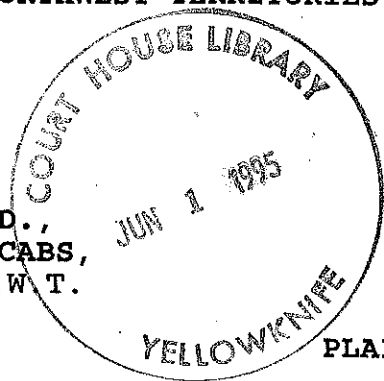


IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

B E T W E E N:

913046 N.W.T. LTD.,  
operating as Y.K. CABS,  
of Yellowknife, N.W.T.



PLAINTIFF

- and -

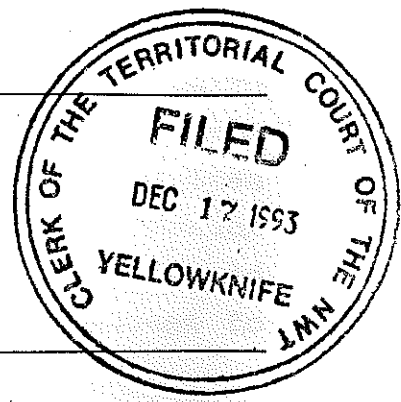
PAUL SENIOR,  
of Yellowknife, N.W.T.

DEFENDANT

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REASONS FOR JUDGMENT OF  
THE HONOURABLE JUDGE T.B. DAVIS  
FILED: DECEMBER 17, 1993

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APPEARANCES:

Assisting and acting on behalf  
of the Plaintiff:

Stephen Kennedy

Assisting and acting on behalf  
of the Defendant:

Patricia Sherman

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

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REASONS FOR JUDGMENT

This matter came before the Territorial Court with neither party being represented by counsel. It became obvious early in the proceedings that the issues were of a technical and complicated nature that would require very careful preparation and presentation of both the evidence and submissions to ensure the court would receive all the information the parties intended to present to support their respective positions.

The court wishes therefore to recognize Brian McQuarrie, a former employee of the Plaintiff, and Patricia Sherman, the mother of the Defendant, for preparing and filing in precise and clear form the detailed submissions of both parties. Without these typed documents, the oral presentations that accompanied them would have been unnecessarily time-consuming and much more difficult for the opposing party and the court to have assessed. Such precision is not usually found in the civil claims before this court when legal counsel are not present.

**AGREEMENT FOR SALE AND FOR EMPLOYMENT**

Both parties recognize and acknowledge that the Defendant, who was a driver of a taxi cab under the Y.K. Cabs designation, had entered into an agreement with the owner of the Plaintiff company to purchase a vehicle which the Defendant was then to use as a taxi cab.

Although this agreement may not be in full technical compliance to the requirements under **The Conditional Sales Act, The Bills of Sale Act, The Motor Vehicles Act**, or other Territorial statutes or regulations, both parties have indicated that they rely on it and are subject to it as though it were a full, proper and enforceable Lease Purchase Contract. Both parties recognize that the agreement, filed as an exhibit in court and having been signed on April 27, 1992 by Paul Senior as the purchaser/employee, was intended to set out the price of the vehicle being sold and the terms of employment agreed upon between the parties.

**PRICE OF VEHICLE**

It is acknowledged by both parties that the purchase price of the vehicle was \$7,500.00, with a credit being given for \$750.00 for payments made by the Defendant on another vehicle, leaving a balance payable on April 27, 1992 marked on the exhibit as the vehicle cost of \$6,750.00, divided into 40 weekly payments of \$168.75.

**STAND RENT**

Under the agreement, the Defendant was to pay \$140.00 per week on what is known in the taxi business as "Stand Rent", for which he was to receive 24 hours per day dispatch services provided to his

vehicle from the Plaintiff. The Plaintiff acknowledges that the weekly payment of \$140.00 included G.S.T.

Terms in the agreement relating to insurance coverage are not to be interpreted, as the Plaintiff has acknowledged that it is liable and willing to repay the Defendant the sum of \$300.00, which amount the Defendant accepts as full satisfaction regarding vehicle insurance coverage.

The court, however, finds no basis upon which the Plaintiff should be responsible for loss of the non-refundable portion of the insurance coverage in the amount of \$115.00 due to the cancellation of the policy. Therefore, upon deducting the \$115.00 from the \$300.00 being acknowledged by the Defendant, the net amount to be repaid by the Plaintiff to the Defendant is therefore \$185.00.

#### **BALANCE ON PURCHASE PRICE**

Both parties acknowledge that 3 payments of \$168.75 (totalling \$506.25) are and have been for an extended period of time outstanding and owing by the Defendant to the Plaintiff as the balance due on the purchase of the vehicle, now in the possession of the Defendant, but still registered under the name of the Plaintiff. I find that the said sum of \$506.25 is due and owing by the Defendant to the Plaintiff.

