

Citation: Globalwide Capital Management Corporation (Re)
2023 BCEST 98

EMPLOYMENT STANDARDS TRIBUNAL

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

- by -

Globalwide Capital Management Corporation
("Globalwide")

- of a Determination issued by -

The Director of Employment Standards

PANEL: David B. Stevenson

FILE No.: 202/089

DATE OF DECISION: November 9, 2023

DECISION

SUBMISSIONS

Richard Liu	on behalf of Globalwide Capital Management Corporation
Victor Goegan	on his own behalf
Stephanie Zegarac	delegate of the Director of Employment Standards

OVERVIEW

1. This decision addresses an appeal filed under section 112 of the *Employment Standards Act* (“ESA”) by Globalwide Capital Management Corporation (“Globalwide”) of a determination issued by Jennifer Redekop, a delegate (“deciding Delegate” of the Director of Employment Standards (“Director”)), on June 2, 2023 (“Determination”).
2. The Determination found 1189764 B.C. Ltd. carrying on business as Globalwide Capital Management Corporation (“Employer”) had contravened Part 3, section 18, of the *ESA* in respect of the employment of Victor Goegan (“Mr. Goegan”) and ordered the Employer to pay Mr. Goegan the amount of \$21,949.10, an amount that included interest under section 88 of the *ESA*, and to pay an administrative penalty in the amount of \$500.00. The total amount of the Determination is \$22,449.10.
3. Globalwide has appealed the Determination on the grounds the Director committed an error of law and failed to observe principles of natural justice in making the Determination.
4. 1189764 B.C. Ltd. has not appealed its liability under the Determination being addressed in this appeal. The sole question in this appeal is whether Globalwide should have been identified as it was in the Determination and, as a logical consequence, assessed a liability under it.
5. In addition to the Determination under appeal here, a director/officer Determination has also been issued against the director of record of 1189764 B.C. Ltd., Stanley Kong Soon Lai (“Mr. Lai”). That determination has not been appealed.
6. In correspondence dated July 13, 2023, the Tribunal, among other things, acknowledged having received the appeal, requested the section 112(5) record (“record”) from the Director, requested submissions on information disclosure, and notified the other parties that submissions on the merits of the appeal were not being sought at that time.
7. The record has been provided to the Tribunal by the Director and a copy has been delivered to each of the parties, who have been provided with the opportunity to object to the completeness of the record.
8. No objection to the completeness of the record has been received and, for the purposes of this appeal, I accept it as being complete.

9. My review of the submission received with the appeal, the record and the Determination indicated there was sufficient presumptive merit to the appeal to warrant seeking further submissions from the parties.
10. In correspondence dated September 19, 2023, the Tribunal invited the Director, 1189764 B.C. Ltd. and Mr. Goegan to make submissions on the merits of the appeal.
11. The Tribunal received a submission from each of the Director and Mr. Goegan. The Tribunal received no response from 1189764 B.C. Ltd.
12. In correspondence dated October 5, 2023, the submissions were provided to Globalwide, who was invited to respond to those submissions. The Tribunal has received no further submission from Globalwide.

ISSUES

13. The issue in this appeal is whether Globalwide has shown errors in the Determination on any of the grounds of appeal listed in section 112 of the *ESA*.

THE DETERMINATION

14. Mr. Goegan filed a complaint under the *ESA* on June 30, 2021, alleging 1189764 B.C. Ltd. had failed to pay him wages he was owed. Notwithstanding the information set out in the Introduction section of the Determination, which states Mr. Goegan's complaint alleged "1189764 B.C. Ltd. carrying on business as Globalwide Capital Management Corporation (the Employer) had contravened the *Act* by failing to pay wages", the complaint filed by Mr. Goegan contained no reference to Globalwide Capital Management Corporation or any assertion that entity was involved in his employment.
15. The Determination states the Employer operates a property management business. Mr. Goegan was employed as a custodian on a property in Prince George, B.C. from December 3, 2018 to July 6, 2022.
16. The claim made in the June 30, 2021 complaint was satisfied, but during the investigation, Mr. Goegan advised that he had not been paid wages for a period from November 16, 2021 to July 6, 2022 and claimed wages for that period. This claim was included in the original complaint.
17. The complaint was investigated by two delegates of the Director ("investigating Delegates"), one of whom produced an "Investigation Report" ("Report").
18. The Report, which is dated March 1, 2023, was sent to the registered and records office of 1189764 B.C. Ltd. and to Mr. Lai. The report included a "Notice to Directors/Officers" advising of the potential for the imposition of personal liability on a director/officer of a corporate employer under sections 96 and 98 of the *ESA*.
19. The Determination indicates the deciding Delegate conducted a review of "all the information on file" when making the Determination.
20. The Determination identifies Globalwide as an entity under which 1189764 B.C. Ltd. was "carrying on business", but contains no examination of the nature of the relationship between 1189764 B.C. Ltd. and

Globalwide or provide a legal and/or an evidentiary basis for the decision to identify the Employer as “1189764 B.C. Ltd. carrying on business as Globalwide Capital Management Corporation.”

