

An appeal

- by -

Wei Wei  
("Wei")

- 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.:** 2018A/118

**DATE OF DECISION:** January 2, 2019

## DECISION

### SUBMISSIONS

Yizhou Deng

counsel for Wei Wei

### OVERVIEW

1. This appeal was filed on behalf of Wei Wei (“Ms. Wei”) by her legal counsel, whose office is situated in Beijing, China. However, the appeal is not properly before the Tribunal and, as such, must be summarily dismissed. My reasons for reaching that conclusion now follow.

### BACKGROUND FACTS

2. On October 11, 2018, Sukh Kaila, a delegate of the Director of Employment Standards (the “delegate”), issued a Determination (the “Determination”) pursuant to section 79 of the *Employment Standards Act* (the “ESA”) against Planb E Storage Ltd. (the “Employer”). This Determination is in the total amount of \$1,138,791.01 and is in relation to the unpaid wage claims of 21 former employees of the Employer. The total unpaid wages (\$1,136,791.01 with section 88 interest) include regular wages, compensation for length of service, and vacation pay.
3. In addition, and also by way of the Determination, the delegate levied \$2,000 on account of four separate \$500 monetary penalties (see section 98) against the Employer.
4. A copy of the Determination was served on the Employer at its registered and records office in Vancouver. In addition, the Determination was delivered to five separate individuals (including Ms. Wei) who were identified as either a “Director” or a “Director/Officer” of the Employer. Ms. Wei was one of these five individuals and she was identified as a “Director”.
5. The Employer has never filed an appeal of the Determination issued against it.
6. At this juncture, I should note that subsection 9(1)(c) of the *Business Corporations Act* states that any record in a legal proceeding may be served on a company by “by serving any director, senior officer, liquidator or receiver manager of the company”. I should also note that under subsection 96(1) of the *ESA*: “A person who was a director or officer of a corporation at the time wages of an employee of the corporation were earned or should have been paid is personally liable for up to 2 months’ unpaid wages for each employee.”
7. So far as I am aware, the Director has not issued a section 96 determination against Ms. Wei with respect to the Employer’s former employees’ unpaid wages. If and when such a section 96 determination is issued, Ms. Wei will have the right to file an appeal of that determination with the Tribunal.

8. The appeal now before me has *not* been filed by the Employer but, rather, by Ms. Wei in her personal capacity. Ms. Wei says that the delegate erred in law in issuing the Determination. More specifically, she maintains:

I, Wei Wei file the Appeal Form to your honorable Tribunal against the Determination ER# 428768 [Note: this is the Determination issued against the Employer on October 11, 2018] and request your Tribunal to remove my name...because the Director of Employment Standards erred in law.

9. Ms. Wei further states that she “should not be personally liable for the wages or administrative penalties because I was not a director of Planb E Storage Ltd. at the time the wages of the employees (as named in the Determination) were earned or should have been paid, and hence I did not authorize, permit or acquiesce in a contravention of the Act as well”. This latter assertion concerns subsection 98(2) of the *ESA* which addresses, among other things, a director’s personal liability for penalties issued against a corporation.
10. Ms. Wei concedes that she was, at one time, a director of the Employer but says that she resigned her directorship on December 10, 2016. Ms. Wei asserts that the employees’ unpaid wages were earned or became payable as and from August 2017.

### **FINDINGS AND ANALYSIS**

11. Ms. Wei would have the legal authority to file an appeal of the Determination *on behalf of the Employer* if she were a present director of the Employer authorized by the Employer’s board of directors to file such an appeal. Of course, Ms. Wei’s position is that she is not a present director of the Employer and, if that is so, she has no presumptive authority of any kind to unilaterally file an appeal of the Determination issued against the Employer. The present appeal is not, on its face, an appeal filed by the *Employer* with respect to the Determination issued against it. Further, Ms. Wei’s materials do not contain any authorization from the Employer permitting her to file an appeal of the Determination on the Employer’s behalf.
12. Even if Ms. Wei’s appeal could possibly be characterized as a valid appeal by the Employer with respect to the Determination (and, in my view, it most assuredly cannot be so characterized), there is nothing in Ms. Wei’s submissions that would demonstrate, even on a *prima facie* basis, that the delegate erred in law in issuing the Determination against the Employer. Ms. Wei’s appeal submissions also contain several allegations of misconduct against various individuals and raise many personal grievances, none of which falls within the Tribunal’s jurisdiction.
13. Ms. Wei’s appeal is *not* in relation to a determination issued against her under section 96 of the *ESA*. As noted above, if and when such a determination is issued against her, she will have the right to appeal that determination to the Tribunal and in such an appeal, her assertion that she was not a director of the Employer when the employees’ unpaid wage claims crystallized would be a central issue.

14. The fact that Ms. Wei was identified in the Determination (strictly for purposes of service of the Determination issued against the Employer) does not somehow convert the Determination into a section 96 determination crystallizing an unpaid wage liability against Ms. Wei for the Employer's former employees' unpaid wages.
15. As matters now stand, this appeal constitutes an abuse of process since Ms. Wei has no legal authority to file an appeal – nominally in her own name but apparently with respect to the Determination issued against the Employer – and thus should be summarily dismissed under subsection 114(1)(c) of the *ESA*. Several matters raised by Ms. Wei's appeal fall outside the Tribunal's jurisdiction (see subsection 114(1)(a) of the *ESA*). This appeal appears to constitute an impermissible presumptive collateral attack on any section 96 determination that might, at some future point, be issued against her and thus this appeal has been filed for an improper purpose (see subsection 114(1)(d)). Finally, this appeal has no reasonable prospect of succeeding and, on its face, does not raise even a *prima facie* argument that the delegate erred in law (see subsections 114(1)(f) and (h)).
16. Accordingly, this appeal must be summarily dismissed.

#### **ORDER**

17. Pursuant to subsections 114(1)(a), (c), (d), (f), and (h) of the *ESA*, this appeal is dismissed.

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