

An appeal

- by -

Khosrow Baripour – a Director of 3 P Enterprises Ltd.
carrying on business as Munchies on Robson
("Baripour")

- 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: David B. Stevenson

FILE No.: 2011A/124

DATE OF DECISION: November 2, 2011

DECISION

SUBMISSIONS

Khosrow Baripour	on his own behalf, a Director of 3 P Enterprises Ltd. carrying on business as Munchies on Robson
Amanda Clark Welder	on behalf of the Director of Employment Standards

OVERVIEW

1. This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”) brought by Khosrow Baripour (“Baripour”) of a Determination that was issued on August 2, 2011, by a delegate of the Director of Employment Standards (the “Director”). The Determination concluded that Baripour was a Director/Officer of 3 P Enterprises Ltd. carrying on business as Munchies on Robson (“3 P”), an employer found to have contravened provisions of the *Act* by failing to pay regular wages, overtime wages, annual vacation pay and statutory holiday pay to Nasser Aziznia Fard (“Aziznia Fard”). Baripour was held to be personally liable under Section 96 of the *Act* for an amount of \$8,399.84.
2. Baripour has appealed the Determination on the ground that evidence has come available that was not available when the Determination was issued. The evidence submitted is directly referable to a challenge to the Determination made against 3 P on August 3, 2011 (the “corporate Determination”). Baripour seeks to have the Determination under appeal here cancelled.
3. The Tribunal has discretion whether to hold an oral hearing on an appeal, but has decided an oral hearing is not necessary in this case. The issues involved in this appeal can be decided from the submissions and the material on the section 112(5) “record”.

ISSUE

4. The issue is whether Baripour has shown there is any reviewable error in the Determination.

THE FACTS

5. The facts that are relevant to this appeal are few and undisputed.
6. The Director issued the corporate Determination on August 3, 2011, in favour of Aziznia Fard, a former employee of 3 P, in the amount of \$12,134.35, an amount that included wages, interest and administrative penalties. The wages which were found to be owing to Aziznia Fard were earned and should have been paid between September 16, 2009, and March 21, 2010. An appeal of the corporate Determination has been considered and dismissed in BC EST # D119/11.
7. The Determination under appeal here indicates a search of the BC On-line Registrar of Companies – Corporations Search was made by the Director on July 8, 2011, and it showed that Baripour was the sole director of 3 P during the period when Aziznia Fard’s wages were earned or should have been paid. This finding has not been challenged.

8. Based on the above information, the Director found Baripour was personally liable under section 96 of the *Act*, which states in part:

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.*

ARGUMENT

9. There is no argument made by Baripour in this appeal relating to the decision of the Director to find him liable under section 96 of the *Act*. The points raised in the appeal submission are identical to those made in the unsuccessful appeal of the corporate Determination.

ANALYSIS

10. It is well established that a person challenging a director/officer Determination is limited to arguing those issues which arise under section 96: whether the person was a director/officer when the wages were earned or should have been paid; and whether circumstances exist that would relieve the director/officer from personal liability under subsection 96(2). The director/officer is precluded from arguing the corporate liability: see *Kerry Steineman, Director/Officer of Pacific Western Vinyl Windows & Doors Ltd.*, BC EST #180/96.
11. In this appeal, to reiterate, Baripour has not challenged the findings of the Director that he was a director of 3 P during the time wages were earned or should have been paid to Aziznia Fard. There is nothing in the material showing there are circumstances that would relieve Baripour under section 96(2) from his personal liability under section 96(1) and he has not made any argument that there are such circumstances.
12. In sum, Baripour has failed to provide any evidence or argument on any issue arising under section 96.
13. As a result, he has failed to demonstrate any error in the Determination and this appeal is, accordingly, dismissed.

ORDER

14. Pursuant to Section 115 of the *Act*, I order the Determination dated August 26, 2010, be confirmed in the total amount of \$8,399.84.

David B. Stevenson
Member
Employment Standards Tribunal