

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

ROBINSONS' TRUCKING LIMITED

Plaintiff

- and -

DALE GAGNON and JEANNIE GAGNON

Defendants

REASONS FOR JUDGMENT

The Plaintiff, Robinsons, seeks summary judgment on its application for an Order for Possession of a lot and dwelling house which it owns in Yellowknife, and which had been leased to the Defendants.

The Defendants argue that summary judgment here would be inappropriate because they have raised an arguable issue, that is, that they had an option to purchase the property which is still available to be exercised.

The Defendant, Jeannie Gagnon, had been a long-term employee of the Plaintiff. On the first day of June, 1995, the Defendants leased the lot and dwelling house from the Plaintiff pursuant to an agreement in writing which provided *inter alia* as follows:

- (a) The term of the lease was for one year terminating on May 31, 1996.
- (b) If the Defendants, as tenants, hold over the premises after the expiration of the lease, such holding over shall be as a monthly tenant only at the same rental (\$2,000.00 monthly) during the main term of the lease.
- (c) The Plaintiff granted the Defendants an option to purchase on the following terms:

Tenant's option to purchase - in consideration of the sum of **Ten Thousand (\$10,000.00) Dollars** (the "option price"), receipt of which is hereby acknowledged, the Landlords agree that the Tenant shall have the irrevocable option to purchase the lands and the Premises on the following terms:

- (a) The Tenant must have duly and regularly paid the rents reserved in the Lease and have performed all of the covenants and obligations in the Lease required to be performed by the Tenant;
- (b) the Tenant may exercise the option at any time during the currency of this Lease, **but in no event later than April 30th, 1996** by delivering written notice of her intention to exercise the option to the Landlords. Should the Tenant fail to exercise the option, the option price shall be forfeited to the Landlords by the Tenant;
- (c) Upon the option being exercised, the following shall be the terms and conditions of the agreement of purchase and sale of the lands and Premises:
 - (i) the purchase price shall be the sum of **Two Hundred & Thirty Five Thousand (\$235,000.00) Dollars**, subject to adjustments for rent to Closing;

- (ii) the following amounts shall be credited towards the purchase price:
 - (A) the sum of *Six Hundred (\$600.00) Dollars* from each rental payment paid to the Landlords by the Tenant to the date of Closing; and
 - (B) the option price.
- (iii) the balance of the purchase price shall be payable in cash or by certified or solicitor's trust cheque on Closing;
- (iv) Closing shall be on a date thirty (30) days' from the date on which the Tenant's exercise the option to purchase or such other date as may be agreed upon between the parties (herein called "Closing");
- (v) the lands and premises shall be conveyed to the Tenant free and clear of all liens, claims and encumbrances whatsoever except utility easements, if any;
- (vi) the purchase price shall include those chattels referred to in paragraph F. 16 of this Lease; and
- (vii) the Landlords and Tenant shall execute all documents necessary to give effect to the sale of the lands and Premises to the Tenant and the Tenant will be responsible for all in connection therewith, including the reasonable costs of the Landlord's solicitor.

It is common ground that the option to purchase was never exercised before April 30, 1996. However, both parties agree that the term of the option was informally

extended. For example, in his affidavit sworn on March 14, 1997, Allan Thom, the Plaintiff's controller, avers:

7. The Defendants were unable to exercise their option on or before April 30, 1996. Based upon the repeated representations of the Defendants to the effect that they still intended to purchase the Lands the Plaintiff agreed to extend the time for exercising the option from time to time.

9. When I spoke to the said Jeannie Gagnon on October 25, 1996 I also told her that the Plaintiff could not continue to extend the period for exercising her option and that the Plaintiff considered the Agreement to be at an end. This did not have anything to do with the Plaintiff requiring Jeannie Gagnon to take holiday time for the reasons set out in paragraph 8 herein. Prior to October 25, 1996 I had spoken with Jeannie Gagnon on at least three occasions advising that the Plaintiff would not extend the option indefinitely and required something to be done if the Defendants wished to purchase the Lands.

