COUR SUPÉRIEURE

CANADA
PROVINCE DE QUÉBEC
DISTRICT DE MONTRÉAL

N° : 500-17-040414-073

DATE : 9 avril 2008

L'HONORABLE JEANNINE M. ROUSSEAU

SCHWARTZ LEVITSKY FELDMAN
demanderesse
vs
MORTY ZAFRAN
défendeur
et
GALAL BEHNA, c.a., arbitre
et
Me CLAUDE ARMAND SHEPPARD, arbitre
et
Me JULIUS GREY, arbitre
mis en cause

JUGEMENT

Le litige

[1] Morty Zafran, c.a., fut associé chez Schwartz Levitsky Feldman (SLF) jusqu'au 31 décembre 2004, date à laquelle il prend sa retraite.

[2] Des problèmes surviennent par la suite entre les parties et, conformément à l'entente de société, notamment l'article 19, il y a arbitrage devant un tribunal d'arbitrage composé de deux avocats et d'un comptable agréé.

[3] Les questions posées aux arbitres se trouvent à P-1, en date du 23 avril 2007; l'audition a lieu en juillet 2007; une décision, P-2, est rendue en date du 4 décembre 2007.

[4] SLF présente une double requête à la Cour supérieure; elle demande :

- une homologation partielle de la décision;
- une annulation partielle de la décision, combinée à un renvoi devant un nouveau tribunal d'arbitrage.

[5] Monsieur Zafran plaide d'abord l'irrecevabilité de cette requête; quant au fond, il plaide qu'elle est mal fondée.

[6] Examinons d'abord les six questions posées au tribunal d'arbitrage et les réponses données aux cinq premières questions avant d'analyser les demandes de SLF.

Les questions posées au tribunal d'arbitrage

[7] On les trouve à P-1, s'agissant d'une lettre signée par les avocats des deux parties et adressée aux trois membres du tribunal d'arbitrage :

> « Dear Sirs:
>
> RE: ARBITRATION MORTY ZAFRAN V. SCHWARTZ LEVITSKY FELDMAN
>
> We wish to inform you that the above-mentioned parties, hereby represented by their attorneys, have agreed on the questions to be decided upon by the Arbitration Panel, namely:
>
> 1. In the context of the contractual relationship between the Partnership and Morty Zafran, does Morty Zafran have the right to render services as a public accountant? What are the parameters and limits, if any, to such entitlement?
>
> 2. Is Morty Zafran entitled to receive a sum from the collections resulting from billings for the work he performed after September 1, 2006 and in the affirmative, in what proportion?
>
> 3. What interpretation should be given to “fees for new business” (Section 12.06.9) and to the “sharing of mark-ups” (positive discounts)?

4. Does the Partnership Agreement entitle the Partnership to change unilaterally, from time to time, the location of the private office of a retired partner, and, in particular, the location of Morty Zafran's office without the latter's consent, and, in the affirmative, under what conditions?

5. Who is responsible for the arbitration costs in this matter?

6. Based on the decision made by the Arbitration Committee, is any party entitled to any damages related to this matter (each side will submit his claim, if any, that will be determined after a decision is made on paragraphs 1, 2, 3, 4 and 5 at a later date by the same tribunal)?

We would therefore suggest that a conference call be organized so that we can schedule the next step in the arbitration process. Finally, we wish to confirm that the parties have accepted the conditions set forth for the arbitration costs for Mr. Behna in his letter dated March 22, 2007 and we hereby confirm that a retainer of $3,076.65 will be sent to Mr. Behna, each party to advance the sum of $1,538.32 ($3,076.65 X 50%) on account to the fees of Mr. Behna in this arbitration. As you will see, the final responsibility for the fees will have to be determined by the Arbitration Committee.

We trust the foregoing to be to your satisfaction, and remain,

Yours very truly, »

[8] Tel qu'il appert de cette lettre, l'arbitrage se fera en deux étapes : d'abord les questions 1 à 5, ensuite la question 6.

