

An appeal

- by -

Ehsan Davani, Valiollah Ranjbar, and Reza Baikoghli, Directors or Officers 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/082, 2009A/083, 2009A/084

DATE OF DECISION: August 24, 2009

DECISION

SUBMISSIONS

David Stoller, Barrister & Solicitor	on behalf of Valiollah Ranjbar, Ehsan Davani, and Reza Baikoghli
Bitra Basir	on her own behalf
Rod Bianchini	on behalf of the Director of Employment Standards

OVERVIEW

1. This is an appeal by Valiollah Ranjbar, Ehsan Davani, and Reza Baikoghli, Directors or Officers of Bazar Enterprises Ltd. carrying on business as Urban Bazar, ("Urban Bazar"), pursuant to Section 112 of the *Employment Standards Act* ("the *Act*"), against Determinations 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. The Director's delegate held a hearing into Ms. Basir's complaint on July 23, September 27, and October 29, 2007. Mr. Stoller represented Urban Bazar at the hearing.
3. On October 21, 2008, the delegate issued a Determination finding Urban Bazar in contravention of 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*. The Determination letter contained the following sentences:

Under the Act, a Determination may be filed in British Columbia Supreme Court and collection proceedings may be commenced. Directors and officers who authorize, permit or acquiesce in a contravention of the Act are also liable for the total administrative penalty amount. If payment is not received by the end of the appeal period noted below, additional interest will accrue.
4. Mr. Stoller appealed the Determination. The Tribunal dismissed that appeal on January 22, 2009. (BC EST # D015/09). When the Determination remained unsatisfied, the delegate conducted an online BC Company search and found that, during the period between September 20, 2005 and April 28, 2006, Masoud Mobasser-Ganjavi, Ehsan Davani, Reza Baikoghli, and Valiolla Ranjbar were listed as Directors of Urban Bazar. On May 12, 2009, the delegate issued separate Determinations against each of the directors finding them personally liable for \$3,112.30, representing not more than two months' unpaid wages. Attached to the Corporate Determination was a Notice to Director/Officers stating:

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.
5. Counsel for three of the Directors/Officers contends that the delegate erred in law and failed to observe the principles of natural justice in making the Determination.
 6. 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

7. Did the delegate err in law in finding Mr. Ranjbar, Mr. Davani, and Mr. Baikoghli to be personally liable for Ms. Basir’s wages and interest?

ARGUMENT

8. Counsel submits that the delegate erred in law in failing to ascertain who the Officers of Urban Bazar were, both in the October 21, 2008 Determination and the May 12, 2009 Determination. He submits that the delegate erred in assuming that the filing of company information accurately determined the Officers of Urban Bazar for the purposes of the *Business Corporations Act*. He says that the delegate’s failure to make findings against persons who performed as officers “renders the decision erroneous”.
9. Counsel also argues that the delegate erred in law in failing to consider whether or not Ms. Basir was an officer of the company, in calculating the amount of wages, and in finding that the accrued interest is the responsibility of a director or officer. Counsel submits that if interest is properly the responsibility of a Director/Officer, it is payable only from May 12, 2009, the date of the Director Determinations. He says that if interest is payable, it should be payable from the date that wages, if any, are determined.
10. Counsel submits that the *Business Corporations Act* provides that a person who acts like a director has the same duties as a Director. He contends that Ms. Basir’s actions were those of an officer of the company and that she is equally responsible for payment of outstanding wages. Counsel also contends that Ms. Basir attempted to deceive the company and that her failure to disclose unpaid wages in the share sale agreement constitutes an act of bad faith. He submits that Ms. Basir should be responsible for payment of her own salary and that the other directors should be relieved of any responsibility for wages.
11. Counsel also says that the Appellants only received the Determination that applied to themselves individually rather than copies of each of the director Determinations.
12. The delegate seeks to have the appeal dismissed, contending that counsel has not demonstrated an error of law. He submits that he properly determined who the Directors/Officers of Urban Bazar were for the purposes of the May 12, 2009 Determinations. He says that while there may be other persons operating as directors, including Ms. Basir, who are not identified as such on the Corporate Registry, that does not negate the fact that Mr. Ranjbar, Mr. Davani, and Mr. Baikoghli were individually Directors/Officers of Urban Bazar.

