
CANADA / JUDGMENT

Thind v. Bluebird Cabs Ltd.

2007 BCSC 1170

COURT

Supreme Court of British Columbia

DECIDED

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2007 BCSC 1170 Thind v. Bluebird Cabs Ltd.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Thind v. Bluebird Cabs Ltd.,

2007 BCSC 1170

Date: 20070801

Docket: 07-1918

Registry: Victoria

Between:

Ranjit Thind

Petitioner

And:

Bluebird Cabs Ltd.

Respondent

Before: The Honourable Mr. Justice Bracken

Reasons for Judgment

Counsel for the Petitioner:

S. Hern

Counsel for the Respondent:

C. L. Pagé

Date and Place of Trial/Hearing:

May 30, 2007

Victoria, B.C.

- [1] The petitioner seeks a declaration that the revocation by Bluebird Cabs Ltd. ("Bluebird") of his authority to drive his taxicab as a Bluebird taxicab and the withholding of personal dispatch services to him constitutes (a) conduct that has been and is oppressive to the petitioner contrary to s. 227(2)(a) of the Business Corporations Act and (b) actions that have been and are unfairly prejudicial to the petitioner contrary to s. 227(2)(b) of the Business Corporations Act. He also seeks an order directing the company and/or its management to cease acting in an oppressive and unfairly prejudicial manner and that he be compensated by Bluebird for any loss of income as a result of oppressive and unfairly prejudicial actions alleged.
- [2] Bluebird says that the suspension of the petitioner's dispatch privileges is justified and it seeks to permanently terminate the dispatch services of the petitioner and wants the petition set over to the trial list where it can be heard together with another matter that is outstanding between the parties. Bluebird also says that the petitioner is operating his taxi in the Victoria area on a "flag" basis and Bluebird seeks an injunction preventing him from continuing to do so.

The Facts

- [3] Bluebird operates a fleet of taxis in the Greater Victoria area. Each of the taxis is owned by one of the shareholders of Bluebird who are also operators of the taxis. The shareholders can hire drivers who become employees of the individual shareholder and not Bluebird, although Bluebird reserves the right to approve of any driver hired by the shareholders to operate their respective taxis. Bluebird also hires dispatchers and other employees to perform administrative duties but who do not actually drive or operate taxis.
- [4] The shareholders and their drivers rely on Bluebird to provide dispatch services to dispatch their taxis in response to requests for service received by Bluebird. While Bluebird cabs can be "flagged" by customers on the street, the dispatched calls are the main source of business and income for the owner and operator of the taxi.
- [5] All of the shareholders operate under a set of rules that were established by Bluebird pursuant to the Articles of Incorporation, including the provision of consequences for breach of the rules. The rules provide for discipline up to and including the permanent revocation of dispatch privileges for a shareholder or driver and termination of employment for employees.

- [6] On March 19, 2007, Bluebird received a call from a female complainant who stated that she had been sexually assaulted by the driver of a Bluebird taxi on the morning of March 18, 2007. Investigation revealed that she was in the petitioner's taxi and that he was the driver. Bluebird was informed by the Victoria City Police that the police would be suspending the petitioner's "Chief's" permit which is a permit issued by the police department and is required to operate a taxi within the City of Victoria.
- [7] On March 23, 2007, Bluebird suspended the petitioner's dispatch privileges because of this complaint. A few days later, on March 29, 2007, the police informed Bluebird that the petitioner's permit was in fact not suspended, and Bluebird then restored dispatch privileges to the petitioner. However, the next day on March 30, 2007, the company again suspended the petitioner's dispatch privileges. The basis for that revocation was that Bluebird believed that the petitioner was acting contrary to the Articles of Incorporation of Bluebird. Article 13.1 of the Articles provides that shareholders cannot be involved with competing taxi companies. Bluebird alleged that the petitioner was associated with a taxi company called C & C Taxi Inc. and that he had become a director of that company. The petitioner advised that C & C Taxi Inc. was not operational and he had resigned as a director. As a result, Bluebird again restored his dispatch privileges on April 4, 2007.
- [8] On April 18, 2007, the company again revoked the petitioner's dispatch services on the basis that the petitioner had not in fact resigned as a director of C & C Taxi Inc. The petitioner assured Bluebird that he had resigned but the resignation had not been recorded at the office of the Registrar of Companies; however, Bluebird refused to restore his dispatch services and on April 23, 2007, the petitioner filed a petition to have the articles of incorporation of Bluebird declared unenforceable as being vague and to have his dispatch services restored. On April 30, 2007, Bluebird restored the petitioner's dispatch services.
- [9] However, on the same day, Bluebird wrote to the petitioner's counsel, advising the petitioner that his employment with Bluebird had been terminated effective April 30, 2007 on the basis of firstly, his involvement with C & C Taxi Inc. and Goldstream Taxi Inc. and secondly, the alleged sexual assault on March 18, 2007. In addition, Bluebird alleged that the petitioner was involved in an assault on another shareholder.
- [10] The petitioner challenged Bluebird with respect to the termination of employment, pointing out that the petitioner was a shareholder and not an employee and therefore his employment could not be terminated. The company was not moved by this submission and listed several complaints and alleged violations of the rules by the petitioner. These included the alleged sexual assault, the alleged involvement with the other taxi companies and the alleged assault on another shareholder who is also the brother of the President of Bluebird. It appears from the materials that the petitioner has not been charged with any offence related to the alleged sexual assault but that he is currently facing charges of assault upon and uttering threats to the other shareholder.

