The Initial Interview:  
Alex Bradley in Bradley v Dutton

Chapter 1:  

Preliminary Problem Identification

Lawyer: Alex, one thing I just want to assure you of is that as far as I’m concerned we have a solicitor-client relationship right now, so our discussions are confidential. And I won’t be talking about this, the information that you give me with anybody else without your permission. And... do you have any questions around that?

Alex Bradley: Um... not really, I mean, I... that’s what I assumed. I assumed that I come here and that I can tell you whatever I want and... But I suppose if I tell you something... <Pause> whatever I tell you and you know, you can’t pretend you don’t know either, right?

Lawyer: That’s correct.

Alex: Ya, OK. Not that there’s anything, but just so that I know that. OK. No, that’s all. No, I understand that.

Lawyer: I’m not sure I understand what you....

Alex: Oh, I’m just saying is that if I tell you something that is harmful to my case, once I’ve told it to you, then I’ve told you, right? And you can’t go around, you can’t write a letter saying... denying what I’ve told you.

Lawyer: Well, first of all, I think it’s important for you to tell me everything and be truthful about what’s going on, what’s happened and that’s why we have solicitor-client privileges so you can feel... you can discuss these things openly because I can’t advise you properly if there’s information that you’re not disclosing.

Alex: Alright.

Lawyer: It’s not unusual for somebody to feel like it’s difficult for them to say something when it may not be a favourable type of event, but it’s helpful to me to understand what’s happened so that I can best advise you. And we can look at information that you might disclose which may not be helpful; we just look at that as a disadvantage. But, we can also discuss how we can manage that in a way that’s going to be most productive for you.

Alex: OK, I understand. OK, great.

Lawyer: So, Alex, today we have an hour and I’d like to spend the hour getting some preliminary information about what this is about.
Alex: Sure

Lawyer: And after that we’ll get into more detail and then finally at the conclusion of the day, we’ll decide what we need to do to go forward. And usually these meetings take... um... we’ll have to get together and have a second meeting at some point in time. So, try to arrange that as near as possible to the day, because I know that you’re probably most anxious about this and I expect the fact that you’re here means that you haven’t been able to work this out yourself.

So we’re gonna try to do what we can to help you. And I think the goal we’ll have is to come up with some options for you so you can choose among those and we’ll review the pros and cons of these options at some point. But today we’ll just start, maybe we can get some preliminary information.

[ON SCREEN: Preliminary Problem Identification Begins]

And I’d like to know, like to get a bit of a brief overview of what this is about. Doesn’t have to be to detailed because we are going to get into more detail later. I’d like to know a little bit about what you hope to achieve, what your objectives are and what kind of solutions that you thought about.

So why don’t you start and just give me kind of a brief description of why you’re here.

[ON SCREEN: Request for Brief Description of Client Problem]

Alex: I’m pissed off! I’m incredibly pissed off! Um... I’m good at what I do. I’m a software developer... I had a bunch of great ideas, worked for IBM; it was really boring because I was working for other people.

So, for me, it was really important that I strike out on my own and use some of my own ideas and get really creative. So that’s what I did and I started up by myself in my basement and over a period of time I was able to build up this great team of developers. And we created some really, really great product.

For personal reasons, I ended up deciding to sell the company so that I wouldn’t have quite so much stress so that I can focus on my home life a little bit better. And so there were these people in the west coast that I had dealt with in sales by the name of Dutton and they ran a company out there. And that company... they appro... I discussed with them the possibility that I might be looking at trying to lessen my load a little bit and they seemed to be very, very interested in the company. So I... we started talking about what we could do about that and then in the end result they came up with an offer to buy my company.

But still, I didn't want to stop working. I mean, I’m a young guy and I wanted to continue for years to come, but I thought it would be great because they could take care of the admin and take care of the sales and I could focus on some business development and also be in charge of my development team.
So they made me an offer and the deal closed in December of 2009. Sorry, December 2008. And the deal was for three million dollars, a million bucks each time. And the deal was to result in my becoming Vice President of the company with certain responsibility for business development and certain responsibility for software development.

So, anyway, to make a long story short, again, for personal reasons, I had to take some time off in the summer. And I got back and, uh, basically, I, they, they, uh... they, all of a sudden weren’t consulting me. I’m a Vice President and they weren’t consulting me on anything. And they started to try to give direct instructions to my development team without telling me. And then they, um, they moved me into a smaller office and I just kind of felt left out in the cold. And I don’t have anything to do. So I really feel as though I’ve been shuttled off into the back corner.

I was really pissed off about that so I had a meeting with the husband. It’s a husband and wife team that bought the company, that now own my company and theirs. And I had a meeting with him and I got really angry, because I was really angry that I was... well, I felt demoted and, uh... he was very critical of me and unfairly, I think, in that meeting. Very, very critical and basically suggested I should start looking for another job. He said that they weren’t gonna pay me anymore money on what they owed me. They still owed me one payment... hell of a lot of money... and that they were through with me. So I didn’t know what to do... So that’s why I’m here.

[ON SCREEN: Active Listening]

Lawyer: Wow, so, I mean, it sounds like you’re very confused about what their motivation is and why these things have happened because you left for a period of time and you returned and things have changed.

Alex: Yeah, I... and... well, my wife died and that’s why I had to take the time off.

Lawyer: I’m sorry to hear that, Alex.

Alex: And that actually... she was sick at the time that I decided to sell the company... and they knew that, they knew that that was one of the motivations why I had to do this. So... that makes me mad!

Lawyer: Had your wife been ill for quite some time?

Alex: Yeah, she got ill in 2007 and, so, I was struggling trying to help her, trying to help raise the kids as well as trying to run the company. And I found, ultimately, I couldn’t do it all. So I went on like that for about close to a year before I finally made contact with the Duttons about possibly selling the company.

