Sherry A. GRAHAM v. CAPITAL CABS LTD. *2005*
NWTTC 06
File: T-01-CV-20050000015

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER BETWEEN:

Sherry A. GRAHAM

Plaintiff

- and -

CAPITAL CABS LTD.

Defendent

REASONS FOR JUDGMENT
of the
HONOURABLE JUDGE Bernadette Schmaltz

Heard at:	Yellowknife, Northwest Territories
Trial Date:	June 13, 2005
Judgment Filed:	June 17, 2005
For the Plaintiff:	Self Represented
Counsel for the Defendant: Davis & Company	Roderick Onoferychuk

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[1] The Plaintiff seeks judgment against the Defendant in the amount of $7,250.00. The Plaintiff claims that the Defendant agreed to pay her $2,000.00 and give her a share in the Defendant Corporation (valued at $5,000.00) for work she did in preparation of the Defendant Corporation starting up a taxi-cab business here in Yellowknife. The Plaintiff also seeks reimbursement of monies she paid out on behalf of the Defendant Corporation.

[2] This trial took place in Yellowknife. The Plaintiff testified, and called one further witness, Meda Shannahan; the Defendant Corporation called Francis Chang, who was currently a director of the Defendant Corporation, but was not a director at the relevant times.

I. EVENTS PRIOR TO AUGUST 6th, 2004

[3] Sometime in July, 2004, a group of people, including the Plaintiff, decided to set up a taxi-cab company. The group of people knew each other and the Plaintiff considered them friends at the time. They had worked together previously for another taxi-cab company in Yellowknife. In July, 2004, three meetings were held at a residence here in Yellowknife where discussions about the formation of the company took place. The group knew that it would take some time to set up the company. The Plaintiff agreed to be and was available to all members of the group which included the future directors of the company,

to assist in whatever way she could, and take care of arrangements to set up the business, e.g. phone hook ups, license applications, etc. The Plaintiff was to be the Office Manager for the new company; the Plaintiff did not have a car, and it was not anticipated that she would be a driver for the company.

[4] During this time there was also discussion about the Plaintiff receiving a share in the new company in consideration for the work that she was doing for the company, and also in consideration of her agreement to work for a reduced salary for the first year that the company was in business. Other shareholders were to pay $5,000.00 for a share in the company and supply a car to be used as a taxi-cab in the business. The Defendant Corporation, Capital Cabs Ltd., was incorporated on August 6th, 2004. At that time Phuu Huynh, Huu Phu Le, and Meda Shannahan were the directors of the corporation.

II. THE CLAIM FOR $2,000.00

[5] In early August, and I find that this meeting was on August 7th, 2004, a meeting of the directors and potential shareholders was held at Phuu Huynh's residence at 187 Rivett Crescent, Yellowknife. The Plaintiff testified, and I accept that it was at that meeting that it was agreed that she would be paid $2,000.00 for the work that she had done and would continue to do to start up and make the necessary arrangements and preparations for the Defendant Corporation to begin the taxi business. Meda Shannahan, who was a director of the Defendant Corporation at the time, also testified that it was agreed at that meeting that the Plaintiff was to be paid $2,000.00 for the prepatory work the Plaintiff was to do before the Defendant Corporation was to begin operating the taxi-cab business.

[6] Francis Chang testified that he did a lot of work in setting up the business for the Defendant Corporation in August, 2004. He testified that he spent a lot of time at City Hall with each individual driver. He testified that he filled out a lot of forms. In cross examination, Mr. Chang could not be any more specific as to

exactly what he had done. To the extent that Mr. Chang was attempting to show that he had done work in August, 2004, that the Plaintiff should have or may have been contracted to do, I do not accept his testimony. I do not accept that he did 40 hours of work that the Plaintiff should have or could have done. I find that Mr. Chang's evidence was vague and evasive with respect to his role in the Defendant Corporation in August and September, 2004.

[7] The Defendant Corporation began business around September 1st, 2004. I accept that as far as the Plaintiff was concerned, the situation or work environment at Capital Cabs Ltd. deteriorated almost immediately. This is only relevant to the fact that the Plaintiff left her employment as Office Manager of the Defendant Corporation around September 3rd, 2004.

