

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 -

David Douglas Beurling
a director / officer of
Imperial Art and Frame Ltd.
("Beurling")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Geoffrey Crampton

FILE NO.: 97/934

DATE OF DECISION: February 11, 1998

DECISION

OVERVIEW

This is an appeal by David Douglas Beurling, a director / officer of Imperial Art and Frame Ltd., under Section 112 of the *Employment Standards Act* (the “Act”) against a Determination which was issued on December 3, 1997 by a delegate of the Director of Employment Standards.

That Determination found Mr. Beurling liable to pay wages to Robert Wurtz in the amount of \$3,650.00. Mr. Beurling appeals on two grounds. Mr. Wurtz was not an employee of Imperial Art and Frame Ltd. and he (Beurling) was unaware of the Determination which was issued against Imperial Art and Frame Ltd. on June 26, 1997.

This Decision has been made following a review and analysis of the Determination and the parties’ written submissions.

FACTS

The Director’s delegate set out the following facts at page 2 of the Determination which is under appeal:

The investigation revealed Robert Wurtz filed a complaint with the Employment Standards Branch on June 19, 1997. Mr. Wurtz indicated that he worked for the company for the period June 1993 to June 12, 1997. On June 12, 1997, the company closed its doors and the bailiff took possession of the assets of the business and proceeded to sell them to recover money for the landlord.(sic)

On June 25, 1997, a Determination was issued against the company in the amount of \$34,165.29. The company did not appeal that Determination. Copies of this Determination were sent to David Douglas Beurling at 50 Sherwood Forest Drive, Markham, Ontario. This document was received on July 8, 1997. The Determination was also sent to the registered office of the company. That document was returned as address unknown. No appeal was made on this Determination.

A corporate registry search was done and it was found the David Douglas Beurling was a director and officer of the company at the time wages were earned. This Determination does not exceed the amount of 2 months wages as per Section 96 of the Act.

The “company” referred to above is Imperial Art and Frame Ltd.

Receipt of the Determination dated June 26, 1997 at the address in Markham, Ontario is confirmed by an "Acknowledgment of Receipt" which was issued by Canada Post.

Mr. Beurling acknowledges in his appeal that "...(t)he amounts outstanding are not disputed however Mr. Wurtz relationship to the company is." (sic)

ANALYSIS

A corporate officer's liability for unpaid wages is contained in Section 96(1) of the *Act*, as follows:

Section 96, Corporate officer's liability for unpaid wages

96. (1) A person who was a director or officer of a corporation at the time wages of an employee of the corporation were earned or should have been paid is personally liable for up to 2 months' unpaid wages for each employee.
- (2) Despite subsection (1), a person who was a director or officer of a corporation is not personally liable for
- (a) any liability to an employee under section 63, termination pay or money payable under a collective agreement in respect of individual or group terminations, if the corporation is in receivership or is subject to action under section 427 of the Bank Act (Canada) or to a proceeding under an insolvency Act,
 - (b) vacation pay that becomes payable after the director or officer ceases to hold office, or
 - (c) money that remains in an employee's time bank after the director or officer ceases to hold office.
- (3) This Act applies to the recovery of the unpaid wages from a person liable for them under subsection (1).

In *Kerry Steinemann, director / officer of Pacific Western Vinyl Window & Doors Ltd.* (BC EST #D180/96), the Tribunal concluded that the purpose of Section 96 of the *Act* is to provide the Director of Employment Standards with a mechanism for collecting wages that are owed by a company to its employees or former employees by making corporate directors and officers liable, within limits, for the payment of wages.

The required procedures for service of a determination are found in Section 122 of the *Act*, which states:

Service of determinations and demands

- 122.(1) A determination or demand that is required to be served on a person under this Act is deemed to have been served if
- (a) served on the person, or
 - (b) sent by registered mail to the person's last known address.
- (2) If service is by registered mail, the determination or demand is deemed to be served 8 days after the determination or demand is deposited in a Canada Post Office.
- (3) At the request of a person on whom a determination or demand is required to be served, the determination or demand may be transmitted to the person electronically or by fax machine.
- (4) A determination or demand transmitted under subsection (3) is deemed to have been served when the director receives an acknowledgment of the transmission from the person served.

It is clear that the Determination dated June 26, 1997 was served as required by Section 122 of the *Act* and, therefore, I am unable to give any weight to Mr. Beurling's submission that he was unaware of the Determination having been issued against Imperial Art and Frame Ltd.

There is no dispute that the Determination dated June 26, 1997 was not appealed. Therefore, in my opinion, this appeal by Mr. Beurling must be limited to the issues which arise under Section 96 of the *Act* – whether he is or was a director of Imperial Art and Frame Ltd. and/or whether the calculation of his personal liability is correct.

When I apply the principles set out in *Steinemann*, supra, and followed in *Perfekto Mondo Bistro* (BC EST #D205/96) and *Seacorp Properties Inc.* (BC EST #D440/97), I conclude that Mr. Beurling is estopped from arguing that Mr. Wurtz was not an employee of Imperial Art and Frame Ltd.

Mr. Beurling does not deny that he is or was a director / officer of Imperial and he expressly agrees that the "...amounts outstanding are not disputed."

For all of these reasons I would confirm the Determination dated December 3, 1997.

ORDER

I order, under Section 115 of the *Act*, that the Determination dated December 3, 1997 be confirmed.

Geoffrey Crampton
Chair
Employment Standards Tribunal

GC/bls