

Appeals

- by -

Jada Holdings Limited

-and-

Jeffrey Venos, a Director and Officer of Jada Holdings Limited  
("the Appellants")

- of Determinations 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:** David B. Stevenson

**FILE Nos.:** 2014A/88 & 2014A/89

**DATE OF DECISION:** November 17, 2014

## DECISION

### SUBMISSIONS

Jeffrey Venos	on his own behalf as a Director and Officer of Jada Holdings Limited and on behalf of Jada Holdings Ltd.
Stacy Beek	on her own behalf
Daniela Ioo	on her own behalf
Teri Mutter	on her own behalf
Dallas Pylypow	on his own behalf
Greg Smithman	on his own behalf
Sean Wright	on his own behalf
Tracy Regier	on behalf of the Director of Employment Standards

### OVERVIEW

1. This decision addresses two appeals filed under section 112 of the *Employment Standards Act* (the “*Act*”): one by Jada Holdings Limited. (“Jada”) of a Determination issued by a delegate of the Director of Employment Standards (the “Director”) on June 12, 2014 (the “corporate determination”); and the other by Jeffrey Venos (“Mr. Venos”) of a Determination also dated June 12, 2014 (the “director/officer determination”).
2. The corporate determination found that Daveco Holdings Ltd. and Jada Holdings Limited, partners carrying on business as Stoney Creek Cabinet Company (“Stoney Creek”) and Cantech Manufacturing Ltd. (“Cantech”), (collectively “the Employer”) should be associated under section 95 of the *Act* as one employer and had contravened Part 3, sections 18 and 21, Part 4, section 40, Part 7, section 58 and Part 8, section 63 of the *Act* in respect of the employment of Stacy Beek, Tyson Daniels, Gerald Dick, Bradley Elding, Daniel Ioo, Tuan Quoc Le, Ba Thu Luu, Scott McGeachie, Teri Mutter, Dylan Patterson, Dallas Pylypow, Ryan Saunders, Shawn Saunders, Greg Smithman and Sean Wright (collectively, the “Complainants”). The Director ordered the Employer to pay wages to the Complainants in the amount of \$89,059.30 and to pay administrative penalties in the amount of \$1,000.00. The total amount of the Determination is \$90,059.30.
3. The director/officer determination found Mr. Venos was a director and officer of Jada at the time wages owed to the Complainants were earned or should have been paid and ordered Mr. Venos to pay wages to the Complainants in the amount of \$80,367.12.
4. Jada and Mr. Venos have filed appeals of the Determinations on the ground the Director failed to observe principles of natural justice in making the Determinations. The Appellants seek to have the Determinations cancelled as against them.
5. Both of the appeals are being considered and decided together for two reasons: first, they both rely on the same ground and are supported by the identical argument; and second they will both be decided on a single

issue, which is whether the Director erred in finding Jada was liable for the wages of the Complainants. If the answer to that issue is “no”, there can be no dispute Mr. Venos was a director/officer of that entity and was correctly held liable under section 96 of the *Act*. On the other hand, if Jada should not have been held liable as an employer of the Complainants, it is questionable whether Mr. Venos should have been held liable under section 96 of the *Act*.

6. The Tribunal has discretion to choose the type of hearing for deciding an appeal. Appeals are not *de novo* hearings and the statutory grounds of appeal are narrow in scope. The Tribunal is not required to hold an oral appeal hearing and may choose to hold any combination of oral, electronic or written submission hearing: see section 103 of the *Act* and section 36 of the *Administrative Tribunals Act*. The Tribunal finds the matters raised in these appeals can be decided from the material in the file, which consists of the section 112(5) “record”, any additional evidence allowed by the Tribunal to be added to the “record”, the submissions of Jada and Mr. Venos, the submission of the Director and the submissions of several of the Complainants.

## ISSUE

7. As I have indicated above, the issue in these appeals is whether the Director erred in finding Jada was liable for wages owed to the Complainants.

