CITATION: *Wayne Walker Transport v Coachcopy* Pty Ltd [2007] NTMC 068

PARTIES:	WAYNE WALKER TRANSPORT
	v
	COACHCOPY PTY LTD
TITLE OF COURT:	Local Court
JURISDICTION:	Local Court
FILE NO(s):	20628567
DELIVERED ON:	16th October 2007
DELIVERED AT:	Darwin
HEARING DATE(s):	19th and 20th September 2007
JUDGMENT OF:	Relieving Magistrate Fong Lim

CATCHWORDS:

Contract – oral – breach essential terms - damages

REPRESENTATION:

Counsel:

Plaintiff:	Ms Farmer
Defendant:	Mr Pritchard

Solicitors:

Plaintiff:	Withnalls
Defendant:	Brian Johns

Judgment category classification:	C
Judgment ID number:	[2007] NTMC 068
Number of paragraphs:	61

IN THE LOCAL COURT
AT DARWIN IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 20628567

[2007] NTMC 068

BETWEEN:

WAYNE WALKER TRANSPORT
Plaintiff

AND:

COACHCOPY PTY LTD
Defendant

REASONS FOR DECISION

(Delivered 16th October 2007)

Ms FONG LIM RSM:

1. The Plaintiff sues the Defendant for breach of contract arising out of an oral agreement between the Plaintiff and the Defendant for the purchase and operation of a Prime Mover. The Plaintiff is the son of the directors of the Defendant.

2. It is agreed between the parties that the terms of the agreement were as follows:

    1. The Plaintiff would purchase the prime mover from the Defendant.

    2. The Plaintiff would pay for the prime mover by meeting the hire purchase obligations the Defendant had with the Commonwealth Bank that is $2700 per month.

    3. The Plaintiff would drive the prime mover to move freight for the Defendant as a sub contractor with the proceeds of the freight being split 80/20 in the Plaintiffs favour.

4. The Plaintiff was to be responsible for the running costs of the prime mover for the duration of the agreement.

5. Once all of the instalments had been paid by the Plaintiff on the prime mover the Defendant would sign over the vehicle to the Plaintiff.

3. It is the Plaintiff's case that he has not been paid all that was owed to him under that agreement which was wrongfully terminated by the Defendant about the 31st of August 2006 when the Defendant took possession of the prime mover. In addition to that the Plaintiff claims he has suffered loss of income through the loss of use of the prime mover due to the Defendant's termination of the contract. An alternative claim for damages is that the Plaintiff claims the loss of the value of the equity of the prime mover that would have been his if the Defendant had not wrongfully terminated the agreement.

4. The Defendant originally pleaded that the Plaintiff breached his agreement with the Defendant by failing to pay the finance instalments required on the prime mover, ie $2700 per month during the operation of the agreement. After evidence had been called the Defendant then applied to amend its Defence to include an allegation of breach of contract that the Plaintiff did not make himself available for work on or about the 21st of August 2006 and that he did not work exclusively for the Defendant as he was required to do under the agreement. The amendment was allowed. The Defendant also counterclaimed from the Plaintiff certain expenses which were incurred by the Defendant and for which the Defendant claims the Plaintiff is responsible.

5. Evidence was taken from the Plaintiff, Wayne Walker and his partner Claire Burrell and a director of the Defendant, Steven Walker the Plaintiff's father. Noticeably absent was any evidence from Mrs Barbara Walker, who was by all accounts the person who did the books of the Defendant and who handled the paperwork side of the business. The Plaintiff also tendered a bundle of

documents seeking to establish the expenses incurred by him in the running of the Prime mover while it was in his possession.

6. **Issues:** The issues to be determined are:

    1. Were there terms of exclusivity and a requirement that the Plaintiff be available to the Defendant whenever he was required.

    2. Was there a breach of contract by the Plaintiff by either not paying the finance instalments or by failing to work exclusively for the Defendants.

