

STATEMENT AND MEMORANDUM

of

Mr. B. F. Baker

re

KENAMER BOILER CO. INC.

(Homer Addams)

December 13, 1927.

December 13, 1927

American Radiator Company,
40 West 40th Street,
New York, N. Y.

Dear Sirs:

The attached memorandum is one which I prepared when I was here on November 28, and sets forth the facts as I recalled them in connection with our association and relations with Mr. Homer Addams of the Kewanee Boiler Company, Inc., a New York corporation. After dictating that memorandum I returned to Kewanee and examined the old files and records in my office and found nothing in them which would vary the facts as set forth in that memorandum. I also discussed the memorandum with the following of my associates, who were all Directors of the old Kewanee Boiler Company of Illinois: Messrs. W. E. Baker, M. F. Moore, H. D. Cherry, E. B. Dickson and E. F. Wagner, and each one of those gentlemen assured me that they were in entire accord with the statement of the situation which I had prepared and set forth in the attached memorandum.

Very truly yours,

(signed) W. E. Baker

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November 28, 1927.

For several years previous to 1920, Kewanee Boiler Company, Kewanee, Illinois, maintained a branch sales office in the City of New York and was licensed to do business in the State of New York, and the manager was Homer Addams, who ^{was} is an employee of the Kewanee Boiler Company on a definite salary. On or about January 1st, 1920, Mr. Addams having built up a large business in the Eastern territory, was dissatisfied with this method of doing business and stated that he should be in a position to increase his compensation as he increased this business. After several discussions with the directors and officers of the Kewanee Boiler Company of Illinois, it was decided that a corporation be organized in New York under the name of Kewanee Boiler Co., Inc., to act as jobbers for the Kewanee Boiler Company of Illinois in the sale of its product. The capital stock was \$100,000 of \$100 par value. Mr. Addams subscribed for 500 shares, Kewanee Boiler Company of Illinois for 498 shares, E. E. Baker for one share and B. F. Baker for one share. The capital stock was paid in by Mr. Addams and the Kewanee Boiler Company and the Messrs. Baker in cash. No contract was entered into between the Kewanee Boiler Company of Illinois and the Kewanee Boiler Co., Inc. of New York for the sale and distribution of boilers manufactured by the Illinois Company, ^{although} ~~also~~ it was tacitly agreed that as long as the Illinois Company sold boilers to the New York Corporation it would

not sell to other jobbers in the territory formerly allotted to
the New York branch office which was taken over by the New York
corporation. My impression is, which I will verify or correct by
an examination of the records in Kewanee, Illinois, that Kewanee
Boiler Company of Illinois paid for its 498 shares by taking an
inventory of its product in New York and turning that over to the
New York corporation. It may be that the Company also turned over
what accounts receivable it had in partial payment for the stock.
Any differences were probably adjusted in cash.

On January 24, 1921, the Kewanee Boiler Company of Illinois
learned that Kewanee Boiler Co., Inc. of New York had declared a
stock dividend payable February 1, 1921 and the Board of Directors
of Kewanee Boiler Company of Illinois authorized the sale of the
49 shares of stock dividend to Homer Addams at par, thereby giving
him control of the corporation. On December 31, 1921 Homer Addams
made a proposition to Kewanee Boiler Company of Illinois to purchase
the 498 shares of stock owned by that Company in Kewanee Boiler Co.,
Inc. of New York, and the proposition was accepted and the certifi-
cates were endorsed and turned over to him and the one share each
to E. E. Baker and E. F. Baker were sold to Mr. Addams at the same
time, so that Kewanee Boiler Company of Illinois no longer held any
stock in the Kewanee Boiler Co., Inc. of New York. At the time this
proposition of Mr. Addams for the purchase of the 498 shares was
accepted, it was agreed by Mr. Addams that he would change the name
of Kewanee Boiler Co., Inc., but no definite time for that change
was agreed upon. A short time later he came to Kewanee and dis-
cussed with several of the officers and directors of Kewanee Boiler
Company of Illinois the change of name, but did not definitely

determine what name he would adopt. Later I wrote him with reference to this change of name, but did not receive satisfactory reply. Because of the fact that the name was so valuable to him and to Kewanee Boiler Company of Illinois because of the business it helped to produce, we did not further insist on the change, but at no time have we agreed that the name should be continued.