10. On October 28, 1996 I prepared a letter to the Defendants which was signed by Marvin Robinson, President of the Plaintiff corporation, confirming that the Agreement was at an end. Attached hereto as Exhibit "C" to this Affidavit is a true copy of the said letter. (Letters attached to these reasons.)

(11) It was agreed by the Plaintiff that the option price forfeited by the Defendants could be credited against their rent and other charges owing if the Defendants vacated the Lands by January 23, 1997.

(14) I spoke with the Defendant Jeannie Gagnon on January 3, 1997. At that time she advised me that the Defendants and the rest of the occupants of the Lands would vacate the Lands by no later than January 23,

1997. At the same time Ms. Gagnon agreed that on January 24, 1997 we would do a walk through of the house to determine what if any damage existed.

(16) On January 21, 1997 I called again and left a message with someone at the house to have Jeannie Gagnon call me. This call was returned that morning by Dale Gagnon who advised that they could not get the money from a bank to buy this place or any other. Dale Gagnon further advised that financially they could not do anything to rent or purchase the Lands and that they were not prepared to move.

The Defendant, Jeannie Gagnon, stated in her affidavit her belief that by its conduct, the Plaintiff agreed to an extension of the option period indefinitely.

Until October, 1996, there appears to have been a friendly relationship between the Plaintiff's officers and the Defendant, Jeannie Gagnon. However, after the Plaintiff sent their letter of October 28th to the Defendants (a copy being attached to these reasons), the Plaintiff discovered financial irregularities in its accounts causing it to terminate the employment of Mrs. Gagnon forthwith.

The Defendants paid the \$2,000.00 monthly rental to September, 1996: no payments have been for the months of October, November, December, 1996 or January, 1997; the Defendants have tendered monthly rental payments of \$2,000.00 for each of the months of February and March, 1997 but these have been refused by the Plaintiff.

The "arguable issue" raised by the Defendants is their assertion that the option to purchase the property had been extended indefinitely and so is still available for their exercise.

I do not accept that there is any merit in that argument. It seems clear that the Plaintiffs were prepared to extend the option period for some while, but on October 25, 1996 took the position that it was ended. This position is clearly set out in the Plaintiffs letter of October 28th (which has been attached). Furthermore, even if the Defendants contend that the option to purchase was somehow extended to the present time (and if so, this would have been a voluntary offer by the Plaintiff without any consideration for doing so), the Defendants could only exercise the option if all rentals had been paid to date, but the four monthly rentals from October, 1996 to January, 1997 inclusive are unpaid. Additionally, exercising the option required written notice of any such intention and I have not been shown that any such notice was ever given.

I am, accordingly, of the view that the Plaintiff is entitled to an order for vacant possession of the premises which I would set for May 31, 1997. The Defendants will pay the Plaintiff the sum of \$2,000.00 per month for use and occupation of the premises since January 23, 1997.

Any other issues in dispute, including the value of the repairs required to be made to the premises by the Defendants, will be resolved after trial. Counsel may apply to me further for any other consequential relief which may be required to give full effect to this order for possession.



H.L. Irving,
J.S.C.

YELLOWKNIFE, N.W.T.

Dated this ~~17th~~ day of April, 1997

Counsel for the Plaintiff:

Paul A. Bolo

Counsel for the Defendants:

Sarah A.E. Kay

Robinsons' Trucking Ltd.
PO Box 1807
Yellowknife, NT
X1A 2P4

October 28, 1996

Dale and Jeannie Gagnon
101 Magrum Crescent
Yellowknife, NT
X1A 3R4

**Re: Lease dated June 1, 1995 for 101 Magrum Crescent, Yellowknife, NT
Robinsons' Trucking Ltd. with Dale Gagnon and Jeannie Gagnon**

Dear Sirs:

The original term of the above noted Lease was for a period of one (1) year from the 1st day of June, 1995 to the 31st day of May, 1996. As the official term of the lease has expired while the tenancy has continued the terms of occupancy have fallen under Section F, Clause 8 of the Lease which states...