- [11] The factual background asserted by Bluebird respecting the last allegation is that on the pretext of a taxi call, the petitioner lured the alleged victim of the assault out to an area of Victoria where he and another individual assaulted him. The fact that charges have been laid in connection with that matter does not appear to be denied by the petitioner and I accept, for the basis of these reasons, that the petitioner is currently facing charges of assault and uttering threats.
- [12] There was another complaint with respect to the petitioner where Bluebird alleges that he allowed an unauthorized person to enter the dispatch offices of Bluebird and that the person he allowed into the dispatch office caused a disturbance in the dispatch office while there. The individual in question appears to be the same one alleged to be involved in the allegation of assault against the other shareholder. The allegation respecting the dispatch office is disputed and obviously is not one that can be resolved based on the conflicting affidavits before me nor, in my view, is it an allegation that will be determinative of the outcome of this application in any event.
- [13] Bluebird also asserts that the petitioner is, or at least was, involved with another taxi company, Goldstream Taxi Inc., in an application to obtain a license to operate a taxi service in the Western Communities region of Victoria. Bluebird has presented some evidence in the form of documents submitted to the appropriate licensing authority to support the allegation. It is plain from the materials filed by the company that the petitioner was involved in making submissions for taxi licenses on behalf of Goldstream Taxi Inc. as recently as February of 2007.
- [14] Bluebird has still not restored the personal dispatch services to the petitioner; however, the taxi that he owns will be dispatched by Bluebird provided he is not the driver, and that anyone who is driving is a driver is authorized by the company.

Articles and Rules of the Company

- [15] Paragraph 13.1 of the Articles of Incorporation of Bluebird provide as follows:

No shareholder shall be involved or interested, directly or indirectly, as an employee, owner, manager, shareholder, or otherwise, in any business similar to the business carried on by the Company, and without limiting the generality of the foregoing, in any business involving the transportation by taxi-cab of goods and/or passengers, except business referred to the shareholder through the company and/or business referred to the Company through the shareholder, with the area of limitation as is set down in the Motor Carrier Authority regulations.

- [16] The rules of the company are dated June 1996, and are attached as Exhibit G to the affidavit of the petitioner. The rules provide a series of definitions and are stated to be rules of general application to all of the shareholders, drivers and employees of Bluebird.
- [17] Paragraph 3 of the rules set out what are referred to as the "general standards of conduct, rights and responsibilities". Paragraph 3(8) provides:

No employee or shareholder, except a company director, may enter the dispatch area without permission from management. Members of the Safety Committee may enter the dispatch area when on Committee related business only.

[18] The rules contain descriptions of the responsibilities of the various participants in the operations of Bluebird. Under Part 3 of the rules, respecting the issue of complaints and discipline, a procedure is set out for the handling of any complaints and the manner in which the complaint is to be submitted. The powers of management are also set out and under paragraph 11(7) it is expressly required that the management "shall investigate all legitimate complaints" and the procedure the investigation should follow is set out in subparagraphs.

[19] Paragraph 12 deals with discipline and termination of employment. Paragraph 12(1) provides:

Any member of the work force not adhering to these provisions shall be given warnings consisting of progressive discipline in the form of verbal warnings, written warnings and suspensions up to and including:

- (a) dismissal, in the case of an employee or,
- (b) permanent loss of personal dispatch privileges, in the case of a shareholder.

Thus, it appears that with respect to a shareholder the maximum penalty that can be imposed under the rules is a permanent loss of personal dispatch privileges to that individual shareholder.

[20] Lastly, paragraph 12(4) provides that:

A driver who is charged with a criminal offense shall be suspended until the conclusion of the criminal investigation.

The definition of "driver" includes anyone who operates a Bluebird taxi for hire.

[21] In a letter to the petitioner's counsel dated May 9, 2007, counsel for the company confirmed that the petitioner's dispatch privileges were revoked for several stated reasons. Among the reasons were the criminal charges that are currently outstanding and his involvement with C & C Taxi Ltd. and Goldstream Taxi Inc.