[9] Ces questions s'inscrivent dans la foulée de l'article 19 du contrat de société :

« 19.00 ARBITRATION

19.01 Dispute

In the event that any dispute arises between the PARTNERSHIP and a PARTNER who has withdrawn from the PARTNERSHIP in accordance with sub-section 12.03, who is expelled from the PARTNERSHIP in accordance with sub-section 12.04, who is disabled as set forth in sub-section 12.05 or who retires as set forth in sub-sections 12.06 and 12.07, or in the event of a dispute between the PARTNERSHIP and the estate of a deceased PARTNER in respect of any of the matters provided for in Sections 12.00 or 13.00 above, or in the event of a disagreement referred to at sub-section 12.02.2(c) above, such dispute shall be submitted to compulsory arbitration for determination thereof. »

[10] Les articles pertinents du contrat de société sont les suivants :

« 12.06 Retirement of a PARTNER

12.06.1 A PARTNER shall retire at the end of the fiscal year of the PARTNERSHIP in which the PARTNER in question attains the age of SIXTY-FIVE (65) years, unless, if the PARTNER so desires, the EXECUTIVE COMMITTEE determines that the PARTNER in question is entitled to remain a PARTNER, said determination to be made on an annual basis, and for a maximum of FIVE (5) more years.

[…]

12.06.2 Subject to sub-section 12.06.1 above, a PARTNER may retire at the end of any fiscal year of the PARTNERSHIP after the PARTNER in question has attained the age of SIXTY (60) years, by giving written notice to the EXECUTIVE COMMITTEE SIX (6) months prior to the date of his intended retirement.

12.06.3 A PARTNER may request the right to retire at the end of any fiscal year of the PARTNERSHIP after the PARTNER in question has attained the age of FIFTY-FIVE (55) years, by written notice to the EXECUTIVE COMMITTEE SIX (6) months prior to the date of his intended retirement, and shall retire on such date, if his retirement is approved by the EXECUTIVE COMMITTEE.

12.06.4 In the event of the retirement of a PARTNER, the EFFECTIVE DATE of the disposition of his PARTNERSHIP INTEREST shall be the first day of the fiscal year of the PARTNERSHIP following:

(a) the date upon which the retiring PARTNER reaches age SIXTY-five (65), or such other age as is approved by the EXECUTIVE COMMITTEE, pursuant to sub-section 12.06.1 hereof; or

(b) the date referred to by the retiring PARTNER as his intended date of retirement in the notice referred to in sub-sections 12.06.2 and 12.06.3 hereof.

12.06.5 Within ONE HUNDRED AND EIGHTY (180) days of the EFFECTIVE DATE, the PARTNERSHIP and the remaining PARTNERS shall give the retiring PARTNER a complete release and discharge with respect to all PARTNERSHIP liabilities and commitments, including bank loans, lease commitments and any balances owing with respect to the purchase of accounting practices, however, any such release shall specifically exclude any other liability not covered by professional liability insurance.

12.06.6 A retiring PARTNER shall not service any clients of the PARTNERSHIP directly or indirectly, through a firm or company with which he is associated as an employee, partner, director or shareholder, or in any other manner whatsoever, unless prior approval is granted in writing by the EXECUTIVE COMMITTEE.

12.06.7 For a period of FIVE (5) years from the EFFECTIVE DATE, a retiring PARTNER shall not directly or indirectly carry on the profession of public accountancy within a radius of ONE HUNDRED AND FIFTY (150) kilometers of the offices of the PARTNERSHIP in which he practised as a PARTNER without the express written consent of the EXECUTIVE COMMITTEE, unless for the benefit and on behalf of the PARTNERSHIP. For the purposes of this sub-section, the profession of public accountancy shall include such services as are usually provided by public accountants, including, without limitation, auditing, estate work, tax counsel, insolvency, bookkeeping and financial services. In addition, and without restricting the generality of the foregoing, the provisions of sub-sections 12.03.8 and 12.03.9 shall apply, mutadis mutandis.

12.06.8 The PARTNERSHIP may employ a retired PARTNER on such terms and conditions as may be agreed upon between the retired PARTNER and the EXECUTIVE COMMITTEE. In such event, the retired PARTNER shall be entitled to receive FORTY-FIVE PERCENT (45%) of all fees billed by him on behalf of the PARTNERSHIP upon collection of the fees.

12.06.9 In the event that a retired PARTNER solicits new clients on behalf of the PARTNERSHIP, the PARTNERSHIP shall pay to the retired PARTNER a fee equal to the amount billed to and collected from such new client for services rendered during the first TWELVE (12) months from the date that said new client became a client of the PARTNERSHIP. The fee referred to herein shall be paid by the PARTNERSHIP to the retired PARTNER in THREE (3) equal, annual instalments, the first instalment to be made THIRTEEN (13) months from the date on which such client became a client of the PARTNERSHIP. In the event that such new client ceases to be a client of the PARTNERSHIP at any time prior to the full payment of all instalments referred to herein, any unpaid instalments shall no longer be payable to the retired PARTNER and the fee shall be reduced by the amount of any such unpaid instalments. For the purposes of this sub-section 12.06.9, a client shall not be considered a new client if referred by, related to or controlled by, either directly or indirectly, a person who was a client of the PARTNERSHIP on the EFFECTIVE DATE.

