

An appeal

- by -

Greg Charanduk
a Director of Sobil Media Enterprises Inc.
("Mr. Charanduk")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

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

TRIBUNAL MEMBER: David B. Stevenson

FILE No.: 2015A/158

DATE OF DECISION: January 18, 2016

DECISION

SUBMISSIONS

Greg Charanduk on his own behalf as a Director of Sobil Media Enterprises Inc.

OVERVIEW

1. Pursuant to section 112 of the *Employment Standards Act* (the “*Act*”), Greg Charanduk, a Director of Sobil Media Enterprises Inc. (“Mr. Charanduk”), has filed an appeal of a Determination issued by a delegate of the Director of Employment Standards (the “Director”) on November 26, 2014.
2. The Determination found Mr. Charanduk was a director of Sobil Media Enterprises Inc. (“Sobil Media”), an employer found to have contravened provisions of the *Act*, at the time wages were earned or should have been paid to Ron Nial (“Mr. Nial”) and as such was personally liable under section 96 of the *Act* for wages in the amount of \$5,283.88.
3. This appeal is grounded in evidence becoming available that was not available when the Determination was being made. Mr. Charanduk seeks to have the Determination cancelled. The appeal was filed with an appeal of a Determination issued against Sobil Media.
4. This appeal was received by the Tribunal on November 26, 2015 – approximately 10½ months after the statutory time limit for filing an appeal expired. Mr. Charanduk seeks an extension of the appeal period.
5. In correspondence dated December 1, 2015, the Tribunal notified the parties, among other things, that no submissions were being sought from any other party pending a review of the appeal by the Tribunal and, following such review, all or part of the appeal might be dismissed.
6. The section 112(5) record (the “record”) has been provided to the Tribunal by the Director and a copy has been delivered to Mr. Charanduk. He has 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.
7. I have decided this appeal is appropriate for consideration under section 114 of the *Act*. 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 by the Tribunal to be added to the record. 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 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.*

8. If satisfied the appeal or a part of it has some presumptive merit and should not be dismissed under section 114(1) of the *Act*, the Director and Mr. Nial 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 the time limit for filing an appeal should be extended and if there is any reasonable prospect the appeal can succeed.

ISSUE

9. The issue at this stage of the proceeding is whether the appeal should be dismissed under section 114 of the *Act*.

THE FACTS

10. The facts relating to this appeal are brief.
11. Mr. Nial filed a complaint alleging Sobil Media had contravened the *Act* by failing to pay him all wages owed. The Director investigated the complaint and, on July 25, 2014, issued a Determination against Sobil Media (the “corporate determination”) which found Sobil Media liable for wages to Mr. Nial in the amount of \$5,206.95. The Director also imposed administrative penalties on Sobil Media in the amount of \$1,500.00.
12. The Determination was sent to Mr. Charanduk by registered mail to the address recorded for Mr. Charanduk in the corporate records of Sobil Media and to which other correspondence sent by the Director had successfully been delivered. A copy was also sent to Sobil Media at their head office and business address.
13. The appeal by Sobil Media of the corporate determination has been dismissed: see *Sobil Media Enterprises Inc.*, BC EST # D011/16.
14. A BC On-line: Registrar of Companies corporate search conducted by the Director on June 10, 2013, indicated Sobil Media was incorporated on May 14, 2013, and Mr. Charanduk was listed as the sole director. The search confirmed Mr. Charanduk was a director of Sobil Media during the period Mr. Nial’s wages were earned or should have been paid.
15. Based on the information acquired and the findings made, the Director concluded Mr. Charanduk was liable under section 96 of the *Act* for the amount set out in the Determination. Mr. Charanduk was not found liable for the administrative penalties imposed on Sobil Media.

ARGUMENT

16. The appeal does not directly address Mr. Charanduk’s personal liability as a director of Sobil Media under section 96 of the *Act*, but rather makes the identical arguments that were made in the appeal of the corporate determination. For the reasons set out later in this decision, it is unnecessary to address those arguments in this appeal.

17. Mr. Charanduk does not challenge the Director's finding that he was a director of Sobil Media when the wages of Mr. Nial were earned or should have been paid; nor does he argue the amount found owing to Mr. Nial exceeds the limit for personal liability of a corporate director under section 96 of the *Act*, or that the circumstances described in section 96(2) apply to relieve him from personal liability.

ANALYSIS

18. The grounds of appeal are statutorily limited to those found in subsection 112(1) of the *Act*, 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.*

19. There are three reasons why this appeal must be dismissed. The first relates to the effect of the decision of the corporate determination. The second relates to the allowable scope of an appeal of a Determination issued under section 96 of the *Act*. The first two reasons are related. The third is based on my view of the failure to file this appeal within the statutory time limit set out in section 112 of the *Act*.

20. On the first matter, I have already noted this appeal is a mirror of the corporate determination. That Determination has been dismissed.

21. Second, a person challenging a determination issued under section 96 of the *Act* is limited to arguing those issues which arise under that provision: whether the person was a director and/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/officer may be found personally liable; and whether circumstances exist that would relieve the director/officer from personal liability under section 96(2) of the *Act*. The director/officer is precluded from arguing the corporate liability: see *Kerry Steinemann Director/Officer of Pacific Western Vinyl Windows & Doors Ltd.*, BC EST # D180/96.

22. In other words, Mr. Charanduk is bound by the Determination made against Sobil Media and the result of the appeal of the corporate determination.

23. The above reasons are sufficient to dismiss this appeal under section 114 of the *Act*.

24. While not required in order to dispose of this appeal, I would not in any event accede to the request to extend the time for filing this appeal. I adopt the same reasoning on the request for an extension here as I did in the extension requested in the appeal of the corporate determination: there is no credible and reasonable explanation for the delay and, in any event, there is no possibility this appeal can succeed.

ORDER

25. Pursuant to section 115 of the *Act*, I order the Determination dated November 26, 2014, be confirmed in the amount of \$5,283.88 together with any interest that has accrued under section 88 of the *Act*.

David B. Stevenson
Member
Employment Standards Tribunal