Lawyer: Alright, so there are all kinds of motivations behind your selling and trying to deal with what’s going on with your wife. I can appreciate it how difficult that is.

[ON SCREEN: Client Objectives]
Have you thought about what you hope to achieve or what you are looking for, what your objective is at this point?

Alex: Well... I don’t know. I’m confused because I really thought I had a deal and I really thought I’m good at what I do. And they treated me like I was an asset of the company. And my future was set there. I still love software development and I like doing the business development stuff. So I would like to continue doing that... but I don’t think I can work with the Duttons anymore. Like, I mean, I don’t know, after what he’s told me, I don’t think they want to work with me either.

But I love the people I work with. You know, the development team I have, they’re great! So I want to able to, and I guess I need to do that on my, and God knows I still have lots of ideas. So I have no problem with starting from scratch. I mean, I still have to be a dad, but I don’t need to be concerned with taking care of my wife because she’s not here anymore.

Lawyer: How many children do you have?

Alex: Two

Lawyer: What ages?

Alex: Fourteen and twelve.

Lawyer: OK, so they’re relatively young.

Alex: Yeah.

[ON SCREEN: Active Listening – Summary]

Lawyer: So what I’m hearing is that your work is important to you and the business is important to you. But it’s your relationship with the Duttons that’s really the major concern right now. And it sounds like there’s a lot of uncertainty around that for you.

Alex: Yeah, I mean I... to give you the total picture, it’s fair to say that after I sold the company and when I was still working... uh... well, after I sold the company and when I was doing my job, uh, I wasn’t all there... My wife was very sick and so even when I was at the office, it was hard for me to do a lot of what I had to do. Some of the business development stuff didn’t get done the way it should of and I wasn’t doing as good a job of managing the developers in the way that I should have.

[ON SCREEN: Active Listening – Clarification]

Lawyer: But your... the objective for you is to be able to continue to do the work that you’ve been doing.

Alex: I love doing what I do.
Lawyer: And is it an objective of yours to try to at least have some communication with the Duttons to better understand how...

Alex: I don’t know how I can talk to them now. Frankly, I’m still incredibly pissed off, and I, because I feel is what they basically said is that they’ve lost confidence in me and I don’t see how the hell I’m gonna get it back. It would be humiliating for me to go back now and say “Oh gosh, isn’t everything fine”, because they knew... <Pause> they knew what I was going through and they had, obviously, no patience for that whatsoever. And a... so... very, very harsh on me and I resent that. So I don’t know that I can work, the other thing is, they still owe me money on that sale.

Lawyer: So that would be another objective is to recover the money.

Alex: Absolutely, every friggin’ penny that I deserve.

[ON SCREEN: Anything Else Question]

Lawyer: Anything else that you can think of that you wanted to accomplish?

Alex: Well... I guess I’m concerned about my reputation. I’m concerned about what they’ve said about me and how that affects, because the business community is not that big. And I want to know that my reputation is intact.

Lawyer: Alright, so... [Interrupted]

Alex: I... go ahead, sorry.

Lawyer: Well, I think part of this is just information. Who have they been talking to? Who else they have discussed with...

Alex: I don’t know. I mean certainly people within the company know something is going on because I’ve been moved and now the reporting structures are different and I’ve been kinda left out in the cold. So they clearly understand. So there’s my reputation with them and of course because it’s a small world, they all know other people in the software community, so that becomes a problem.

And of course, they talk to customers and I’ve dealt with some customers and all of a sudden they’re not dealing with me anymore so I don’t know what the Duttons are saying. I have no idea. The other thing [pause] that worries me is that... well... I’d signed a whole bunch of stuff when I sold the company and I remember there was something that I signed that talked about not being able, if I left the company, I couldn’t do what I’m doing now.

Lawyer: OK, so a non-competition...

Alex: Yeah, that’s what you call it, and I... but that friggin’ thing can’t be binding, can it?

[ON SCREEN: Client Question Identified as a Client Concern]
Lawyer: Well, that’s one of your concerns then, on whether this is a binding document and whether that clause is binding, so I take it the concern is can you work...

Alex: Well, I’ve always understood they can’t stop me from working and doing what I know how to do.

Lawyer: Uh-huh, well that’s a concern we’re gonna address for you.

Alex: So, are you saying I have something to worry about?

Lawyer: No, I think it’s something we need to look at, and what I want to do is really identify what you’re concerned about and what your objectives are. And what I’m hearing right now is that that clause is a major concern for you because what you want to be able to do is work and, maybe the real question is how are you going to be able to work, doing what you want to do. Because, right now, I think, as I hear it, your concern is about your relationship with the Duttons. You don’t understand why they’re, um... why they’ve done what they’ve done. You’re angry about it, you’re upset about it... [Interrupted]

Alex: I’m angry and upset! Do I understand why they’ve done it...? Uh... I understand why they’ve done it. I think it’s grossly unfair and high-handed and I think they need to pay for it. So do I care about my relationship with them? At this point... probably not. I want to make sure they don’t say bad things about me, but I don’t know that I can work, like, for me to go back and try to work for them would be humiliating. I need to know that I can move on and do what I love to do, without them. And I’ll show them...

Lawyer: Right, so right now, because of that anger, you’ve thought about some ideas... first thing that I think I understand is really important to you is to be able to do your work and your reputation in the community that you have worked in is extremely important, especially with the employees and other people you would have had a business relationship with. So that’s important to protect.

Alex: Yes.

Lawyer: And you’ve got other commitments. You’ve got children that you are responsible for and you just had a major loss in your life. These are things that all play a part of what’s happening here.

[ONSCREEN: Client Solutions]

Lawyer: Have you thought about solutions?