[8] Mr. Chang testified that he had reviewed the Minute Book of the Corporation, and that no contract or agreement with the Plaintiff was reflected in it. In Cross Examination, he testified that the first meeting of the Defendant Corporation, as reflected in the Minute Book was December 13th, 2004. I find the Minute Book as referred to by Mr. Chang as the document he reviewed must be incomplete; for example, see the Minutes of Organizational Meeting of the Shareholders of Capital Cabs Ltd., entered as Exhibit 8, and referring to a meeting held on *December 9th, 2004*, at which Mr. Chang was present.

[9] I have considered the letter of November 4th, 2004, from the Plaintiff to the Defendant Corporation (Exhibit 5) wherein the Plaintiff requests that she be paid $1,000.00 for her work. I accept the Plaintiff's explanation that this was an offer to settle on her part, and not a concession that this was all she was owed. She admits in that letter that she left before the dispatch office was completed, however I do not find that that in and of itself was a concession by the Plaintiff that she was only due $1,000.00, but simply that she would have accepted $1,000.00 at that time.

[10] There is no evidence that I accept that any work that the Plaintiff was required to do in consideration of the $2,000.00 was not done before she left her position on or about September 3rd, 2004.

[11] The Plaintiff has not received the $2,000.00 nor any part thereof, for the work she did for the Defendant.

III. THE CLAIM FOR A SHARE IN THE DEFENDANT CORPORATION

[12] There was discussion at the August 7th, 2004, meeting about a share in the Defendant Corporation that the Plaintiff was to receive. I accept that there had been a previous agreement that the Plaintiff would receive a share in the company. The Plaintiff and Ms. Shannahan both testified to this earlier agreement, and part of Exhibit 1, the *"Shareholders' Register"* (dated August 6th, 2004) may also be some evidence of this earlier agreement. The *"Shareholders' Register"* indicates that the Plaintiff was to be issued 5 *Class "C" Preferred shares* and 1 *Class "A" Common share*. The letter dated August 10th, 2004, received by the Plaintiff from the law firm of Lawson Lundell (Exhibit 2) reflects the subscription price for the *Class "A" Common shares* was $1.00 per share, and the *Class "C" Preferred shares* was $1,000.00 per share. The Plaintiff never received any shares in the Defendant Corporation, and was not a shareholder as of December 9th, 2004.

[13] Ms. Shannahan testified that at the August 7th, 2004, meeting the earlier agreement that the Plaintiff would receive a share in the company "changed." There was no agreement at that meeting that the Plaintiff would receive a share in the Defendant Corporation under circumstances different than other shareholders, i.e. other than upon providing a car to be used in the business, and the payment of $5,000.00. The Plaintiff never agreed to provide a car for the business nor to pay $5,000.00. I find that no agreement was reached at that meeting with respect to whether or not the Plaintiff would receive a share in the

company. I will address the effect of the agreement reached in July, 2004, further below.

[14] The Plaintiff has not been issued any share in the Corporation, and has not received any other compensation in lieu of such share.

IV. REIMBURSEMENT FOR PAYMENTS MADE

[15] The Plaintiff testified that on August 7th, 2004, Phuu Huynh, a Director and President of the Defendant Corporation, requested that she buy some vegetable and meat trays to be served at the meeting to be held that evening. The Plaintiff did pick up meat and vegetable trays, and paid $201.00 for same. She also purchased file folders and other stationary supplies for the Corporation at a cost of $49.00. At the meeting of August 7th, 2004, the Plaintiff submitted the receipts for these expenses to Meda Shannahan, who was the treasurer of the Corporation at the time; Ms. Shannahan in turn testified that she did in fact receive these receipts from the Plaintiff, and turned them over to Phuu Huynh. The Plaintiff also testified that she paid $25.00 for a search done at the Corporate Registry, and $50.00 for registration of the Corporation's name; the Plaintiff testified that this $75.00 was paid by reimbursing Ms. Shannahan for receipts that Ms. Shannahan provided to the Plaintiff for this search and registration. Ms. Shannahan confirmed this in her testimony, i.e. that she had been reimbursed $75.00 from the Plaintiff for these receipts. I accept that the Plaintiff did pay these expenses on behalf of the Defendant Corporation and she is entitled to be reimbursed.