It has always been understood, by us at least, that we had the right to cease selling to the Kewanee Boiler Co., Inc. of New York at any time we chose to and that if we did so cease to sell, we would have the right to sell boilers in this territory to anyone we chose.

About three years ago, the Kewanee Boiler Company had a proposition from the American Radiator Company to consolidate the properties of the two companies. This proposition was refused by us. In June of this year when Mr. E. E. Baker and myself were in New York, Mr. Addams said that in view of the fact that the American Radiator Company might have purchased the business, that he had felt that he should have a contract of some kind with Kewanee Boiler Company and Mr. E. E. Baker suggested that he have a contract drawn and sent to Kewanee when it would be considered, but Mr. Addams has never sent a contract.

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On October 22, 1927, all of the directors of the Kewanee Boiler Company of Illinois were present in Kewanee and the present sale of the property of the Kewanee Boiler Company to the American Radiator Company was thoroughly discussed. The firm of Winston, Strawn & Shaw of Chicago had been employed as representatives of the Kewanee Boiler Company to handle the sale of the properties to the American Radiator Company on behalf of Kewanee Boiler Company, and this firm was pre-

paring the necessary documents, minutes, etc. for this purpose. A waiver of notice was presented to the directors for a meeting of the directors to be held on October 28. This waiver of notice was signed by all of the directors including Mr. Homer Addams. A letter was prepared to be sent out to the stockholders outlining the proposed sale to the American Radiator Company. This letter was also signed by all of the directors including Mr. Addams.

At the meeting of October 22nd, 1927, Mr. Addams raised no objection whatever to the sale, nor did he contend at that time that any contractual relation existed between him and the Kewanee Boiler Company of Illinois or that he had any exclusive rights to handle Kewanee products which were not terminable. I intend to return to Kewanee and gather together all of the correspondence and other documents which may pertain to this subject. In this letter, I am simply giving my recollection of what happened, and have also obtained from the office of Winston, Strawn & Shaw at Chicago where the minute books of the Company are at this time, everything that appears in the minutes in regard to the transactions mentioned above. I attach to this letter an excerpt from these minutes.

January 27, 1920.

RESOLVED, that the Treasurer of this Company be authorized and instructed to subscribe and pay for 498 shares of the capital stock of Kewanee Boiler Co. Inc., of New York at \$100 per share.

Adopted unanimously

January 24, 1921.

WHEREAS, Kewanee Boiler Co. Inc., of New York has declared a dividend payable in stock on February 1, 1921, of which this Company will receive 49 shares, and

WHEREAS, Homer Addams is desirous of purchasing the same,

THEREFORE, BE IT

RESOLVED, that the Treasurer be authorized to sell and transfer to Homer Addams the above-named stock at par for cash.

December 31, 1921.

The proposition of Homer Addams to purchase the 498 shares of stock owned by this Company in Kewanee Boiler Co. Inc., of New York, was presented and on motion, the proposition was accepted and the President and Secretary were authorized and empowered to endorse the certificates of stock in the name of this Company for transfer.

Memorandum

Dated in New Hamilton 4/2/32

My contacts with Mr. Homer Addams in respect to Kewanee fall into three classifications or periods as follows:

1. In November, 1927, while the Kewanee Company was under option, we for the first time received an intimation that Addams claimed certain rights with respect to name, etc., and I called him over to my office. I told him the whole story, of our negotiations, option, etc. (which, of course, he already knew) and encouraged him to discuss the matter. It was not long until he voiced his claims to the exclusive right to the use of the name Kewanee as applied to steel boilers in the eastern territory covered by his existing agency. When I expressed surprise at the claim, he became quite vociferous and stated in effect that I must think he was very stupid if over these 20 odd years of representation he had not had a definite plan for preserving for himself and his heirs the goodwill for Kewanee in the eastern territory, which he had personally built up. He stated further in regard to his length of service, long years of work, of the formation of Kewanee of New York on a 50-50 basis, of his later forcing the Bakers to sell their remaining interest to him and concluded the peroration by suggesting the veritable aspersion which I was casting on his intelligence by saying that all of these years of planning and effort did not as a matter of law bring him the results he claimed. I went into the matter in some detail as to the basis of his claim and very naturally in view of the existing option, questioned him as to his relations with Kewanee Boiler Company. At no time, directly or indirectly, did he claim that he had any contract in writing or otherwise, expressed or implied. His whole claim lay on the fact that he owned Kewanee Boiler Co. of New York, had built up the business, and that at any time Kewanee wished to dispense with his services well and good, in which case he was entitled to use the name Kewanee on any product he desired as against any rights of Kewanee Boiler Company. I was considerably shocked by this revelation and immediately laid the matter before Mr. Chaire of Sullivan & Cromwell for their opinion before we close the Kewanee deal. Sullivan & Cromwell are quite familiar with the opinion they prepared at that time based on the facts of the case as recited to them by Messrs. Baker and recorded in an affidavit signed by Mr. B.F. Baker. Based on the foregoing, the deal was closed December 13, 1927.

