

An appeal

- by -

Helen Broadfoot and Glen Broadfoot, Directors or Officers of 389309 B.C. Ltd.
operating as Suchi's Bath and Kitchen

- 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.: 2003A/60 and 2003A/81

DATE OF DECISION: June 3, 2003

DECISION

OVERVIEW

This decision addresses appeals filed by Glen and Helen Broadfoot (“the Broadfoots”) pursuant to Section 112 of the Employment Standards Act (the “*Act*”) from two Determinations dated February 6, 2003 by the Director of Employment Standards (the “Director”) finding them liable as directors or officers of a British Columbia corporation 389309 B.C. Ltd. (“the Company”).

In the exercise of its authority under section 107 of the *Act* the Tribunal has concluded that an oral hearing is not required in this matter and that the appeal can be properly addressed through written submissions

The Company was found liable for wages owing to a former employee, Catherine Power (“the employee”), because the Director found that the Company did not provide written notice to the employee of termination of her employment.

The Determination against the Company was issued on July 9, 2002. The time for the Company to file an appeal expired on August 1, 2002 without an appeal being filed. The Company has not since filed an appeal or applied for any extension of time to file an appeal. The Company has not paid the amount as determined against it. Subsequently, the Director determined that Glen and Helen Broadfoot were directors of the Company at the time the wages became due and therefore issued the determinations against them personally on February 6, 2003.

The Broadfoots now appeal the determinations that were made against them as directors or officers of the Company.

ANALYSIS

The Broadfoots have filed identical appeals that assert that the employee was given actual notice of termination of her employment because all the employees knew that the business operated by the Company was closing. It is noted that all the employees participated in the closeout sales. They say that the other employees sought-out and found other employment. It is pointed out that the Company even provided this employee with a letter of reference to assist her in finding alternative employment.

The Broadfoots do not deny that they were directors of the Company at the time the employment was terminated and the wages became due and payable.

It is apparent that the substance of the appeal relates back to the original determination against the Company. The submission is that the employee had ample actual notice of the pending termination of employment because the business was closing. However, even if I were addressing an appeal by the Company verbal or actual notice is not a defence in law to the lack of “written” notice as required by section 63 of the *Act*. There is no claim in the materials filed by the Broadfoots that the employee was given proper written notice and the *Act* does not accept verbal notice as a method of discharging the statutory liability of the employer to compensate for length of service upon termination of employment: *Re: Frans Markets*, [1997] BC EST No. D303.

In terms of the liability of the directors and officers of the Company, there is no allegation that the Broadfoots were not directors at the time that the wages became due. No other reason is advanced as to why they should not be found liable as directors of the Company. Essentially, there is no substantive ground of appeal alleged that would excuse these directors from personal liability for the wages owed by the Company to this employee. The appeals must be dismissed.

ORDER

I order, under section 115 of the *Act*, that the two determinations herein are confirmed.

John M. Orr
Adjudicator
Employment Standards Tribunal