

An appeal

- by -

John Ruffolo, a Director or Officer of V.I. Renter's Centre Ltd.

- 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

ADJUDICATOR: John M. Orr FILE No.: 2000/740 DATE OF HEARING: March 26, 2001 DATE OF DECISION: March 27, 2001





# DECISION

#### **APPEARANCES:**

John Ruffolo

On his own behalf

Barbara Miller

On her own behalf

No one appeared on behalf of the Director

#### **OVERVIEW**

This matter involves an appeal filed on behalf of John Ruffolo ("Ruffolo"). pursuant to section 112 of the *Employment Standards Act* ("the *Act*") from a determination dated October 02, 2000 (#ER 096976) by the Director of Employment Standards ("the Director") against him personally as Director or Officer of V.I. Renter's Centre Ltd ("VIRC" or "the company").

On the same date the Director found that the company was liable for wages owed to an employee, Barbara Miller ("Miller"). The basis for the corporate liability was twofold. Firstly the company had issued a cheque to Millar in April 1999 in the amount of \$476.73. Miller misplaced the cheque and never tendered it for payment. She was seeking replacement of this cheque. The Director found that the cheque represented payment for wages and that the company was liable in this amount.

The second basis for liability arose in August 199 when Miller alleges that she was dismissed without just cause. The Director found that she was entitled to 2 weeks wages as compensation for length of employment.

Ruffolo appeals his liability for both of these amounts. He appeals the first issue on the basis that the cheque was not issued for wages but was an advance for future services that were not performed. He appeals the second amount because it arose after he had sold all of his shares in the company and ceased to be a director or officer.

#### FACTS

Barbara Miller ("Miller") worked as a commissioned sales agent for VIRC from August 5, 1998 to approximately May 15, 1999. In May 1999 Ms Miller says she took an unpaid leave, which was open ended with no specific arrangements for return to work. Mr. Ruffolo was the owner of the company at the time and he claims that Miller took her annual vacation and simply did not return at any time before he sold the company on June 30, 1999.

There are two substantial issues that arise between Miller and VIRC. The first relates to a cheque dated April 23, 1999. Miller misplaced the cheque and never cashed it. She simply wants a replacement cheque. She says that the cheque was payment for services performed as part of her contract (employment or otherwise). Ruffolo claims that the cheque was an advance paid to Miller in expectation of services that she was to perform but never did.

The second substantial issue relates to the termination of Miller's employment. Miller submits that she was on an open-ended unpaid leave from VIRC. She claims that in early August 1999 she contacted Carson, the new owner of VIRC, to let her know that she was now ready to return to work. Carson had no knowledge of Miller and did not re-hire her. The Director's delegate found that the failure to re-hire was unjust dismissal.

Much of the material filed on the two appeals relates to whether Miller was an employee or a contractor. The Director concluded that she was an employee. I have not decided this issue.

### ANALYSIS

The appeal of the corporate liability for compensation for length of service remains outstanding. This appeal specifically relates to the personal liability of Ruffolo as a director or officer of the company pursuant to section 96 of the *Act*.

Section 96 of the *Act* 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 month's unpaid wages for each employee.

Ruffolo sold his shares and ceased to be a director or officer of the company on June 30, 1999. He was not a director or officer of the company when the liability for compensation for length of service was triggered or should have been paid. He is therefore not personally liable for this portion of the determination.

If the company is found liable to pay Miller the \$476.73 for the cheque, which she never cashed, then it is likely that Ruffolo would be personally liable for this amount. That is, if the cheque represented "wages" earned in April 1999 then it is conceded that Ruffolo was a director of the company at that time.

However, the corporate liability for this amount has been referred back to the Director for further investigation and therefore it would be inappropriate to vary this determination before that issue is resolved. As a result I am also going to refer this matter back to the Director to re-investigate the essence of this cheque.



## **ORDER:**

Pursuant to section 115 of the Act I order that the matter is referred back to the Director.

JOHN M. ORR

John M. Orr Adjudicator Employment Standards Tribunal