning carried out by an employee to establish a competing business while still employed may not constitute a breach of the duty of good faith.

[70] Given the fact that Ms. Nicolas had already been given notice of her dismissal, the fact that Restauronics' contract with BCCW had been cancelled, and the fact that Ms. Nicolas "competition" with her employer consisted of submitting a proposal through a formal a request for proposal process approximately 2 weeks before the end of the notice period, I conclude that she did not breach a duty of good faith to her employer. It follows that Ms. Nicolas' conduct in submitting the proposal did not constitute cause for dismissal that the employer can rely on in this action and that Ms. Nicholas was therefore entitled to four months notice of the termination of her employment.

Did Ms. Nicolas conspire with Mr. Forster to injure Restauronics?

[71] It is the position of Restauronics that Ms. Nicolas and Mr. Forster conspired to injure Restauronics. It says that evidence of the conspiracy is comprised of the following:

1. the initial "A" is noted at some points in the margins of Ms. Nicolas' working copy of the BCCW proposal, it being argued that "A" stood for Art Forster and that Mr. Forster would be responsible for developing the noted sections of the proposal;
2. the statement of Ms. Spick that she was told by Ms. Nicolas on September 19, 1995 that Mr. Forster would be helping her with her plans, menus and food and labour costs;
3. prior to Westcana submitting its proposal for BCCW catering, Mr. Forster had informed Restauronics that he did not consider himself to be legally bound by the restrictive covenant or the non-competition clause in his employment agreement;
4. preparing proposals had been part of Mr. Forster's duties when he worked for the Forster companies;
5. Mr. Forster and Ms. Nicolas appear to have had some contact during the summer of 1995 and they had each been in discussions with a representative of Grand Cuisine Systems.

[72] As noted above, Mr. Forster denied any contact with Ms. Nicolas between May and October 1995. He denied that he played any part in the preparation of the BCCW proposal. The proposal to Mr. Forster and Ms. Nicolas from Grande Cuisine Systems is dated October 24, 1999.

[73] As one of the elements of the tort of conspiracy the plaintiff in this case must prove an agreement between Ms. Nicolas and Mr. Forster. A conspiracy may be found either where the predominant purpose of the defendants' conduct is to injure the plaintiff or where the defendants use unlawful means to achieve an end knowing that the plaintiff may be injured. As stated by McLachlin J.(as she then was) in **Nicholls v. Richmond (Township)** (1984), 52 B.C.L.R. 302 (S.C.) at page 312:

The requirements of the second type of conspiracy, conspiracy by unlawful means, are an agreement between two or more persons which is effected by unlawful conduct where the defendants should know in the circumstances that damage to the plaintiff is likely to ensue and such damage does in fact ensue.

[74] An agreement may be inferred. The test to determine if an inference is justified was set out at page 313 in **Nicholls** by reference the words of the Lord Chancellor in **Sweeney v. Coote**, [1907] A.C. 221 at 222 (H.L.):

In such a proceeding [i.e. where civil conspiracy is alleged] it is necessary for the plaintiff to prove a design, common to the defendant and to others, to damage the plaintiff, without just cause or excuse. That, at all events, it is necessary to prove. Now, a conclusion of that kind is not be arrived at by a light conjecture; it must be plainly established. It may, like other conclusions, be established as a matter of inference from proved facts, but the point it is not whether you can draw that particular inference, but whether the facts are such that they cannot fairly admit of any other inference being drawn from them. (Emphasis added.)

[75] The strongest evidence suggesting an agreement is the evidence of Ms. Spick that Ms. Nicolas told her that Mr. Forster would be assisting Ms. Nicolas. Although Ms. Nicolas denied such a statement, I prefer Ms. Spick's evidence that some comment about Mr. Forster was

made by Ms. Nicolas. It constitutes some evidence of an arrangement between Ms. Nicolas and Mr. Forster.

[76] In my view, however, no adverse inference can be drawn from the evidence that Mr. Forster had advised Restauronics that he did not consider himself bound by the restrictive covenant and non-competition agreement or that he had work experience of the type that would have been assistance to Ms. Nicolas in the preparation of her proposal. It is to be noted that, subsequent to Mr. Arthur Forster stating that he did not consider himself bound by the agreements, his father, Mr. William Forster expressed his concern. Mr. William Forster feared that he might be implicated should his son compete with Restauronics. He, therefore, warned his son that he would take legal action against him should Restauronics consider Arthur Forster's activity to be a reason to refuse to pay William Forster the balance of funds owing under the share purchase agreement.