2. The deal having been closed, on the occasion of Mr. B.F. Baker being in New York some time in January or possibly February, 1928, and finding Addams in a belligerent mood, I suggested that we get together with Mr. Addams and see if there could not be set in process the necessary steps to reach an amicable understanding. Mr. Addams and his attorney came to this office with Mr. B.F. Baker and spent two or three hours. My line of approach was to suggest that his lawyer and our lawyers sit down together and discuss the law as applicable to the facts. At no time in all of these discussions, which were pertinent to the issue, was there the faintest suggestion of a contract. Quite to the contrary, the impression was indelible that both parties considered it a long standing agency, terminable by either party at will, but with both parties resting confident that

in the event there was a break the other party would know about it well in advance and would prepare for it. I can not swear that Mr. Addams stated positively in so many words that there was no contract, but I can swear that as a course of conduct applicable to this particular point - with others, of course - not only was the fact of no contract not denied but to the contrary, any intelligent person present at this conference, or at any of the other conferences, herein mentioned, would have unequivocally stated that there was no difference in the opinions of the parties in respect to this particular fact. Mr. Addams appeared to be reasonably favorable to this suggestion and the conference broke up with the understanding that we would meet again shortly and would expect to get our lawyers together. I telephoned Mr. Addams several times during the weeks thereafter and he undoubtedly did what is popularly known as "stalling". It finally reached a point where we did not feel it possible to pursue the matter further, it being evident that Addams did not want to follow through.

3. I had no formal meeting with Mr. Addams, as far as I can recollect, thereafter until about three months ago when it became perfectly evident from the 1929 sales results that he was not pushing Kewanee boilers, but to the contrary was holding back their sales. I can not prove this statement but the statistics prove it to the satisfaction of anyone who cares to investigate.

Mr. Dickson had been here and I had had an understanding with him that he might as well prepare to take up the sale of Kewanee boilers direct in this territory but that as a last resource I would approach Addams again if it could be done in a way that would not indicate anxiety on our part. The meeting was arranged through a third party and Mr. Addams came to my office, I think, twice and we went out to lunch together once or twice.

The purport of the whole conversation at each meeting had to do with the same issues as before, that is his claim to the name Kewanee, and that we could not recognize this and that in fact the time had come when there must be a showdown on this situation. He was told frankly that unless this matter was cleared up, his representation would have to cease and we would take up the direct sale of the boilers. In an early conference when this representation would cease was left as a generality, but at the last conference, which I should say was the second or third week in January, 1930, I told him that we would begin the sale of the boilers ourselves on March 1st, if we could not reach an understanding.

We spent two hours at lunch at the Republican Club discussing this. I told him that we did not want to undertake the direct sale and would much prefer to continue his representation if he could carry on as in the years when he did not have a competitive boiler of his own and did not make claims which put us in the position of working for him instead of him working for us. We went over the whole ground several times and I suggested again that our lawyers get together,

and even went so far as to suggest that we would leave the whole thing to arbitration. All of this was of no avail. He continued to assert his claims and said that he would stand on it.

In every one of these conferences I deliberately endeavored or sought to give him an opportunity to state that he claimed to have any sort of agency other than one terminable at the will of either party. In fact I deliberately attempted to irritate him on this point - to draw him out. But at no time did he make any claim of any kind whatsoever with respect to right of notice or termination of the agency, nor did he negative, at the last conference, our right to assume the sale of the product on March 1st. Quite to the contrary, at the last conference he stated specifically that he recognized we had reached an impasse and that he expected us to terminate the representation, saying that he was quite reasonable enough and smart enough to understand the impossibility of further continuance under the circumstances without the accord which he was not willing to grant.