21. As part of the background information, the deciding Delegate noted there was agreement among the parties that Mr. Goegan was owed wages in the amount of \$20,912.00. Based primarily on that information, which was also contained in a draft Settlement Agreement between 1189764 B.C. Ltd. and Mr. Goegan, the deciding Delegate found Mr. Goegan was owed wages in the amount stated in the Determination.
22. An administrative penalty of \$500.00 was imposed.

ARGUMENTS

23. Globalwide asserts the deciding Delegate erred by identifying Globalwide as an entity through which 1189764 B.C. Ltd. is carrying on business. Their argument is fully expressed in the following part of the appeal submission:

The Director erred in law and fact in that 118 [“1189764 B.C. Ltd.”] and Globalwide are not associated companies. Globalwide has a different owner and director to 118 and Globalwide has never been involved in the business of 118 and does not carry on business on behalf of 118. Globalwide has no direct or indirect interest in 118 or the property owned by 118 and 118 has direct or indirect interest in Globalwide. They are two unrelated companies. Globalwide has lent money to the wife of the principal of 118 secured by a mortgage of the property owned by 118.
24. The appeal submission attaches a corporate summary and share registry for Globalwide. I will note here that this information is evidence that was not before the Director when the Determination was being made and falls within the ground of appeal set out in section 112(1) (c). Globalwide’s appeal does not identify that ground and this omission shall be addressed later in this decision.
25. The appeal submission does not specifically address the natural justice ground of appeal, but an assessment of the record and an examination of the Determination demonstrate clearly the basis for this appeal, which includes the absence of any legal or evidentiary basis for concluding Globalwide is an entity through which 1189764 B.C. Ltd. is carrying on business, a failure to adequately investigate what relationship might exist between the two entities, a failure to determine the identity of Globalwide, and a failure to provide Globalwide and its director with either notice of the complaint or an opportunity to be heard on it.
26. The Director and Mr. Goegan have each filed a response to the appeal. 1189764 B.C. Ltd. has not responded.
27. The Director says it has no objection to Globalwide’s appeal submission, requesting only that “the style of cause be varied” to take into account the absence of any objection and “that the decision remain otherwise enforceable against 1189764 B.C. Ltd.”
28. The response of Mr. Goegan asserts his contention that the appeal “should not absolve the registered owners [presumably the owners of the property on which he performed work] from their financial responsibilities and obligations” and records his belief that Globalwide and 1189764 B.C. Ltd. are

somehow “intertwined.” He has included some documents – a letter dated December 12, 2018 notifying tenants of the Maple Park Shopping Centre of a transfer in ownership to 1189764 B.C. Ltd. and a business card for an individual working for an investment company located in Kamloops BC – with his submission.

29. Globalwide has been afforded the opportunity to reply to the responses of Mr. Goegan and the Director but has not provided one.

ANALYSIS

30. 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.*

31. An appeal is not simply another opportunity to argue the merits of a claim to another decision maker. An appeal is an error correction process, with the burden in an appeal being on the appellant to persuade the Tribunal there is an error in the determination under one of the statutory grounds.

32. There must be demonstration of an error in a determination on one of the statutory grounds as a condition of the exercise of my authority under section 115(1) of the *ESA*.

33. In respect of the merits of the appeal, I shall first address the matter of the evidence provided by Globalwide in the appeal submission and by Mr. Goegan in his reply to the appeal.

34. Even though Globalwide has not raised the new evidence ground of appeal in the Appeal Form, I find it is appropriate to address whether there is any reason why the Tribunal might consider this appeal under that ground. The Tribunal has not considered itself bound by the chosen grounds on the Appeal Form, but has opted to take a liberal reading of the reasons for the appeal, which directs that the Tribunal should inquire into the nature of the challenge to the determination (or the process that led to it being issued) and then determine whether that challenge, on its face, invokes one of the statutory grounds. see *Triple S Transmission Inc. o/a Superior Transmission*, BC EST # D141/03.

35. The evidence submitted by Globalwide comprises a copy of a BC Registry Services company summary and the share registry for Globalwide. The information shows an incorporation date for Globalwide of June 4, 2018, a listing of the registered and records office at an address on West Broadway in Vancouver, the identity and address of a sole director (which is not Mr. Lai), and the shareholdings for Globalwide that lists only one person (not Mr. Lai) as sole shareholder.

36. As suggested above, this evidence is what would be characterized as ‘new’ evidence and I reiterate that the new evidence ground of appeal was not specifically indicated in the Appeal Form.