## THE FACTS

8. The facts included in this decision have been gleaned from the corporate determination.
9. The Employer operated a cabinet manufacturing and installation company in Coquitlam. Stoney Creek operated alongside Cantech under one common director, David Kiselbach (“Mr. Kiselbach”). Cantech employed those persons involved in the manufacturing process; Stoney Creek employed those responsible for the sales, assembly and installation of the cabinets. In December 2012 all Cantech employees were transferred to the payroll of Stoney Creek.
10. In February 2013, the Employer encountered financial difficulties and closed down for a period from February 22, 2013, to February 26, 2013. The business returned to normal operation until June 4, 2013, when it closed permanently. The Complainants filed their complaints in June and July 2013.
11. A search of the BC Online Corporate Registry on June 13, 2013, listed Stoney Creek as a general partnership of Daveco Holdings Ltd. and Jada. Two additional searches listed Mr. Kiselbach as the sole director and officer of Daveco Holdings Ltd. and Mr. Venos as the sole director and officer of Jada. As of May 24, 2014, there had been no changes to the corporate information acquired in June 2013.
12. A search of the BC Online Corporate Registry on June 19, 2013, listed Mr. Kiselbach and Richard Welsh (“Mr. Welsh”) as directors and officers of Cantech. The corporate determination indicates Mr. Venos had been a director of Cantech.
13. The corporate determination contains many findings relating to the events of the temporary and permanent closure of the business of the Employer, the termination of the employment of the Complainants and their wage entitlement. None of those matters are disputed in these appeals and, accordingly, need not be related in this decision.
14. There was evidence provided to the Director relating to Mr. Venos’ involvement with the Employer.

15. In a July 5, 2013, e-mail to the Director, which appears to be Mr. Venos' first written response to the notice provided to him by the Director of the complaints, he says: "I have no knowledge of the circumstances of these claims as I have withdrawn from the partnership and, have not been involved with the business in any way, since the beginning of the year." He indicated he was seeking legal counsel, who would provide a formal reply. On July 17, 2013, the Director received correspondence from counsel for Jada. The central element of the correspondence is the representation that Jada, "sold or disposed" of its stake in the business of Stoney Creek to Daveco Holdings Ltd. and Mr. Venos withdrew from any involvement in the business as of February 28, 2013. The correspondence included a copy of an agreement stated to be between Daveco Holdings Ltd and Jada Holdings Limited. The correspondence also asserts the fact of Mr. Venos' disposal of his stake in Stoney Creek was brought to the attention of the employees at a staff party in late February 2013 and a formal notice of his withdrawal from the partnership was displayed on the business' premises.
16. The section 112(5) "record" indicates that in February 2014, the Director canvassed the Complainants concerning the assertions made in the July 17, 2013, correspondence, asking each Complainant for information relating to three matters:
- Confirmation of the letter Mr. Venos' counsel said had been displayed, when the particular employee might have seen it and where in the work place it was posted;
  - Confirmation of the "departure party", when it was held, where it was held, what was announced and who attended according to your recollection; and
  - Any evidence the Complainant may have that would challenge Mr. Venos' position, "(ic) email correspondence you may have received after the February 28, 2013 date etc."
17. Many of the Complainants responded to these questions. All who responded had no knowledge of any notice of Mr. Venos' withdrawal from the business being posted. Most of those who responded recalled there being a gathering at the approximate time stated by Mr. Venos. Others recalled a gathering but were unclear when it occurred. Many of the responders recall the purpose of the gathering was to thank the employees for continuing to work through uncertain financial circumstances and delayed wage payments. Some of the responders recalled an announcement that Mr. Venos was leaving, or stepping away from, the business; a few recall reference to his recent health problems. One of the responders, Daniela Ioo, provided what seems to be a conscientious and relatively thorough response to the queries made by the Director, although she does qualify them by noting the event took place "almost a year ago". She says, quite emphatically, that there was no letter posted "anywhere in the office" confirming Mr. Venos departure from the company. She says she "found out about Mr. Venos' departure from Mr. Dave Kiselbach, one day or two before he announced to all the employees in a meeting that was held in the lunch room." She goes on to state, "a meeting was held with everybody announcing that Mr. Venos will be leaving the company and at that meeting he presented his new business partners".
18. In her response to the second point, Ms. Ioo says, in part: "we were asking what he [Mr. Venos] would be doing and Mr. Kiselbach said that we would see Mr. Venos around because they will still be doing business together and Mr. Venos will bring work to the company (singles kitchen). After that party Mr. Venos was coming in almost every day having lunch with Mr. Kiselbach and Mr. Gil Wardrop".
19. On the third query, Ms. Ioo refers, among other things to being told by Mr. Kiselbach about meetings with lawyers which occurred before the announcement and that there was a meeting with the bank about which Mr. Kiselbach seemed "very stressed".

20. In the Determination, the Director finds, “the majority maintain it [the gathering] was not to mark Jada’s withdrawal from the partnership, but to thank the employees for working despite delayed payments.” The Determination goes on to state:

In any event, I find, based on the Complainants’ statements to me, that Mr. Venos maintained a visible role within the business. I question why he would maintain his involvement if Jada was no longer a partner, unless he substituted himself as a partner. As there is no real evidence to support this I find the more likely explanation is that Jada did not withdraw from the partnership.