[77] In considering all of the evidence relating to the alleged conspiracy, I am not satisfied that there is sufficient evidence to conclude that Ms. Nicolas and Mr. Forster conspired to injure Restauronics in relation to the BCCW contract.

Did Ms. Nicolas commit the tort of interference with economic relations?

[78] Restauronics says that Ms. Nicolas interfered with its economic relations in two ways. The first is that Ms. Nicolas intentionally interfered with the restrictive covenant provisions of Restauronics' share purchase agreement with Mr. Forster and with the non-competition provisions of its employment agreement with Mr. Forster. The second is that by submitting a proposal for the BCCW contract Ms. Nicolas interfered with Restauronics' expectation that it would have been the successful bidder and would have obtained a three-year contract with BCCW.

[79] The elements of this tort are:

1. the existence of a valid business relationship or expectancy;
2. knowledge by the defendant of the relationship or expectancy;
3. intentional interference inducing or causing a termination of the relationship or expectancy by unfair or unlawful means;
4. proximate cause; and
5. resultant damages (see *Braunfel Engineering & Construction Ltd. v. Sanger*, [1997]B.C.J. No. 886 (Q.L.)(S.C.))

[80] Much of Restauronics' submission on this part of its claim was based on its position that Ms. Nicholas' conduct in submitting the proposal constituted cause for dismissal. I have found to the contrary. As a result, I have concluded that this ground of Restauronics' claim cannot succeed.

[81] On the issue of whether Ms. Nicolas intentionally interfered with Mr. Forster's agreements with Restauronics, I have concluded above that the evidence does not support an inference that

Mr. Forster assisted Ms. Nicolas in the preparation of the BCCW request for proposal. As to Westcana's hiring of Mr. Forster in 1997 there is very little evidence on how this came about. I am not satisfied that in the hiring of Mr. Forster Ms. Nicolas intentionally interfered with the restrictive covenant then in place.

[82] On the issue of Restauronics' loss of the BCCW contract, two matters must be considered. First, the existing contract with BCCW had been lawfully ended by BCCW. Second, the evidence does not support an inference that Restauronics would have been successful on its proposal had Ms. Nicolas not caused Westcana to submit a proposal. In my view, Restauronics cannot succeed on this ground.

Did Ms. Nicolas act as an accomplice in any breach of fiduciary duty by Mr. Forster?

[83] Restauronics raised this issue in the context of Ms. Nicolas' potential liability as an accomplice should Mr. Forster be found to have breached a fiduciary duty to Restauronics. It was referred to but not extensively argued. In my view, even if it is found that Mr. Forster was in breach of a fiduciary duty to Restauronics, it cannot be said that Ms. Nicolas was sufficiently "caught up in a web of duties" owed by him that she could be held jointly and severally liable for such breaches (see *Canadian Industrial Distributors Inc. v. Dargue* (1994), 7 C.C.E.L. (2d) 60 (Ont. G.D.)).

Did Mr. Forster breach his employment agreement with Restauronics?

[84] The non-competition agreement between Mr. Forster and Restauronics was made February 24, 1995. It prohibited competition with Restauronics by Mr. Forster for a period of 12 months following termination of his employment. Mr. Forster's employment with Restauronics ended May 15, 1995.

[85] I have found above that Restauronics has not proven that Mr. Forster assisted Ms. Nicolas in the obtaining of the BCCW contract in 1995. Mr. Forster's employment with Westcana which began in 1997 occurred after the non-competition period of 12 months had expired. There is no evidence of any other alleged breach of the non-competition agreement. In the result I conclude that no breach of the agreement has been proven.

Did Mr. Forster breach his obligations under the restrictive covenant in the share purchase agreement?

[86] The restrictive covenant is set out in Article 6 of the share purchase agreement. It is an extensive provision containing eight enumerated paragraphs occupying almost three pages of the agreement. It seeks to prohibit the vendors from participating in any manner in the business of providing food services to institutional and similar clients. The duration of the covenant is five years. The geographic area described is "within British Columbia, Alberta and within a 100 mile radius of any regional or branch operations of the Purchaser".

[87] Article 6.4 is headed "Separate Covenants" and includes the statement, "Each provision of this Article 6 is declared to constitute a separate and distinct covenant and to be severable from all other such separate and distinct covenants."

