

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 -

The California Shutter Company of Canada Ltd.
(the "Employer")

and

John Davidson, director/officer of
The California Shutter Company of Canada Ltd.
("Davidson")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: Ib S. Petersen

FILE NOS.: 98/795 and 98/796

DATE OF DECISION: April 29, 1999

DECISION

SUBMISSIONS

Mr. John Davidson	on behalf of himself and the Employer
Mr. Dan Plunet	on behalf of himself
Mr. Kola Ros	on behalf of himself
Mr. W.J. Prest	on behalf of himself
Mr. Yi-Cheng Mao	on behalf of himself
Mr. Prenil Narayan	on behalf of himself
Mr. Paul Dobson	on behalf of himself
Mr. Eric Thunstrom	on behalf of himself
Mr. Anil Hiralall	on behalf of himself
Mr. Mark Woken	on behalf of himself
Ms. Beverly Huffey	on behalf of the Director of Employment Standards

OVERVIEW

This decision concerns two appeals by the Davidson pursuant to Section 112 of the *Employment Standards Act* (the “Act”), against two Determinations of the Director of Employment Standards (the “Director”) issued as follows:

- November 10, 1998 against the Employer for a total of \$20,862.01 owing to some 22 employees on account of wages and vacation pay (the “Corporate Determination”); and
- November 23, 1998 against Davidson as director/officer of the Employer for a total of \$20,862.01 (the “Davidson Determination”).

FACTS AND ANALYSIS

Initially, an appeal was filed with respect to the Corporate Determination. By letter dated December 21, 1998, Davidson advised the Tribunal that the Employer would not be appealing the Determination against it. Subsequently, in January 1999, Davidson advised the Tribunal that he wished to re-open the appeal of the Corporate Determination. The Tribunal allowed him until February 1, 1999 to file an appeal. He filed an appeal on February 1, 1999.

Davidson attached a “rough chronology of events” with his appeal. From this document, I understand that the TM Wood Things Ltd., which is related to the Employer, closed down its operations in August 1997. The Employer continued to experience financial difficulties and in late October let its employees know that it would be closing. The Employer was not able to pay its employees at the end of October and went into bankruptcy.

In his appeal, Davidson argues that the Determinations are wrong for the following reasons:

- 1) There are calculation errors in the Determination.
- 2) He made partial payments to the employees and made a “real and moral” attempt to pay amounts owed. He has nothing left to contribute.
- 3) He suggests that the employees should turn to the Workers’ Compensation Board for compensation. WCB seized an amount from the auction of the assets of a related company, TM Wood Things Ltd.

Davidson does not dispute that he was the sole director/officer of the Employer at the material time. As well, this is confirmed by the corporate registry. The delegate states that wages owing was calculated from the records supplied from the trustee in bankruptcy.

Davidson is not able to supply any records to support the cash payments he claims to have made and, in fact, states that he does not “doubt that some of the amounts outstanding are payable to the former employees”. He says he “recall” that two of the employees were paid most of the amount owed to them. One employee, Dan Plunet, agrees that he was paid \$400.00 by Davidson in December 1997.

In my view, there is no merit to the appeal of either Determination. The onus is on the appellant to show that the determination is wrong. While Davidson argues that the calculations are wrong, the appeal does not contain even basic particulars to support that claim. Moreover, it is clear that there are no records to support that payments were made. While I have considerable sympathy for Davidson’s position, that he had made “real and moral” efforts to pay his employees is irrelevant for the present purposes, amounts owed under the *Act*. In any event, the submissions of the employees in this matter suggest a different picture.

Section 96 of the *Act* provides (in part):

96(1) A person who was a director or officer of a corporation at the time wages of an employee were earned or should have been paid is personally liable for up to 2 months' unpaid wages for each employee.

Section 96 of the *Act* provides for personal liability for corporate directors and officers. They may be liable for up to two month's unpaid wages for each employee, if they were directors or officers at the time the wages were earned or should have been paid. In other words, the issues that arise under Section 96 are limited to whether a person was a director/officer at the material time, or whether the amount of personal liability was calculated correctly (see, for example, *Pacific Western Vinyl Windows & Doors Ltd.*, BCEST #180/96).

In my view, I am not required to offset the \$400.00 paid to Plunet. The amount was paid to him separately from the payment order set out in the Determinations and the purpose of that payment was apparently to get him to work for Davidson in a new business venture.

Davidson also argues that the Director takes priority over the WCB as a creditor and--presumably--that the money seized from TM Wood Things Ltd. should somehow be applied towards the liability of the Employer and Davidson. Without deciding whether I have jurisdiction to deal with this matter, Davidson had not provided any authority to support the proposition advanced by him and, in any event, it appears to me--from the correspondence supplied by Davidson--that the amount was seized, not from the Employer, but from the assets of a separate corporate entity, TM Wood Things Ltd. In short, there is no basis for Davidson's argument.

In the result, the appeal must fail.

ORDER

Pursuant to Section 115 of the *Act*, I order that the Determinations in this matter, dated November 10 and 23, 1998 be confirmed.

Ib Skov Petersen
Adjudicator
Employment Standards Tribunal