21. As an alternative, the Director finds Mr. Venos was a *de facto* director of Daveco Holdings Ltd., finding Mr. Venos “continued to attend the workplace and exert authority over decisions related to staff and spending, specifically by ending the lease arrangement for Mr. Saunders and mailing the Complainants’ T4’s from his home address dated well after his “departure date” of February 28, 2013.”

22. The Director rejects the February 25, 2013, agreement between Jada Holdings Limited and Daveco Holdings Ltd. as evidence the partnership was being dissolved at that time, citing an incorrect reference in the body of the document to the parties as Jada Holdings Inc. and Daveco Holdings Inc., the absence of clear identification of the signatures on the document and that it was never filed with the corporate registry.

## **ARGUMENT**

23. The Appellants argue the Director failed to observe natural justice in making the Determination.

24. The appeals submission asserts Jada extricated itself from the partnership with Daveco Holdings Ltd. as Stoney Creek Cabinet Company by late January 2013. The submission identifies several steps taken by Mr. Venos and Jada to accomplish ending the partnership, including:

- Negotiating an agreement with their corporate bank to release Mr. Venos and Jada from personal guarantees and other security agreements that were given to secure operating loans for the business;
- Closing the partnership’s accounts with HSBC;
- Advising companies that supplied materials to the partnership of the Mr. Venos’ retirement;
- Ending the partnership’s relationship with their payroll service, Ceridian;
- Executing a simple agreement dissolving the partnership; and
- Vacating the office space used by Mr. Venos at the Stoney Creek facility.

25. Mr. Venos also says he gave up his keys to the business facilities and that any visits after the end of February were social – to visit and have lunch with old friends.

26. He says after the dissolution of the partnership he had no access to any Daveco/Stoney Creek payroll records.

27. Mr. Venos and Jada submit the failure to change the information in the corporate registry which continued to show Jada and Daveco Holdings Ltd. as a partnership doing business as Stoney Creek Cabinet Company is irrelevant when the information showed the partnership ceased to do business as a partnership in January 2013 and was dissolved in February 2013.

28. The Director and the Complainants have been invited to file responses to the appeal.
29. Responses have been received from six of the Complainants: Stacy Beek, Teri Mutter, Dallas Pylypow, Greg Smithman, Sean Wright and Daniela Ioo. Ms. Beek says she believes Mr. Venos was still involved with the business right to the end. She says he was “around as much after [February 2013] as he was before”, that he “took over the cedar downs contract” and points out her 2013 T4 statement came with his personal residence as the return address. Ms. Mutter also refers to the T4 statement coming from Mr. Venos’ personal residential address. In that respect, she adds Mr. Venos personally delivered it to her as she had changed her address. She also says Mr. Venos was supposed to tell her of the final closure. Mr. Pylypow says as far as he knows, Mr. Venos was no longer an owner in the business, but that it “all seemed kinda fishy”. He wonders why there were no witnesses to the agreement that Mr. Venos was no longer an owner. Mr. Smithman is more emphatic about Mr. Venos’ continued involvement in the business. He refers, as he did during the investigation, to being told by Mr. Kiselbach that Mr. Venos should have phoned him while he was on holidays to inform him of the closure and to a text received from Mr. Venos on June 10, 2013 inviting him to “meet and talk plans”. He says neither of those matters indicates Mr. Venos was no longer involved. Mr. Wright subscribes to the same view as Mr. Pylypow, that what is being said by Mr. Venos now and what was taking place at the time do not really add up. Ms. Ioo reiterates in her submission that Mr. Venos did not post a letter confirming his departure from the company and says that Mr. Venos “was still very much in charge until the company closed down”.
30. The Director submits that, while Mr. Venos told the Director the partnership was dissolved, he made no mention of the corporate bank, did not provide any documents relating to negotiations with the bank, did not mention the partnership account had been closed or provide documents such as old and new cheques. The Director says that if Mr. Venos mentioned that Daveco Holdings Ltd. hired two new people to take over Mr. Venos’ duties, he never mentioned the identity of these people during the investigation. The Director denies that Mr. Venos provided contact information for Mr. Kiselbach, but said he had not spoken to Mr. Kiselbach and that Mr. Kiselbach owed him money.
31. The Director says Mr. Venos did not provide any information during the investigation with regards to the partnership debt, closed bank accounts, notification to suppliers, or cancelled payroll accounts. The Director notes the Complainants “dispute any written notice was given and dispute the party held in February 2013 was notice that the partnership dissolved.”
32. The Director says the letter provided with the appeals submission from the house accountant for Daveco Holdings Ltd. was not provided during the investigation. The Director indicated there was an attempt, during the investigative process, to contact a person at the same number as shown on the document, but there was no answer and a message could not be left.
33. The Director submits the listing in the corporate registry, showing the partnership existed, is “considered correct” unless it is rebutted by reliable evidence showing it is not correct and there was insufficient evidence of that nature. The Director says, absent reliable evidence showing the information in the corporate registry was not up to date or was incorrect, it was proper to rely on it.
34. The Director says much of the information provided with the appeal is “new evidence” that does not satisfy the conditions for admitting it on appeal.
35. Finally, the Director submits there was no failure to observe principles of natural justice; that the Appellants were notified of the complaints, given an opportunity to be heard, present evidence and to challenge the evidence of the Complainants.