13. The delegate also contends that section 88 (1) of the *Act* provides that interest accrues from the earlier of the date the employment terminates or the filing of a complaint.
14. Ms. Basir says that, 2 and one half years after filing her complaint, the company has been dissolved and she remains unpaid. She alleges that the company's lawyer is simply "elongating the process" in an effort to avoid paying her. She submits that the appeal is without merit and seeks to have it dismissed.

THE FACTS AND ANALYSIS

15. 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
16. The burden of establishing the grounds for an appeal rests with the Appellants. They must provide persuasive and compelling evidence that there were errors of law in the Determination, or that the delegate failed to observe the principles of natural justice. I am not persuaded the Appellants have discharged this burden.
17. As noted above, the issues that are properly before the Tribunal in a section 96 proceeding include the status of the individual (was the person a director or officer when the wages were earned or should have been paid?), the possible application of any statutory defences, or whether the director/officer's liability has been correctly determined in terms of the 2-month "liability ceiling".
18. Mr. Stoller represented Urban Bazar during the three day hearing into Ms. Basir's complaint. Arguments about the good faith nature of Ms. Basir's claim were made at that hearing and addressed by the delegate. That issue also formed one of the grounds of appeal. Not only has that argument already been addressed, it is not relevant to the issues I must decide in this appeal.
19. I find no merit in counsel's argument that the delegate erred in identifying the directors of Urban Bazar.
20. Section 126 of the *Business Corporation Act* ([SBC 2002] c. 57) provides that:
 - A company must keep a register of its directors and enter in that register
 - (a) the full name and prescribed address for each of the directors,
 - (b) the date on which each current director became a director,
 - (c) the date on which each former director became a director and the date on which he or she ceased to be a director, and
 - (d) the name of any office in the company held by a director, the date of the director's appointment to the office and the date, if any, on which the director ceased to hold the office,
21. The Tribunal has held that corporate records raise a rebuttable presumption that a person is a director. A defence to section 96 liability can be successfully raised if a director can show, on credible and cogent

evidence, that the Registrar's records are inaccurate, either because the person resigned or is not properly appointed: (Wilnofsy (BC EST # D106/99) and Michalkovic).

22. The delegate conducted a search of the company records. That search indicated that the three Appellants were directors of Urban Bazar at the time Ms. Basir's wages were earned and ought to have been paid, Furthermore, during the hearing, Mr. Davani, Mr. Baikoghli and Mr. Ranjbar all confirmed that they were directors of Urban Bazar. I find no merit to this ground of appeal.
23. Counsel also contends that the wage amount set out in the May 12, 2009, Determination is the single amount for all the Directors and Officers. Section 96 is unambiguous. It imposes liability on each individual director or officer for unpaid wages: *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.* I find no merit in this argument.
24. Counsel submits that section 96 does not state that Directors and Officers are liable for interest, and that the delegate exceeded his jurisdiction in finding that the effective date of the determination of wages owing was October 21, 2008. I also find no merit in this argument.
25. On October 21, 2008, the delegate issued his Determination concluding that Ms. Basir was entitled to wages. That conclusion was upheld on appeal. Section 87(1) of the *Act* provides that unpaid wages constitute a lien, charge and secured debt in favour of the director, dating from the time the wages were earned, against all the real and personal property of the employer or other person named in a determination. Furthermore, as noted by the Tribunal member in the appeal of the corporate Determination, section 88 (1) of the *Act* provides that:
 - 1) If an employer fails to pay wages or another amount to an employee, the employer must pay interest at the prescribed rate on the wages or other amount from the earlier of
 - (a) the date the employment terminates, and
 - (b) the date a complaint about the wages or other amount is delivered to the director to the date of payment.
26. When Urban Bazar failed to satisfy the outstanding debt to the Director, interest accrued under section 88 and the liability was 'transferred' to the Directors. There is nothing in section 96 that exempts a corporate director from liability for interest on an outstanding wage debt.
27. Finally, counsel argues that the Appellants did not receive copies of each of the Determinations against all four of the company directors. While I am not entirely certain about the point being made by counsel in this submission, I infer this constitutes the basis for his argument that the delegate failed to observe the principles of natural justice. The evidence is that each of the directors was individually served with a copy of the Determination against them. There is no basis to conclude that the delegate failed to observe the principles of natural justice by not providing each of the directors with copies of all of the Determinations.
28. The appeal is dismissed.

ORDER

29. I Order, pursuant to Section 115 of the *Act*, that the Determinations, dated May 12, 2009, be confirmed, together with whatever interest has accrued under Section 88 of the *Act* since the date of issuance.

Carol L. Roberts
Member
Employment Standards Tribunal