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Docket: C981899
Registry: Vancouver

IN THE SUPREME COURT OF BRITISH COLUMBIA

Oral Reasons for Judgment
The Honourable Mr. Justice Melvin
February 20, 2001

Between:

AZAR POURDAD

PLAINTIFF

AND:

**BEACH PLACE VENTURES LTD. and
BLACK TOP CABS LTD.**

DEFENDANTS

Appearing in Person:

Azar Pourdad

Appearing in Person on behalf of Plaintiff:

P. Pourdad

Counsel for Defendants

N. Howell

[1] **THE COURT:** In dealing with this matter this afternoon, I should say at the outset that I do not propose to review all the evidence or all the submissions made on behalf of the plaintiff or the defendants.

[2] In large measure, there is really not much dispute in relation to the evidence as to what transpired between April and October of 1997, but initially I start with this: the nature of the cause of action of the plaintiff is – her claim is (inaudible) damages. She alleges conduct on the

part of the defendants which amounts to constructive dismissal of her from her employment as general manager of the company in question.

[3] It should be noted that the company in question, Black Top Cabs, has apparently some 700 individuals who, at any given time, may be drivers or driver/owners, or staff personnel.

[4] In relation to the history of this matter, the plaintiff became employed with the defendants as a comptroller in approximately 1990. In April of 1997, the defendants offered the plaintiff the position of general manager, an increased salary and an expense allowance.

[5] Although the plaintiff testified that she was somewhat coerced into accepting this role by a comment made at lunch by a director, she did not advise the board of directors of her reluctance at any time to assume the role of general manager, and she operated in that capacity for approximately six months thereafter.

[6] She obviously performed her duties in a satisfactory manner, both as comptroller earlier, before she took the position as general manager, and as general manager. And, as I said, she resigned on October 15, 1997, after commencing her employment as general manager in April of that same year.

[7] The plaintiff testified that throughout that approximate six-month period, in the defendants' operations, there was an atmosphere of threats, of abuse, of harassment and general unacceptable behaviour on the part of various owner/drivers in relation to the cab operation.

[8] This conduct occurred, according to the plaintiff, as the owner/drivers of cabs were shareholders in the company, and, as a result, they felt that they could communicate their concerns, their disputes, and their overall complaints with the general manager, who had a role in relation to their activities in the sense that she was required to discipline in perhaps two to three different fashions.

[9] When the plaintiff was functioning in her capacity as comptroller for approximately six and a half years, she does not testify as to any problems with the owner/drivers of any significance during that period of time. The conduct that she regards as being oppressive and amounting to harassment occurs after April of 1997.

[10] As a general manager, amongst her duties to manage overall, the plaintiff was required to discipline drivers, as I mentioned, for various infractions. This could amount to time off the air, which means they do not have the (inaudible) in the dispatch side of the operations, or it may even be physically a day off work. All of which has an adverse effect on the owner/drivers' income, because there is no income generated during that period of time, or not the same amount of income generated.

[11] Obviously, under these circumstances, disputes and differences could arise when the general manager is exercising that aspect of her duties, in the role of disciplinarian, for want of a better expression.

[12] During her short tenure as general manager, despite her overall assessment of the workplace environment as an atmosphere of oppression, perhaps harassment, perhaps coercion, the plaintiff can only identify four instances where owner/driver disputes caused her concern. She does not testify that she was subjected to abuse, harassment, threats, or the like,

from those to whom she reported -- for example, the president, vice president, secretary, or other board of director members.

[13] The four instances she complains of have been subjected to a lot of comment during the course of the trial and I am going to touch on them briefly. The first one I am going to deal with is the driver who has been described as Walia. He was a former driver/owner who ceased such association, and, as a result of ceasing his association, there was a holdback with the company to set aside against any accounts that might be coming into the company – that is, the defendants – which would be properly charged against Walia.

[14] He apparently attended, after he had ceased his association with the defendants, and caused such a disturbance over non-payment of this holdback that the police were called. I note that there was no physical harm, that he swore and he threatened, and, in the words of the plaintiff, used horrible words to her. By the time the police arrived, Mr. Walia was apparently long gone from the scene.

