

EMPLOYMENT STANDARDS TRIBUNAL

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

Employment Standards Act, R.S.B.C. 1996, c. 113

-by-

SSC Industries Ltd.

(“SSC”)

- of a Determination issued by -

The Director of Employment Standards

(the “Director”)

ADJUDICATOR: Kenneth Wm. Thornicroft

FILE No.: 97/713

DATE OF HEARING: December 10th, 1997

DATE OF DECISION: January 28th, 1998

DECISION

APPEARANCES

Ronald Busch &
Christopher Prince for SSC Industries

Dean Schubert)
Patrick Lee)
Kevin Charles) on their own behalf (“former employees”)
Raymond Aldana)
Yanka Loh)

Lesley A. Christensen for the Director of Employment Standards

OVERVIEW

This is an appeal filed by Ronald Busch on behalf of SSC Industries Ltd. (“SSC”) pursuant to section 112 of the *Employment Standards Act* (the “Act”) from Determination No. CDET 006823 issued by the Director of Employment Standards (the “Director”) on September 5th, 1997 (the “Determination”). The Director determined, *inter alia*, that SSC was obligated to pay the sum of \$75,454.17 on account of unpaid wages owed to twelve former employees of Ron Busch Construction Corporation (“RBCC”) and Busch Industries Ltd. (“BIL”). The Director determined that SCC was liable for the former employees wages claims by reason of section 95 of the *Act* (the “associated corporations” provision).

The appeal was heard at the Tribunal’s offices in Vancouver on December 10th, 1997.

ISSUE TO BE DECIDED

Mr. Busch, an officer, director and shareholder of SSC, advised that the only issue before me was the correctness of the section 95 determination as it related to SSC. Mr. Busch, on behalf of SSC, does not dispute the Director’s determination as to the amount of unpaid wages owed to the former employees.

FACTS AND ANALYSIS

Section 95 of the *Act* provides as follows:

Associated corporations

95. If the director considers that businesses, trades or undertakings are carried on by or through more than one corporation, individual, firm, syndicate or association, or any combination of them under common control or direction,

(a) the director may treat the corporations, individuals, firms, syndicates or associations, or any combination of them, as one person for the purposes of this Act, and

b) if so, they are jointly and separately liable for payment of the amount stated in a determination or in an order of the tribunal, and this Act applies to the recovery of that amount from any or all of them.

As noted above, the Director determined that SSC was “associated” with RBCC and/or BIL relying on several points including the common nature of the businesses (cabinetry and countertops) and the prominent role played by Ron Busch in all three firms.

Ron Busch’s evidence is that SSC was established some ten years ago (approximately 1988) to work as a supplier/installer in what was then a new business, namely, “solid surface” countertops (used in both residential and commercial construction). Mr. Busch contacted an old acquaintance, Christopher Prince, and in due course SSC was incorporated with four shareholders (Busch, Prince and their respective spouses) with Busch serving as president and Prince as secretary of the company; Busch and Prince were elected, and remain, the only two directors of SSC. Busch characterized his role in SSC as being primarily an “investor” although he was “on-call” for consultation regarding SSC business. Busch put up the necessary initial operating capital for SSC while Prince would be responsible for day-to-day management.

As noted above, the Director held that SSC, RBCC and BIL were “associated corporations” under section 95 of the *Act*. Busch’s evidence is that he is the sole officer/director/shareholder of RBCC a millwork/cabinetry firm that was incorporated in 1981, several years prior to the incorporation of SSC. Busch advised that RBCC is now “insolvent”; that its annual reports are in arrears; and that he has no intention of filing any of the reports that are in arrears. One can expect that, in due course, if this situation continues, RBCC will be struck off the provincial register of companies.

Busch caused BIL to be incorporated in 1991 with the intention that this firm would undertake primarily residential and commercial millwork projects. BIL is now, for all practical purposes, a defunct company although it may not have yet been struck from the provincial register of companies. Busch also testified that a third firm, Ron Busch Holdings Ltd. was also incorporated to serve as a “holding company” of the shares of RBCC and BIL but I am advised by the Director’s

delegate that the “holding company” does not now appear on the provincial register of companies; Busch himself characterized this latter holding company as an “inactive shell company”.

The testimony of Busch and Prince was to the following effect:

- SSC at various points has operated out of premises formerly occupied by one or the other of RBCC or BIL; at other times, the two firms have been located in the same complex albeit in separate, but closely proximate, locations;
- More recently, the two firms had separate premises in the same building complex and both Busch and Prince had access to the premises occupied by both firms;
- Commencing in September 1994, SSC and RBCC shared a common secretary/bookkeeper whose compensation was shared between the two firms (this person’s office--and many SSC records--was located in RBCC’s premises although Prince had unfettered access to this office);
- SSC sometimes acquired materials from RBCC inventory although SSC was invoiced for such materials;
- On at least one occasion, an SSC cheque was used to pay for materials that were ordered and used by RBCC and/or BIL
- On occasion, RBCC subcontracted work to SSC;
- on occasion at particular job-sites where both RBCC and SSC were contractors, there was a sharing of the services of personnel between the two companies as well as the sharing of equipment between the two firms;
- Busch is one of three authorized signatory on the SSC bank account (the other two being Prince and his wife);
- when RBCC closed down its operations (then located on Annicis Island) in July 1997, certain tools and equipment were transferred from the RBCC location to the plant location of SSC (I might parenthetically add that Busch and Prince testified that this equipment was properly transferred to the SSC plant location because SSC held some sort of property interest in this equipment--there is no registered or written security agreement in place with respect to this particular transaction);
- Busch also testified that some three years ago he personally loaned SSC the sum of \$50,000 which loan has been substantially repaid (these monies are separate and apart from the initial \$45,000 that was provided by Busch as SSC’s “start-up capital”).

CONCLUSION

In light of the foregoing testimony of Busch and Prince, I am satisfied that the Director properly determined that SSC, RBCC and BIL were “associated corporations” under section 95 of the *Act*. Although Bush and Prince endeavoured to keep the firms separate for accounting purposes, I am entirely satisfied that the firms were under the common direction and control of Busch. Although Busch attempted to portray his role in SSC as a limited one I cannot accept that to be the case--he was the moving force in the original incorporation of SSC; he provided all the start-up and a substantial amount of the other operating capital utilized by SSC; firms that he controlled shared personnel and equipment with SSC and this “sharing” was not always properly accounted for; Busch exercised some managerial authority with respect to SSC’s business--a business that was closely connected to the business carried on by RBCC and BIL. When RBCC closed its doors, a significant amount of tools and equipment were transferred to SSC’s place of operations--a transfer that, on its face, given the total absence of any written security documentation confirming SSC’s proprietary interest, seems highly irregular. Finally, as further evidence of the control exercised by Busch over the business affairs of SSC, I note that SSC’s appeal was filed on its behalf by Busch and it was Busch who acted as SSC’s primary spokesperson on this appeal.

ORDER

Pursuant to section 115 of the *Act*, I order that Determination No. CDET 006823 be confirmed as issued in the amount of \$75,454.17 together with whatever further interest that may have accrued, pursuant to section 88 of the *Act*, since the date of issuance.

Kenneth Wm. Thornicroft
Adjudicator
Employment Standards Tribunal