[16] The Plaintiff has not been reimbursed for receipts she submitted for expenses she incurred on behalf of the Corporation.

V. EVIDENCE OF FRANCIS CHANG

[17] Sometime in August, 2004, Francis Chang was engaged by the Defendant to perform renovations for the Defendant, specifically with respect to its dispatch and administration office. As of December 9th, 2004, Mr. Chang was a director of the Defendant Corporation. It appears from the evidence that Mr. Chang had more to do with the Defendant Corporation than simply doing renovations, but exactly what his involvement was, or when it occurred is certainly not clear. As a witness, I found Mr. Chang unhelpful at best, and at worst evasive in clarifying his position or involvement with the Defendant Corporation prior to becoming a director on December 9th, 2004.

[18] In a letter dated August 31st, 2004, from the Defendant Corporation, the signature line indicates that Francis Chang is the "Managing Director" (the Automatic Cover Sheet indicates that this letter was sent from the YK Liquor Store on September 3rd, 2004); this letter and cover sheet are part of a group of documents, many undated, entered as Exhibit 9. Another piece of correspondence forming part of Exhibit 9, undated itself, but with a *fax date* (the date appearing across the edge of the paper generated by the fax machine) of September 13th, 2004, refers to the "Capital Cabs Ltd. contact person" as "Francis Chang, Managing Director"; a similar piece of correspondence, again forming part of Exhibit 9, has a *fax date* of September 14th, 2004. A letter dated September 14th, 2004, to the TD Bank from the Defendant Corporation, requests the Plaintiff be removed "from any documents and/or account privileges", and that Francis Chang be given "account enquiry privileges"; further, a letter dated October 27th, 2004, from the Defendant to TD Investment Services Inc., requests that the Plaintiff be removed from having signing authority on the Capital Cabs Ltd. account, and requests that Francis Chang be added to the account (Exhibit 4). In the Minutes of Directors' Meeting (Exhibit 10), on November 6th, 2004, Francis Chang is listed as Acting Manager.

[19] Mr. Chang testified that he was initially contracted by Phuu Huynh, his neighbour, to do renovations for the Defendant Corporation. His initial quote for the renovations was $5,500.00 but the final cost of the renovations was $6,800.00 plus GST ($7,276.00). Mr. Chang testified that three quarters of the way through the renovations Phuu Huynh asked him if he would agree to reduce his bill by $5,000.00 if he were given a share in the Defendant Corporation; Mr. Chang agreed to do this. As of *August 6th, 2004*, Francis Chang is listed on the *Shareholders' Register* (Exhibit 1) as having 5 *Class "C" Preferred shares* and 1 *Class "A" Common share*. A letter from Capital Cabs Ltd. to Francis Chang, (that Mr. Chang testified that he wrote), dated *August 23rd, 2004*, offers Francis Chang a share in the Defendant Corporation if he deducts $5,000.00 from his invoice. The letter indicates that if Mr. Chang agrees to do this, Capital Cabs Ltd. will add Francis Chang as a shareholder in the company. I find this letter confusing, as it appears that at *August 6th, 2004*, Francis Chang was already listed as a shareholder in the *Shareholders' Register*. Further, though Mr. Chang testified that he accepted this offer, he still submitted an invoice to the Defendant Corporation on *October 15th, 2004*, for $7,276.00, with no $5,000.00 reduction reflected (Exhibit 6). Mr. Chang testified that he was a shareholder in the Defendant Corporation.

[20] When questioned in cross examination about a meeting held on November 15th, 2004, Mr. Chang was evasive, first stating that it was not a meeting, it was lunch; on being shown the minutes (Exhibit 10), he reluctantly conceded that it was a meeting, but not a "Board" meeting, and later again stated that it was only lunch.