[15] The second incident referred to involved a Mr. Athwal, a dispute over seven dollars which was charged to him for filling the gas tank. He complained to the president and secretary about this seven-dollar charge. His complaints were considered a joke within the company, and, because of the dollar amount, the plaintiff thought the dispute over seven dollars was ridiculous. She testified that he was rude and had a threatening attitude, although there was no actual threats uttered. And the issue disappeared when the plaintiff, I would suggest, in frustration, gave his seven dollars to “shut him up.” “I gave him seven dollars to get rid of him.” Obviously, using my words, he was a nuisance.

[16] I note as well that, in the examination for discovery, she acknowledged that it was true that he was not abusive in relation to the seven-dollar item; he just wanted this amount.

[17] The third incident referred to involves Mr. Jaswal. He lost a fare because he took the fare to the wrong location and another driver had to pick up the fare and take him to the correct location, and there was a dispute as to this particular fare. He was angry with the plaintiff when he attended and met with her. She was to discipline him, and he uttered words to the effect he would cut off her head if she gave him a day off. In others words, disciplined him in the fashion that discipline was apparently carried out.

[18] This, in my view, was a threat. The plaintiff reported it to the president and secretary. They thought it was humorous. The plaintiff did not. She did not, however, ask that the matter be brought up to the board of directors. She believed that the secretary apparently reported to Jaswal. Apparently there was no further problem with him.

[19] I view the Jaswal incident as being serious, as did the plaintiff. In one sense, the incident (inaudible) report, and apparently resolved, although there is little evidence to conclude that the defendants took remedial steps with reference to this serious statement.

[20] The final incident is involving Mr. Athwal again, on October the 15th, 1997. A dispute had arisen over a garage bill being charged against him. He disputed it with the garage. He consulted with the plaintiff, who said she could do nothing, that the board of directors would have to deal with it. He screamed and shouted and swore at her and would not leave her office.

[21] According to the receptionist, however, who was called on behalf of the defence, the plaintiff was the one who was screaming and that Mr. Athwal did not apparently take her seriously; that is, the plaintiff seriously.

[22] The plaintiff, in frustration, it would appear, said to Athwal, "You leave or I'll leave, " and, as Athwal did not leave, she resigned.

[23] I think it should be noted, right here and now, this last instance, that the board of directors, the president, the vice president, or any other officer of the company had absolutely no opportunity to deal with this issue due to the plaintiff's immediate resignation.

[24] The president, it is interesting to note, contacted her within a day or two after the letter of resignation was signed by the plaintiff and asked her to return. She would only return if she could return to the position of comptroller at the same salary of general manager.

[25] These incidences I have mentioned are the only ones that are identified by the plaintiff as items of harassment or coercion or threats, or whatever, however one wishes to categorize them. One involves an ex-employee, Mr. Walia. That is something that the defendants, in my view, have absolutely no control over. Any individual, ex-employee, customer, person off the street, stranger, can walk into a business premises and start to create a fuss, cause a disturbance and cause unrest on the part of the employees and the staff. It is almost impossible for one to anticipate when this is going to occur, and one can only deal with it as and when it develops. And in this instance, it was dealt with by a telephone call to the police, which apparently was enough to cause Mr. Walia to disappear.

[26] The second item is the seven-dollar item which I referred to, which I would categorize as a nuisance, and I think the plaintiff dealt with it as a nuisance; she paid seven dollars to get rid of him.

[27] The other item is the threat which I mentioned a moment ago, which I view, as the plaintiff did, as somewhat more serious. However, it does appear to have been resolved in the sense it never came up again. Apparently – and I only say apparently because the evidence is somewhat unclear on this – a member of the board spoke to the offender and no further issue arose between the offender and the plaintiff thereafter.

[28] And then the final exchange, which, in my view, was beyond the board of directors; they had no opportunity to deal with the issue.

[29] The plaintiff alleges that part of the problem – and this came up a number of times in evidence and in submissions – is the lack of policy, formal policy directions concerning harassment, etcetera, on the part of the defendants, which represents their lack of concern over these issues and lends support to an atmosphere of oppression or harassment. In other words, if a formal policy was in existence to deal with matters of employee/employer, owner/driver, general manager problems, then these problems might not occur as frequently, they might not be as intense. The lack thereof is an indication that, I take it from the submissions, that amounts to some condonation on the part of the defendants to the type of activity which I have described.

[30] It should be noted that prior attempts to create such a policy have failed, as boards of directors seem to change with some frequency on the part of the defendants.

