

Citation: Glavas Hospitality International Inc. (Re)  
2018 BCEST 84

An appeal

- by -

Glavas Hospitality International Inc. carrying on business as Gino's Restaurant  
("Gino's")

- of a Determination issued by -

The Director of Employment Standards

pursuant to section 112 of the  
*Employment Standards Act* R.S.B.C. 1996, C.113 (as amended)

**PANEL:** Michelle F. Good

**FILE NO.:** 2018A/68

**DATE OF DECISION:** August 15, 2018

## DECISION

### SUBMISSIONS

David Seccia on behalf of Glavas Hospitality International Inc. carrying on business as Gino's Restaurant

### OVERVIEW

1. Pursuant to section 112 of the *Employment Standards Act* (the "ESA"), Glavas Hospitality International Inc. carrying on business as Gino's Restaurant, ("Gino's") has filed an appeal of a Determination issued by Jennifer Redekop, a delegate ("Delegate Redekop") of the Director of Employment Standards (the "Director") on May 17, 2018. In that Determination, the Director found that Gino's was in contravention of section 16 of the *ESA* by failing, in multiple instances, to pay employees minimum wage; section 17 of the *ESA* by failing, in multiple instances, to pay employees within eight days of the end of their pay period; section 28 of the *ESA*, by failing to keep records of daily hours of for work all pay periods; section 34 of the *ESA* by failing, in multiple instances, to pay a minimum of two hours if an employee reports to work on any day; and section 40, in multiple instances, by failing to pay employees overtime wages as required.
2. In the Determination Gino's was ordered to pay a total of unpaid wages in the amount of \$1,019.59 pursuant to sections 16, 17, 34, and 40 of the *ESA* as well as interest in the amount of \$17.19 pursuant to section 88 of the *ESA*. Further, mandatory administrative penalties as required by section 98(1) were ordered in the amount of \$2,500.
3. This decision is based on Gino's submissions, the section 112(5) record (the "Record") that was before the Director at the time the determination was made, and the Reasons for the Determination.

### ISSUE

4. Did the Director err in law?

### ARGUMENT

5. Mr. Seccia, on behalf of Gino's, argues there was no contravention of the *ESA* and that the administrative penalties are too severe.

### THE FACTS

6. The Employer, Gino's, is a company incorporated under the laws of British Columbia on February 16, 2007, as confirmed by a Corporate Search conducted on November 6, 2017 (Incorporation Number BC0782985). The listed directors and officers are Helen Glavas ("Ms. Glavas") and Lynda Noelle Sahli-Glavas also known as Noelle Linda Sahli-Glavas.

7. On November 5, 2017, a confidential complaint was filed pursuant to section 75 of the *ESA* at the Employment Standards Branch (the “Branch”) that Gino’s had failed to pay overtime wages and statutory holiday pay. On January 3, 2018, Delegate Redekop spoke with Ms. Glavas advising her of the complaint and that the Branch would be conducting a payroll audit. Ms. Glavas stated that wages had been paid in accordance with the *ESA*. Gino’s was also notified by way of correspondence from the Branch dated January 4, 2018, that it was undertaking an investigation as to whether wages had been paid in accordance with the *ESA* for the period of July 5, 2017, through January 4, 2018. The January 4, 2018, correspondence included a Demand for Records (the “Demand”) which required the production of payroll records by January 23, 2018.
8. The Record shows that when Gino’s failed to produce the payroll records by the stated deadline, Theresa Robertson, a delegate of the Director, (“Delegate Robertson”) contacted Gino’s by phone at which point Gino’s advised Delegate Robertson that they would be represented in the matter by their accountant David Seccia (“Mr. Seccia”). Subsequently, Mr. Seccia faxed a variety of payroll related records to the Branch.
9. The set of records faxed by Mr. Seccia to the Branch was incomplete. He was notified by the Branch of the insufficiency of records in correspondence sent via email on February 22, 2018, to which he did not reply. On February 28, 2018, a letter providing a final deadline of March 9, 2018, for the production of records was sent to Gino’s via registered mail with a copy sent to Mr. Seccia via e-mail. Mr. Seccia responded on March 7, 2018, that all records had been disclosed. As all the records requested by the Branch in the Demand for Records had not been provided by Gino’s, on March 13, 2018, Mr. Seccia was asked to confirm that neither he nor Gino’s had the missing records. He responded that neither he nor Gino’s were in possession of the missing records.
10. In correspondence dated April 5, 2018, the Delegate provided her preliminary finding based on the records provided to the Director as well as a final opportunity for Gino’s to respond regarding the wage issues, potential director liability and potential administrative penalties. Gino’s was given until April 19, 2018, to voluntarily comply and was advised that if they did not, a Determination would be issued without further notice and an administrative penalty of \$500 for each contravention would be applied.
11. No further submissions on behalf of Gino’s were received by the Director.
12. As of May 17, 2018, contrary to the assurances of Mr. Seccia that Gino’s would remit the payment for wages to the Branch, no such payment was received.
13. On May 17, 2018 the Director issued a Determination in the matter.

