



An appeal

- by -

Stephen Chang, a Director or Officer of ILS Entertainment Group Ltd.

- 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

**ADJUDICATOR:** M. Gwendolynne Taylor

**FILE No.:** 2000/733

**DATE OF DECISION:** February 7, 2001

## DECISION

### WRITTEN SUBMISSIONS BY:

For the employer Stephen Chang, Appellant

For the employee David Nielsen, Respondent

For the Director Julie Brassington, Industrial Relations Officer

### OVERVIEW

On June 1, 2000, the Director issued a determination against ILS Entertainment Group Ltd. (“ILS”), in favour of David Nielsen, in the amount of \$4,434.29 for wages owing plus interest. Mr. Nielsen’s claim arises from a contract to work on producing a movie entitled *Black Door*. ILS appealed the Director’s determination; the Employment Standards Tribunal dismissed the appeal on September 15, 2000.

On October 2, 2000, the Director issued another determination, pursuant to section 96, requiring Stephen Chang personally to pay the wages owing to the extent that section 96 imposes liability on a director or officer.

Section 96(1) of the *Act* states:

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.

Mr. Chang has appealed the October 2, 2000 determination. Mr. Chang does not agree that ILS had a contract with David Nielsen. He says the employer was *Black Door*. Mr. Chang asks the Tribunal to relieve him from any obligations arising from David Nielsen’s employment and from the determination.

### ISSUE

Whether Stephen Chang is personally liable to reimburse David Nielsen for unpaid wages.

### ARGUMENT

Stephen Chang’s argument is directed to whether ILS owes money to David Nielsen. He submits that Mr. Nielsen was hired by Lucas Lo for the “*Black Door*” production. He refers to section 171 of the *Company Act* and submits that Lucas Lo could not act on behalf of ILS

without the agreement of the company. Accordingly, Lucas Lo has sole responsibility for obligations arising from contracts he entered into.

Mr. Chang has provided a document entitled ILS Entertainment Group Ltd. Directors Agreement, dated November 13, 1999. The agreement is between Lucas Lo, director and 40% shareholder of ILS, and Ian Lade and Stephen Chang, directors and 30% (each) shareholders. Stephen Chang is president of ILS and Ian Lade is secretary treasurer of ILS.

The Directors Agreement provides that Lucas Lo is solely and wholly responsible for anything related to The Black Door. Among other things, the Directors Agreement states that Lucas Lo is the only director liable for any resulting legal or tax action taken against ILS on any matter concerning the Black Door project.

Another point raised by Mr. Chang concerns the actions and statements of the delegate of the Director of Labour Standards. I have reviewed Mr. Chang's submissions on this point and find that they are not relevant to the issue before me.

## ANALYSIS

The only issue before me is whether Stephen Chang can be held personally liable. In the previous hearing before the Tribunal, Lucas Lo represented the employer. It is apparent that the issue of who the employer was did not arise. It was assumed that ILS was the employer. Mr. Chang now argues that ILS was not the employer.

The evidence before me includes a copy of the first page of the contract between David Nielsen and ILS Entertainment Group Ltd. The contract names "Black Door" as the movie.

I have reviewed the September 15, 2000 decision of the Tribunal. In that decision as well as in the other evidence before me, it is apparent that Lucas Lo accepted as fact that ILS was the proper party to the proceedings before the Branch and the Tribunal.

Mr. Chang has not presented any evidence that would lead me to conclude that ILS was not the employer.

I find that David Nielsen contracted with ILS Entertainment Group Ltd. to work on the production of "Black Door". The Director's Agreement assigning liability to Lucas Lo may be enforceable between the directors but does not limit the liability of ILS and its directors under the *Employment Standards Act*.

The Director referred to evidence to support findings of the date the company was incorporated, the dates the wages were earned, that Stephen Chang was a director/officer of the company during that time, and that Stephen Chang participated in the activities of the company.

In the absence of evidence to the contrary, I find that the Director correctly determined that Stephen Chang was a director or officer of ILS at the time these unpaid wages were earned and became payable. I find that the Director correctly determined that, pursuant to section 96, Stephen Chang is personally liable for up to 2 months' unpaid wages.

**ORDER**

The Appeal is dismissed. The Determination dated October 6, 2000 is confirmed

**M. GWENDOLYNNE TAYLOR**

**M. Gwendolynne Taylor**  
**Adjudicator**  
**Employment Standards Tribunal**