[88] Mr. Forster says that the covenant is unreasonable and unenforceable. It is submitted that the unreasonableness is to be found in the circumstances in which the covenant was entered

into, its geographic scope, the duration of the covenant, the scope of the trade restrained, and the inappropriateness of severing the offending provisions.

[89] Restauronics says that the principal assets of the company were the client accounts and the goodwill of the Forster companies with the clients. It submits that the scope of the trade restrained is reasonable or parts of it can be severed and that the geographic scope can be severed.

[90] The courts have recognized a distinction between restrictive covenants forming part of agreements involving the sale of a business and those contained in employment agreements. In ***Elsley et al v. J.G. Collins Insurance Agencies Ltd.***, [1978] 2 S.C.R. 916 at p.924 Dickson J. stated:

The distinction made in the cases between a restrictive covenant contained in an agreement for the sale of a business and one contained in a contract of employment is well-conceived and responsive to practical considerations. A person seeking to sell his business might find himself with an unsaleable commodity if denied the right to assure the purchase that he, the vendor, would not later enter into competition. Difficulty lies in definition of the time during which, and the area within which, the non-competitive covenant is to operate, but if these are reasonable, the courts will normally give effect to the covenant.

[91] The agreed price for the sale was \$2,574,000 and the vendors intended to be bound by the contract were not only Mr. Arthur Forster, but also his father and two brothers. The vendors were represented by counsel. The sale was, therefore, a relatively large transaction of importance to both the purchasers and the vendors. The Forster name was well known in British Columbia in this segment of the food services business. The contracts with clients were frequently renewed thus providing for long term relationships with clients and a restrictive covenant to protect the value of those assets was agreed to by all of the parties to the agreement. In light of this I conclude that the broad scope of trade restrictions with clients set out in Article 6.1 of the agreement was reasonable. For the same reasons, I conclude that the five year duration of the covenant was reasonable.

[92] At the time of the share purchase agreement the Forster companies provided food services to a large number of units in British Columbia. While the units were concentrated in the lower mainland, they were also located on Vancouver Island, the Okanagan, the Kootenays and Prince George. For that reason I am satisfied that a covenant with geographical scope extending throughout British Columbia was reasonable. Its extension to Alberta and within a 100-mile radius of any regional or branch operations of the Purchaser was not. For that reason it is necessary to consider whether the extended geographical scope is severable.

[93] The severability of a geographic boundary for a restrictive covenant was considered in ***Sterling Fence Co. v. Steelguard Fence Ltd.*** [1992] B.C.J. No. 2302 (Q.L. (B.C.S.C.)). In that case the geographic area in the covenant extended to British Columbia, Alberta, Saskatchewan, Manitoba and the State of Washington. In addition the covenant contained a clause providing the each provision of the restrictive covenant was declared to constitute separate and distinct covenants. In concluding that the geographical scope could be severed to make the covenant applicable only to British Columbia and Washington, Skipp J. considered the Court of Appeal decision in ***Can. Amer. Fin. Corp. (Can.) Ltd. v King*** (1989), 36 B.C.L.R. (2d) 257.

[94] In **Can. Amer. Fin. Corp.** the court considered a contract of service which restricted the defendant from engaging in business "within Canada or Bermuda". The court held that the covenant was unreasonable and declined to substitute a smaller geographical area, such as British Columbia, in its place. It distinguished between severing a contract and rewriting a contract.

[95] The instant case is similar to the provision in **Sterling Fence** where the court severed from the covenant the geographical areas which made the covenant unreasonable and retained those that were reasonable. I therefore conclude that in Article 6.1 of the share purchase agreement the words "Alberta and within a 100 mile radius of any regional or branch operation of the Purchaser" can be severed so that the geographical scope of the covenant is limited to British Columbia alone.

[96] As a result, I find the restrictive covenant, as severed, to be reasonable.

[97] Mr. Forster was employed by Westcana on a part-time basis beginning in April 1997 and ending about March 31, 1999. His duties included representing Ms. Nicolas with clients on occasion and office functions such as the payment of accounts. In September 1997 in response to a Request for Proposal Westcana submitted a proposal to provide food services to BCIT. In the proposal Mr. Forster was described as a "principal" of Westcana and its Director of Operations. He did not make any personal submissions or representations to BCIT nor did Westcana succeed in its proposal.

[98] As distinct from the restrictive covenant in Mr. Forster's contract of employment, I am satisfied that in accepting employment with Westcana and participating in its provision of institutional food services that he breached the restrictive covenant in the share purchase agreement.