    3. Did the Defendant wrongfully terminate the agreement by taking possession of the Prime Mover.

    4. If there was a wrongful termination did the Plaintiff suffer any damages arising out of the termination.

7. **Terms of the agreement:** The parties agree the basic terms of the agreement and they are conveniently pleaded in the Defendants amended Defence of the 14th September 2006.

8. The parties also agree that even though the agreement was reached in April of 2006 it didn't come into operation until June of 2006.

9. What is in dispute is whether there were terms of exclusivity between the parties and as a corollary to that whether the Plaintiff was to be available to the Defendant whenever required.

10. It is important at this point to note the background to the agreement coming into existence. The Plaintiff had not been in contact with his parents for a couple of years prior to contacting his father in April of 2006 to advise him that he was looking into starting up his own trucking business. The Plaintiff says the purpose of the call was to notify his father that he would be looking for work from his father. The next day, Mr Steve Walker called the Plaintiff back with a proposal that the Plaintiff purchase the Prime mover (subject of these proceedings) from the Defendant by taking over the finance payments and to ensure those payments were made the Defendant would provide the

Plaintiff with work. The agreement was made that the Plaintiff would operate as an owner/driver with the normal 80/20 split in income. Mr Steve Walker gave evidence that he made this proposition to his son because he knew that the Plaintiff would find it difficult to get finance and he wanted to give him help to get on his feet. I have no doubt of Mr Walker's initial motivation behind offering his son this deal and that the Plaintiff accepted the deal in that light.

11. Unfortunately as with many family business arrangements the agreement was never reduced to writing and that allowed each of the parties to make assumptions rightly or wrongly as to how the agreement was to operate.

12. In his evidence the Plaintiff did not mention anything about a requirement to make himself available to the Defendant as required or about any requirement to drive exclusively for the Defendant. However he did give evidence that the agreement was that he drive for his Dad until the loan on the Prime Mover was paid off and the Prime mover was transferred to himself. There was clearly an expectation by both parties that the Prime Mover be used by the Plaintiff to "subcontract" to the Defendant as long as the work was available to him. Mr Steve Walker gave evidence that the Plaintiff was to drive for the Defendant and the Defendant only because he wanted to ensure that his asset was protected and the monthly payments to the finance company were made. That may have been his intention but that was not the Plaintiff's understanding.

13. The parties were clearly not in agreement as to the exclusivity of the contract.

14. The evidence of both the Plaintiff and Mr Steve Walker that the relationship was not totally exclusive because the Plaintiff was able to take arrange backloading and the Defendant had agreed that they would not require 20% of the income on that backloading even though a term of the original

agreement was that 20% of all income from the Prime Mover was to be paid to the Defendant.

15. Counsel for the Plaintiff made much of the fact that in the usual owner/driver situation it is not a requirement that a driver work exclusively for one company, that would defeat one of the purposes of being an owner/driver, being your own boss. Mr Steve Walker agreed that it was not industry practice that an owner/driver is made to commit to exclusively drive for one company. However the agreement between the parties is not a usual owner/driver agreement, the vehicle was not the Plaintiff's nor was it legally the Defendants as it was under a hire purchase agreement from the CBFC. The Defendant remained legally responsible for the finance payments on the vehicle and the vehicle remained legally the property of CBFC until the final instalment was paid. In those circumstances is plausible that Mr Steve Walker would want to protect himself regarding those obligation by maintaining control over the Defendants workload and I accept that was his intention.

16. The Plaintiff believed that after the June 2006 he was to treat the Prime Mover as his own as long as he paid the finance payments of $2700 per month. He spent money on repairs, insurance and registration for the vehicle and none of that is disputed by the Defendant. He took responsibility for the fuel for the vehicle and was paid 80% of the income arising out of the use of the Prime Mover (although there is some dispute about whether the full 80% has been paid).

17. It is agreed between the parties that during April and May 2006 the Plaintiff had possession of the Prime Mover and drove it for his father as a driver without being paid a wage or a percentage of the income. The evidence is that the Plaintiff worked for his father as a driver for 8 weeks without pay and that during that period he and his partner, Clare Burrell, lived with the Plaintiff's mother and father and they assisted with their living expenses.