[31] The existence of such a policy is wise. A wise business corporate structure has policies to deal with these matters, has them in writing, and when they do have them, it may have the effect of eliminating matters which we are dealing with today. If not eliminating, perhaps reducing them. However, there is no legal obligation that I am aware of that requires boards of directors or companies to have such policies in place, absent some contractual obligation that may occur as a result of employment contracts which they enter into through union or other arrangements. However, I do, as I say, suggest that it is a very, very wise course to follow.

[32] In the context of all this, the plaintiff relies on some language which is taken from the *Morgan* decision which he quoted from – that is, the plaintiff's husband quoted from – at length. This is *Morgan v. Chukal Enterprises Ltd.*

[33] I think it always is very important to consider the facts upon which every case is decided. *Quinn v. Latham* made that very clear, a case of some antiquity. In this instance Morgan's complaints were about a superior, which is not, of course, the case at bar. I will read some paragraphs, some of which are germane to the issues which arise in these types of cases involving constructive dismissal.

[34] First:

Constructive dismissal occurs when the employer –

And it's important to emphasize "employer,"

-- commits either a present breach or an anticipatory breach of a fundamental term of a contract of employment, thereby giving the employee a right, but not an obligation, to treat the employment at an end. Secondly, the breach must go to the very root of the contract. Third, a fundamental implied term of any employment

relationship is that the employer will treat the employee with civility, decency, respect and dignity. An employee is entitled to decent treatment at the hands of his or her employer.

And that statement is, interestingly enough, some 80 years ago.

[35] In relation to the facts in the *Morgan* case, I think it is important to note this – I am reading from paragraph 13 of the decision:

The evidence discloses that both Mr. Mellios, the individual complained of, exhibited significant rudeness and hostility to Miss Morgan over an extensive period of time and that the owners tolerated it, in spite of Miss Morgan's complaints.

[36] There is no, I suggest, evidence of that latter part in the case at bar.

[37] And finally, over to paragraphs 17 and 19:

Viewed objectively, Mr. Mellios did treat Miss Morgan rudely and with hostility on a consistent basis. The owners rationalized and condoned his behaviour instead of stopping it. This placed Miss Morgan in an intolerable position. The refusal of the owners to stop the abusive behaviour amounted to a fundamental breach of the implied term of her employment contract that she would be treated with civility, decency, respect and dignity.

[38] Accepting those principles and applying them to the facts established by the evidence in the case at bar, the question immediately arises, how do they apply?

[39] First of all, I suggest that the evidence demonstrates no pattern of abusive behaviour or hostility or harassment. There is no consistent basis of rude or hostile comments or conduct.

Each incident concerned a different owner/driver. Jaswal, Walia, who was an excellent

employee, Athwal – but only one of those was an incident prior to October 15, 1997 which could be dealt with by the board of directors if they participated.

[40] And finally, the plaintiff's willingness to return to the defendants' operation at her previous position indicates two things, in my opinion: first of all, that the lack of policy concerning complaints or harassment was not a factor either in that particular job or insofar as the plaintiff herself is concerned; or secondly, it causes one to infer that the discipline duties of a general manager were not to her liking, and that was the main problem insofar as she was performing as general manager.

[41] As I said earlier, the lack of formal policy to resolve disputes, control abuse or harassment is one of the fundamental complaints of the plaintiff, and such a policy is a wise course. However, its absence does not mean that the defendants condone this conduct, nor is there any evidence before me that would cause me to conclude that there is a condonement on the part of the defendants of oppressive, abusive or harassing conduct.

[42] It is always going to be difficult when owners and shareholders must be under the direction or control of paid staff members such as managers. Abusive, harassing events may occur; however, in my view, none of the plaintiff's complaints relate to the officers to whom she was responsible to report. Her complaint is that nothing was done to handle, eliminate, resolve or avoid the conduct complained of with reference to the ones I have itemized, either in the past, present or future.

[43] However, looked at objectively, in my opinion, the evidence of three instances – actually two – involving owner/drivers, does not satisfy the burden of proof on the plaintiff to establish

the basis for concluding that she was constructively dismissed. Consequently, the plaintiff's case is dismissed. Costs follow the event, Scale 3. Adjourn.

The Honourable Mr. Justice
Melvin