## **ANALYSIS**

14. Section 114(1) of the *ESA* provides that at any time after an appeal is filed and without a hearing of any kind the Tribunal may dismiss all or part of the appeal if the Tribunal determines that any of the following apply:
  - (a) the appeal is not within the jurisdiction of the tribunal;
  - (b) the appeal was not filed within the applicable time limit;

- (c) the appeal is frivolous, vexatious or trivial or gives rise to an abuse of process;
- (d) the appeal was made in bad faith or filed for an improper purpose or motive;
- (e) the appellant failed to diligently pursue the appeal or failed to comply with an order of the tribunal;
- (f) there is no reasonable prospect that the appeal will succeed;
- (g) the substance of the appeal has been appropriately dealt with in another proceeding;
- (h) one or more of the requirements of section 112 (2) have not been met

15. Section 112(1) of the *ESA* provides that:

- 112 (1) Subject to this section, a person served with a determination may appeal the determination to the tribunal on one or more of the following grounds:
- (a) the director erred in law;
  - (b) the director failed to observe the principles of natural justice in making the determination;
  - (c) evidence has become available that was not available at the time the determination was being made.

#### ***ERROR OF LAW***

16. In *Gemex Developments Corp., v. British Columbia (Assessor of Area 12 – Coquitlam)* [1998] B.C.J. No. 2275 (B.C.C.A.), the British Columbia Court of Appeal defined “error of law. The Tribunal subsequently adopted that definition, as articulated below:

1. a misinterpretation or misapplication of a section of the *Act* [in *Gemex*, the legislation was the *Assessment Act*];
2. a misapplication of an applicable principle of general law;
3. acting without any evidence;
4. acting on a view of the facts which could not reasonably be entertained; and
5. adopting a method of assessment which is wrong in principle.

17. Unless the Director’s decision raises an error of law, the Tribunal lacks the jurisdiction to reach factual conclusions that differ from those found by the Director. (see *Britco Structures Ltd.*, BC EST # D260/03)

18. Mr. Seccia’s submissions on behalf of Gino’s defend against the allegations put forward in the original complaint and further submit that the administrative penalties are excessive.

19. Gino’s was given ample opportunity to make submissions in response to the complaint and was fully apprised of the consequences of choosing not to make submissions including the application of mandatory administrative penalties pursuant to section 98(1). Having offered no submissions or evidence whatsoever to rebut the allegations in the first instance, it is simply not open to Gino’s to make those submissions now in the form of an appeal.

20. I am not persuaded that the Director erred in law. I find this appeal has no reasonable prospect of success.

**ORDER**

21. Pursuant to section 115 of the *ESA*, I order the Determination issued on May 17, 2018, be confirmed together with any further interest that has accrued under section 88 of the *ESA*.

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**Michelle F. Good**  
**Member**  
**Employment Standards Tribunal**