

An appeal

- by -

Terry Hanley, a Director or Officer of
603704 B.C. Ltd operating as Metropole Pub

- 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: John M. Orr

FILE No.: 2005A/53

DATE OF DECISION: July 29, 2005

DECISION

OVERVIEW

1. This decision addresses an appeal filed by Terry Hanley (“Hanley”) pursuant to Section 112 of the Employment Standards Act (the “Act”) from a Determination dated February 25, 2005 by the Director of Employment Standards (the “Director”) finding Hanley liable as a director or officer of a British Columbia corporation 603704 B.C. Ltd. (“the Company”).
2. The Company was formed specifically as the agency in charge of the operations of the Metropole Pub in Vancouver. The Pub operated in a building owned jointly by the Downtown Eastside Residents Association (“DERA”) and Abbot Holdings Ltd (“Abbot”). The Pub ran into financial difficulties and apparently defaulted on payments to Abbot and Abbot went into receivership. There is no evidence in the file to indicate that 603704 B.C. Ltd was in receivership or bankruptcy.
3. Donald Parker and Leslie Rippel were employed by the Company (603704) and the Company failed to pay them vacation pay, statutory holiday pay and compensation for length of service. A Determination against the Company was issued on July 15, 2004. The time for the Company to file an appeal expired on August 23, 2004 without an appeal being filed. The Company has not since filed an appeal or applied for any extension of time to file an appeal. The Company has not paid the amount as determined against it.
4. Subsequently, the Director determined that Terry Hanley was a director of the Company at the time the wages became due and therefore issued a Determination against her personally pursuant to s.96 of the Act on February 25, 2005.
5. Hanley now appeals the Determination that was made against her as a director or officer of the Company.
6. In the exercise of its authority under section 36 of the *Administrative Tribunals Act* (incorporated into Section 103 of the Act) the Tribunal has concluded that an oral hearing is not required in this matter and that the appeal can be properly addressed through written submissions.

ANALYSIS

7. Hanley appeals on the grounds that she only participated in the Company as part of her employment. She alleges that the real operating mind of the business was DERA and that DERA sold the business and received the proceeds of sale.
8. Unfortunately it appears that the Company did not appeal its liability. The substance of Ms. Hanley’s appeal is that the Company should not have been found liable. She does not deny that she was a director or officer of the Company at the time the wages were earned.
9. Even if Ms. Hanley was not an active director, the Act does not distinguish between active or inactive directors, *Re: Universal Cleaning Equipment Inc.*, BCEST #D424/02. She does not deny that she was registered as a director at the relevant time. The issues that arise under s. 96 of the Act are whether a person was a director at the material time or whether the person is covered by one of the exceptions in s.96 (2).

10. The relevant exceptions in this case might have been that the Company was in receivership, bankruptcy or other insolvency proceedings or that Hanley had ceased to be a director at the relevant time. Hanley has not submitted that these exceptions applied in this case. She does not dispute the amount of the wages as calculated.
11. It is apparent that the substance of the appeal relates back to the original determination against the Company. It is indeed unfortunate if Ms. Hanley has found herself liable on account of her position as a director if she was naively acting as a director without actively exercising her authority as a member of the board of directors. Those who agree to be appointed directors and officers of corporations must be aware of their responsibilities and of the potential risks of holding such positions. As stated in *Re: Van Four Enterprises Ltd.* BCEST #D088/04, it would be contrary to the *Act* to endorse a principle that a person who voluntarily consents to be named as a director of a corporation might avoid liability for unpaid wages by showing she was uninformed, misinformed or misled about the potential risks of being named a director.
12. As a member of the board of directors it was also within her power to have the Company appeal the original corporate determination but no appeal was filed.
13. Essentially, there is no substantive ground of appeal alleged that would excuse Ms. Hanley from personal liability as a director for the wages owed by the Company to these employees. The appeal must be dismissed.

ORDER

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

John M. Orr
Member
Employment Standards Tribunal