18. It was the evidence of the Plaintiff that there was an agreement that this would continue until the finance payments had been brought up to date. After 8 weeks of this arrangement the Plaintiff queried his father about commencing the arrangement in the form as agreed and it was agreed by the parties that the arrangement would commence in June 2006. It is the Plaintiff's evidence that after this point in time he treated the truck as if it were his own as a sub contractor to his father. The Plaintiff relied on a document signed by both his mother and father stating his status as a subcontractor (see P2) as evidence of the fact that it was always intended he be treated as a subcontractor. The Plaintiff also submits that P2 is an indication of what his parents believed he could earn in working with them. The document reads as follows:

> " Wayne Walker is currently working with our Company as an owner Driver with on going work pulling our trailers from Sydney to Darwin. Wayne's gross amount is $35000 per month. We believe this amount is conservative, and only represents 2 trips per month.
>
> We have no hesitation in keeping Wayne on as a Sub- contractor, considering the work ethics displayed by Wayne whilst working for this Company. We will do everything in our power in making sure that this operation runs along smoothly. "

19. There is nothing in that document that suggests any exclusivity between the parties. The Defendant's references to the Plaintiff as an "owner/driver" and "Subcontractor" suggest the contrary.

20. The evidence supports the view that everyone besides the Defendant viewed the Plaintiff as the Defendant's subcontractor and an owner/driver. It is my view that if the Mr Walker intended his son to work for him exclusively he did not communicate that to the Plaintiff. The fact that the only documentation evidencing the relationship indicates a subcontract relationship, that the Plaintiff was responsible for all of the running costs and was able to backload without reference to the Defendant and he was able to take breaks when he wanted to between runs all confirms that the Plaintiff

was a sub contractor. A sub contractor is not bound to work for one "employer" unless there is some explicit agreement between the parties about that aspect and it is my view in the present case that there was no such agreement. It was an assumption made by Mr Steve Walker and not communicated to the Plaintiff.

21. Exclusivity was not originally pleaded by the Defendant as a term of the contract neither was the alleged breach of that term. The Plaintiff's submission is that the issue of exclusivity has only become an issue because the evidence did not support the Defendant's claim that the Plaintiff failed to make the payments of $2700.00 per month and the Defendant needed another hook to hang his hat on to support his termination of the contract.

22. I am inclined to agree with the Plaintiff's submission on this point. Mr Steve Walker was given the opportunity to explain why exclusivity was not pleaded in his original Defence but chose not to give any explanation. He could have said that his previous solicitors misunderstood his instructions or that he didn't think it was something he needed to articulate to his solicitors at the time, however he gave no explanation.

23. All the way through his evidence Mr Steve Walker stressed that he had reached the agreement to help his son out and as it was family he saw no need to have the agreement reduced to writing and against that background it is my view that is more than likely he just assumed that the Plaintiff would work for him only until the Prime Mover was paid off, he did not communicate that to the Plaintiff and therefore it was not a term of the agreement.

24. The Defendant also claimed that there was a term of the contract that the Plaintiff make himself available for and accept sub contact work from the Defendant as required by the Defendant from time to time.

25. The Plaintiff accepted in cross examination that he would make himself available when there was work available from his father however did not accept that he was to be at his father's beck and call. It was his evidence that he was happy to pull his father's trailers as long as there was work enough to allow for the payment of the $2700 per month and other expenses of running the truck.

26. In my view this was situation where Mr Steve Walker has again assumed something which was never discussed with the Plaintiff and took it for granted that his son would do what he asked him to do because of family obligations.

27. **The operation of the agreement and the "termination".** The parties agreed in evidence that the operation of the agreement commenced in June of 2006, from that time the Plaintiff took over the running expenses of the Prime mover eg registration, fuel, maintenance etc, and continued to pull trailers for the Defendant from NSW to Darwin at the direction of the Defendant. The splitting of the income on the 80/20 ratio commenced from that time and was calculated by the Plaintiff's partner and his mother Mrs Barbara Walker (a director of the Defendant). It is also agreed in evidence that the Plaintiff did four trips under that agreement and on the fifth trip the Defendant repossessed the prime mover.

