

EMPLOYMENT STANDARDS TRIBUNAL

An appeal

- by –

He Ping Fang, a director of STP Canada Enterprises Ltd.

(“Mr. Fang”)

- 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: David B. Stevenson

FILE No.: 2022/107

DATE OF DECISION: June 30, 2022

DECISION

SUBMISSIONS

Martin Yeung

on behalf of He Ping Fang

OVERVIEW

1. He Ping Fang (“Mr. Fang”) has filed an appeal under section 112 of the *Employment Standards Act* (the “ESA”) of a determination issued by Jennifer Redekop, a delegate of the Director of Employment Standards (the “deciding Delegate”) on March 25, 2022.
2. The Determination found Mr. Fang was a director of STP Canada Enterprises Ltd. (“STP”), an employer found to have contravened provisions of the *ESA*, at the time wages were earned or should have been paid to Alex Qu (“Mr. Qu”), and as such was personally liable under section 96 of the *ESA* for wages in the amount of \$978.41.
3. This appeal is grounded in an assertion that evidence has become available that was not available when the Determination was being made.
4. In correspondence dated May 4, 2022, the Tribunal, among other things, acknowledged having received the appeal, requested the section 112(5) record (the “record”) from the Director, invited the parties to file any submissions on personal information or circumstances disclosure and notified the other parties that submissions on the merits of the appeal were not being sought at that time.
5. The section 112(5) record (the “record”) has been provided to the Tribunal by the Director and a copy has been delivered to the parties, who have been provided with the opportunity to object to its completeness. No objection to the completeness of the record has been received and, accordingly, the Tribunal accepts it as being complete.
6. I have decided this appeal is appropriate for consideration under section 114 of the *ESA*. At this stage, I am assessing the appeal based solely on the Determination, the reasons for Determination, the appeal, the written submission filed with the appeal, my review of the material that was before the Director when the Determination was being made and any other material allowed to be added to the record in the appeal. Under section 114(1), the Tribunal has discretion to dismiss all or part of an appeal, without a hearing, for any of the reasons listed in the subsection, which reads:
 - 114 (1) At any time after an appeal is filed and without a hearing of any kind the tribunal may dismiss all or part of any 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 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.

7. If satisfied the appeal or a part of it has some presumptive merit and should not be dismissed under section 114(1), the Director and Mr. Qu will be invited to file submissions. On the other hand, if it is found the appeal satisfies any of the criteria set out in section 114(1), it is liable to be dismissed. In this case, I am looking at whether there is any reasonable prospect the appeal can succeed.

ISSUE

8. The issue in this appeal is whether it should be allowed to proceed or be dismissed under section 114(1) of the *ESA*.

THE FACTS

9. The facts relating to this appeal, as set out in the Determination, are relatively brief.

10. Mr. Qu filed a complaint alleging STP had contravened the *ESA* by failing to pay him all wages owed under the *ESA*. A delegate of the Director of Employment Standards investigated the complaint, and on March 25, 2022, the deciding Delegate issued a determination (the “corporate determination”), finding STP was liable to Mr. Qu for wages, including interest, in the amount of \$2,080.42. The Director also imposed administrative penalties on STP in the amount of \$1,500.00.

11. The corporate determination, which included a notice to directors and officers explaining their personal liability under the *ESA*, was delivered to the address for STP, with a copy to Mr. Fang.

12. An appeal of the corporate determination has been filed and dismissed: see *STP Canada Enterprises Ltd.*, 2022 BCEST 40.

13. The record shows searches were conducted of the BC Online Registry of Companies on March 9, 2021, and March 17, 2022, which showed:

- STP was incorporated on October 11, 2018.
- Mr. Fang was named as the sole director.

14. Based on the information acquired and the findings made, the deciding Delegate concluded Mr. Fang was a director of STP during the period which Mr. Qu’s wages were earned or should have been paid and was, accordingly, liable under section 96 of the *ESA* for the amount set out in the Determination. Mr. Fang was not found liable for the administrative penalties imposed on STP.

ARGUMENTS

15. Mr. Fang has raised the same ground of appeal and has made the same arguments as were made by STP in its appeal of the corporate determination.

ANALYSIS

16. The grounds of appeal are statutorily limited to those found in subsection 112(1) of the *ESA*, which says:

- 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.

17. The complete answer to this appeal lies in the well-established principle that a person challenging a determination issued under section 96 is limited to arguing those issues which arise under that provision: whether the person was a director or officer when the wages were earned or should have been paid; whether the amount of the liability imposed is within the limits for which a director or officer may be found personally liable; and whether circumstances exist that would relieve the director or officer from personal liability under section 96(2) of the *ESA*, which reads:

- (2) Despite subsection (1), a person who was a director or an officer of a corporation is not personally liable for
- (a) any liability to an employee under section 63, termination pay or money payable in respect of individual or group terminations, if the corporation
 - (i) is in receivership, or
 - (ii) is subject to action under section 427 of the *Bank Act* (Canada) or to a proceeding under an insolvency Act,
 - ...
 - (c) vacation pay that becomes payable after the director or officer ceases to hold office, or
 - (d) money that remains in an employee's time bank after the director or officer ceases to hold office.

18. The appeal by Mr. Fang does not argue any of those issues. The focus of his appeal is the corporate determination. Mr. Fang, as a director of a corporation, is precluded from raising and arguing the corporate liability in an appeal of a section 96 determination. The right to appeal and raise arguments against the corporate determination belongs to the corporation and as indicated, an appeal by the corporation has been filed and dismissed.

19. Mr. Fang has raised the ground of appeal set out in section 112(1) (c).
20. The Tribunal has a discretion to accept new or additional material presented with an appeal as evidence and such evidence is tested against several considerations before the Tribunal will accept it: see *Davies and others (Merilus Technologies Inc.)*, BC EST #D171/03.
21. In this case, however, Mr. Fang has presented no material with the appeal relative to the matters that can be raised in respect of a challenge to a determination issued under section 96 of the *ESA* and which might be scrutinized under this ground.
22. There is nothing in the appeal that shows the deciding Delegate made an error in the Determination. The material in the record confirms Mr. Fang was a director of STP during the time wages were earned or should have been paid to Mr. Qu, that the liability imposed on him is within the limits for which a director may be found personally liable under section 96, and there are no circumstances that would relieve Mr. Fang personal liability under the *ESA*.
23. Based on all of the above, I find this appeal has no reasonable prospect of succeeding. The purposes and objects of the *ESA* are not served by requiring the other parties to respond to it. The appeal is dismissed under section 114(1) (f) of the *ESA*.

ORDER

24. Pursuant to section 115 of the *ESA*, I order the Determination dated March 25, 2022, be confirmed in the amount of \$978.41, together with any interest that has accrued under section 88 of the *ESA*.

David B. Stevenson
Member
Employment Standards Tribunal