

**EMPLOYMENT STANDARDS TRIBUNAL**

In the matter of an appeal pursuant to Section 112 of the

*Employment Standards Act S.B.C. 1995, C. 38*

- by -

510321 B.C. Ltd. Operating Special Screencraft Printers Ltd.  
("Special Screencraft Printers Ltd.")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Niki Buchan

**FILE NO.:** 96/656

**DATE OF DECISION:** January 7, 1997

**DECISION**

**OVERVIEW**

This is an appeal by 5110321 B.C. Operating Special Screencraft Printers Ltd. (“Special Screencraft Printers Ltd.”) pursuant to Section 112 of the *Employment Standards Act* (the “Act”) against Determination No. CDET 004370 issued by a delegate of the Director of Employment Standards on October 18, 1996. In this appeal Special Screencraft Printers Ltd. claims that no compensation for length of service and vacation pay is owed to Christopher S. Mound arising from employment prior to its purchase of the company on January 5, 1995.

I have completed my review of the information provided by the parties on this appeal and have decided to confirm the Determination.

**ISSUE TO BE DECIDED**

The issue to be decided in this appeal is whether Mr. Mound is owed compensation for length of service and vacation pay by Special Screencraft Printers Ltd.

**FACTS**

Mr. Mound was hired as a screen printer by Screencraft Printing Ltd. on January 30, 1990. In the fall of 1993, the business was sold to John Ziros, who registered the business as Amazon Marketing Inc.. Mr. Mound’s employment was continuous through this change.

On about January 5, 1996 the business was sold by John Ziros to Michael Ee. The agreement of sale describes it as being a purchase of assets. One of the agreed terms of sale states that “the Seller is responsible for all payables, receivable, employee wages, benefits, taxes, workers compensation, and insurance up to January 5, 1996 at 5:00 P.M.”. It further states that “the seller was to dismiss all staff/employees by completion and that the buyer could rehire such employees as the buyer deemed fit”. The appellant claims that Mr. Mound was given a Record of Employment by Mr. John Ziros and was required by Mr. Michael Ee to fill in an application for employment.

Mr. Mound submits that any intentions concerning his termination were not made clear until he was asked to leave on the same day his position was eliminated on May 15, 1996. There was never

any discussions about being dismissed or rehired during the change of ownership. He claims that the employment records given to him by John Ziros were explained as being strictly a routine procedure since he was leaving and would no longer be the owner. He does not recall filling out an application for employment. He was requested to write out his name, address and phone number, which he did. It was explained that this was just for the record.

Mr. Mound continued working for the new owner at the same job and rate of pay until his termination on May 15, 1996. On termination of his position Mr. Mound was paid compensation for one week length of service and 4% vacation pay.

## ARGUMENTS

Special Screencraft Ltd. denies that it owes compensation for the period Mr. Mound worked for the previous owners. It concedes that his employment was uninterrupted and essentially unchanged by the sale. It argues that Section 97 does not apply to the situation where the prior employer specifically terminates the employee, and the employee then specifically applies for employment with the new employer.

Mr. Mound claims his employment was continuous from January 30, 1990 until his termination on May 15, 1996 and Special Screencraft Ltd. is responsible for paying him 6 weeks compensation for length of service and vacation pay of 6%.

## ANALYSIS

Section 97 of the *Act* reads as follows:

Sale of business or assets

97. If all or part of a business or a substantial part of the entire assets of a business is disposed of, the employment of an employee of the business is deemed, for the purposes of this *Act*, to be continuous and uninterrupted by the disposition

The leading case in British Columbia on the interpretation of this section is **Helping Hands Agency Ltd. v. British Columbia Director of Employment Standards** 96 C.L.L.C. 210-009 (B.C.C.A.) In that case the Court of Appeal allowed the appeal from the decision of Lander J. (reported at 90 B.C.R. (2d) 125) and held that the purchaser of a substantial part of the entire assets of the vendor company was responsible for payment of outstanding vacation pay accrued while the employees worked for the vendor company. The Court of Appeal noted that the general

purpose of the *Act* is to afford protection to employees for the payment of their wages that may not be available to them at common law. The Court found that the preconditions to the application of Section 96 in the old *Act* (now Section 97 in the new *Act*) had been met in that there had been a sale of business and the employees had been employed by the purchaser. The results that flow from these preconditions are that, for the purposes of the *Act*, the employment of the employee is not terminated by the sale and it is deemed to be continuous and uninterrupted by the sale with the effect that the purchaser is responsible for payment of vacation pay accrued during employment with the former employer.

That case was analyzed and followed by the adjudicator in **Columbia Recycle Ltd.** BC EST #D070/96. The issue in Columbia Recycle Ltd. was whether the employee was owed compensation for length of service. The facts are similar to those in this appeal in that the purchase was pursuant to a sale of assets and under that agreement the vendor would remain responsible for any liabilities with respect to its employees prior to the termination of the employees at the date of sale. The employee there was given notice of termination by the vendor company but continued to work at Columbia past the termination notice period for approximately 4 months before being terminated by Columbia Recycle. The adjudicator found that the preconditions to the operation of Section 97 had been met in that there was a sale of business. The employee's employment was continuous and uninterrupted by the sale therefore any and all of the rights and benefits provided by the *Act* became the responsibility of the purchaser. Columbia Recycle was therefore responsible for payment of compensation for length of service to the employee.

The issue before me in this appeal is whether Special Screencraft Printers Ltd. is solely responsible for the payment of compensation to Mr. Mound. Applying the Court of Appeal's reasoning in **Helping Hands** and the adjudicators reasoning in **Columbia Recycle** I find that Special Screencraft Printers Ltd. is responsible for compensation for length of service and vacation pay as set out in Determination No. CDET 004370. The preconditions to the operation of Section 97 have been met in that there was a sale of assets of a business and Mr. Mound was employed by the purchaser continuously without interruption by the sale. Once he began work for the purchasing employer he was entitled to compensation or notice in lieu of compensation based on the original starting date with the previous owner or owners. Mr. Mound has accrued continuous employment from January 30, 1990 to May 15, 1996 therefore he is entitled to compensation set out in the Determination.

## **ORDER**

Pursuant to Section 115 of the *Act* I order that Determination No. CDET 004370 be confirmed.

---

Niki Buchan  
Adjudicator  
Employment Standards Tribunal