

An appeal

- by -

Sarbjit Singh Dult a Director or Officer of Central Villa Sand & Gravel Ltd.
(“Dult”)

- 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: Kenneth Wm. Thornicroft

FILE No.: 2014A/35

DATE OF DECISION: May 27, 2014

DECISION

SUBMISSIONS

Parminder Brar

on behalf of Sarbjit Singh Dult a Director or Officer of
Central Villa Sand & Gravel Ltd.

INTRODUCTION

1. On July 12, 2013, a Determination was issued under section 79 of the *Employment Standards Act* (the “*Act*”) against Central Villa Sand & Gravel Ltd. (“Central Villa”) ordering it to pay its former employee, Rajvansh Gill (“Gill”), the sum of \$5,803.59 on account of unpaid wages and section 88 interest. This Determination also included two separate \$500 monetary penalties (see section 98) and thus the total amount payable under it was \$6,803.59. I shall refer to this Determination as the “Corporate Determination”.
2. The record before me shows that Central Villa, of which the current applicant Sarbjit Singh Dult (“Dult”) is the sole director and officer, is not in good standing with the Registrar of Companies and is “in the process of being dissolved” presumably for failing to file annual reports. The Director of Employment Standards was unable to collect the amount due to Mr. Gill and, accordingly, on September 10, 2013, issued the Determination now before me, namely, a Determination issued under section 96 of the *Act* against Mr. Dult in his capacity as Central Gravel’s sole officer and director (the “Section 96 Determination”).
3. Section 96 of the *Act* states that directors and officers of a corporation may be held liable for up to 2 months’ unpaid wages per employee provided the wages “were earned or should have been paid” when the person was serving as a director or officer. The Section 96 Determination orders Mr. Dult to pay Mr. Gill the total sum of \$5,829.19 on account of unpaid wages and section 88 interest. There is no dispute that Mr. Dult was a director and officer during the time frame when Mr. Gill’s wages should have been paid. While Central Villa disputes the amount of its unpaid wage liability, it does acknowledge some liability and says that “we still ready to issue him cheque” (*sic*).
4. The deadline for appealing the Section 96 Determination, namely, October 18, 2013, appears in a text box, along with other information regarding the appeal process, on the second page of the Section 96 Determination. Mr. Dult filed his appeal of the Section 96 Determination on March 24, 2014, along with an identical appeal relating to the Corporate Determination.
5. Mr. Dult’s appeal was filed after the appeal deadline, calculated in accordance with the deemed service provisions contained in section 122 of the *Act*, expired. In fact, Mr. Dult’s appeal was filed over five months after the appeal period expired and thus he now seeks an extension of the appeal period pursuant to subsection 109(1)(b) of the *Act*. I am issuing these reasons for decision based solely on the submissions filed on behalf of the applicant although, in addition, I have reviewed the record that was before the Director of Employment Standards when the Section 96 Determination was being made.
6. In reasons for decision that are being issued concurrently with these reasons, I refused to extend the appeal period concerning the appeal of the Corporate Determination (see *Central Villa*, BC EST # D041/14). For largely the same reasons, I am declining to exercise my statutory discretion to extend the appeal period relating to the Section 96 Determination.

FINDINGS AND ANALYSIS

7. The materials filed along with Mr. Dult's Appeal Form include a 7-paragraph memorandum headed "Reasons for Filing An Appeal After the Appeal Period Has Expired". The second paragraph of this memorandum states that Central Villa "received the determination by email on 06-Nov-2013 after the date of right to appeal". I assume this statement refers to the Corporate Determination (that was also served on Mr. Dult). However, neither Central Villa nor Mr. Dult has provided any explanation regarding why this appeal was filed more than 4 more months later.
8. I have reviewed the section 112(5) "record" and it shows that the Section 96 Determination was originally sent, by registered mail, to the address recorded in the B.C. Corporate Registry as Mr. Dult's address for delivery. This envelope was returned to the Employment Standards Branch as undeliverable because the addressee had "moved". All corporate directors and officers must ensure that their address for delivery is kept current in the B.C. Corporate Registry. I might add that prior to the issuance of the Section 96 Determination, the Employment Standards Branch made repeated efforts to inform both Central Villa and Mr. Dult about the fact of Mr. Gill's complaint and the ensuing adjudicative processes but it appears that neither Central Villa nor Mr. Dult were the least bit interested in communicating with the Employment Standards Branch about the matter.
9. The Tribunal has established a number of criteria that should be taken into account when considering an application to extend the appeal period including factors such as the length of the delay, the reason why the appeal was not filed in a timely fashion, whether the appellant can demonstrate a *bona fide* ongoing intention to appeal and has communicated this intention to the Director, the presumptive merit of the appeal and whether any other party would be prejudiced if the appeal period were extended. The burden of demonstrating that these criteria have been satisfied in any particular case lies on the applicant and extensions of the appeal period are only ordered only when there are compelling circumstances that favour granting the application.
10. The record before me suggests that Central Villa and Mr. Dult were seemingly determined to avoid having anything to do with this matter from the outset. Mr. Dult's delay in filing this appeal is significant – over 5 months – and he has not provided *any* explanation, let alone a credible explanation, for his failure to file a timely appeal. Central Villa's appeal has now been dismissed and the Corporate Determination thus stands as a final payment order. In this appeal, the only issue properly before the Tribunal at this juncture is whether or not Mr. Dult was a director and officer of Central Villa when Mr. Gill's unpaid wage claim crystallized and whether Mr. Dult's unpaid wage liability has been correctly determined. Mr. Dult does not dispute his status as a Central Villa director/officer and the record before me clearly shows that he was a Central Villa director and officer when Mr. Gill's unpaid wage claim crystallized. The amount of Mr. Gill's unpaid wage claim, as fixed in the Section 96 Determination, is clearly within the "2 months' unpaid wages" limit set out in subsection 96(1) of the *Act*. Thus, on its face, this appeal is clearly lacking in merit.
11. I am not satisfied that this application to extend the appeal period should be allowed particularly given the length of the delay, the absence of any explanation accounting for the failure to file a timely appeal and the fact that the appeal obviously lacks merit. Even if I were inclined to extend the appeal period, in my view, this appeal has no reasonable prospect of success.

ORDER

12. Mr. Dult's application for an extension of the appeal period is refused. Pursuant to subsections 114(1)(b) and (f) of the *Act*, this appeal is dismissed. Pursuant to section 115 of the *Act*, the Section 96 Determination is confirmed as issued in the amount of \$5,829.19 together with whatever further interest that has accrued under section 88 of the *Act* since the date of issuance.

Kenneth Wm. Thornicroft
Member
Employment Standards Tribunal