

EMPLOYMENT STANDARDS TRIBUNAL

In the matter of an appeal pursuant to Section 112 of the
Employment Standards Act R.S.B.C. 1996, C.113

- by -

Carson Dupuis
a Director or Officer of 470854 B.C. Ltd.
operating RV Doctor

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: John M. Orr

FILE No: 1999/771

DATE OF DECISION: March 23, 2000

DECISION

OVERVIEW

This is an appeal by Carson Dupuis ("Dupuis") pursuant to Section 112 of the Employment Standards Act (the "Act") from a Determination numbered ER# 066395 dated November 30, 1999 by the Director of Employment Standards (the "Director").

The Director issued a Determination ("the corporate determination") against a corporation, 470854 B.C. Ltd. ("the Company") operating as RV Doctor on November 17, 1999 in favour of certain complainants for wages earned but not paid. The amount of the corporate determination was \$23,515.82 including interest to that date. The Company did not appeal the corporate determination within the time limit prescribed and no application for an extension of time has been made.

The Director issued this Determination finding that Dupuis was a director or officer of the Company at the time the wages were earned or should have been paid. The Director determined that pursuant to Section 96 of the Act Dupuis was liable for payment of the wages owing.

Dupuis has appealed the Determination in relation to his personal liability as a director of the Company.

ANALYSIS

Section 96 is found in Part 2 of the Act entitled "Enforcement". It provides as follows:

96. (1) 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.

(2) Despite subsection (1), a person who was a director or officer of a corporation is not personally liable for

(a) any liability to an employee under section 63, termination pay or money payable under a collective agreement in respect of individual or group terminations, if the corporation is in receivership or is subject to action under section 427 of the Bank Act (Canada) or to a proceeding under an insolvency Act,

(b)

The Director determined that at the time the wages were earned Dupuis was a director and officer of the corporation and that all of the liability arose within the two month time period provided for in the section.

Dupuis has appealed and the grounds attached to the notice of appeal set-out a number of factors. He states that he is claiming bankruptcy. He states that the business was sold and that there is a new owner. He claims that a number of employees were able to get new jobs. He sets out some financial hardship.

Section 96(2) provides that a director or officer is not personally liable if "*the corporation is in receivership or is subject to ... a proceeding under an insolvency Act*". But in this case Dupuis submits that he personally is claiming bankruptcy. He states that the business has been sold but does not allege, or submit any evidence to persuade me, that the corporation is in receivership or subject to an insolvency action. There is nothing in the appeal material which could support a conclusion that subsection 2 applies in this case. Therefore I must conclude that the director's liability remains enforceable under Section 96(1).

None of the other grounds set-out above or in the notice of appeal amount to defences against liability imposed under Section 96. The personal bankruptcy only sets-up certain priority and collection issues which will have to be resolved in the bankruptcy but does not effect the initial finding of liability. The selling of the business does not relieve the directors or officers of liabilities which arose while they were directors and the finding of new jobs does not mean that employees should not be paid wages owing for past services. Other than the provisions of Section 96(2) the *Act* has no provision to relieve an employer from liability on the basis of financial hardship.

The fundamental issues under Section 96 are whether Dupuis was a director of the corporation at the time wages were earned or should have been paid and whether the amount of personal liability has been correctly calculated. The appeal in this case does not address either of these issues and raises no other effective grounds for appeal. Therefore the Determination will be confirmed.

ORDER

I order, under section 115 of the *Act*, that the Determination is confirmed.

John M. Orr
Adjudicator
Employment Standards Tribunal