28. The evidence of the Plaintiff's partner Ms Burrell was that she and Mrs Barbara Walker handled all of the paperwork, working out of the same office at the time. The payment for the loads brought up from Pt Kembla for NQX were paid to the Defendant by NQX, deductions taken out and then distributed on the 80/20 basis between the Plaintiff and the Defendant. There is some dispute between the parties of what payments have been made for the first four journeys but there is agreement that the Plaintiff has not been credited for any income arising out of the final trip from Newcastle (the "final trip")

29. Some of the circumstances of the final trip are agreed and others are disputed. It is agreed that on or about the 15th August 2006 the Plaintiff had a conversation with his father about work. He advised his father there was no backload available to him and his father then asked him to travel down from Darwin with the Defendant's trailers and deliver them to him in Burke. On the way down the Plaintiff had to ask the Defendant to pay for the fuel at Mt Isa because he did not have enough funds to do so and claims that was caused by the fact that he had not been paid for the previous trip. The Plaintiff then delivers the trailers to his father in Burke and was told by his father that he should travel to the Defendant's depot in Dubbo where he would be advised by his father what loads were to be transported.

30. The Plaintiff proceeded to Dubbo and before he arrived there he passed his father on the road on his way out of Dubbo. The parties' evidence diverges at this point. The Plaintiff says he arrived in Dubbo and waited for two days without contact from his father before calling the NQX depots in both Pt Kembla and Newcastle to ascertain what work was available. He gives evidence that the Pt Kembla people told him that the load meant for Defendant had been collected by another sub contractor and that there was no more for the month. The Plaintiff then called the Newcastle depot who advises that there were loads available for him to pick up. It is after that conversation that the Plaintiff is contacted by his father who tells him not to take a load from Newcastle because his company did not deal with the Newcastle depot. An argument ensued which resulted in the Plaintiff hanging up on his father and taking the load from Newcastle anyway. Upon his return to Darwin his father then took possession of the vehicle in the presence of police.

31. The Defendant, through Mr Steve Walker, has a different version of events and that is from the time the Plaintiff left Mt Isa he tried to contact him many times on the phone and was unsuccessful, he says he had concerns about the security of his prime mover at this stage because of some trouble

in the past (he didn't elaborate what that trouble might be). He agrees that the Plaintiff met him at Burke and that he told him to meet him at Dubbo for further instruction. He claims that the Plaintiff didn't meet him at Dubbo as arranged and when he past him on the road outside of Dubbo he tried to contact him on the radio without success. He says he tried to contact the Plaintiff several times to tell him what work there was to do but was unsuccessful and it was then that he rang around looking for the Plaintiff. Mr Walker says that when he contacted the Plaintiff in Newcastle he told him that the load out of Newcastle wasn't part of the agreement and that he should return the equipment to Dubbo. Mr Walker states that given the argument he had with the Plaintiff about the load out of Newcastle and the failure to communicate between Burke and Dubbo he was worried about the security of his asset and he took steps to protect that asset by repossessing it hence terminating the contract.

32. The acceptance or otherwise of the Plaintiff's or the Defendant's version of what happened on that final trip is integral to any decision as to whether there was a breach of contract by the Plaintiff to warrant the Defendant's action to repossess the vehicle.

33. **Breach of Contract:** The Plaintiff claims that that Defendant breached its contract with him by wrongfully repossessing the vehicle. In its Defence, as most recently amended, the Defendant claims that the repossession was lawful because of the following breaches:

> "3. ……the Defendant says the Plaintiff paid two instalments of $2700.00 and then defaulted on the oral contract thereby bringing the oral contract to an end. …
>
> and
>
> 5. … and says that the Plaintiff defaulted on any oral contract in that he failed to make himself available to accept subcontract work from the Defendant on or about 21st August 2006 in Dubbo and purported to accept sub contract work from a contractor other than the Defendant."

