

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

MS. FRANCE BERNIER

Plaintiff

-and-

CITY CAB (1993) LTD.

Defendant

MEMORANDUM OF JUDGMENT

[1] France Bernier seeks a declaration that she entered into a valid and binding contract with the Defendant, City Cab (1993) Ltd. (“City Cab”) and she seeks damages for breach of that contract.¹

FACTS

[2] Two witnesses gave evidence during the trial. Ms. Bernier testified on her own behalf and Mr. Adan Ahmed gave evidence on behalf of City Cab. There were also a number of exhibits tendered, and neither their authenticity, nor admissibility was disputed by either party.

[3] Ms. Bernier was a taxi driver in Yellowknife. On January 14, 2002 she entered into a written taxi brokerage services contract with City Cab to use her 2000 Dodge Caravan in its taxi fleet (Exhibit 2). Ms. Bernier referred to this (and subsequent brokerage contracts) as a “City Hall Contract” and that is what these contracts will be termed in these reasons. It should be noted that a number of City Hall Contracts were tendered into evidence; however, only those which are

¹ Ms. Bernier was also seeking to have legal title to her vehicle transferred back to her from the Defendant, but at the trial she indicated she was abandoning that claim.

relevant to the issues in this lawsuit or required for context will be discussed in these reasons.

[4] The terms of the January 14, 2002 City Hall Contract included a requirement for Ms. Bernier to transfer legal title of the vehicle to City Cab and to operate it as part of City Cab's fleet. She was required to pay to have it painted with City Cab's fleet colours and to purchase and maintain appropriate insurance. She was also required to pay "stand rent" to City Cab each week in an amount to be determined by City Cab.²

[5] In exchange, City Cab would, among other things, provide taxi brokerage services, *i.e.* taking calls and assigning requests to Ms. Bernier, as well as other drivers. It was also required to provide a taxi license plate, a radio transmitter/receiver unit, a taxi meter and a roof sign light. City Cab remained the owner of this equipment and it was required to maintain and repair it at its own expense.

[6] This particular City Hall Contract did not contain a termination date; however, it provided for termination upon either party providing thirty days written notice to the other, or immediately upon certain deemed breaches. It was ultimately terminated and replaced by subsequent City Hall Contracts between the parties.

[7] Also dated January 14, 2002 is an agreement between City Cab and Ms. Bernier entitled "Woman Driver Contract" (Exhibit 3). Under the terms of this contract, Ms. Bernier agreed to accept all requests for a woman driver and all requests for in and out of town medical travel trips. She was required to pay stand rent in the amount of \$200.00 a week and to keep the vehicle in the City Cab fleet for a minimum of five years, with an option to renew for a further two years, subject to approval by the City Cab board of directors. She was not allowed to sell the vehicle to another driver in the City Cab fleet and it was a term of this contract that Ms. Bernier would be the only driver of the vehicle.

[8] During his testimony Mr. Ahmed explained how it was that the parties came to enter into the Woman Driver Contract. City Cab's board of directors had passed a resolution that it would not take on more drivers because the City of Yellowknife had limited the number of livery licenses it would issue. The Woman Driver Contract was viewed as a mechanism to allow City Cab to get around this resolution and hire Ms. Bernier.³

² The amount was set out in the "Woman Driver Contract" and later, in the "Suburban Contract", discussed *infra*.

³ The validity of this contract is not in issue in this case, but the fact of it is important to the narrative.

[9] Ms. Bernier testified she was not expecting the Woman Driver Contract. Rather, she thought she was going to sign a "Suburban Contract". She did not want to sign the Woman Driver Contract, but she felt she had no choice. She had already paid to have her vehicle painted in City Cab colours and the radio equipment had been installed. Subsequently, she voiced her objection to it and she threatened to quit. City Cab eventually offered her a Suburban Contract, which the parties executed May 22, 2002 (Exhibit 1).

[10] The Suburban Contract had a number of features similar to the Woman Driver Contract; however, there were a number of differences as well. Ms. Bernier was still required to pay weekly stand rent in the amount of \$200.00 a week. She was required to drive it at least one shift a day, but she could have another driver take over for the remaining shift. She was required to take all medical travel trips assigned to her, both in and out of town. She would be able to sell the vehicle to another driver provided she had permission from City Cab's board of directors.

[11] The Suburban Contract was for a term of five years, which would take it to May 21, 2007. It also contained an option to renew for an additional four years, subject to approval by City Cab's board of directors.

[12] No further documents were executed in relation to the Suburban Contract following expiration of the initial term. Ms. Bernier testified City Cab did in fact choose to renew it for the additional four years and that she was advised of this verbally by a member of the Board of Directors as well as a shareholder. Accordingly, both Ms. Bernier and City Cab continued meet their obligations under the terms of the Suburban Contract. This evidence was not contradicted, nor contested, by City Cab.

[13] The copy of the Suburban Contract which was admitted into evidence at trial bears a stamp on the first page which reads "VOID March 20, 2008". Mr. Ahmed explained this was done because City Cab had intended to enter into a further Suburban Contract with Ms. Bernier. The parties did not ever enter into a new Suburban Contract, however.

