

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 -

Lydia 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: 1999/772

DATE OF DECISION: March 23, 2000

DECISION

OVERVIEW

This is an appeal by Lydia 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 her 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.

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 on the basis that she is not and never has been a director or officer of the Company.

The Director's delegate provided a Company search dated 99/10/20 which shows that, as of October 15, 1999, Ms Dupuis was a director and secretary of the Company. Ms Dupuis has provided a photo copy of a 1996 Company resolution purporting to show that there was only one director. However I note that the original document has been altered to remove her as a director. Her name is crossed-out with someone's initials beside it. There is no indication in any of the appellants submissions as to when this was done or by whom. I note that despite the deletions she is still shown as the Secretary of the Company.

Ms Dupuis has also submitted a letter, dated February 14, 2000, from a lawyer, Netexa Verbrugge. Ms Verbrugge purports to act for Ms Dupuis and states in her letter that Ms Dupuis

never consented to act as the Secretary of the Company. Ms Verbrugge alleges that she has reviewed all of the corporate records and that they show that all of the records have been signed by Carson Dupuis only and not by Ms Dupuis.

I find Ms Verbrugge's assertions somewhat disconcerting considering that she was the solicitor for the Company at the time the 1996 resolution was passed appointing Lydia Dupuis as the Secretary of the Company until her successor be appointed. The 1996 document submitted by the appellant appears to have been signed by Ms Verbrugge.

Ms Verbrugge has not submitted any affidavit evidence. She has not requested admission of new evidence and she has provided no evidence whatsoever to refute the clear evidence of the Company search provided by the delegate. All I have is Ms Verbrugge's letter which appears to assert that she allowed her client's name to be put forward and registered as the company Secretary without her knowledge and consent. I find this hard to believe.

Ms Verbrugge's letter is also contradicted by the letter from Lydia Dupuis, received by the Tribunal on "00 Jan 14", in which Ms Dupuis admits that she was the Secretary of the Company. In my opinion, the records as registered with the Registrar of Companies raise a rebuttable presumption that Ms Dupuis is an officer of the Company. There is very little in the submissions of the appellant which goes to rebutt such presumption other than a bare denial.

It is important to note that this Tribunal has consistently held that the onus on an appeal is on the appellant to satisfy the Tribunal that the Determination is wrong. The letter from Ms Verbrugge is not sufficient to satisfy me that Ms Dupuis was not an officer of the Company at the time that the wages were earned.

The fundamental issues under *Section 96* are whether Dupuis was an officer 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 satisfy me that the Director's determination on either of these issues was wrong 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