

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
THIRD JUDICIAL DISTRICT AT ANCHORAGE

JOSEPH W. VAN TREECK, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 THE CREAMERY CORPORATION )  
 d/b/a MATANUSKA MAID DAIRY, )  
 )  
 Defendant. )

*Gleason*

Case No. 3AN-07-11347 Civil

**COMPLAINT**

**Allegations Common to All Causes of Action**

1. Plaintiff Joseph W. Van Treeck (hereinafter "Van Treeck") was for over twenty-two years an employee and for the last 21 years the chief executive and chief operating officer for the defendant corporation or its precursors operating under the name Matanuska Maid Dairy.
2. Defendant Creamery Corporation (hereinafter the "Creamery") is a corporation in good standing duly incorporated under the laws of the State of Alaska.
3. The Creamery has operated a milk processing and marketing business under the name "Matanuska Maid Dairy," buying milk from producers in the Matanuska Valley and from other sources, processing it and marketing products, including milk and other dairy products, for more than twenty years, and with its precursors for more than seventy years, primarily operating within the Municipality of Anchorage.

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4. The business affairs of the Creamery are conducted by a board of directors, (hereinafter the "board" or "Board A" referring to the board under Chair McClaren (Mac) Carter or "Board B" referring to the board later appointed with Kristen Cole as Chair). The Creamery Board is appointed by and serves at the pleasure of the Board of Agriculture and Conservation (The "BAC.").

5. The sole shareholder of the Creamery is the BAC, a state agency established under AS 03.10 as a successor to the Agricultural Revolving Loan Fund, a state entity. The BAC consists of seven members appointed by the governor and confirmed by the legislature. Members of the BAC sometimes serve on the Creamery Board.

6. In 2006 and early 2007, Mr. Van Treeck was employed by the Creamery under a contract, a copy of which is attached hereto as Exhibit 1 which continued under an Extension agreement (Exhibit 2) until June 30, 2007.

7. Under Section 6 of the contract, failure by the Board to notify Mr. Van Treeck by December 31,(in any year) of its decision about renewal or non-renewal automatically obligates the Corporation to an additional one year renewal and salary adjustment beginning July 1 of the following calendar year.

8. Mr. Van Treeck had notified board A of the need to consider contract changes by letter of May 25, 2006 (Exhibit 3) and at the board meeting of May 31, 2006, a discussion took place regarding Mr. Van Treeck's contract, scheduled to expire in June, 2007 and a motion was adopted to discuss the terms of an extended or renewed contract with Mr. Van Treeck. (Exhibit 4)

9. No action was taken by Board A at its last meeting (October) of 2006, to specifically renew Mr. Van Treeck's contract, but the minutes (Exhibit 5) do reflect that board A discussed the renewal and was aware of the need to renew and intended to renew the contract so that Mr. Van Treeck's contract was in fact renewed by his contract and operation of law, beginning July 1, 2007 and extending to June 30, 2008.

10. The contract included a non-competition provision (paragraph 10) prohibiting employment in Alaska dairy related businesses for a period of one year after termination of the agreement.

11. In the spring of 2007 it was becoming increasingly apparent that the Creamery could not operate economically as a result of various changes in the circumstances of the production, processing and market of milk. Mr. Van Treeck communicated these circumstances to the board which agreed with his conclusions and began its consideration of alternative plans for termination of Creamery operations.

12. On or about May 31, 2007, Mr. Van Treeck gave Board A a letter of resignation of the same date, a copy of which is attached hereto as Exhibit 6 in which he noted that the duties and responsibilities that he had historically performed on behalf of the Creamery had been substantially reduced as a result of the Creamery's plan to go out of production, a result creating a breach of his employment agreement by the Creamery. Mr. Van Treeck nevertheless continued in his duties as President and Chief Executive Officer.

13. On or about June 6, 2007, at the direction of the chair, Mr. Van Treeck recommended and presented to Board A an amended plan for phasing out operations which was adopted by Board A. Board A also asked Mr. Van Treeck to reconsider his resignation. Mr. Van Treeck said he would reconsider.

14. On or about June 13, 2007, notwithstanding political concerns, as a result of the economic information made available to it, the board made the decision to end production on August 31, 2007.

15. At the June 13 meeting, Board A met with Mr. Van Treeck regarding his resignation and he was asked if he could be flexible concerning the end date of his employment, since the board had extended the date of suspension of milk production to July 7, 2007. Mr. Van Treeck confirmed his willingness to be flexible and to assist in the wind down of operations of the Creamery.

16. On or about June 15, 2007, pursuant to its understanding with Mr. Van Treeck, Board A gave Mr. Van Treeck a letter in which it rejected his letter of resignation and gave notice that his employment agreement (which had been renewed on July 1) was terminated effective August 31, 2007 or, if all production was ended earlier, such earlier date. A copy of this letter is attached (Exhibit 7). Mr. Van Treeck confirmed, the same day, that he had withdrawn his resignation

17. The conclusion that the Creamery should be shut down was politically unacceptable to the BAC and the officials appointing BAC members and as a result Board A of the Creamery was replaced with Board B.