12.06.10 A retiring PARTNER shall use his best efforts to encourage acceptance of the PARTNERSHIP by his clients in order that the PARTNERSHIP retain such clients for the benefit of the PARTNERSHIP. Upon the request of the EXECUTIVE COMMITTEE, a retiring PARTNER shall visit any such client together with any other PARTNER for the purpose of introducing one or more of the PARTNERS to such client. The retired PARTNER shall receive no remuneration for any such service.

12.06.11 A retired PARTNER shall be entitled to the use of a private office in the offices of the PARTNERSHIP, without costs, for a term of FIVE (5) years commencing on the EFFECTIVE DATE.

12.06.12 A retired PARTNER shall be designated as a consultant of the PARTNERSHIP by the EXECUTIVE COMMITTEE for a period of FIVE (5) years from the EFFECTIVE DATE and shall be entitled to receive remuneration in

consideration of such designation commensurate with his contribution, the whole as determined by the EXECUTIVE COMMITTEE.

12.06.13 A retiring PARTNER shall dispose of his PARTNERSHIP INTEREST, and the PARTNERSHIP shall acquire same, as at the EFFECTIVE DATE, in accordance with the provisions of Section 12.02 above. In respect of the payment for a retiring PARTNER's goodwill, a retiring PARTNER shall be entitled to receive an amount equal to TWO HUNDRED AND TWENTY-FIVE PERCENT (225%) of his RETIREMENT ACCOUNT as at the end of the fiscal year of the PARTNERSHIP immediately preceding the EFFECTIVE DATE, payable in the manner contemplated at sub-section 12.02.3 above. »

Les réponses données par le tribunal d'arbitrage

[11] La décision du 4 décembre 2007 (P-2), dont le but est de répondre aux cinq premières questions, comporte 41 paragraphes. Les douze premiers n'ont pas besoin d'être reproduits, s'agissant de faits introductifs. Les paragraphes 13 à 41 sont ceux qui traitent des cinq premières questions; c'est de ces réponses que traite la requête en homologation/annulation. Ces paragraphes se lisent comme suit :

« 13. Of the questions submitted to the panel, the first has by far the greatest significance and we propose to treat it as the main part of this decision, leaving the rest to be resolved in the end.

QUESTION I

14. The panel heard several witnesses brought by the defence as well as the Plaintiff personally. While all of this testimony served to confirm that the relationship of the Parties had broken down, it ultimately was of little help in finding the answer to the first question posed. The text of the documents exchanged between the parties lead us to the appropriate conclusion.

15. The Partnership Agreement is lengthy and not entirely coherent. Nevertheless, it does create a comprehensive scheme for the retirement of partners and the payment to them of a retirement allowance for a period of five years. Sections 12.06.1 – 12.06.13 read:

[voir le paragraphe 10 ci-dessus]

16. Of particular interest to us are Sections 12.06.6, 12.06.7 and 12.06.8.

17. Plaintiff interprets Section 12.06.7 as authorizing a retired partner to work “for the benefit or on behalf of the partnership” **without obtaining** the office's agreement under S. 12.06.8, which would therefore apply only to the partners referring work, not to clients giving mandates to the retired partner.

18. This right to practice would last for five years (i.e. in our case until Jan. 2010) during which time Section 12.06.11 would guarantee the retired partner an office and the title of consultant.

19. Attractive though this interpretation may seem, it would mean that a fundamentally unaccountable former partner could be operating on his own under the aegis of the partnership and would therefore not necessarily be handing over his files to active partners. This is difficult to justify, both as a matter of common sense, and in view of the clear obligations of S. 12.06.10.

20. It is to be noted, too, that the restrictions in S. 12.06.07, although far-reaching, do allow the practice of accounting outside the geographic limits and do not prevent professional employment as a controller or auditor for a specified client (e.g. a company or the government). The restrictions therefore fall short of a total prohibition of earning a livelihood, which could arguably be invalid.