[21] Many of Mr. Chang's answers to specific questions were "I don't recall" or "I can't recall." Many specific questions put to Mr. Chang in cross examination with respect to the administration of the business or the day to day running of the business he either did not know the answer to, or could not recall the answer to, or again was evasive and unhelpful. Many documents that may have assisted in

determining dates and other details, Mr. Chang did not bring with him, or was not sure where they were, or could only give vague answers as to where they might have been. Mr. Chang initially testified that he was at the meeting of August 7th, 2004, where the agreement was made to pay the Plaintiff $2,000.00. However, when Mr. Chang was asked about that agreement he thought he may have arrived at that meeting "late" and did not recall being present for that. When asked if he was advised of the agreement after, his answer was "I don't believe so." I do not believe Mr. Chang's testimony with respect to his knowledge of the agreement to pay the Plaintiff $2,000.00. Further, where the evidence of Francis Chang and the Plaintiff are in conflict, I accept the evidence of the Plaintiff.

VI. THE DEFENDANT'S POSITION

[22] The Defendant's position is that the agreement reached between the parties, or the contract entered into, was entered into in July, 2004. In July, 2004, the Defendant Corporation did not exist, it was not, at that time, a legal entity, and therefore had no capacity to enter into a contract. In the alternative, the Defendant submits that the terms of the agreement or contract between the Plaintiff and the Defendant Corporation were too vague to be enforceable or to constitute a valid agreement. And further in the alternative, the Defendant submits that if there was a valid contract between the Plaintiff and the Defendant Corporation, there was only part performance of the contract on the Plaintiff's part and she should not be entitled to the full amount of her claim.

A. When was Agreement Reached?

(i) Payment of $2,000.00

[23] The Defendant submits that the evidence shows that the contract was made in July. I disagree. The evidence shows that discussions were held in July as to how the prospective company would work and what the Plaintiff would do.

However, I find that at the August 7th, 2004, meeting, it was agreed that the Plaintiff would be paid $2,000.00 for the work that she was to do in preparing for the Defendant Corporation to open for business. I find there was agreement that she would be paid $2,000.00, for this initial work, and once the business was operating she would be paid a salary to continue on as the office manager. I find that though there was discussion about the remuneration the Plaintiff would be paid once the business started operating, there was no final agreement as to what her salary would be.

(ii) Share in the Defendant Corporation

[24] In July, in the preliminary discussions, it was agreed that the Plaintiff would be given a share in the company, however at the August 7th, 2004, meeting, there was no agreement, as Ms. Shannahan testified, originally there was an agreement, but later, and I find that to be at the August 7th, 2004, meeting, that was "changed." I find that no subsequent agreement was ever reached with respect to whether or not the Plaintiff would have a share in the company.

[25] The issue then is what is the effect of the agreement reached in July? I accept that the Defendant Corporation did not exist in July, 2004, and therefore had no capacity to enter into a contract. Section 14(2) of the *Business Corporations Act* states:

> 14(2) Within a reasonable time after it comes into existence a corporation may, by any action or conduct signifying its intention to be bound, adopt a written contract made in its name or on its behalf before the corporation came into existence, and on the adoption
>
> (a) the corporation is bound by the contract and is entitled to the benefits of the contract as if the corporation had been in existence at the date of the contract and had been a party to it; and

> (b) a person who purported to act in the name of or on behalf of the corporation ceases, except as provided in subsection (3), to be bound by or entitled to the benefits of the contract.

[26] The agreement reached in July, even if it could be said to have been a contract, was not in writing. Therefore, even if it could be said that the Defendant Corporation adopted the agreement, which I specifically find it did not, still the contract could not be enforced against the Defendant Corporation, not having been reduced to writing.

[27] I have considered whether the Plaintiff may have a claim against the Defendant Corporation for unjust enrichment, or a claim on a *quantum meruit* basis with respect to the agreement that the Plaintiff would receive a share in the Company, and whether or not the Plaintiff ever performed any work or tasks for the benefit of the Defendant Corporation relying on the perceived agreement that she was to receive a share in the company. First, if there was an agreement, part of the consideration on the Plaintiff's part was to have worked for a reduced salary for the first year that the Corporation was in business. The Corporation was "open for business" on or about September 1st, 2004, and the Plaintiff "walked away" from her position as Office Manager on or about September 3rd, 2004. I find there was no unjust enrichment realized by the Corporation with respect to that term of the agreement. Beyond that, I am not satisfied on the evidence, what further consideration there was to be on the part of the Plaintiff in return for her being given a share in the company.