18. On or about August 14, 2007, Mr. Van Treeck, by letter of that date (Exhibit 8), requested Board B, through its Chair Kristen Cole, to set out its understanding of the Creamery's remaining obligations to him under his contract of employment.

19. On or about August 22, 2007, Mr. Van Treeck, by letter of that date (Exhibit 9), reported to Board B, through its chair, requesting acknowledgement of close out obligations due him by the Creamery. Included with the letter was a detailed outline of contractual benefits due as understood by Mr. Van Treeck.

20. Under his contract with the Creamery, Mr. Van Treeck is entitled to ten months of salary obligation to June 30, 2008 of a value of \$115,994.67.

21. Under his contract with the Creamery, Mr. Van Treeck is entitled to a Pension contribution of 10.6% for a total of \$12,295.43 to June 30, 2008.

22. Under his contract with the Creamery, Mr. Van Treeck was entitled to Health care premium payments through June 30, 2008. Based on the COBRA costs for continuing coverage, premiums are \$1,836.18 per month, resulting in a total of \$16,526.62 for the period October 2007 through June 2008.

23. Under his contract with the Creamery, Mr. Van Treeck is entitled to Disability Insurance premium payments to June 30, 2008 of a value unknown at this time but to be proven at trial.

24. Under his contract with the Creamery, Mr. Van Treeck is entitled to moving expenses in an amount of \$15,000 for moving household and vehicles to a

location outside Alaska if the move is made within six months of the termination of the agreement.

25. No complaints regarding Mr. Van Treeck's service were ever voiced by the board or by anyone else closely connected with the Creamery prior to September 18, 2007 but on the contrary, his service was accompanied by continued remarks on the value of his service to the Creamery and praise for his professionalism and dedication.

26. By letter dated September 18, 2007, (Exhibit 10) through an attorney hired for the purpose of litigating against Mr. Van Treeck, the Creamery notified Mr. Van Treeck that for various reasons, which are either deliberately false, grossly misleading or irrelevant, that it would not honor any of the provisions of his contract that provide for benefits beyond the August 31, 2007 date of termination.

27. All paragraphs of the complaint are incorporated in each specified cause of action.

**First Cause of Action  
(Breach of Contract)**

28. By its actions and by its refusal to honor the terms of its agreement with the plaintiff, the defendant breached its contract with the plaintiff.

**Second Cause of Action  
(Covenant of Good Faith and Fair Dealing)**

29. The covenant of good faith and fair dealing is an implied condition of the plaintiff's employment contract with the defendant.

30. The action of the defendant in refusing to honor its contract with plaintiff, and in pretending that it had no continuing contractual obligations to the plaintiff was intended to deprive plaintiff of the benefits of that contract in breach of the covenant of good faith and fair dealing.

**Third Cause of Action  
(Statutory Penalty for Withholding Payments Due)**

31. The actions of the defendant in continuing to withhold payments due for benefits under the plaintiff's contract is a violation of AS 23.05.140.

**Fourth Cause of Action  
(Retaliatory Withholding of Benefits Due)**

32. The actions of the defendant constitute a retaliatory and wrongful punishment of the plaintiff for disclosing the financial circumstances that would ultimately require the closing of the Creamery.

**Fifth Cause of Action  
(Punitive Damages)**

33. The actions of the board in refusing to honor Mr. Van Treeck's contract were taken in bad faith, knowing that Mr. Van Treeck was entitled to his contractual rights but motivated by a desire to scapegoat Mr. Van Treeck, to satisfy purely political needs and deprive him of his just compensation.

**Sixth Cause of Action  
(Fraudulent Conveyances: AS 34.40.010)**

34. Since the plaintiff's contract ended and as payment have become due to him, the defendant has suffered extraordinary financial losses endangering the ability of the defendant to pay all its debts as they come due.

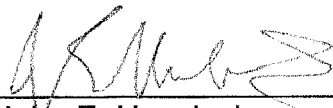
35. Since the plaintiff's contract ended, the defendant has been disposing of its property or creating interests in its property below value for the purpose of aiding specific creditors or beneficiaries of the defendant's operations all in violation of AS 34.40.010. Defendant also threatens to return property to the BAC, without first paying creditors such as the plaintiff who has a preference as a wage claimant.

### PRAYER

WHEREFORE, the plaintiff asks:

1. For money damages in an amount to be established at trial, in excess of the jurisdictional limits of the District Court;
2. For injunctive relief as appropriate to provide for protection of assets of the defendant available to meet the requirements of plaintiff's contract or for the making of interim payments;
3. For injunctive relief as appropriate to provide for the continuation of plaintiff's benefits;
4. For the setting aside of fraudulent transfers in violation of AS 34.40.010;
5. For punitive damages; and
6. For such other relief as the court deems just.

Dated this 14<sup>th</sup> day of November, 2007.

  
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John E. Havelock  
Alaska Bar # 6101006  
Attorney for Plaintiff