34. It was proved through Ms Burrell and conceded by Mr Steve Walker that the breach pleaded in paragraph 3 of the Defence is not made out on the evidence and in fact is positively disproved by the evidence. Therefore the Defendant was left with the breaches as freshly pleaded.

35. I have found that the claim that the Plaintiff was an exclusive sub contractor to the Defendant to be not supported on the evidence and therefore the only breach available to the Defendant to rely upon to support its repossession of the prime mover is the alleged breach of the Plaintiff failing to make himself available for work through the Defendant.

36. The Defendant complained about the lack of communication between Plaintiff and Mr Steve Walker from Mt Isa to Dubbo on the final trip. The Defendant claims by making himself uncontactable the Plaintiff made himself unavailable for work the Defendant had arranged and further that by taking a load from Newcastle NQX without notice to the Defendant made him unavailable to take the Defendant's work.

37. To be successful in proving that breach contractual duty the Defendant must prove on the balance of probabilities that the Plaintiff's availability to the Defendant was an essential term of the contract and further that there was work available through the Defendant at the relevant time.

38. In cross examination and Mr Steve Walker was inconsistent with his evidence in chief about the availability of work for the Plaintiff first of all he said that he had a good working relationship with NQX Newcastle and then he states that he didn't load out of Newcastle because they do not pay as much. There was no evidence of the rates paid out of NQX Pt Kembla compared to the rates out of Newcastle. There was no independent evidence to establish that there was in fact a load available to the Plaintiff out of Pt Kembla. The Plaintiff swears that he was advised by NQX there was no work available out of Pt Kembla, what work there had been at that point in

time was already loaded by another subcontractor, the Defendant swears there was a load available.

39. Mr Steve Walker conceded that he had not sorted out work for the Plaintiff at the time he and Plaintiff met in Burke and that is why he couldn't tell him then what work was available. The Plaintiff gave evidence that while he missed the Defendant in Dubbo he spoke with him on the phone the next day regarding work. The Plaintiff was told by his father that there would be no further loads for him to pull at that time. Ms Burrell confirms in her evidence that she was present when that call was made.

40. The Plaintiff's evidence was that he was told by his father the he was to sit and wait until his father contacted him about further work. The Plaintiff didn't accept this direction from his father and looked for work at the Newcastle depot of NQX where he found work available to him. The Plaintiff then advised his father that he was going to take a load from Newcastle. It is accepted by the Plaintiff that taking load from Newcastle was against his father's wishes but was of the opinion that he would rather be earning money than sitting at a depot waiting for instructions from his father the timing of which was uncertain.

41. The conflict in the evidence between parties can only be resolved by the court accepting one version or the other as the truth on the balance of probabilities. Mr Steven Walker gave evidence that he was angry at his son because he failed to meet him at the Dubbo depot when told to, he was angry that he had not been contactable during the trip down from Darwin and angry that the Plaintiff chose to disobey his direction about waiting in Dubbo for instruction. The Plaintiff was clearly angry with his father that he was expected to wait around when he could be earning by taking a load out of Newcastle. It would have been a simple exercise for the Defendant to produce evidence from NQX in Newcastle to prove that there was a load available to the Plaintiff at the relevant time however they did not, it was

there onus to prove that the load existed and was available they have not done so on the balance of probabilities.

42. The Plaintiff's version of the events is confirmed to a certain extent by Ms Burrell in that she confirms that she was present when the Plaintiff had two telephone conversations with Mr Steve Walker while in Dubbo which conversations are denied by the Defendant.

43. In my view is not likely that the Plaintiff would have taken a load from Newcastle if there was one available from Pt Kembla given that was his usual place of loading. It is also not likely that the Plaintiff took a load from Newcastle just to spite his father especially if the fees paid out of Newcastle were not as good as Pt Kembla as Mr Steve Walker stated in his evidence.

44. Given the above it is my view that the evidence supports the Plaintiff's version to be more likely on the balance of probabilities. The Defendant has not provided the Court with sufficient evidence that there was a load available to the Plaintiff through the Defendant at the relevant time and therefore has not proven that the Plaintiff took work from another source when there was work available from the Defendant. There was no breach of an essential term of the contract to justify the termination of the agreement by the repossession of the vehicle.