Holding Over - if upon the expiration of the term of this Lease, the Tenant holds over the Premises without any express agreement as to a new term, a tenancy from year to year shall not be created by implication of law, but the Tenant shall be a monthly Tenant only at a monthly rent equal to the instalments of rent hereby reserved and otherwise on the same terms and conditions set forth in this Lease insofar as the same are applicable to a month to month tenancy.

This correspondence is provided to finalize and clarify certain matters relating to the Lease and its' current status.

Notice to Vacate

Based on the fact that the lease term has expired, that the option to purchase has not been exercised, and that you are now considered to be month to month Tenants, and further to a conversation between Alan Thorn and Jeannie Gagnon on October 25th, let this correspondence serve as formalization of the ninety day notice given to you on October 25, 1996 instructing you to vacate the premises on or before January 23, 1997.

Rental Calculations

Total rent of \$8,177.61 is due from the Tenant to the Landlord for the period from October 1, 1996 to the end of occupancy on January 23, 1997. This amount has been calculated as follows:

Balance on Receivable Account - October 25, 1996	\$ 2,032.49
Less Payroll Deduction - October 25, 1996	<u>(1,338.75)</u>
Balance Outstanding - October 25, 1996	693.74
Balance of Rental Payments	
October, 1996	2,000.00
November, 1996	2,000.00
December, 1996	2,000.00
January, 1997 (23 out of 31 Days)	<u>1,483.87</u>
Balance Outstanding to the Landlord - January 23, 1997	\$ <u>8,177.61</u>

Effective October 25, 1996 you are no longer required to make any rental payments. Rent on the Premises will continue to be accrued and charged to you at \$2,000.00 per month, as indicated in the above calculation, but will be accumulated on account and then applied against the option price of \$10,000.00 as discussed in the *Settlement of Account Between Landlord and Tenant* section below.

Tenant's Option to Purchase

Section F, Clause 14, provides the Tenant with the option to purchase the Premises at a certain value and that, upon exercising this option, the \$10,000.00 deposit (referred to as the 'option price') plus \$600.00 from each rental payment paid to the Landlords by the Tenant to the date of Closing would be credited towards the purchase price. This option had to be exercised, in writing, no later than April 30, 1996.

As the option has not been exercised prior to April 30, 1996 the \$10,000.00 option price is forfeited to the Landlords by the Tenant. The opportunity to apply, as a deposit against the purchase price, \$600.00 of each rental payment made does not exist as this was only on the condition that the option was exercised prior to April 30, 1996 and therefore continues to be considered part of the \$2,000.00 monthly rent.

Settlement of Account Between Landlord and Tenant

Although the option price of \$10,000.00 has been forfeited, the Landlord is willing to return the option price to the Tenant. This amount will be returned under the following conditions:

1. The \$8,177.61 in rent owed by the Tenant to the Landlord as noted above in the *Rental Calculations* section will be deducted from the \$10,000.00 option price; and
2. The balance owing to the Tenant of \$1,822.39 will be retained by the Landlord until February 28, 1997 in order to make certain that
 - (a) all repair to the Premises for which the Tenant is responsible has been completed by the Tenant; and
 - (b) all third party costs associated with the Premises for which the Tenant is responsible have been paid by the Tenant and will not be transferred to the Landlord.

A preliminary visual review of the Premises will be performed concurrently by the Landlord and Tenant during the week of January 6, 1997 with a final visual review on January 23, 1997.

Miscellaneous

Any correspondence relating to this or any other matter regarding the occupancy of the Premises should be addressed directly to the attention of the undersigned under the same provisions as made in Section G, Clause 2, of the original Lease agreement.

Robinsons' Trucking Ltd.

Per:  _____

#CV 06889

A.D. 1997

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REASONS FOR JUDGMENT OF THE
HONOURABLE MR. JUSTICE H.L. IRVING