I hereby direct that, if and when the sum is so paid along with interest as noted hereafter, the Plaintiff is to forthwith transfer the vehicle and deliver to the Defendant all papers necessary for the registration of the vehicle in the name of the Defendant or his assignee. As there is no mention of interest on such amount in the agreement, I direct that interest on this amount can commence one month after this decision is filed in the court, and shall be calculated at the rate of 5% per annum, that being the post-judgment interest allowed in this court.

#### REFERENCE TO EXISTING OPERATORS CONTRACT

The Defendant acknowledges that the agreement required the Defendant to comply with all the rules of the company under an "Operators Contract" on file with the company, and agrees to be bound by the terms therein even without having seen the terms, since the company is also bound by the said document. It is acknowledged by both parties that the company was to supply dispatching services, referred to in the document at section 2 (5), when there was no failure by the driver/owner to make payment of the "Stand Rent". The company could withdraw such services until the said sum is paid.

Although the company indicates that it has been the policy of taxi-operating firms to withhold dispatch services from its drivers to ensure compliance with company directions and policies, I find no legal basis upon which the removal of their obligatory duty to provide same is justified without such authority being stated in its "Operator Contract" thereby being known to the driver upon taking employment with the company.

#### TEMPORARY CANCELLATION OF DISPATCH SERVICES

I find that any temporary cancellation of such dispatch services, other than when the driver is in default of payment of his weekly stand rent, appears to be without authority. I do find, however, that such discontinuance of services by the company prior to the 5th day of January, 1993 was negotiated and settled between the parties or is subject to other litigation, but does not form part of this claim before the court. This civil proceeding commenced as a result of actions by the Defendant on January 5, 1993, when he became annoyed that dispatch services were again temporarily discontinued and gave a notice of termination of his employment. The company had withheld services for a six hour period on that occasion.

The parties both acknowledge that section 7 (D) of the "Operator Contract" requires 30 days notice of termination from either party when there is compliance with all other terms of the contract, including the payment of the "Stand Rent".

The manager of the company indicated that he had taken the Defendant's vehicle off service for a 6 hour period because of continuous late payments on the agreement. In court, the Plaintiff agreed to refund to the Defendant the sum of \$80.00, being the total for 4 days when the Defendant did not have the service available to him. I agree with this amount and allow the Defendant that sum of \$80.00 against the Plaintiff. Such discontinuance of services was not a sufficient ground for immediate termination of the contract by the Defendant, as the Defendant had other more appropriate remedies available to him.

I find that there is no basis upon which any other amounts can be allowed as being claimed by the Defendant for temporary removal of services or for any legal fees incurred by the Defendant on previous negotiations involving a solicitor at times when such services were temporarily discontinued by the company.

#### **TERMINATION NOTICE**

It is unfortunate that the manager of the company and the Defendant were unable to work together in a more amicable way during what appears to have been a rather difficult financial period for the Defendant. Had it not been for the suspension of dispatch services after the Defendant had made payment of the arrears on January 5, 1993, I suspect the Defendant would not have filed his notice of termination of his employment. He indicates that, up until that date, the owner of the company had been lenient and understanding when he had been late in his obligation to make his weekly payments.

However, when the Defendant withdrew his vehicle and himself from the employment agreement, he then cancelled any further benefits that could have accrued to him had he continued to drive his vehicle as a cab for the Plaintiff.

I therefore do not allow any claim by the Defendant for alleged losses following the 5th day of January, 1993. Even if there had been a legal basis for the Defendant's claims for loss of income after January 5, 1993, the court could not assess such loss as there was no evidence upon which the claim could be based. The evidence before the court shows that the Defendant often was not earning enough income to pay the "Stand Rent" and the lease-purchase amounts, and at times had financial help from his mother in order to bring up some arrears. There is therefore no proof of future loss before the court.

#### **SIGNING BONUS**

From the evidence of the company manager, which had not been disputed by evidence of the Defendant, I find that the incentive offered for 2 weeks free "Stand Rent" to attract drivers into the employment of the Plaintiff was to be granted to the Defendant only if he had continued in the employment of the Plaintiff for a period of one year.

I note that the Defendant had not received such free rental at any time between April 5, 1992 and January, 1993 and had made no demand for such a bonus prior to terminating his employment with the Plaintiff. No credit is granted or allowed to the Defendant as he had not remained in the employ of the company for the period of one year.

**GOODS AND SERVICES TAX**

The final item in dispute between the parties is whether or not the Defendant must pay G.S.T. on the purchase of the vehicle.

When determining the sale price of the vehicle and the method of paying for it, the Defendant and the company owner showed the price at \$7,500.00, on which \$750.00 was to be credited, and the balance of \$6,750.00 to be paid in 40 weekly payments of \$168.75. This weekly payment was to be made at the time the "Stand Rent" was paid by the Defendant to the Plaintiff.

