

An appeal

- by -

Masoud Mobasser Ganjavi, a Director or Officer of Bazar Enterprises Ltd.
carrying on business as Urban Bazar
("Urban Bazar")

- 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: Carol L. Roberts

FILE No.: 2009A/080

DATE OF DECISION: August 18, 2009

DECISION

SUBMISSIONS

Masoud Mobasser Ganjavi	on his own behalf
Bitra Basir	on her own behalf
Rod Bianchini	on behalf of the Director of Employment Standards

OVERVIEW

1. This is an appeal by Masoud Mobasser Ganjavi, a Director or Officer of Bazar Enterprises Ltd. carrying on business as Urban Bazar, ("Urban Bazar"), pursuant to Section 112 of the *Employment Standards Act* ("the *Act*"), against a Determination of the Director of Employment Standards ("the Director") issued May 12, 2009.
2. Bitra Basir filed a complaint with the Director of Employment Standards alleging that she worked for Urban Bazar between September 20, 2005, and March 20, 2006, and that she was entitled to regular wages, overtime wages, annual vacation pay, compensation for length of service and statutory holiday pay.
3. The Director's delegate held a hearing into Ms. Basir's complaint on July 23, September 27, and October 29, 2007. The employer was represented by counsel.
4. On October 21, 2008, the delegate issued a Determination in which he found Ms. Basir to be an employee of Urban Bazar. He also found that Urban Bazar had contravened Sections 17, 18 and 28 of the *Act* in failing to pay Ms. Basir wages, compensation for length of service, overtime wages, vacation pay, and statutory holiday pay. He concluded that Ms. Basir was entitled to wages and interest in the total amount of \$11,569.78. The delegate also imposed a \$1,500 penalty on Urban Bazar for the contraventions of the *Act*, pursuant to section 29(1) of the *Employment Standards Regulation*.
5. Counsel for Urban Bazar filed an appeal of the Determination contending that the delegate erred in law. The Tribunal dismissed that appeal on January 22, 2009. (BC EST # D015/09)
6. The delegate conducted a BC online company search on August 17, 2008, and found that, during the period September 20, 2005, to April 28, 2006, Urban Bazar's four directors were Masoud Mobasser Ganjavi, Ehsan Davani, Reza Baikoghli and Valiolla Ranjbar. On May 12, 2009, the delegate issued Determinations against each of those directors finding them personally liable for \$3,112.30, representing not more than two months' unpaid wages. Although the delegate noted that Mr. Ganjavi ceased to be a Director as of March 6, 2006, the delegate found Mr. Ganjavi was still personally liable for up to two months' wages as Ms. Basir had not been paid any wages for nearly six months.
7. Mr. Ganjavi submits that he did not receive a copy of the Determination and that he sold his shares in Urban Bazar and has no contact with the company or its directors.
8. Section 36 of the *Administrative Tribunals Act* ("ATA"), which is incorporated into the *Employment Standards Act* (s. 103), and Rule 17 of the Tribunal's *Rules of Practice and Procedure* provide that the Tribunal may hold any combination of written, electronic and oral hearings. (see also *D. Hall & Associates v. Director of Employment*

Standards et al., 2001 BCSC 575). This appeal is decided on the section 112(5) “record”, the submissions of the parties and the Reasons for the Determination.

ISSUE

9. Did the delegate err in finding Mr. Ganjavi to be a director or officer of Urban Bazar at the time Ms. Basir’s wages were earned?

ARGUMENT

10. Mr. Ganjavi contends that Ms. Basir left the company after his departure from Urban Bazar and that the remaining directors of the company decided not to pay her. He says that because he did not participate in that decision he should not be held responsible for it.
11. Mr. Ganjavi also argues that counsel for Urban Bazar “ignored” the Determination and that the subsequent Determination finding him personally responsible for unpaid wages is based on “false facts”.
12. The delegate says that although the director Determination sent to Mr. Ganjavi was returned to the Branch, Mr. Ganjavi had knowledge of the Determination because he telephoned the Branch seeking clarification as to how Ms. Basir’s wages were calculated. The delegate reviewed the Determination and issued a corrigendum.
13. The delegate acknowledges that according to the corporate record search, Mr. Ganjavi ceased to be a director of Urban Bazar effective March 6, 2006. However, he submits that Mr. Ganjavi was a director of Urban Bazar between September 2005 and March 20, 2006, which is when Ms. Basir’s wages were earned and should have been paid.

THE FACTS AND ANALYSIS

14. Section 112(1) of the *Act* provides that a person may appeal a determination on the following grounds:
 - the director erred in law
 - the director failed to observe the principles of natural justice in making the determination; or
 - evidence has become available that was not available at the time the determination was being made
15. The burden of establishing the grounds for an appeal rests with an Appellant. Mr. Ganjavi must provide persuasive and compelling evidence that there were errors of law in the Determination.
16. Mr. Ganjavi’s argument that Urban Bazar’s counsel “ignored” the Determination is without merit. The fact is that the corporate Determination was appealed, although it was not upheld.
17. Attached to the Corporate Determination was a Notice to Director/Officers stating that a Director/Officer cannot argue the merits of the Determination against the company after its appeal period has expired. After that time there are only three grounds for appeal:
 1. whether you were a Director of the company at the time wages were earned or should have been paid

2. whether the calculation of your personal liability is correct and
 3. whether you authorized, permitted or acquiesced in the contravention.
18. Section 96 of the *Act* provides that a person who was a director or officer of a corporation at the time wages of an employee of the corporation were earned and should have been paid is personally liable for up to 2 months unpaid wages for each employee.
19. Mr. Ganjavi has conceded that he was a director of Urban Bazar at the time the bulk of Ms. Basir's wages were found to be earned. I accept that he resigned effective March 6, 2009. However, this does not relieve him of liability for up to two months' unpaid wages. Ms. Basir had been working for Urban Bazar for several months at the time Mr. Ganjavi resigned and she is entitled to be paid for that work. There is no evidence Mr. Ganjavi did not participate in the decision not to pay her.
20. I find no error in the delegate's conclusion that Mr. Ganjavi is personally responsible for up to two months' wages.

ORDER

21. I Order, pursuant to Section 115 of the *Act*, that the Determination, dated May 12, 2009, be confirmed.

Carol L. Roberts
Member
Employment Standards Tribunal