21. If this first-line argument of the Plaintiff is rejected, it does not mean that he has no right to practice. It was established at the hearing that Schwartz Levitsky, often made particular arrangements with retiring partners. It certainly did so in this case. Nothing in the main partnership agreement precludes such arrangements and, while the Agreement remains in force for all other matters, the agreement of April 18, 2005 must be given effect insofar as Morty Zafran's practice is concerned.

22. Schwartz Levitsky argued that the purpose of this subsequent agreement was solely to provide for the one-year administrative role for Morty Zaran and to raise his share of the billing on specialty files to 55% from the usual 45%. This is to understate the scope of the agreement, which in effect reaffirmed Morty Zafran's right to practice. There is no other way to interpret Sec. 4. His continued professional activity is also quite clearly contemplated in the other memos exchanged by the Parties both before and after the signing of the agreement of April 18, 2005.

23. This agreement contains no **term**; Morty Zafran contends that this is because he is entitled to practice until January 2010 under S. 12.06.07.

24. Schwartz Levitsky sees the agreement as a contract for services subject to unilateral cancellation under 2125 C.C.Q. and maintains that its letter of July 18, 2006 had this effect.

25. The panel has already indicated that it does not accept the notion of a right to practice for five years. However, it also does not accept the theory that 2125 C.C.Q. applies because, in its view, the agreement of April 18, 2005 is not a contract for services under 2098 C.C.Q. These articles state:

> 2098. A contract of enterprise or for services is a contract by which a person, the contractor or the provider of services, as the case may be, undertakes to carry out physical or intellectual work for another person, the client or to provide a service, for a price which the client binds himself to pay.
>
> […]
>
> 2125. The client may unilaterally resiliate the contract even though the work or provision of service is already in progress.

26. Mr. Zafran did not undertake any obligation; he merely obtained the right to assume them. Therefore 2125 C.C.Q. which is an exceptional provision, cannot apply in the absence of an essential condition.

27. It follows that the usual rule of “reasonable notice” must apply to a decision to terminate the agreement of April 18, 2005.

28. The panel takes into account:

a) the importance of the skills involved;

b) the length of service;

c) the fact that a fairly far-reaching non-competition clause greatly restricted Morty Zafran's opportunities, but that, on the other hand, he does get an annual payment during those years;

d) the fact that an older person usually has more difficulty in starting a new career.

29. In Aksich v. C.P. Rail, 500-09-014533-046, the Court of Appeal granted two years' notice to a highly specialized senior executive in his fifties, who, it was held, could not easily find similar employment. While that case dealt with employment and not partnership, the period of two years appears compelling for this case. It would follow that Plaintiff was entitled to practice until August 31, 2008 or to compensation in lieu of notice under the law.

30. While Morty Zafran continued to work after his purported termination and must be paid for it, we do not consider it a reasonable solution for him to continue unless all parties agree. The relations had deteriorated to the point that, despite the undoubted professionalism on both sides, the clients' interests could suffer. However, if the parties work out an agreement for future cooperation this would clearly be in the interest of both.

31. Some of Morty Zafran's actions during the period following the purported termination (e.g. involving some of the clients in the dispute) were unwise. Nevertheless, the Panel does not find that any of these actions amounted to “just cause” permitting dismissal for cause. He must therefore be compensated for the two years of practice.

32. The work performed by him in the period following the termination was carried out in very difficult circumstances. Therefore the previous years (Sept. 1, 2005 – Aug. 31, 2006) increased by the standard increase in cost of living must constitute the minimum payment for each of the next two years. As well, the special expenses undertaken by Schwartz Levitsky, Feldman on April 18, 2005, must be paid to him. Moreover, the fact that he is now entitled to 55% on the specialty files must be calculated as part of his compensation.

33. The finding in no way affects:

    a) Morty Zafran's retirement payments which must continue to be paid;

    b) Morty Zafran's right to a referral fee in appropriate cases;

    c) Morty Zafran's right to an office or the title of consultant as per the partnership agreement.

34. While it is to be hoped that the Parties can make the precise calculation of the amount owing without our intervention, we remain open to solve any disputes about quantum pursuant to par. 6 of the letter of April 23, 2007.

QUESTION II

35. Morty Zafran is entitled to be paid for the work performed on the basis of the agreement of April 18, 2005 (55% specialty work, 45% for other work).

QUESTION III

36. “Fees for new business” under S. 12.06.9 is a notion that raises several queries.

37. Firstly, under our interpretation of S. 12.06.08, Schwartz Levitsky retains the power to decide whether the retired parties perform the work or not and therefore there is no need for the retired partner to deduct the value of work performed by him from his commission. He would be entitled to the commission even if he did not do the work and, if he worked, he must be paid for it in addition to receiving his referral fee.