It is acknowledged by both parties that the weekly "Stand Rent" collected from all the taxi drivers includes G.S.T. Both parties also acknowledge that there are no signs posted at the company premises to show whether or not G.S.T. is included or excluded on any transactions or sales that are conducted by the company.

The Defendant has satisfied the court that the vendor is responsible for collecting G.S.T. upon the sale of goods or provision of services. The Defendant has also satisfied the court that, under **The Excise Tax Act**, the supplier is deemed to have collected the tax and is required to disclose to the recipient the tax that is to be added to any sale value. The Act appears to restrict a supplier from the right to sue for G.S.T. on any item when disclosure had not been made to the purchaser or recipient in compliance with **The Disclosure of Goods and Services Tax Regulations**, P.C. 1990-2747 issued on December 18, 1990.

I find that it was reasonable for the Defendant, as the purchaser, to presume that the Plaintiff, being the vendor, was collecting the required G.S.T. in the weekly payment on the lease-purchase portion of the agreement, as was being done on the weekly payment for the "Stand Rent" portion.



I therefore find that the Plaintiff has not proven to the court any right to collect G.S.T. from the purchaser in addition to the stated original price of the vehicle on which there are now 3 payments still outstanding. The portion of the Plaintiff's claim for G.S.T. is therefore dismissed.

In summary, I find:

The Plaintiff is entitled to be paid by the Defendant for the balance of the purchase price of the vehicle, the sum of \$ 506.25

The Defendant is entitled to be paid by the Plaintiff the amounts agreed to by the Defendant at trial for refund of insurance in the amount of \$185.00, plus a refund for cancellation of services of \$80.00, for a total of 265.00

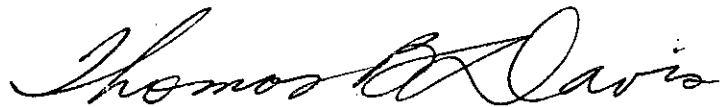
Net balance payable to the Plaintiff \$ 241.25  
=====

As noted earlier, upon payment of \$241.25 by the Defendant to the Plaintiff, the transfer of the vehicle is to be completed. If such amount is not paid within one month, then interest shall accrue at the rate of 5% per annum.

The Plaintiff is not restricted from proceeding further on any lawful remedy available to it.

Judgment for the Plaintiff is in the amount of \$241.25, subject to the terms above-noted.

As there was a valid position for each party upheld by the finding of the court, there are no costs allowed to either party.



THOMAS B. DAVIS  
JUDGE

KR 111

# YK CABS

P.O. BOX 1225  
YELLOWKNIFE, NWT  
X1A 2N9

April 27th / 82

## Lease To Buy Contract

I Paul Senior HEREBY AGREE TO LEASE OR RENT CAR  
# 6 DESCRIBED AS 19 87 Chev suburban 72200 mileage  
SERIAL # 1G1NEV16K2HF180278 FOR \$ 353.75 PER  
Week ON LONG ~~1-SHORT-SHIFT~~ FOR THE PERIOD (10 mths)  
April 27 1992 TO Feb 1992. / 40 week From START DATE  
And will be responsible for Insurance + wcb and Repairs  
And maintenance.

I SHALL BE RESPONSIBLE FOR THE FUEL AND OIL CONSUMPTION IN LEASED  
VEHICLE. I SHALL ALSO BE RESPONSIBLE FOR ANY INSURANCE DEDUCTIBLE OR  
WILFUL DAMAGE TO VEHICLE. I WILL SUPPLY TO Y.K. CABS COPIES OF REQUIRED  
DOCUMENTS LISTED ON ATTACHED SHEET. I WILL COMPLY WITH ALL TERRITORIAL  
AND MUNICIPAL STATUTES BY LAWS, RULES AND REGULATIONS AND ALL COMPANY  
POLICIES, RULES, DIRECTIVES AND REGULATIONS, FROM TIME TO TIME IN  
AFFECT RELATING IN ANY WAY TO THE OPERATION OF A TAXI, TAXI BUSINESS OR THE  
CONDUCT AND QUALIFICATIONS OF CAR OWNERS OR DRIVERS.

Price 7500.00  
less down pay: 750.00

Vehicle cost 6750.00 ÷  
40.00 =  
168.75 \*

cost/week 188.75 +  
Stand Rent 140.00 +  
Insurance 50.00 +  
383

cost/week 353.75 \*A

313.75 + ins  
\*36.75

SIGNED Paul Senior

[Signature] for YK Cabs.

WITNESS [Signature] Maria Bell

**WE FEATURE CLEAN CARS AND COURTEOUS DRIVERS!**

\* Paul do not have any alteration work  
on vehicle for 1st month. Paul Senior