Alex: Well, there are two things. I mean, one is the sale of the business. I want my money. And they can afford it. The business was my business and had great product, there were good sales. And the Duttons are wealthy people, they freakin’ well got the money to pay me. And so I want to get, so... that’s one thing I want. Secondly, I’m gonna be out of a job at some point and once that happens, the income they’re
paying me is gone and I’m... yes, the deal was for three million dollars, but I need to retire at some point in my life and that was going to be my nest egg... I still need to earn a living. And it’s going to take me a while to build up the necessary product to be able to sell and start creating an income from a new business. So I... I want to get paid severance for whatever time it’s gonna take me to...

Lawyer: Have they continued to pay you since...

Alex: Oh, they’re paying me now, yes. In fact, I’m going in every day even though I have nothing to do. So, I mean that’s only... he’s told me... Dutton told me, when we fought, that to start looking for another job.

Lawyer: OK, alright. [Slight pause while he continues to take notes] Anything else you can think of in terms of concerns you may have?

Alex: Yeah, I mean, in terms of talking about the kind of people the Duttons are, um, one of the things he mentioned in the meeting when we fought was that he was having trouble, huge trouble collecting some of the accounts receivables. So, when I sold the business, it was an active business. So there was product, and there was inventory, you know, stuff, like equipment and all that stuff, and there were people and... but it was an active business, so there were payables and I had lots of receivables. And there was some issues with some of the receivables because we sold, I sold, right in the middle, just when there were economic problems here. And I was concerned about some of the accounts receivables. And I told the Duttons that. I wrote them and I said, when we were negotiating, I said “the one thing I’m not sure about is the receivables.” I said I would collect some of them, but clients that we have are suffering because of the recession and it’s going to take a while for the money to come in.

So, when I was having the fight with Dutton, he raised the issue of the accounts receivables and he said that they’ve been having a nightmare collecting them and because I had guaranteed the accounts receivables, it was my responsibility. Well, I hit the friggin’ roof because I never guaranteed those receivables when I was negotiating with them. I mean, we signed the agreement between us. And, uh, I mean I looked at it. As you know, I had other things on my mind so for me it was just getting rid of it. So I didn’t really look all that carefully at the agreement. Well, he shows me this clause that says I’m guaranteeing the receivables in the agreement. I didn’t even know that was there, but he friggin’ well knew that I wasn’t guaranteeing the receivables, that I was concerned about them. So he’s gonna try to use that and try to say that he doesn’t owe me that last payment.

Lawyer: OK, but from your understanding the guarantee is a new item for you. You didn’t know that...

Alex: I didn’t know that was in the agreement.

Lawyer: And in addition, Dutton didn’t expect it to be in the agreement?
Alex: Well, Dutton wrote the agreement.

Lawyer: OK.

Alex: So, when I wrote that letter to him and when we were talking it was clear, from my perspective, that they weren’t there. He then puts in this guarantee in the agreement that he drafted without pointing it out to me or telling me it was there. So I had no reason to believe that it was there.

Lawyer: OK.

Alex: Yes I signed it, but I mean, I was not in great shape at that point.

[ON SCREEN: Parking an Issue for Subsequent Discussion]

Lawyer: Alright, we may go into some more detail on that in a few minutes. That’s going to be an important point.

Alex: OK.

Lawyer: So, I know your objectives, but in terms of how we resolve it, have you thought about it?

Alex: I... <Long pause> ... I need to keep my reputation intact. I want to be able to leave where I am, take my development team with me, and start working from scratch doing new ideas in exactly what I want to do. I want to get paid everything that I’m owed under that agreement of original sale and I want to get severance. And I want to get a letter from them saying that it’s been nice knowing me and I was great at what I did when I was there. That’s what I want.

Lawyer: In terms of your reputation, what would you be looking for?

Alex: I’d be happy with a letter from them saying that, and the way in which I leave is important as well.

Lawyer: OK, a letter indicating that they’re not going to talk negatively about you...

Alex: Well, actually, a letter saying how good I was at what I did.

Lawyer: Oh, a type of reference letter.

Alex: Yeah, but more importantly than that, like for the company itself, I want the employees to know, I want them to believe that it’s my decision to leave. And I want them to believe that the Duttons are sorry to see me go. But that it’s my decision because I need to run my own show.

[ON SCREEN: Client Recognition]

Lawyer: OK, so Alex, that’s very helpful to me and really what I’m hearing is that you’ve had a business that you’ve established yourself at a time that was most
difficult and right now, as a consequence of your wife’s illness and other circumstances you decided to sell to the Duttons, and something’s happened that’s changed the arrangement and you’ve gone away for a period of time to deal with your wife and you return and everything’s changed. You’re feeling isolated. They’re accusing you of things you really don’t understand and you’ve got some really important concerns about your reputation, not only with respect to the Duttons, but with all the other people that you’ve worked with. You’re also concerned about the money that’s owed to you and insuring [interruption]

Alex: Just to be clear, they’re paying me my salary right now [interruption]

Lawyer: Yes, I understand that, but you [interruption]

Alex: But the money for the business, that’s right they still owe me the million dollars.

Lawyer: They owe you the million dollars plus you’ve got a concern about ongoing income and what’s going to happen in your relationship. So you want to be able to work and do the work that’s most important to you.

Alex: Yes.

Lawyer: And you’ve got children that you need to think about as well. So you’ve thought about a resolution, one of which is to ensure that they give you a letter of some sort that sets out how much they think about you and that the decision to leave, if you’re going to leave, is really your decision.

Alex: Do you know what I want is, I want a party! I want them to have a party of celebration for my time there. That’s what I want. So it’s very clear to them that they’ve enjoyed having me there and now it’s time for me to move on, to go back to do my own thing because I’m an entrepreneur and I don’t like working for other people.

Lawyer: OK.

Alex: That’s what I want.