36. In their final reply, the Appellants answer, point by point, the response of the Director. The reply makes the following points:
1. Mr. Venos has never had any record that the partnership account was closed, but it was;
  2. Mr. Venos has never had any cheques from the partnership, as he was never involved in cheque writing, and has no access to cheques from the new business account created by Mr. Kiselbach;
  3. Mr. Venos was never asked to provide the names of the individuals who replaced him at the new company;
  4. Mr. Venos recalls providing the Director with contact information for Mr. Kiselbach;
  5. As Mr. Venos had none of the financial records, he would be unable to prove that the new company stopped using a payroll service and started issuing pay cheques on its corporate account;
  6. Mr. Venos consistently told the Director he had no documents and could not provide information about the new company.

## ANALYSIS

37. The grounds of appeal are statutorily limited to those found in subsection 112(1) of the *Act*, which says:

- 112 (1) *Subject to this section, a person served with a determination may appeal the determination to the tribunal on one or more of the following grounds:*
- (a) *the director erred in law;*
  - (b) *the director failed to observe the principles of natural justice in making the determination;*
  - (c) *evidence has become available that was not available at the time the determination was being made.*

38. An appeal to the Tribunal under section 112 is not intended as an opportunity to either resubmit the evidence and argument that was before the Director in the complaint process or submit evidence and argument that was not provided during the complaint process, hoping to have the Tribunal review and re-weigh the issues and reach different conclusions.
39. A party alleging a denial of natural justice must provide some evidence in support of that allegation: see *Dusty Investments Inc. dba Honda North*, BC EST # D043/99.
40. The *Act* does not provide for an appeal based on errors of fact and the Tribunal has no authority to consider appeals based on alleged errors in findings of fact unless such findings raise an error of law: see *Britco Structures Ltd.*, BC EST # D260/03. The Tribunal noted in the *Britco Structures Ltd.* case that the test for establishing an error of law on this basis is stringent, requiring the appellant to show, not merely declare, that the findings of fact are perverse and inexplicable, in the sense that they are made without any evidence, that they are inconsistent with and contradictory to the evidence or that they are without any rational foundation.
41. The Appellants allege the Director failed to observe principles of natural justice in making the Determinations. In *Imperial Limousine Service Ltd.*, BC EST # D014/05, the Tribunal briefly summarized the natural justice concerns that typically operate in the context of the complaint process:

Principles of natural justice are, in essence, procedural rights ensuring that parties have an opportunity to know the case against them; the right to present their evidence; and the right to be heard by an

independent decision maker. It has been previously held by the Tribunal that the Director and her delegates are acting in a quasi-judicial capacity when they conduct investigations into complaints filed under the *Act*, and their functions must therefore be performed in an unbiased and neutral fashion. Procedural fairness must be accorded to the parties, and they must be given the opportunity to respond to the evidence and arguments presented by an adverse party.( see *BWT Business World Incorporated*, BC EST #D050/96).