45. **Loss & Damages:** The Plaintiff has claimed loss of underpayment of income from the work done by the Plaintiff and damages on two different bases, either the loss of equity of the vehicle or the loss of profit for 6 months.

46. Underpayment - The Plaintiff provided the Court with a schedule of income earnt out of the use of the prime mover on behalf of the Defendant and payments made to the Plaintiff from those funds. The schedule was produced by Ms Burrell and became exhibit P3. When cross examined on that schedule in reference to the primary documents attached to that schedule,

Ms Burrell conceded that some of the income claimed in the schedule should not have been included. She conceded that any claim for income for the months of April and May should not have been included because it had been agreed between the parties that the Plaintiff would not claim any income for a period of time until the payments on the Prime mover were brought up to date. Ms Burrell also conceded that one load of the 22.6.06 and one on the 12.7.06 were not attributable to the Plaintiff. The Defendant did not provide any alternative figures on the income and agreed the payments that had been made to the Plaintiff were accurately reflected in the schedule.

47. With the concessions made by Ms Burrell the Plaintiff's claim for unpaid income is as follows:

NQX departure date	**Arrival date**	**LSD**	**Amount**
2.06.06	13.06.06	3517645	$8962.65
22.06.06	28.06.06	3573594	$10898.94
7.07.06	13.07.06	3637680	$8792.40
14.07.06	21.07.06	3662492	$1889.24
4.08.06	10.08.06	3738633	$12199.19
24.08.06	30.08.06	3813801	$3911.42
25.8.06	30.8.06	3817911	$5527.20
Total income to Coachcopy from NQX			**$50291.80**

48. It was agreed between the parties and upon the production of documents that the Defendant had paid to the Plaintiff a total of $32483.39. Calculating the

income which should have been paid to the Plaintiff during the period of the operation of the agreement at 80% of the gross income, the Defendant should have transferred $40233.44. On those raw figures the Defendant owes the Plaintiff the sum of $7750.05.

49. Damages – The Plaintiff also claims damages for breach of contract by the Defendant. The Plaintiff claims the loss of profit the Plaintiff could have earned using the vehicle and based on the net profit earned for the 3 months in which the agreement was in place. The gross income earned from the Plaintiff's use of the vehicle is agreed at $40233.44 plus $5940.00 from backloading. The expenses claimed by the Plaintiff were particularised in a document filed on the day of the hearing and substantiated by primary documents tendered in the form of P7. Those expenses were not challenged by the Defendant. The Plaintiff and Ms Burrell gave evidence that they paid for all of the fuel during the term of the agreement (except for the one trip from Mt Isa) and the general maintenance and registration of the vehicle. Those expenses were a total of $30424.38 giving a net profit of $19722.38 for the 3 months.

50. The Plaintiff argues that had the agreement not been terminated by the Defendant it would be more than likely that the Plaintiff would have continued to make a similar profit. If that is true then the Plaintiff would have made an average of approximately $6570 per month (ie $19722.38 divided by 3) . The Defendant, through Mr Steve Walker, gave evidence that there was plenty of work available to the Plaintiff and that is in some way confirmed by the fact that the Plaintiff was able to arrange a load for himself from Newcastle when there was nothing available to him from Pt Kembla. There was no evidence of any seasonal issues with the industry and no evidence that the vehicle was due for major mechanical repairs or such like however it is my view that the court should take into account contingencies such as the probable need for some mechanical repairs for a

vehicle of that age when considering damages based on that vehicle producing profit to the Plaintiff.

51. The Plaintiff has claimed a further 6 months of profit less the wages earnt by the Plaintiff in his employment with Gulf Transport over that period of time. The Plaintiff's calculations in his particulars of claim filed in court on the 20th September 2007 do not actually accord with that claim. The calculations are based on 3 times the profit shown over the first 3 months which is in fact profit of 9 months not 6.

52. The Plaintiff also only deducts 2 months of employment with Gulf transport however it is my view that 5 months should be deducted because he continues to be employed by Gulf and had only one month where he was unemployed.