Lawyer: And a party would give the atmosphere that you’re looking for?

Alex: Absolutely!

Lawyer: OK.

Alex: With their full support and their being there to thank me for their time there, for my time there.

Lawyer: OK. Alright, great. Anything else that you can think of at this point?

Alex: [Sigh] No, I mean, I could ask for an apology, but I just don’t think... I don’t care. I don’t care if I ever see them again, frankly, once this is over with.
Lawyer: Alright.

Alex: I just want to get out and get on.

Lawyer: Alright. I’ll note it though; just park it as a thought.

**Chapter 2**

**Detailed Questioning**

[ON SCREEN: Beginning of Detailed Questioning]

Lawyer: Alright, what I’d like to do know is kind of move to getting some more detail around the situation. And what’s helpful is if we kind of establish a timeline, when things first started and that gives me a fuller picture of how events evolved. So, and then we’ll, and the timeline is just basically the events as it happened in a chronological sequence and then we’ll take a look at those events in more detail in the latter part of the interview. So what I’d like, if you could for me, is to establish the first thing that happened with respect to the situation.

Alex: <Pause> My wife being diagnosed.

Lawyer: When did that happen?

Alex: January, about… a little over 2 and a half years ago… 2 years and nine months.

Lawyer: What next happened?

Alex: Company was doing really well, but I was, we were going back and forth to doctor’s appointments. You know, there’s chemotherapy, the effects of that. Of course the kids didn’t understand and we had to tell them and I was trying to deal with their grief and I was trying to run a business. And things were growing. The business was doing really well. It was so weird, to have the business doing well and things at home being so bad. And ah, so it went on like that probably… well, actually it continued to go on like that for almost a year before I really decided that I needed to do something to change.

So it was really, the start was about a year and a half ago. And I dealt with the Duttons before on a couple of deals. They bought some of my product and I liked them as people and we seemed to get along really well. So I thought, “OK, well this is, you know, if I were…” I began to think “I need to do something and, um, the idea of selling the company might give me a little bit of security, but also would allow me to offload some of the stress that I had.” So we started talking, I guess, about a year and a half ago we started to talk.

Lawyer: So your wife was diagnosed two and a half years ago and then you spent a year just trying to manage the situation and then you decide, you think maybe one of the options is to sell. So, you knew the Duttons from… do I understand that relationship developed through your business?
Alex: Yes

Lawyer: OK, alright. So you have started to have discussions with them?

Alex: Yeah.

Lawyer: Alright, what’s the next thing that happened?

Alex: Well, my wife went through a period of remission when I thought things were going to be OK for probably about three or four months and then she started to get sick again and I started to have a lot more problems trying to manage. So then I picked up the phone and I called the Duttons and said “Look, we get along well...” And they made a couple of comments about, you know “we think that your organization would fit really well within ours and if ever it’s something you thought of doing...” And they also knew the struggles that I was having at home so I picked up the phone and I called them and I said “OK, I want to talk.” And, so, we talked... probably... you know they wanted to come and they wanted to at... they wanted to check out what my sale... there’s this whole... I hate lawyers, OK. So, I said “I don’t want any lawyers involved in this”, but I said “let’s just try to do this.” So they came up with... I was concerned with, like, because they’re clients of mine, I wanted to make sure that they didn’t tell anybody else.

So we signed what we call in the business an NDA, a Non-Disclosure Agreement so that they could look at my stuff and not tell anybody. So we signed that. I don’t remember when it was. It was sometime about, a little over a year ago when they checked everything out and they asked me questions and I showed them some financial information. And then finally about a year ago, they... about a year ago, they came up with a letter of intent. And then we actually signed a deal about, I guess, in October and then we closed in December. So, what’s that, about nine months ago?

[ON SCREEN: Timeline Bracket]

Lawyer: So you signed the deal.. that was the agreement to purchase?

Alex: Yeah, in October.

Lawyer: And then you closed in December.

Alex: Yeah. And then...

Lawyer: OK, so if I just go back to the letter of the Non-Disclosure Agreement, between the time you signed that agreement and the letter of intent, what took place between that time?

Alex: Well, a lot of stuff at home and trying to juggle the work stuff. And I was kinda half at home and half at work. And, actually, it took them a while because I was having trouble getting stuff to them. And so we... I... it took a lot longer... and I... you know... It was hard, right? Because you’re selling your own business, I was kind of
delaying things because I just didn’t know what’s happening at home, I didn’t know what was happening at work and I just thought I would... I didn't want to rush it. So I took my time and did what I could and tried to run the business and tried to take of my wife at home.

Lawyer: And, in that period of time, was there information that was exchanged about the...?

Alex: Oh yeah. They wanted to understand the product in more detail, the development process. They were concerned whether or not there was any, ah, any breach of other patents or any kind of copyright issues and they wanted to check my clients. They wanted to understand who I was selling to. I was selling to some of their competitors, in fact, so that was going to be a problem if they bought the company. And they wanted to understand, kind of, how the business was growing, what my business model was, how I operated the software team, the development team and how I dealt with my clients and all that. So they were looking at financial information, they were looking at some client lists, they were looking at the details of people that I employed, they were understanding the product that I had, all of that was happening at that time. But it took a while.

Lawyer: Alright, so then the next thing was the letter of intent and following that was the signing of the agreement.

Alex: Yeah, and remember I told you that thing about the accounts receivables?

Lawyer: Right.

Alex: Before the letter of intent, when we were doing that Non-Disclosure, I remember writing them and I was saying “I’m worried about some of these receivables”... like, I don't know... first of all, I said I don't have the time to chase people for money that they owe me because I’m too busy with other stuff. And secondly some of the clients I don't know if they’ll pay.

Lawyer: And that was prior to the letter of intent?

Alex: That was prior to the letter of intent because I wanted them to know that when they set the price.