[28] In order for there to be an unjust enrichment, I must be satisfied that there has been an enrichment, a corresponding deprivation, and absence of any juristic reason for the enrichment. I cannot find on the evidence that I am satisfied that there has been an enrichment and corresponding deprivation. Consequently, I find that the principle of unjust enrichment has no application in this case. To be clear, I find this only with respect to any agreement or contract that may have existed with respect to the Plaintiff's entitlement to a share in the

company. If I had not found an actual agreement between the Plaintiff and the Defendant Corporation with respect to the work done by the Plaintiff in preparing for the Defendant Corporation to commence business, I would find that the Plaintiff's claim for payment for this work done, that is the claim for the $2,000.00, would be sustainable on the principles of unjust enrichment and *quantum meruit*.

B. Terms of the Agreement

[29] I find that there was discussion in July, 2004, as to the Plaintiff's role in the business. The Plaintiff was to be the Office Manager, and to undertake all the duties that that position entailed. I find that there was discussion between at least two of the directors, that is between Mr. Phuu Huynh and Ms. Shannahan, with respect to how much the Plaintiff should be paid. Ms. Shannahan testified that she recalled speaking with Mr. Huynh and agreed that $2,000.00 seemed fair to her. I find that at the meeting of August 7th, 2004, there was further discussion as to the Plaintiff's remuneration for work done prior to the Defendant Corporation opening for business, and that a final agreement was reached at that meeting. The Defendant Corporation and the Plaintiff agreed that the Plaintiff would be paid $2,000.00 to perform the work that needed to be done in order for the Defendant Corporation to commence its taxi-cab business.

[30] I do not find that the terms of the agreement reached vague or unclear or in any way ambiguous. The Plaintiff was to do the work necessary to get the business up and running so to speak, and the Defendant Corporation would pay her $2,000.00 for her efforts. The Plaintiff did the work.

[31] At the August 7th, 2004, meeting, there was also discussion about what salary the Plaintiff would be paid if she worked as the Office Manager once the Defendant Corporation began operating the taxi-cab business. No agreement was reached on that issue. The Plaintiff did not work as an Office Manager for

the Defendant Corporation once it opened for business, so the fact that this term was not agreed to is of no consequence.

C. Part Performance

[32] As stated earlier I do not accept the evidence of Mr. Chang that he did work the Plaintiff should have been doing prior to the Defendant Corporation opening for business. None of the documentary evidence supports this; Mr. Chang's evidence was vague to evasive on this issue. I accept the Plaintiff's testimony that the business was ready to open when she left her position on or about September 3rd, 2004. The Defendant Corporation's claim that the Plaintiff did not completely fulfill or perform all of her duties is not supported by the evidence, and I find no merit in it.

VII. CONCLUSION

[33] In all the circumstances, the Plaintiff's claim is allowed in part. The Plaintiff is entitled to be paid the sum of $2,000.00 for the work done prior to the Defendant Corporation opening for business, and the Plaintiff is entitled to be reimbursed in the amount of $325.00 for the monies paid out by the Plaintiff for the benefit of the Defendant Corporation. Judgment shall be entered for the Plaintiff against the Defendant in the amount of $2,325.00 plus costs and reasonable disbursements.

[34] The issue of costs and reasonable disbursements is to be addressed in Court upon notice by the Plaintiff to the Defendant Corporation and to this Court. Notice of the hearing into the issue of costs and reasonable disbursements is to be given to the Defendant no later than 30 days from the filing of this judgment, though the hearing may be held later than 30 days from the filing of this judgment. The hearing shall be on a Monday, at 9:30 a.m. or as soon thereafter as the Court may hear the matter, and shall be scheduled for a date when I am

presiding. If the Plaintiff fails to comply with the notice provision, the Plaintiff will be allowed costs of $100.00 plus filing fees.

Bernadette Schmaltz
J.T.C.

Dated this ____ day of June, 2005, at
the City of Yellowknife in the Northwest Territories.

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