38. On the other hand, we do not agree with Morty Zafran that if the client remains with Schwartz Levitsky for a second year with minimal billing, the full commission must be paid in the second and third year, even though no commission at all would be paid if the client gave no mandates to Schwartz Levitsky, Feldman. This was an obvious oversight in the agreement and the intention would surely have been to adjust the commission to the billing in the second year and third year.

39. The mark-ups in dispute, while they purported to be for unbilled disbursements are unrelated to any specific disbursements. They are included in revenue for tax purposes. Therefore they cannot be deducted from the retired partner's commission any more than, for instance, secretaries' salaries.

QUESTION IV

40. The panel is unable to find that Morty Zafran is entitled to any particular office either under the partnership agreement or the subsequent agreement. If proof had been made that the office proposed was unsuitable or insalubrious there might have been an implicit breach of the agreement. No such proof was made and therefore the panel cannot intervene in the allocation of offices.

QUESTION V

41. The panel agrees that, in view of the mixed results, each party should pay for an arbitrator named by it and they should share equally the costs of the president. »

(Les caractères gras sont de la soussignée.)

Les demandes de SLF

[12] SLF demande l'homologation de la décision eu égard aux questions 2 à 5, i.e. les paragraphes 35 à 41.

[13] Quant à la question 1, elle demande l'homologation des seuls paragraphes 14 à 27; non seulement ne demande-t-elle pas l'homologation des paragraphes 28 à 34, elle en demande même l'annulation pour cause d'*ultra petita*; d'après SLF, ces paragraphes 28 à 34 traitent de dommages, s'agissant d'un sujet réservé à la deuxième étape de l'arbitrage via la question 6.

[14] Ces demandes de SLF eu égard à la question 1 s'appuient sur les articles 947.1 et 946.4 du *Code de procédure civile* :

947.1. L'annulation s'obtient par requête au tribunal ou en défense à une requête en homologation.	**947.1. Annulment is obtained by motion to the court** or by opposition to a motion for homologation.

946.4. Le tribunal ne peut refuser l'homologation que s'il est établi:

1° qu'une partie n'avait pas la capacité pour conclure la convention d'arbitrage;

2° que la convention d'arbitrage est invalide en vertu de la loi choisie par les parties ou, à défaut d'indication à cet égard, en vertu de la loi du Québec;

3° que la partie contre laquelle la sentence est invoquée n'a pas été dûment informée de la désignation d'un arbitre ou de la procédure arbitrale, ou qu'il lui a été impossible pour une autre raison de faire valoir ses moyens;

4° **que la sentence** porte sur un différend non visé dans la convention d'arbitrage ou n'entrant pas dans ses prévisions, ou qu'elle **contient des décisions qui en dépassent les termes**; ou

5° que le mode de nomination des arbitres ou la procédure arbitrale applicable n'a pas été respecté.

Toutefois, **dans le cas prévu au paragraphe 4°, seule une disposition de la sentence arbitrale à l'égard de laquelle un vice mentionné à ce paragraphe existe n'est pas homologuée**, si cette disposition peut être dissociée des autres dispositions de la sentence.

946.4. The court cannot refuse homologation except on proof that

1) one of the parties was not qualified to enter into the arbitration agreement;

2) the arbitration agreement is invalid under the law elected by the parties or, failing any indication in that regard, under the laws of Québec;

3) the party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitration proceedings or was otherwise unable to present his case;

4) **the award** deals with a dispute not contemplated by or not falling within the terms of the arbitration agreement, or it **contains decisions on matters beyond the scope of the agreement**; or

5) the mode of appointment of arbitrators or the applicable arbitration procedure was not observed.

In the case of subparagraph 4 of the first paragraph, the only provision not homologated is the irregular provision described in that paragraph, if it can be dissociated from the rest.

(Les caractères gras sont de la soussignée.)

Le conflit

[15] D'après SLF, le tribunal d'arbitrage a outrepassé son mandat en décidant d'un préavis de deux ans; il s'agit là de dommages, dit SLF, sujet qui ne devait être traité qu'à la deuxième étape, sous l'égide de la question 6; SLF affirme que la preuve n'a pas porté sur ce sujet. D'où sa demande d'annulation des paragraphes où il en est question.

[16] Et la nécessité du renvoi devant un nouveau tribunal d'arbitrage s'explique par le fait que le premier s'étant déjà commis, il lui serait difficile d'être impartial par la suite.

