



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

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**