Lawyer: So anything else happen as a consequence of you sending that letter?

Alex: Not really, just negotiations continued, you know.

Lawyer: OK, so we may get into that in a bit more detail later. So we have the letter of intent and then you signed the agreement?

Alex: Yeah.

Lawyer: So, Alex, I understand that you sent a letter relating to the receivables to the Duttons?
Alex: Yes.

Lawyer: Then there was [sic] some other discussions that went on.

Alex: Lots of other discussions.

Lawyer: So we’ll get into that a bit more at a later time. But, from the time that the letter of intent was signed until the actual agreement was signed in October, what took place?

Alex: Sorry, between the letter of intent and the agreement being signed?

Lawyer: That’s correct.

Alex: They... We were... There was [sic] some essential parts of the deal... The letter of intent was kind of... What I wanted to know is how much they were prepared to pay and the letter of intent told me how much they were prepared to pay. But we had to talk about what we were going to do with the employees, we had to talk about, we had to negotiate the terms of my work for them, where I was going to work, what my responsibilities were going to be. So that was a lot of that discussion and then there were... we had to talk about some transitional things, about how the business was going to operate before closing because there was [sic] some changes we had to make into the context of doing... of completing the deal with them.

Lawyer: OK so a lot of the details had to be worked out in that period. Alright, OK. Then you signed in October and you closed the deal in December. What took place between the signing of the agreement and the closing?

Alex: Well, they had a lawyer. I told them that I wasn’t going to go to a lawyer. I didn’t have the time. And, as I told you, I hate lawyers. So I said, “you take care of it and I’ll trust you that it’s all going to be fine.” So their lawyer did whatever the hell lawyers do to get stuff ready. And, so it took them a while to get documents and I had some leases and I had some loans and they wanted to know details of the leases and details of the loans. I had a lease and we had to go get consent of the landlord of the lease. So all of that stuff happened between October and closing in December.

Lawyer: Alright, so let's go on from there in December. What happened after the closing?

Alex: Well, it’s funny. You do all that work and then you go into work the next day and it’s the same as it was the day before, except I was working for a different company. I was still in charge of my developers and I was still doing some business development, but for me what was great was that I didn’t have to worry about the administration stuff so much anymore. I didn’t have to worry about payroll. I didn't have to worry about HR. I didn’t have to worry about legal stuff and I could just do... I could focus on my development team and some client development. And that was initially the case for probably the first three or four months. It was exactly what I wanted and then my wife got really sick.
Lawyer: OK... and what happened then when your wife became ill?

Alex: Well... I don't know if you have ever been through it but it's really hard because you want to be around 24 hours a day and you can't. But you can't do anything because you're trying to look after the kids and you're trying to be up for them and trying to be up for your wife and then you're trying to be up at work and something has to give. So... and I just didn't have the energy.

So I had trouble going into the office. I didn't want to talk to anybody. I just didn't have any energy to do it. So there were some... there was some business that we could have had that we probably didn't have because I didn't return some calls. And I have to say that I wasn't brimming over with fresh ideas for the development team either. I didn't have any energy, I didn't have any creativity, and I was just totally focused on trying to make sure the kids were OK and trying to take care of my wife. So I was going to the office, sometimes I was late, sometimes I'd leave early, the odd day I wouldn't go in at all. But I was... And that was like starting at, I don't know, maybe the end of... beginning of March. And then, by the end of June, it was clear that my wife was going to die so I had to take time off.

Lawyer: OK, so the end of June, you took time off. I suppose you didn't really know what to expect... and what happened then?

Alex: Well, I told... I really, really had a good support staff. I had an assistant and then I had a lead developer and so, I just told them I wouldn't be in. And they said “don't worry, we'll cover for you.” And so they... they continued and I checked in. I'd make the odd phone call to make sure things were OK. It was stuff happening that they didn’t tell me about, in terms of clients that wanted to talk to me that I wasn't there for. It’s true.

Lawyer: But your main focus at that point was taking care of your wife?

Alex: Taking care of my wife and my kids. Yeah. And the kids were off... I mean, it was just horrible. I don't wanna talk about it. But anyway... She died the 15th of July. And then I was off for three weeks dealing with the funeral and trying to help the kids. I came back to work, probably, I guess it was like, about a month ago by then. You know, second week of August. I don't really remember. And that’s when the shit hit the fan.

Lawyer: So what happened when you returned?

Alex: Well, I walk in and I could tell that the staff was feeling really badly, like they all... couple of them couldn’t look at me in the eye. My assistant was... not there. And I was told that she was moved to another part of the building that we were in. And um... the development team was working on stuff, but it wasn’t anything that I talked to them about so somebody else... I assume the Duttons had come in and started talking to my development team. OK so I, at first, felt really badly, ’cause I thought “OK, I’ve not been able to do what I’ve been supposed to do. But then I got really angry because I thought, this is not right. Because they knew this might
happen. They knew this might be a problem. So then I started to get angry and I
didn’t have anything to do! I didn’t have an assistant. The development team is
working on something I don’t even know about and I tried calling a couple of clients
and they’re clearly dealing with other people in the company. So, all of a sudden,
there’s nothing for me to do. And... so I called Dutton and I said “I gotta see ya.” And
that’s when we had the big shouting match.

Lawyer: And what happened after that?

Alex: Well, I mean... he basically said... you know, he dumped it all on me... “You
know you’ve let the company down”... “You’ve not followed through on these
business opportunities and the development team doesn’t know what to do because
you’re never there.” And um... “You clearly can’t perform your job” and “You’re not
gonna have a job here much longer so you better start looking”... and “By the way,
we’re not paying any more money on the purchase price because the company is not
what we thought it was.”

Lawyer: So Alex the um... you returned to work and I think you indicated it was that
time that you found everything had changed and you then asked for a meeting
with... Mr. Dutton?

