

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 -

451846 B.C. Ltd.
(the "appellant")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: Kenneth Wm. Thornicroft

FILE No.: 1999/471

DATE OF DECISION: January 14, 2000

DECISION

OVERVIEW

This is an appeal brought by 451846 B.C. Ltd. (the “appellant”) pursuant to section 112 of the Employment Standards Act (the “Act”) from a Determination issued by a delegate of the Director of Employment Standards (the “Director”) on July 7th, 1999 under employer file numbers 086934 and 091189 (the “Determination”).

The Director’s delegate determined that 451846 B.C. Ltd. was “associated” (see section 95 of the Act) with C.T. Construction Ltd., Specialty Homes Inc. and C.T. Properties Ltd. and, accordingly, was jointly and separately liable with the latter three firms to pay \$17,471.14 in unpaid wages, a \$500 monetary penalty and interest.

THE DETERMINATION

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.

The Director’s delegate determined that 451846 B.C. Ltd. was “associated” with C.T. Construction Ltd., Specialty Homes Inc. and C.T. Properties Ltd. based on the following facts:

- Douglas Cunliffe is the president of all four firms;
- all four firms share the same business address;
- all four firms share the same telephone number, fax number, web-site and e-mail address; and
- all four firms are characterized as being part of the “C.T. Group” of companies whose business is the planning, construction and management of residential properties.

It should be noted that, consistent with section 77 of the Act, prior to issuing the Determination the delegate contacted Mr. Cunliffe in person and again by mail to request further particulars regarding the relationship between 451846 B.C. Ltd. and the other three firms. Despite being given an opportunity to make submissions to the delegate regarding the possible application of section 95 of the Act, Mr. Cunliffe chose not make any submission whatsoever. Thus, the delegate proceeded on the basis of the information available to him.

REASONS FOR APPEAL

In its “Reasons for Appeal”, Mr. Cunliffe, on behalf of 451846 B.C. Ltd., asserts that:

- the delegate erred both in law and in fact--the nature of these alleged errors is not particularized;
- “No demand for Information was issued in compliance with the statutory requirements of Section 122 of the Act...”;
- the delegate committed “transgressions” of the law--none of which are particularized;
- “the alleged Demand for Information upon which the Determination relies lacks any legal authority in the making thereof, and constitutes a breach of privacy at Law”;
- “No reasonable opportunity was given to respond to a Demand, either reasonable or otherwise, as expressly required by Section 77 of the Act”.

ISSUE ON APPEAL

The Director’s delegate submits that this appeal ought to be dismissed pursuant to section 114(1) of the Act because the appellant’s grounds of appeal are entirely without merit and because the appellant has not provided any credible evidence to support its position that the Determination ought to be cancelled.

ANALYSIS

I am of the opinion that the present appeal is, on its face, wholly without merit and thus ought to be dismissed.

I commence my analysis with the observation that the issue before me is whether or not the delegate correctly determined that 451846 B.C. Ltd. was “associated” with the other three firms. There is no issue regarding the other three firms’ liability--determinations were previously issued against all three firms (these determinations were either not appealed or, in one case, was confirmed on appeal after C.T. Construction failed to appear at the appeal hearing) and thus both the dollar amount in issue and the question as to whether or not the other three firms are

“associated” have now been finally determined. These two issues, namely, the quantum and the section 95 issue as it relates to the other three firms *inter se*--are now *res judicata*.

451846 B.C. Ltd. has not presented any evidence to the Tribunal which would suggest that it was not properly found to be associated with the other three firms. 451846 B.C. Ltd. was given an opportunity to make submissions regarding this latter question to the delegate but chose not to avail itself of that opportunity. As noted, I have no evidence from the appellant regarding the section 95 issue but had such evidence been presented, it may well have been ruled inadmissible in any event by reason of the *Tri-West Tractor/Kaiser Stables* exclusionary rule [see *Tri-West Tractor Ltd.* (B.C.E.S.T. No. D268/96) and *Kaiser Stables Ltd.* (B.C.E.S.T. No. D058/97)].

451846 B.C. Ltd. appears to be taking the position on appeal that the Determination is a nullity by reason of the various matters set out in the above-noted “reasons for appeal”. I shall briefly deal with each of these allegations.

First, there is nothing before me to suggest that the material “facts”, as found by the delegate, are incorrect. Nor am I of the view that the delegate, given those uncontradicted facts, erred in finding that 451846 B.C. Ltd. was “associated” with the other three firms. 451846 B.C. Ltd. was given a full and fair opportunity to make submissions on that very point during the course of the delegate’s investigation but did not do so. Similarly, it has not presented any evidence to the Tribunal which would suggest that a section 95 declaration is inappropriate.

Second, section 122 of the Act--which concerns the service of determinations and section 85 Demands--has absolutely no relevance here. Clearly, 451846 B.C. Ltd. was served with the Determination otherwise how could it have known to file an appeal? The Determination was properly served on 451846 B.C. Ltd. and that firm filed a timely appeal with the Tribunal.

Third, by way of a letter dated June 25th, 1999, the delegate wrote to Mr. Cunliffe--451846 B.C. Ltd.’s president and secretary--and requested certain information regarding the relationship between 451846 B.C. Ltd. and the other three firms. Not only did this request satisfy the requirements of section 77, but, in addition, the delegate was entitled to request this information in accordance with the provisions of section 85 of the Act. As previously noted, the delegate’s request for information was ignored; indeed, the evidence before me suggests that 451846 B.C. Ltd. was deliberately uncooperative.

Finally, I note that in his October 18th, 1999 written submission to the Tribunal Mr. Cunliffe, in a letter signed in his capacity as president of Specialty Homes Inc. (a party that does not have any status in this appeal), advanced quite a number of other allegations including unsupported allegations of criminality and other misconduct against the delegate, allegations regarding the current NDP government and undefined criticisms (“your legislation on its face is a travesty”) regarding the Act itself. I do not propose to address these wholly irrelevant matters.

ORDER

Pursuant to section 115 of the Act, I order that the Determination be confirmed as issued in the amount of **\$17,471.14** 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