53. If the calculation is made on the basis of 6 months profit the figures (with the concessions made in evidence) would be:

3 months income June July August	$50145.76
3 month's expenditure	$30424.38
Net profit	$19722.38 (for three months)
6 months profit 2 x $19722.38 =	$39444.76
Monies earnt with Gulf, 5 x $4950 =	$24750.00
Total loss	**$14694.76**

54. The alternative calculation of damages put by the Plaintiff is the loss of equity of the truck had the agreement been complied with by both parties. The only evidence as to the left in the truck is that from Mr Steven Walker who tells the court that the truck was sold for $40000.00 less the final payment on the vehicle of $18900.00. Those figures establish that the equity at the time of sale was $21100.00. The Plaintiff provides no alternative evidence as to the value of the vehicle however the evidence provided by the

Defendant does not reasonably satisfy me that the vehicle was sold for a reasonable market value and therefore any calculation of the equity of the vehicle on the basis of the Defendant's figures would be unsafe.

55. The calculation of the loss of profit for the use of the vehicle for 6 months is in my view reasonable. The payout figure evidenced by the Defendant's witness indicates that there was approximately 7 months of payments of $2700.0 left on the finance contract but taking into account the age of the vehicle and the recognition by the Plaintiff of it limited continued service (he indicated in his evidence he was looking to replace the vehicle) some discount should be made for contingencies such as the possibility of major repairs. It is also relevant that once the vehicle was paid off the agreement between the Plaintiff and the Defendant would be complete and the issue of the supply of work would be a matter for renegotiation, there would be no obligation on the Defendant to provide the Plaintiff with work and no obligation for the Defendant to drive for the Plaintiff and therefore any projected profit from that moment on would be uncertain.

56. Taking into account the above, damages for the unlawful termination of the agreement are assessed at $14694.76.

57. **Counterclaim -**The Defendant counterclaimed Fuel Bill of $1323.00 and registration fee of $1629.18 and fines of $2836.96 (other expenses were claimed however abandoned at the hearing). It was agreed between the parties in evidence that during the operation of the agreement from June to August the Plaintiff was to be responsible for all of the running costs of the vehicle including fuel and registration. The fuel bill of $1323.00 related to the journey commenced on about the 15.8.06 and the refuel at Mt Isa for which the Plaintiff did not have enough funds to pay. The Defendant paid that fuel for the Plaintiff. The Plaintiff conceded in evidence that fuel was his responsibility and therefore that amount should be credited back to the Defendant.

58. In relation to the fines it is conceded by the Defendant that the fines were incurred at the time that the agreement was not in force and it was not until this action ensued that there was any kind of demand for payment of those fines. The Defendant has not produced sufficient evidence for this court to accept that those fines were the responsibility of the Plaintiff.

59. In relation to the registration fees it is agreed between the parties that the Defendant paid for the registration of the vehicle from 21.4.06 - 20.7.06 of $1622.00 and that the Plaintiff paid the registration from the 21.7.06 – 20.9.06 of $1633.00. Neither party was really sure of actual periods of registration and but what they were sure of is that the Plaintiff had the use of some of the registration paid for by the Defendant and that the Defendant has use of some of the registration paid by the Plaintiff. The Plaintiff clearly only had the benefit of the use of the vehicle for 3 months (June, July & August) as an “owner/driver” out of the 6 months registration paid for by both parties therefore on a pro rata basis the Defendant is not owed anything in relation to the registration of the vehicle.

60. The Defendant’s counterclaim then succeeds only in one aspect and that is the fuel bill of $1323.00.

61. **Orders**:

1. Judgment in favour of the Plaintiff in the sum of $7750.05 for underpayment of income plus $14694.76 for damages for breach of contract

2. Judgement in favour of the Defendant in the sum of $1323.00

3. The Defendant pay the Plaintiff the sum of $21121.81.

4. Costs reserved for further submissions.

Dated this 16th day of October 2007.

_____

Tanya Fong Lim
RELIEVING STIPENDIARY MAGISTRATE