

Citation: *Sir Froggy 1st Class Limousine v.
City of Whitehorse*, 2010 YKTC 142

Date: 20101109
Docket: 08-05175A
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before His Honour Judge J. Roy

SIR FROGGY 1ST CLASS LIMOUSINE

v.

CITY OF WHITEHORSE

Appearances:
Lori Lavoie
Robert Tétrault

Counsel for the Plaintiff
On his own behalf

[TRANSLATION]

REASONS FOR JUDGMENT

[1] ROY T.C.J. (orally): On November 28, 2008, the City of Whitehorse issued a fine against the defendant, Sir Froggy Limousine, for having violated section 47 of Municipal Bylaw 2003-17 by failing to hold a permit for a vehicle for hire with respect to a 1994 Lincoln. Subsequently, on February 18, 2009, an information was filed before this court with respect to two charges under Bylaw 2003-17, which deals with vehicles for hire. Section 37 provides that a vehicle for hire may not be used as a vehicle for hire unless it has a special permit that cannot be transferred to another vehicle. As for the second charge, section 47 provides that the owner of a vehicle for hire must obtain a permit

each year.

[2] The defendant, Sir Froggy, was represented by its president, Robert Tétrault, and the City of Whitehorse was represented by Ms. L. Lavoie. The defendant claims that it is not subject to this bylaw since it operates a limousine service and that the vehicle identified in the fine and in the two charges is not a taxi but a limousine equipped with 11 seatbelts and that, unlike a taxi operator, it must receive reservations in advance.

[3] The City of Whitehorse acknowledges that, until December 13, 2007, these permits were issued under the *Motor Transport Act*. This *Act* was repealed on December 13, 2007. The *Motor Transport Licensing Regulations* were also repealed on December 13, 2007.

[4] The City of Whitehorse also states that since that date, namely December 13, 2007, it is Bylaw 2003-17 that applies and that the defendant's vehicle falls under the definition of *charter vehicle*. The definition of *charter vehicle* reads as follows:

“CHARTER VEHICLE” [meaning] any motor vehicle used for the transportation of passengers for a charter fare, including a taxicab hired for a charter fare....

[5] The City of Whitehorse admits that there is no definition of the word “limousine” in the bylaw; it also admits that the bylaw does not apply to buses. It adds that there is no difference between *bus* and *chartered bus*, which leads to the conclusion that *bus* and *chartered bus* are not covered by the bylaw.

[6] The City of Whitehorse submits that under the *Municipal Act*, more specifically section 265 of the *Act*, it may adopt bylaws respecting transport, carriers of persons,

taxi drivers, vehicles businesses and other forms of public transport. It must again be mentioned that the *Act* of December 13, 2007, amended the *Motor Transport Licensing Regulations* because, again, permits were issued under that *Act*; that same *Act* of December 13, 2007, which repealed the *Motor Transport Act*, also amended the *Liquor Act* by amending the definition found in section 4 of that *Act*, with respect to liquor in motor vehicles, by adding, after the words *chartered bus*, the word “limousine”. Before this amendment, the provision read as follows:

“chartered bus” means a bus that is hired by

After the amendment, the provision read as follows:

“chartered bus” means a bus or limousine....

[7] In fact, with respect to the offense committed in November 2008, as a result of the repeal of the *Act* on December 13, 2007, it is Bylaw 2003-17, that was adopted by the municipality on August 9, 2004, that applies. In that bylaw, several means of transportation are defined, for example, “DOG SLED” and “HORSE-DRAWN CARRIAGE”. “HORSE-DRAWN SLED” is also defined, as is “MOTOR VEHICLE FOR HIRE”. “MOTOR VEHICLE FOR HIRE” is defined as follows:

“MOTOR VEHICLE FOR HIRE” means motor vehicles licensed under the *Motor Transport Act* to transport passengers for a fare and, without limiting the generality of the foregoing, shall, for the purposes of this bylaw, exclude buses. **(Bylaw 2004-04 passed August 9, 2004)**

“PEDICAB” and “TAXICAB” are also defined; there is, however, no reference to “limousine”.

[8] The license issued on February 29 under the *Partnership and Business Names Act* states that Sir Froggy Limousine 1st Class is “For the purpose of: Limousine”. That license expires on February 28, 2010. It is Exhibit P3.

[9] On June 27, 2008, the City of Whitehorse wrote to the defendant, stating the following:

This letter will acknowledge your concern regarding our letter dated June 18th in regards to taxi mechanical inspections. Please accept his letter as confirmation that your limousine company does not need to participate in this inspection geared for taxi companies.

[10] It therefore falls upon the Court to attempt to determine the nature of the defendant’s vehicle, since the City of Whitehorse’s bylaw does not define the word “limousine”. Again, the defendant’s vehicle is equipped with 11 seatbelts. The defendant [sic] admitted in the letter that I have just read, namely the letter of June 27, 2008, that this limousine is not subject to the inspections required for taxis. There is, however, an important element in attempting to determine what constitutes a limousine; part of the solution, an element to define the word “limousine”, can be found in an act adopted by the Yukon Territory, namely the *Act* that repealed the *Motor Transport Act* on December 13, 2007. Here, in fact, is an extract from section 4 of the *Act* adopted on December 13:

“ chartered bus” means a bus or limousine that is hired by or made available to a group of people for the purpose of conveying the group on a specified trip or for a specified time, but does not include a taxi....

[11] Each year, the defendant pays a fee to the City of Whitehorse to obtain a license. According to Exhibit D1G, it is a “Business License” that states the following:

Sir Froggy Limousine 1st Class is licensed to carry on the business of: Transport: Charter/School.

We also read in this document:

The licensee herein named, having paid the prescribed fee, is hereby licensed within the City of Whitehorse to carry on the business, trade or profession stated herein unless the license is sooner cancelled....

As well as the following:

This license is issued ... applicable City of Whitehorse bylaws ...

[12] It should be mentioned that the first license issued to the defendant, which was issued for the period ending May 6, 2003, and which was entered in evidence as Exhibit D1A, states the following:

... to carry on the business of: Standard Business License....

There is therefore a distinct difference between the license issued in 2003, which refers to a *Standard Business License*, and the license that expires on May 6, 2009, which covers the period which includes the month of November 2008 when the fine was issued, and this latter license refers to *transport, charter and school* and not *Standard Business License*. Bylaw 2003-17 defines what is meant by *Business License*. And section 11 of the bylaw also states the following:

The granting of any licence or permit under this bylaw shall not relieve any person to whom such licence or permit is issued from compliance with any other bylaw of the City.

[13] The case before us is a strict matter of law. There is no definition of the word “limousine” in Bylaw 2003-17. The City of Whitehorse acknowledges in a letter that the defendant’s vehicle is not subject to the inspection requirements for taxis, thereby acknowledging that it is another type of vehicle. The City of Whitehorse also acknowledges that no distinction is to be made between *chartered bus* and *bus*. There is also an element of clarification in defining the nature of the defendant’s vehicle in the December 13, 2007, enactment, which states the following:

“chartered bus” means a bus or limousine

[14] In this case, the City of Whitehorse wished to establish that the defendant had committed an offense within its jurisdiction by not having a permit to operate a business of this kind and therefore violated sections 37 and 47. However, the evidence as a whole does not support the argument that the vehicle used by the defendant, which is a limousine, is subject to Bylaw 2003-17; the complaints against the defendant are therefore dismissed.

[15] Are there any questions?

ROY T.C.J.