Alex: Yes.

Lawyer: <Pause> Alright... and that’s when you had the confrontation and a lot of
accusations were made...

Alex: Yes, that’s when he... that’s when he said “I... you know we’ve... you’ve let us
down. You’re not doing your job and we’re... therefore you better start looking for
work elsewhere ’cause you ain’t gonna be around here much longer and, by the way,
we’re not paying you any more money because the business isn’t what we thought it
was and we can’t collect your receivables.”

So then I got really angry because I said “You knew about my wife. You knew this
was going to be a problem. You did the deal with me... Do you have any compassion?”
And “What’s this about the receivables? I wrote you and I told you.” And then he
pulls out the agreement and he points to this clause, that I told you about, the one
that says I’m guaranteeing the receivables. And I said “That was not the deal I wrote
you” and he said “What matters is what’s in the agreement and this is what I bought.
You’re guaranteeing on these receivables. So I’m not paying you.” And it just got...
And I just... I lost it and I got really angry. And he was angry back. We yelled at each
other and I stormed out... um... and I guess, for... I mean, I’ve been going back to
work everyday, but there’s nothing for me to do.

Lawyer: And how long ago was that?

Alex: That was about three weeks ago.

Lawyer: OK... and what happened after that?
Alex: Not much. I've been basically staring at the wall 'cause I've nothing to do. I mean, the clients are not calling me. I don't have any authority to do any client development. My development team, I'm doing a little bit with them. They come and ask me questions and I give suggestions, but it's clear they can only go so far. They're taking orders from somebody else. I assume that's Dutton so I don't have that much to do there. And... it becomes humiliating to go in and I just don't think that's right.

Lawyer: No... and you're just fresh from coming back from your period away and your wife passing away so I'm sure it's... not only are you going through a grieving process but now you're trying to deal with a difficult situation at work which you don't understand.

Alex: To give myself credit, it was a long haul at home and I miss her, but I feel... I mean, I have all this energy. Like, I feel I need to get back. I don't want to sit around and feel sorry for myself for the next twenty years. I want to be able to get back in the driver's seat and start working.

Lawyer: Keep yourself busy.

Alex: Yes, but I can't do it in this kind of environment. I just can't.

[ON SCREEN: Transition Frame]

Lawyer: Alright, that's extremely helpful to me to have that overview of how things developed. But there's a couple of things that I'd like to have more information about and I wonder if we could just take some time and develop that a bit. And what I'm particularly interested in is the agreement and how that developed. And so, I think the... as I understand it you had the letter of intent that was developed, which would have been very general in nature. And then a lot of discussion would have taken place and information exchanged, up to the point where the agreement was signed. And you talked about the fact that you decided that you didn’t want to have a lawyer, but that you would depend on their lawyer. So, what I’d like...

Alex: Actually, I depended on the Duttons. If they got a lawyer to help them do stuff, and I didn’t care who, what they did. I just wanted to sign the agreement and get the deal done. I didn’t go to a lawyer, as I said, I didn’t like them. I didn’t have the time and I trusted these people and I figured it would be OK.

Lawyer: Alright, so what I’d like to do is focus on that period of time, from the letter of intent to the agreement. What can you tell me about that?

Alex: Um...., The Duttons kept on calling me and asking me for information. They wanted copies of documents, like the lease, the loans with the bank. I had a couple... I had an IT contract for software support that they wanted to see that, they wanted to see all the employment contracts I had with the employees, such as they were. They wanted to see my receivables list. They wanted to see, I have a couple of patents on some of the products and they wanted to see the patents and ah... It was
sorta like every two days I’d get a phone call “What about this? What about this?” And I think probably what they were trying to do is not overwhelm me with information... ah... with requests, so ’cause I could only handle so much at the time because I was so crazy with other stuff. And... <Long pause>... I guess... they kept on saying the agreements coming and I guess I knew they had a lawyer and I knew they were working with a lawyer, but the lawyer never ca... I didn’t want to talk to any lawyers, including theirs, so the lawyer never called me. Everything went through them. So they would be the ones calling me. They would be the ones sending me requests, from them, not from their lawyer.

And then eventually, they came up with a draft of an agreement. Well, you know what lawyers are like. The freakin’ thing was sixty pages long and here I am, I’m trying to run a business. I’m trying to run a house. I’m trying to take care of my wife and I’m presented with a sixty-page document, all in legal jargon. And so I just looked at him and said “I trust you. If this is the deal and this is what we talked about, then I’m in.” And, I mean, I checked the purchase price. I checked the payment schedule and I just, I thought, you’re paying... and then I, the other thing was that I wanted to know what my terms of employment were.

But of course the agreement was to agree to agree, so that was one of the things we had to sort out after we signed the agreement. But the signing of the actual agreement, it was kinda like I sat there for an hour and I looked at the purchase price and I looked at the payments and I asked... I kinda flipped through, asked him, like a few other questions, but I didn’t read it in detail. I was tired. I didn’t have the focus. So eventually I said “Yeah, let’s do the deal” and we both signed and then he took it away.

Lawyer: Anything else you can think of for that period of time?

Alex: Not really. No, it just... the deal... the agreement had a closing date of the 15th of December and, um... So I knew that we had, and he said “I’m sorry, there’s going to be more stuff” and of course I was concerned because I wanted to know the terms of the employment for me. So we talked a bit about that and then of course there was a draft employment agreement that came a week later. Again, I cared about how much they were going to pay me and I cared about whether they could fire me or not... but other than that, I didn’t look carefully at the agreement.

Lawyer: Alright, so you received the drafts?

Alex: Yes, the draft of my agreement... Like, we signed the agreement in October, like mid-October and then I received the draft employment agreement.

Lawyer: After that?

