

Citation: Wen Li Liang (Re)  
2019 BCEST 116

An appeal

- by -

Wen Li Liang  
("Liang")

- 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:** Kenneth Wm. Thornicroft

**FILE NO.:** 2019/160

**DATE OF DECISION:** October 28, 2019

## DECISION

### SUBMISSIONS

Tanya Taylor on behalf of the appellant

### OVERVIEW

1. This appeal, in my view, is wholly misconceived and, as such, must be summarily dismissed as having no reasonable prospect of succeeding (see *Employment Standards Act* – the “ESA” – section 114(1)(f)). I will briefly set out my reasons for reaching that conclusion.

### FACTS & FINDINGS

2. A former employee (the “complainant”) of Spruce Hill Resort and Spa Ltd. (“Spruce Hill”) filed an unpaid wage complaint which was, in turn, investigated by a delegate of the Director of Employment Standards. On May 29, 2019, a determination was issued against Spruce Hill for \$4,833.77 on account of unpaid wages and interest, and an additional \$1,000 on account of two \$500 monetary penalties (see *ESA*, section 98), for a total amount payable of \$5,833.77 (the “Corporate Determination”).
3. The section 112(5) record before me shows that the Corporate Determination was delivered to Spruce Hill’s business office, its registered and records office, and also to Wen Li Liang (“Liang”) and Kin Wa Chan, the latter two individuals being, respectively, the sole director and the president/secretary of Spruce Hill. The Corporate Determination included information regarding the appeal process (and also advised that the appeal deadline was July 8, 2019) and, additionally, included detailed information regarding section 96 and corporate directors’/officers’ personal liability for unpaid wages.
4. The Corporate Determination was never appealed to the Tribunal and it now stands as a final order. The time period for appealing the Corporate Determination expired on July 8, 2019.
5. On August 2, 2019, a determination was issued against Mr. Liang under section 96 of the *ESA* in the total amount of \$4,865.33 on account of unpaid wages and interest owed to the complainant (the “Liang Determination”). The record indicates that Mr. Liang was a Spruce Hill director when the complainant’s unpaid wages were earned or should have been paid.
6. On September 9, 2019 (the last day of the appeal period), an Appeal Form was filed with the Tribunal identifying Mr. Liang as the appellant. However, Mr. Liang did not prepare the Appeal Form. The form was prepared and signed by “Tanya Taylor” (“Ms. Taylor”) who identified herself as the “front desk manager” (presumably at Spruce Hill’s resort). There is nothing in the material before me to show that Mr. Liang authorized Ms. Taylor to file an appeal on his personal behalf. Further, a brief ½ page memorandum appended to the appeal form does not speak to the Liang Determination but, rather, takes issue with the unpaid wages that were determined to be owing to the complainant under the Corporate Determination. Essentially, the memorandum takes contests the wage rate that was accepted for purposes of calculating the complainant’s unpaid wages.

7. Ms. Taylor's memorandum does not contest the fact that Mr. Liang was a Spruce Hill director when the complainant's unpaid wage claim crystallized; there is nothing in the memorandum regarding any of the defences set out in section 96(2), and there is nothing in the memorandum arguing that there was some sort of calculation error regarding the amount payable as set out in the Liang Determination. As noted above, the entire thrust of Ms. Taylor's memorandum appended to the Appeal Form concerns Spruce Hill's liability to the complainant and, more particularly, his agreed wage rate.
8. Arguments regarding Spruce Hill's liability could have properly been advanced in an appeal of the Corporate Determination. However, no such appeal was ever filed and thus the amount found due owing to the complainant cannot be challenged in the present appeal, which purports to be an appeal of the Liang Determination (see *Neudorf*, BC EST # D076/07). Mr. Liang either was, or certainly should have been, fully aware of his possible liability under section 96 of the *ESA* if Spruce Hill failed to pay the amount due under the Corporate Determination. As such, and in his capacity as a Spruce Hill director, he could have ensured that the latter determination was appealed to the Tribunal, in which case the wages found to be due and owing to the complainant could have been reviewed. However, I should stress that having read the reasons issued with respect to the Corporate Determination, and given the findings of fact set out in those reasons, Ms. Taylor's arguments regarding the amount determined to be owing to the complainant appear to have little, if any, presumptive merit.
9. This appeal is nominally grounded on the basis that the Director of Employment Standards failed to observe the principles of natural justice in issuing the Liang Determination. However, there is *nothing* in the appeal documents that explains how or why there was a natural justice breach. As previously noted, the reasons for appeal prepared by Ms. Taylor speak only to the matter of the complainant's wage rate for purposes of calculating his unpaid wage liability.
10. Finally, it is not entirely clear to me that this appeal is even properly before the Tribunal given the irregularities I identified, above.
11. In light of the foregoing, it seems clear and obvious that this appeal has no reasonable prospect of succeeding and thus must be dismissed.

## **ORDER**

12. Pursuant to section 114(1)(f) of the *ESA*, this appeal is dismissed. Pursuant to section 115(1)(a) of the *ESA*, the Liang Determination is confirmed as issued in the amount of \$4,865.33 together with whatever further interest that has accrued under section 88 of the *ESA* since the date of issuance.

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**Kenneth Wm. Thornicroft**  
**Member**  
**Employment Standards Tribunal**