42. Provided the process exhibits the elements of the above statement, it is unlikely the Director will be found to have failed to observe principles of natural justice in making the Determination. Natural justice does not require the decision maker to accept everything each party says – that would be absurd and make the process unworkable – nor does it prohibit the decision maker from accepting the position of one party and rejecting the position of the other so long as reasons are provided for the choice made and those reasons are based on relevant considerations, which I find they were in this case. It is clear the Appellants were afforded the procedural rights contemplated by the above statement; procedural rights, I note, that are also statutorily protected by section 77 of the *Act*.
43. The “natural justice” ground is not specifically identified or argued in the appeals submission and no natural justice issues are apparent in either the process adopted by the Director or in the Determinations.
44. As indicated above, the burden is on the Appellants to provide some evidence in support of its allegation of denial of natural justice. I find that the Appellants have not met that burden in the circumstances of this case.
45. In reality, however, the position of the Appellants does not engage natural justice, but raises a question of whether the Director made an error of law, which is whether the Director erred in finding Jada and Mr. Venos liable for unpaid wages of the Complainants. The argument of the Appellants is, at its core, an attempt to re-argue the position that Jada had extricated itself from the partnership which was Stoney Creek Cabinet Company before the wages which were the subject of the complaints were earned or became payable. In other words, it challenges findings made by the Director on evidence and material provided during the complaint investigation. While error of law is not relied on as a ground of appeal, it is appropriate nonetheless to address whether this ground has any merit.
46. If the Appellants are to succeed on this basis, they must demonstrate the Director’s findings raise an error of law. The Tribunal has adopted the following definition of “error of law” set out by the British Columbia Court of Appeal in *Gemex Developments Corp. v. British Columbia (Assessor of Area #12 – Coquitlam)*, [1998] B.C.J. No. 2275 (B.C.C.A.):
1. a misinterpretation or misapplication of a section of the Act [in *Gemex*, the legislation was the *Assessment Act*];
  2. a misapplication of an applicable principle of general law;
  3. acting without any evidence;
  4. acting on a view of the facts which could not reasonably be entertained; and
  5. adopting a method of assessment which is wrong in principle.
47. The Tribunal noted in the *Britco Structures Ltd.* case that the test for establishing an error of law on this basis is stringent, requiring an appellant to show that the findings of fact are perverse and inexplicable, in the sense that they are made without any evidence, that they are inconsistent with and contradictory to the evidence or they are without any rational foundation.



48. I have carefully reviewed the Determination and the section 112(5) “record” for a potential error of law.
49. While the Appellants did provide evidence which, on its face, supported the position that Jada and Daveco Holdings Ltd. had ended the partnership, I agree the supporting evidence was not strong and that there was other evidence pointing to the Appellants’ continued involvement in the business. I do not find Mr. Venos’ assertion that he was, and continues to be, unable to provide additional and more objective support for his assertion to be realistic. His contention that he was unable to provide evidence of the payment of the partnership debts and closure of its accounts, confirmation of the bank’s release of the Appellants from personal guarantees, a notice to Ceridian cancelling payroll accounting or copies of notices to suppliers of a change in the structure of the business seems improbable. His assertion that a notice was posted for employees at the business premises was unanimously rejected by the Complainants. His contention that he had no records from the business is contradicted by the apparent issuance of 2013 T4s to many of the Complainants showing the return address on the envelope in which the T4s were issued to be his home address. Mr. Venos has never addressed or responded to this point, either to the Director or to the Tribunal in the appeals submission. Some of the Complainants say they were told Mr. Venos was to have contacted them about the final closure of the business in June 2013. He has never responded to those statements.
50. Mr. Kiselbach has not supported the position of the Appellants in any way. He has, it seems, chosen not to participate in the complaints investigation at all.
51. As well, the submission on the appeals is generously sprinkled with what can only be referred to as “new” evidence. Even if such evidence was admissible under the test used by the Tribunal for assessing such evidence – and I find no “new” evidence that would meet the test – it is not helpful to the contention being advanced by the Appellants. The brief note from Ms. Shiozaki, for example, expresses nothing more than her “understanding”. It does not say how or from whom she acquired this “understanding” or if there was any objective basis for it. Similarly, two of the letters submitted with the final reply of the Appellants are expressions of understandings and knowledge unsupported by any objective material. Additionally, there is simply no explanation why these persons could not have provided their information to the Director during the investigation.
52. Overall, it is trite that in deciding the merits of the complaints, the Director had to make some choices between the competing positions of the parties and the evidence provided. The choices were made and the reasons for those choices were explained in the Determinations. The Appellants may not like the choices made, but on the face of the information provided to the Tribunal in these appeals they were provided with the opportunity required by section 77 of the *Act* and the principles of natural justice to present their position and to respond to the claims presented by the Complainants.
53. The burden on the Appellants in these appeals has not been met. I find there is no valid ground of appeal and no reviewable error in the Determinations. On this basis and for the above reasons, the appeals are denied.

**ORDER**

- <sup>54.</sup> Pursuant to section 115 of the *Act*, I order the corporate determination and the director/officer determination, both dated June 12, 2014, be confirmed in the amounts of \$90,059.30 and \$80,367.12, respectively, together with any interest that has accrued under section 88 of the *Act*.

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**David B. Stevenson**  
**Member**  
**Employment Standards Tribunal**