[17] D'après monsieur Zafran, le tribunal d'arbitrage n'a aucunement outrepassé son mandat en fixant à deux ans le préavis requis. Il souligne que la question 1 ne traitait pas seulement de son « right to render services as a public accountant » mais aussi des « parameters and limits, if any, to such entitlement ».

[18] Il rappelle le contexte de la décision : il avait plaidé qu'il avait le droit de travailler pendant cinq ans en vertu de l'article 12.06.7 du contrat de société, alors que SLF avait plaidé qu'il s'agissait d'un contrat de services, auquel SLF pouvait mettre fin à tout moment, sans préavis; de façon subsidiaire, SLF avait plaidé que, s'il s'agissait d'un contrat d'emploi, l'exécution spécifique n'était pas disponible à monsieur Zafran et que, de toute façon, SLF avait des motifs suffisants pour le congédier.

[19] Monsieur Zafran se réfère aux soumissions écrites faites au tribunal d'arbitrage de part et d'autre avant les quatre ou cinq jours d'audition :

- sa présentation écrite du 14 juin 2007 (D-2A), notamment du paragraphe 54 au paragraphe 65;

- la présentation écrite de SLF en date du 29 juin 2007 (D-2B), du paragraphe 99 au paragraphe 154, notamment aux paragraphes 109, 113, 114, 115 et 116.

[20] Ainsi, dit monsieur Zafran, lorsque le tribunal d'arbitrage a écarté les prétentions de part et d'autre quant au lien contractuel Zafran–SLF (question 1) pour conclure à un contrat *sui generis*, il agissait à l'intérieur de son mandat.

[21] Le Tribunal note que le tribunal d'arbitrage lui-même interprète la question 6 de son mandat comme en étant une de chiffres et de calculs :

> « 34. While it is to be hoped that the Parties can make the precise calculation of the amount owing without our intervention, we remain open to solve any disputes about quantum pursuant to par. 6 of the letter of April 23, 2007. »

[22] Voilà donc la question du fond. Est-ce prématuré de s'y attaquer immédiatement : voilà la question préliminaire, celle de l'irrecevabilité.

La prématurité

[23] Les deux parties reconnaissent le principe de l'épuisement de la procédure d'arbitrage avant le recours aux tribunaux de droit commun : voir l'arrêt *Compagnie nationale Air France* vs *Mbaye*[1].

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[1] [2003] R.J.Q. 1040 (C.A.).

[24] Mais SLF suggère, en se référant au jugement de la Cour supérieure dans *Paris* vs *Macrae*[2], que certaines décision interlocutoires d'un tribunal d'arbitrage revêtent un tel caractère de finalité que l'intervention de la Cour supérieure serait possible.

[25] Ce à quoi monsieur Zafran répond que la décision du 4 décembre 2007 ne constitue pas une telle décision.

L'analyse du Tribunal

[26] Le Tribunal est d'avis qu'il est prématuré de vouloir faire homologuer/annuler la décision arbitrale P-2 :

- à sa face même, elle est incomplète; le tribunal d'arbitrage prévoit, au paragraphe 34 reproduit ci-dessus, la tenue d'une autre séance d'arbitrage : d'ailleurs, la date en avait été fixée et agréée par les parties; mais vu la présentation de la présente requête, le tribunal d'arbitrage a décidé d'y surseoir;

- le mandat conféré au tribunal d'arbitrage exige une telle méthode, en prévoyant deux phases d'enquête séparées par une première décision.

[27] Par voie de conséquence, il n'est aucunement nécessaire d'envisager l'envoi à un nouveau tribunal d'arbitrage et il n'y a pas de raisons d'empêcher le tribunal d'arbitrage actuel de finir son travail.

Les conclusions

[28] Le Tribunal :

> **REJETTE** la requête amendée présentée par Schwartz Levitsky Feldman, intitulée « Amended Motion in Partial Homologation of a Decision of the Arbitration Panel and in Annulment of Certain Paragraphs of the Arbitration Decision »;
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> Avec dépens en faveur de Morty Zafran à l'encontre de Schwartz Levitsky Feldman.

j.c.s.

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[2] (27 septembre 2006), Montréal 500-11-028559-066 (C.S.).

Me Emmanuelle Saucier
McMillan Binch Mendelsohn
Avocats de la demanderesse

Me Gilles Poulin
Avocat du défendeur

Date d'audience : 13 mars 2008