

EMPLOYMENT STANDARDS TRIBUNAL

In the matter of an appeal pursuant to Section 112 of the
Employment Standards Act S.B.C. 1995, C. 38

- by -

Philip Yee
(" Yee ")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Hans Suhr

FILE NO.: 96/751

DATE OF DECISION: February 25, 1997

DECISION

OVERVIEW

This is an appeal by Yee pursuant to Section 112 of the Employment Standards Act (the “*Act*”) against a Determination issued by the Director on November 28, 1996. The Determination found that Yee was employed by Can-Chi Holdings Ltd. (“CCHL”) and was an officer of CCHL, therefore it would be inappropriate to collect wages for directors or officers of a corporation. Yee’s complaint for wages owing was subsequently dismissed.

Yee has appealed the Determination alleging that the Director erred in concluding that CCHL was the employer, that Yee was an officer of CCHL at the time the wages being sought were earned and the Director failed to apply the provisions of Section 95 of the *Act*.

I have completed my review of the submissions received from Yee and the information provided by the Director.

ISSUES TO BE DECIDED

1. Who was the employer ?
2. Are wages owed to Yee by the employer ?

FACTS

The uncontested documents set forth the following:

- Yee provided a letter of resignation from his position as Secretary of CCHL dated November 1, 1993 with his resignation to be effective immediately.
- A Directors Resolution dated May 1, 1995 and signed by Ronald Chi-Ho Lui (“Lui”) accepts the resignation of Yee as well as other officers of CCHL.
- Another Directors Resolution dated May 1, 1995 recognizes and accepts that CCHL is responsible for salary owing to Yee in the amount of \$54,944.21.
- This Resolution further contains a provision that Lui agrees to be personally responsible for the outstanding salary owed to Yee.
- A Promissory Note dated December 31, 1994 provides that CCHL promises to pay Yee the amount of \$54,944.21.

- A Personal Guarantee dated December 31, 1994 and signed by Lui indicates that Lui agreed to be personally responsible for the amount of the Promissory Note.

ANALYSIS

The *Act* sets forth the definition of employee and employer in Section 1 as follows:

“**employee**” includes

- (a) a person, including a deceased person, receiving or entitled to wages for work performed for another,
- (b) a person an employer allows, directly or indirectly, to perform work normally performed by an employee,
- (c) a person being trained by an employer for the employer’s business,
- (d) a person on leave from an employer, and
- (e) a person who has a right of recall

“**employer**” includes a person

- (a) who has or had control or direction of an employee, or
- (b) who is or was responsible, directly or indirectly, for the employment of an employee;

The Director has not provided any objective evidence such as a Registrar of Companies Search to prove that Yee was an officer of CCHL at any time.

The Director has not provided any objective evidence of any payroll records or even a request for payroll records from CCHL which might indicate whether an employer - employee relationship existed between Yee and CCHL.

Neither the Promissory Note from CCHL nor the Personal Guarantee from Lui, both dated December 31, 1994, and presumably presented to Yee, make any mention that the amount owing to Yee is for “wages or salary”.

While the Resolutions of the Directors of CCHL dated May 1, 1995 indicate that the amount owing to Yee has become, at that point in time, “salaries” owing, there is no objective evidence of any employment relationship between CCHL and Yee.

Yee has not provided any objective evidence of an employment relationship between himself and any employer, be it CCHL or the individuals named in Yee’s complaint. There is no employment contract, no payroll records, no pay stubs for the \$10,000.00 in **wages or salary** allegedly received from August 1993 to December 31, 1995.

It is not possible, based on the information provided by the Director and Yee, to adequately determine the matters before the Tribunal.

ORDER

Pursuant to Section 115 of the *Act*, I order that this matter be referred back to the Director for further investigation.

Hans Suhr
Adjudicator
Employment Standards Tribunal