Damages

[99] Damages must be assessed in relation to:

1. Restauronics' wrongful dismissal of Ms. Nicolas;
2. Mr. Forster's breach of the restrictive covenant;
3. Westcana's vicarious liability for Mr. Forster's breach of the restrictive covenant.

[100] As I have determined above, Ms. Nicolas was entitled to four months notice of her termination from Restauronics. She was given approximately two months notice. She is entitled to the equivalent of four months salary less the amount paid to her by Restauronics for the two months notice given to her and less the amount she earned from her subsequent employment with Westcana during the remainder of the notice period. The notice period ended on December 3, 1995. Ms. Nicolas' work with Westcana on the BCCW contract began November 1. The evidence on Ms. Nicolas' income from Westcana for this period is not entirely certain but I find that her income from Westcana for the first 12 months after November 1 was \$28,000. One month's portion of that is approximately \$2300. There will therefore be deducted from the amount payable by Restauronics to Ms. Nicolas the sum of \$2300.

[101] Before assessing the damages payable by Mr. Forster to Restauronics for his breach of the restrictive covenant, it is necessary to determine on what basis the calculation must be made. It is submitted by Restauronics that the claim rests on equitable principles and that damages should be assessed on the basis of the benefit or gain to Mr. Forster. In support of this proposition counsel cites ***Jostens Canada Ltd. v. Gibsons Studios Ltd.*** (1999), 174 D.L.R. (4th) 351 (B.C.C.A.).

[102] In ***Jostens***, however, the court was considering an assessment of damages where there had been a breach by the defendant of a duty of good faith and fidelity. The court recognized a distinction between a loss at law and a loss in equity. At law damages are to be measured by assessing the plaintiff's loss. In equity damages are to be assessed by assessing the defendant's gain.

[103] In the instant case Mr. Forster's duty to Restauronics arises out of the purchase and sale agreement. In my view the evidence does not support a finding that in working as an employee of Westcana Mr. Forster breached a duty of good faith or a fiduciary duty to Restauronics. I conclude that damages for Mr. Forster's breach of the restrictive covenant must be measured by assessing Restauronics' loss attributable to his breach.

[104] In April 1997 the Westcana contract with BCCW had already been in place for approximately 17 months. The loss of that contract by Restauronics is not causally connected to Mr. Forster having become employed by Westcana. Mr. Forster's participation in the proposal made by Westcana to BCIT in September 1997 was not successful. Restauronics was awarded the contract.

[105] Restauronics claim for damages against Mr. Forster was essentially based on its submission that Mr. Forster assisted Ms. Nicolas in seeking and obtaining the BCCW contract in 1995. It was out of that alleged breach of the restrictive covenant that substantial damages may have been awarded against Mr. Forster. Mr. Forster's breach of the covenant in taking part-time employment with Westcana in 1997 and in assisting Westcana to submit a proposal to BCIT makes him liable to pay damages under the share purchase agreement but Restauronics has not shown any substantial loss resulting. On the evidence before me, therefore, those damages can only be nominal and they are not damages for which Westcana is vicariously liable.

[106] In ***Cariboo Press (1969) Ltd. v. O'Connor***, *supra*, the court considered an award of nominal damages in favour of the plaintiff. Chief Justice McEachern sought to award nominal damages that would not be seen to be "contemptuous damages" amounting to "the court's expression of disapprobation of a plaintiff". To accomplish this he awarded the plaintiff nominal damages of \$500. The award of nominal damages to Restauronics on this ground of the case is not an expression of disapprobation. For that reason, I would award Restauronics damages of \$500 against Mr. Forster.

[107] In summary:

1. Restauronics' claims against Ms. Nicolas are dismissed;
2. Restauronics' claim against Westcana Services Inc. is dismissed;
3. Ms. Nicolas was not given reasonable notice of her dismissal by Restauronics and was wrongfully dismissed from her employment;

4. Mr. Forster breached the restrictive covenant set out in the Share Purchase Agreement in favour of Restauronics and is liable for nominal damages in the amount of \$500;

5. Restauronics' other claims against Mr. Forster are dismissed;

6. Mr. Forster's claim for wrongful dismissal against Restauronics is dismissed.

[108] The parties have requested an opportunity to speak to costs following judgment. They may arrange to do so through the Registry.

"Bryan F. Ralph, J."
The Honourable Mr. Justice Bryan F. Ralph