[14] On September 16, 2002, Ms. Bernier entered into another City Hall Contract, which was to remain in effect until February of 2005 (Exhibit 4). During her testimony she indicated she had to enter into this one because the previous City Hall Contract related to her Dodge Caravan and she was changing to a larger vehicle. She considered this contract to have replaced the one executed the previous January. When this contract expired, the parties entered into a further City Hall Contract, to be in effect from March 18, 2005 until March 31, 2008

(Exhibit 6). Ms. Bernier did not ever actually sign that contract; however, it was performed and at trial Ms. Bernier testified there were no issues with either party complying with the obligations set out in it.

[15] In April of 2008 Ms. Bernier was asked to attend the City Cab offices to sign another City Hall Contract (Exhibit 8). This contract was to remain in effect until March 19, 2011. It was signed by representatives of City Cab. It should be noted that by this point, the relationship between Ms. Bernier and City Cab had deteriorated significantly. She had raised issues about the legality of the City Hall Contracts with bylaw officials from the City of Yellowknife and she had raised those issues with certain members of City Cab's board of directors and other staff.

[16] Ms. Bernier did not feel comfortable signing the City Hall Contract when it was put before her. She had not yet had an opportunity to read the document and consider it. She also noticed it contained some terms which were not in previous City Hall Contracts. She requested that she be permitted to take it home with her to read. According to her, City Cab was reluctant to let her do so and one of the directors threw his eye glasses across the table at her during the meeting where she made this request. Eventually, however, she was permitted to take the document with her to review.

[17] Ms. Bernier testified she was concerned about the differences between the new City Hall Contract and previous ones. Among these was a provision prohibiting the sale or transfer of the contract itself (clause 8.8). This, she felt, took away her security.

[18] Ultimately, Ms. Bernier refused to sign this last City Hall Contract. She stopped driving the taxi altogether on April 4, 2008 and she tried to make arrangements for City Cab to come and take its radio and metering equipment out of the vehicle but, for reasons relating mostly to the poor relationship between the two parties, they were unable to coordinate this.

[19] The vehicle has been "parked" since on or about April 4, 2008 and legal title remains with City Cab.

ISSUES

[20] The circumstances which led to this lawsuit are most unfortunate. As is evident from the foregoing, there was a great deal of conflict between Ms. Bernier and City Cab. It would serve no purpose to go through all of the conflicts in fine detail, but it is worth noting that there were many misunderstandings and a pattern of ineffective communication which led to the demise of the business relationship.

These kinds of problems are not matters for which this Court can offer a solution, however.

[21] The Court's role is limited to determining the *legal* issues between these two parties, of which there are three:

- a. Was there a contract between City Cab and Ms. Bernier?
- b. If so, did City Cab breach it?; and
- c. If so, what are the damages?

[22] These are addressed below.

ANALYSIS

[23] As of March 31, 2008, the City Hall Contract, marked as Exhibit 6, had expired. While it may be assumed City Cab continued to provide brokerage services following the expiry, and while it is apparent the parties intended to enter into a further contract, they did not ever do so. Thus, there was no City Hall Contract in place when Ms. Bernier stopped driving on April 4, 2008.

[24] That City Cab purported to include, among other changes, a clause prohibiting sale or transfer of the City Hall Contract did not amount to a breach of contract. As indicated, the previous contract had expired and City Cab was entitled to negotiate a contract with different terms, something which it chose to do. Ms. Bernier was not, of course, required to accept those terms, but she was not entitled to require City Cab to change the terms it offered to her. That is the nature of contractual relations.

[25] The Suburban Contract was still subsisting as of March 31, 2008. This is notwithstanding that City Cab purported to "void" it. City Cab had no legal basis for doing so and, barring very specific terms, a party cannot unilaterally bring a contract to an end by simply marking it "void". The evidence establishes that City Cab had renewed that contract for the additional four years and that the parties continued to perform their obligations under it.

[26] When Ms. Bernier stopped driving and permanently parked the vehicle, however, she herself was in breach of the Suburban Contract. Among the fundamental terms of the Suburban Contract was the requirement for Mr. Bernier

to have the vehicle on the road not less than twelve hours a day, six days a week and to accept all requests relayed to her through City Cab.

[27] Ms. Bernier stopped performing her own obligations under the Suburban Contract as of April 4, 2008 when she stopped driving. City Cab was entitled to treat it as being at an end as of April 4, 2008. Accordingly, City Cab did not breach the Suburban Contract.

[28] There being no breach of contract, there are no damages.

CONCLUSION

[29] Ms. Bernier's action is dismissed.

[30] City Cab is awarded its costs on a party and party basis.

K. Shaner
J.S.C.

Dated at Yellowknife, NT, this
27th day of November, 2015

Ms. Bernier was self-represented
Counsel for City Cabs (1993) Ltd.

Adam Vivian
McLennan, Ross

**IN THE SUPREME COURT OF THE
NORTHWEST TERRITORIES**

MS. FRANCE BERNIER

Plaintiff

-and-

CITY CAB (1993) LTD.

Defendant

**MEMORANDUM OF JUDGMENT OF
THE HONOURABLE JUSTICE K. SHANER**