Alex: Yes, after that. And then, I don’t know, just mountains of paper.

Lawyer: So if we could go back in time to the period between the letter of intent and the agreement actually being signed, is there anything else that you can think of?
Alex: Other than... is this about the receivables? Because that’s when the business about the receivables happened, was back... Actually, I can’t even remember. Isn't that awful? I can't remember if it was before or after the letter of intent. I'll see if I can find it. I'm sure I've got a copy somewhere of that letter that I wrote to them about the receivables and I can't remember now whether it was before or after the letter of intent, but I'll get... you obviously want that information so I'll find out for you.

Lawyer: Alright.

Alex: Um, the... um... just a lot of going back and forth on getting information, that’s a lot of what happened in that period of time.

[ON SCREEN: Closed Questions]

Lawyer: Now, when the agreement was signed, were you together with the Duttons at that time?

Alex: Yep!

Lawyer: And was the lawyer present at the time?

Alex: No, just the Duttons and me.

Lawyer: OK. And where did that meeting take place?

Alex: Their office.

Lawyer: In the west coast?

Alex: Yes.

Lawyer: So you flew out?

Alex: Yes.

Lawyer: OK. And how long was the meeting?

Alex: An hour, maybe an hour and a half.

Lawyer: Alright. Alex, you say you’re at the meeting with the Duttons, that you had flown out to their office and who was present in the office?

Alex: Just the Duttons and me.

Lawyer: Do I take it that you had received the agreement or a draft of the agreement prior to going out there?

Alex: No, I told them that I didn’t have time to look at it. I'd come out and I'd sign it.

Lawyer: Alright. So you arrive at the meeting?
Alex: Yes.

Lawyer: Mr. and Mrs. Dutton are there?

Alex: Yes.

Lawyer: You’re there.

Alex: Yes.

Lawyer: Nobody else?

Alex: No.

Lawyer: Tell me how that developed? How did the meeting develop?

Alex: Well, I mean, I walk in and he’s got this conference table. And so he ushers me in and his wife is sitting there and there’s this big thick document. And so he said, he asked me to sit down and I said “Sure” and he said “This is it.” And I said “Is it what we talked about?” And he said “Yes.” And I said “I should probably look at this.” and he said “By all means.” He said “You can take it with you if you want.” “No, I won’t read it if I… you know, I just want to know basically it’s OK.” So he said “Take some time and look at it now.” So I sat there and flipped through and asked a few questions. Well, actually, I asked because the thing as I said is huge. So I said “Where is the purchase price?” And he said “Turn to page….” I don’t know five or six, whatever the heck it was. So I did and there the purchase price was. Three million dollars. And then I said “What about the payment terms?” And he said “Turn to page eight.” And I turn to page eight and there were the payment terms. And I said “What else is in here?” and he rolled his eyes and he said “You know lawyers.”

And so I kinda flipped through and I’d see the odd thing. A thing about the lease and I said “We’ve taken care of this?” And he said “Yeah, yeah. The landlord is going to let us take over the space.” And then I flipped to the… and then there was something about the bank loan and I said “You know, the bank loans are OK?” And he said “Yes.” And then I was concerned about a couple of the employees in particular. I wanted to make sure that they were getting the provisions that… and I said “Where’s that?” and he told me where and I went and sure enough there’s the stuff about their assuming the employees under the same terms and conditions that I had for them. And, um… and then there was the agreement. I was concerned about my agreement, for me being an employee. “Where was that?” Well that was a (incomprehensible), that was way back and so he pointed it out where it was. I checked, make sure I was getting paid what they said they were going to pay me and that I had the title and the responsibility that I was going to have.

And I don’t know. I asked him a few other questions about a few things, but I, you know, some of those clauses went on for about a page and a half and I just, I didn’t have the time or the attention. It’s not what I do. So I just said “Is there anything in
here that I should know about?” He said “It’s all pretty standard.” And all that took about an hour.

Lawyer: OK. Put yourself back in the room, if you can, just for a minute. And think. Is there anything else that you can think of that might...

Alex: Might be relevant?

Lawyer: Yes.

Alex: <Long pause> Not really, I mean I... I mean he..., he did say to me “you know you can go to a lawyer if you want, and maybe you should.” And I said “You know that I don’t have time for this, I just wanna sign.” And, um... and I have to say that I felt pressure, like I, they were sitting there staring at me, waiting for me to ask questions or... and I don’t...I think they were trying to just be helpful. Maybe that’s not the case in retrospect, but at the time that’s what I thought. So it was kind of uncomfortable to sit there and be reading it, but I just wanted to get it done and get it over with. I had flown out there. I had to get back. So, that’s it, I mean, I asked some questions and he answered them and then I signed and so did they.

Lawyer: Now, two important clauses in that agreement that you found out after the fact related to one; the guarantee of the receivables...?

Alex: Yep.

Lawyer: And secondly, the restrictions on your future employment should you leave the company.

Alex: Yeah.

Lawyer: So, Alex, there’s a couple of paragraphs that were contained in the agreement that you indicated were a surprise to you when you later found out about them. One related to the guarantee of the accounts receivables?

Alex: Yes.

Lawyer: And the other related to the restrictions on your future employment should you leave the company?

Alex: Well... the receivables one I told you I did not expect that, in fact it was totally contrary to what I told him before. I mean, I wrote to him and said I don’t know about collection... and when I sat down there and I said “Is this what we agreed to?” and he said “Yes” I didn’t bother reading all the fine print, I assumed it would all be there. So, that clause was a surprise. The non-competition clause, I didn't give it much thought because I was signing with these people for life and I figured I’d be with them for the next twenty years and it didn’t matter. So, I mean, there’s nothing unusual about having a non-competition agreement, particularly in our industry where it’s all about your client contacts and your knowledge of products and stuff.
But, I didn’t really think about it because I just assumed I’d be working with these people forever.