37. The evidence submitted by Mr. Goegan on reply and described above is also new evidence.
38. The Tribunal has discretion to accept or refuse new evidence. When considering an appeal based on this ground, the Tribunal has taken a relatively strict approach to the exercise of this discretion and tests the proposed evidence against several considerations, including whether such evidence was reasonably available and could have been provided during the complaint process, whether the evidence is relevant to a material issue arising from the complaint, whether it is credible, in the sense that it be reasonably capable of belief, and whether it is probative, in the sense of being capable of resulting in a different conclusion than what is found in the determination: see *Davies and others (Merilus Technologies Inc.)*, BC EST # D171/03.
39. New evidence which does not satisfy any of these conditions will rarely be accepted. This ground of appeal is not intended to give a person dissatisfied with the result of a determination the opportunity to submit evidence that, in the circumstances, should have been provided to the Director before the determination was made. The approach of the Tribunal is grounded in the statutory purposes and objectives of fairness, finality and efficiency: see section 2(b) and (d) of the *ESA*.
40. First, relating to the documents provided by Globalwide, I find that, while the documents are not “new”, it is not reasonable to find they ought to have been provided during the complaint process.
41. The Investigation Report makes no mention of Globalwide; the Investigation Report was sent only to 1189764 B.C. Ltd. and Mr. Lai. The complaint made by Mr. Goegan does not assert he was employed by Globalwide. All of the employment information provided by him identifies 1189764 B.C. Ltd. as his employer. The only mention made by him of Globalwide being an employer is in the following excerpt found at page 38 of the record in an email sent by him on August 21, 2022 to one of the investigating Delegates:
- PS it appears that Maple Park Mall where I was employed by Globalwide Capital Management Corporation has been sold. I will confirm this as information surfaces.
42. The response, also on page 38 of the record, from the investing Delegate includes the following:
- I have saved the information from your two emails to your file.
- It will be available to a delegate to look at as one has been assigned to your case.
43. There is nothing in the file indicating any delegate of the Director inquired about whether there was any relationship between 1189764 B.C. Ltd. and Globalwide that would support a conclusion that Globalwide was a vehicle through which 1189764 B.C. Ltd. carried on business. That is a significant deficiency in the complaint process where there is no apparent legal or factual basis for identifying Globalwide as a vehicle through which 1189764 B.C. Ltd. carried on its business.
44. It is both fair and reasonable that Globalwide should have the opportunity to address the presumption made as to the identity of the Employer.
45. The evidence provided is relevant to a material issue. On its face, it shows what the appeal asserts – that 1189764 B.C. Ltd. and Globalwide have different directors and owners and are not related.

46. I find the evidence is credible and probative.
47. In sum, I find no reason to refuse this evidence and I exercise my discretion to accept the documents submitted by Globalwide with the appeal and to give them effect.
48. My view of the documents provided by Mr. Goegan is slightly different. I also accept it would not be reasonable to find they ought to have been provided during the complaint process. The course of the investigative aspect of that process does not allow for such a conclusion.
49. However, I do not find the material provided by Mr. Goegan to be relevant or probative. It does not indicate Globalwide was a vehicle through which 1189764 B.C. Ltd. carried on business. Consequently, I do not accept it for the purposes of this appeal.
50. Based on my acceptance of the evidence provided and my review of the record and Determination, I find the appeal filed by Globalwide must succeed.
51. There are no factual findings, and no evidence, to support a conclusion that Globalwide is a vehicle through which 1189764 B.C. Ltd. carries on business. The absence of factual findings, among other things, negates the basis for a legal finding that Globalwide should be identified as an employer. The Determination contains no reasons for a conclusion that 1189764 B.C. Ltd. and Globalwide are related in a way that makes both, and their directors/officers, potentially responsible for wages under the *ESA*. All of these deficiencies are errors of law.
52. In respect of the natural justice elements of the appeal, I note first that neither Globalwide nor its listed director were given the notice required by section 77 of the *ESA*, which is a codification of one element of natural justice, and the complaint process was conducted by the delegates involved completely outside the principles of natural justice, with neither Globalwide nor its listed director being provided with the procedural rights demanded in the circumstances: the opportunity to know the case against them; the right to present their evidence; and the right to be heard by an independent decision maker.
53. The appeal succeeds. Globalwide should not have been identified as Mr. Goegan's employer in the Determination. The Determination will be varied to effect that conclusion.
54. I will make one further note; this decision is not determinative of whether 1189764 B.C. Ltd. and Globalwide might be associated as one employer under section 95 of the *ESA*, which is placed in the Enforcement part of the *ESA*. This decision is based only on the facts in the record of this appeal and addresses only whether it was correct to identify the Employer as including Globalwide.

ORDER

55. Pursuant to section 115(1) of the *ESA*, I order the Determination dated June 2, 2023 be varied to remove reference to Globalwide Capital Management Corporation as an employer or an entity through which 1189764 B.C. Ltd. carries on business. The Determination is otherwise confirmed against 1189764 B.C. Ltd. in the amount of \$22,449.10, together with any interest that has accrued under section 88 of the *ESA*.

David B. Stevenson
Member
Employment Standards Tribunal