Discussion

[22] Oppressive conduct has been described as "burdensome, harsh or wrongful" conduct against a shareholder. (*Scottish Cooperative Wholesale Society Ltd. v. Meyer*, [1959] A.C. 324) In the case of *Walker v. Betts*, [2006] B.C.J. No. 161; D. Smith, J. commented at paragraph 81 that:

- [81] In order to maintain a personal action for oppression, an applicant shareholder must establish harm to his interests as a shareholder, as distinct from his interests as a director, officer or employee. He must also establish harm peculiar to his shareholder interests as distinct from the other shareholders' interests. Moreover, the contractual force of conduct permitted by a company's articles of association cannot be ignored when determining if conduct is oppressive or unfairly prejudicial.
- [23] Smith, J. went on to say that "The essence of oppressive and unfairly prejudicial conduct is the abrogation of the reasonable expectations of a shareholder in the position of the applicant." Several examples of oppressive conduct gathered from the case law were set out and in my view none of them are consistent with the nature of the conduct complained of in this case.
- [24] Bluebird relies on alleged violations of the Articles of Incorporation and the Rules of the company. While many of the facts are in conflict and there was initial confusion in the position that Bluebird was taking, it seems to me that on the available material the allegations of the petitioner fall short of the appropriate test for oppressive conduct. It may be that the case will be stronger once the evidence is developed further but for the present there appears to be evidence to support the allegations made against him respecting violations of the Articles of Incorporation and there is no dispute that he is currently facing criminal charges of assault and uttering threats against another shareholder of Bluebird a fact that in itself seems to justify a suspension of his dispatch privileges.
- [25] Bluebird initially responded to the difficulties with the petitioner in a confusing manner. The issues with respect to his alleged interest in other taxi companies appears to have been treated by a suspension of his dispatch privileges, then reinstatement of his dispatch privileges, and then cancellation again. As well, it appears that there are other difficulties that reveal serious problems between the petitioner and other shareholders and the management of the company. The most serious of these, of course, is the allegation of sexual assault that is apparently still under investigation but has not resulted in any criminal charges, and the allegation of assault against another shareholder of the company which has resulted in criminal charges.
- [26] While the rules provide for progressive discipline in accordance with a set procedure, it is hard to see how there could be progressive discipline with respect to a complaint of an assault that results in criminal charges. Paragraph 12(4) of the rules clearly states that where a driver is charged with a criminal offence, that driver is immediately suspended until the conclusion of the criminal investigation. Presumably, that involves waiting until the criminal charges are finally determined by the courts.

- [27] While there is much in conflict on the affidavit material before me on this application, one thing does appear to be agreed upon is that the petitioner is currently facing charges of assault and uttering threats. Leaving everything else aside for the moment, it appears to me that a suspension of dispatch privileges can be justified by the company on that ground alone.
- [28] I do not consider it to be oppressive conduct under the Business Corporations Act to enforce rules that have been established pursuant to the articles of incorporation of the company, and that have been accepted by the shareholders of the company. I therefore find that the application for a declaration that the company is acting in a manner oppressive to the petitioner insofar as it is based on the materials before me is dismissed. Likewise, the application for an order directing the company to restore the petitioner's dispatch privileges is also dismissed.

The Respondent's Cross-Application

- [29] The respondent has made a cross-application for an order enjoining the petitioner from operating his taxi on a "flag" basis. The suggestion is that the petitioner is operating his taxi in the Victoria area without utilizing any dispatch services. It is alleged that he is driving his taxi in areas where people are likely to want taxi service and waiting for someone to flag him down. He allegedly turns on the meter of his taxi when he has a fare, and charges the appropriate fare at the end of the trip. The respondent has attached to the affidavit of Ann McHugh a series of computer print-outs that reveal that the meter of the taxi owned by the petitioner has been turned on and off frequently over the course of several nights in May during the times that his dispatch privileges have been suspended. Bluebird alleges that during those times the petitioner was the driver of the taxi.
- [30] It is also alleged that he has been seen picking up passengers at a cruise ship dock in Victoria at around the same time. While this appears to be in violation of the rules of the company, there does not appear to have been any action taken against the petitioner in accordance with the procedure set out in the rules. In addition, there does not appear to be any material to indicate that Bluebird is suffering any loss or harm that requires the intervention of the court by means of an injunction. Therefore, the respondent's cross-application is also dismissed.
- [31] The respondent has requested that the petition be transferred to the trial list as it wishes to permanently revoke the petitioner's dispatch privileges and prevent him from operating on a "flag" basis. There are obviously some serious difficulties between the parties that will stand in the way of any ongoing relationship. The petitioner wants an order that Bluebird purchase his shares. There is much conflict in the materials that have been placed before me on the hearing of the petition. It is my view that the conflict between these parties is one that cannot be resolved simply on affidavits. Obviously, the entire matter will have to be sorted out at a full hearing of the petition, and it is my view that the petition should be referred to the trial list to determine all of the issues after a full canvassing of the facts. Costs

of both parties will be costs in the cause.

"J. K. Bracken, J."

The Honourable Mr. Justice Bracken

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