Lawyer: Had there been any discussion prior to this meeting when the agreement was signed about the restrictive covenant?

Alex: No, he talked about a standard employment agreement. And I… He talked about a standard employment agreement, he didn’t talk specifically about the non-competition, no.

Lawyer: OK.

Alex: And I didn’t ask about it.

Lawyer: And you didn’t read it?

Alex: No...

Lawyer: At the time...

Alex: No, but I mean, would I be surprised to see it there? Probably not, but again, I didn’t give it much thought because I just assumed that I would be working in this place forever so it wouldn’t matter.

Lawyer: OK, now the paragraph relating to the accounts receivables, that guarantee, there had been some discussion around accounts receivables, but what you’re telling me is that you at no time, understood you’d be guaranteeing...

Alex: Not at all.

Lawyer: OK.

Alex: Total surprise to me when he pointed it out to me in August.

Lawyer: Alright. Did you read anything in the agreement at that time?

Alex: Not about that stuff. I mean that’s all, that’s what I considered to be all the fine print. I mean, I was looking at, I wanted to make sure I was gonna get paid, I wanted to know when I was going to get paid, I wanted to know when the closing date was and I had concerns about the lease and the employees and that was the stuff that I thought of and, I mean, I’m not a lawyer. I wasn’t approaching it that way. It was a business deal. I just wanted to get the deal done.

Lawyer: OK. Had there been many discussions around the receivables prior to this particular date?

Alex: There was so much we were talking about... um... I mean, certainly after I wrote that letter, there was nothing he said that would have told me that he wasn’t accepting my statement that the receivables were a problem.
Lawyer: OK.

Alex: So, I had no idea from him that he was asking me to guarantee them. There’s nothing he said that, I mean I sent that letter saying that the receivables are an issue. That’s all I did. And he never came back and said “Oh, that’s gonna be a problem.”

Lawyer: Alright. So, certainly from your understanding at the time you signed the agreement, you didn’t look at the agreement specifically, you didn’t look at the specific clauses. But your understanding was that you were not guaranteeing the accounts receivable?

Alex: That’s correct.

Lawyer: OK. Alright.

Chapter 3

Concluding Interview

[ON SCREEN: Concluding Interview]

Lawyer: Well, our time is almost up, but we really need to get together again because it’s a very complicated issue and there are a couple of things that I’d like to look at for you so we can better help you in terms of decisions around what you’re going to do.

Alex: So, what am I supposed to do and how long is this going to take?

Lawyer: What I’d like you to do, if you could, is to gather all the documentation that you have relating to this matter and bring it back when we next meet. I’d like to have the letter of intent, I’d like to have a copy of the letter that you sent with respect to the receivables, I’d like to see the agreement and anything else that you might have in terms of documentation, I’d like to have. So, if you could get those documents for me.

Alex: You know, it’s like this thick, eh?

Lawyer: That’s OK. I understand that. But we’ll need to see it and I’d like to review it. And I’d like to review the specific paragraphs in the agreement, which are of concern for you. And we’re going to take some time to review the situation because you’re in a contractual relationship with these people. So that document’s a very important one. And we want to take a look at some of the law around restrictive confidence as well, because we want to make sure that, in case where it’s too restrictive, that part of the document could be void altogether so we want to make sure we’re current on that issue as well. So that’s what we’re going to do. And I’d like to get together in a week, if we could. Does that work for you?

Alex: Oh, that’s no problem at all.
Lawyer: OK.

Alex: I’ll make time. What do I do about going to work?

Lawyer: Well, they haven’t said you can’t continue to work right now?

Alex: Correct.

Lawyer: How difficult is it for you to go in?

Alex: Well, I mean difficult and difficult. Psychologically, like it’s really hard because I have nothing to do and I’m working with all these people over whom I had authority and I don’t have that authority anymore. I mean, so it’s kind of humiliating, but... if I have to go, I have to go. Like I don’t wanna ... I don’t wanna lose anything by virtue of not going in if it’s going to harm my position.

Lawyer: Alright. What I suggest is to try and maintain the status quo as best you can. If it becomes difficult, call me. We’ll talk about what you might do at that point in time.

Alex: What if Dutton calls me?

Lawyer: Well, I’d just try to be a listener, I guess and ask what he’s calling you about. And perhaps if he does call you, if you’re not comfortable talking to him about something or you’re concerned about what you might say, why don’t you just let him know that you’ll have to get back to him and why don’t you call me and we’ll talk about it.

Alex: Should I tell him that I’ve been to see you?

Lawyer: No, I don’t think he needs to know that at this point.

Alex: OK, great.

[ON SCREEN: Fees Discussion]

Lawyer: Now, we’ll have to talk about legal fees at some point in time.

Alex: That’s why I’m worried about this big stack of documents you have to go through. I’m paying you to go through those, right?

Lawyer: That’s right. So, I’m going to estimate that it’s going to take us, maybe...including our time today, reading the documents and our next meeting, we’re probably going to have five hours involved. And our fees are two hundred and twenty-five dollars an hour so that’s the type of cost that you might incur in the beginning. At the end of that period of time, you’ll have some idea of what kind of options are available for you, and looking at those options, what are the advantages and disadvantages of moving one way or the other. So at the end of that period of time, you’ll have a better conception of what the future looks for you.
Alex: OK.
Lawyer: Does that seem reasonable?
Alex: That's great.
Lawyer: OK. So why don't we meet, maybe...I don't know, next Wednesday?
Alex: That works for me.
Lawyer: OK. Now, do you have any other questions that you can think of?
Alex: No, I don't think so. You've told me what I needed to know.
Lawyer: Alright, that's great Alex.
Alex: Great.
Lawyer: Thank you very much.
Alex: Thank you very much.