

**EMPLOYMENT STANDARDS TRIBUNAL**

In the matter of an appeal pursuant to Section 112 of the

*Employment Standards Act*, S.B.C. 1995, c. 38

-by-

Michael David Sawers

(“Sawers”)

- of a Determination issued by -

The Director of Employment Standards

(the “Director”)

**ADJUDICATOR:** Kenneth Wm. Thornicroft

**FILE No.:** 97/68

**DATE OF DECISION:** April 28th, 1997

## DECISION

### OVERVIEW

This is an appeal brought by Michael David Sawers (“Sawers”) pursuant to Section 112 of the *Employment Standards Act* (the “Act”) from a Director’s Determination issued under file number 18744 by the Director of Employment Standards (the “Director”) on January 10th, 1997. The Director determined that Sawers was the sole director and officer of FCC (1995) Holdings Inc. (“FCC”) and, accordingly, liable for unpaid wages owed to a former FCC employee, Luigi Parrotta (“Parrotta”) (\$3,056.80), and a further \$500 monetary penalty arising from the appellant’s failure to produce payroll records.

By way of Determination No. CDET 004402 the Director held FCC liable for unpaid wages in the amount of \$3,056.80 owed to Mr. Parrotta. This latter determination issued against FCC was not appealed.

Sawers has not appealed the \$500 monetary penalty but does challenge the Director’s finding that he is personally liable, under section 96(1) of the *Act*, for Luigi Parrotta’s unpaid wage claim.

### ISSUES RAISED ON APPEAL

Sawers raises two substantive matters in his letter to the Tribunal dated February 3rd, 1997, and appended to his notice of appeal. First, Sawers alleges that Parrotta has been paid in full; second, he says that Parrotta was not an employee (and therefore not entitled to claim under the *Act*), but rather was a sub-contractor.

A *B.C. Company Act* search, dated February 6th, 1997, shows that, at all times material to Parrotta’s complaint, Sawers was a director of FCC. Thus, Sawers’ status as a director of FCC is not in dispute.

### ANALYSIS

The two substantive matters raised by Sawers in his appeal are now *res judicata*. As noted above, the Director also issued a determination against FCC. No appeal has been filed with respect to this latter determination and the time for filing such an appeal [see section 112(2) of the *Act*] has now expired.

If Sawers had wished to challenge Parrotta's entitlement to file a wage complaint under the *Act* or, indeed, the wage claim itself, Sawers, as a director of FCC, could have (but apparently chose not to) caused that company to file the appropriate appeal. Having failed to do so, in accordance with previous judicial (e.g., *Stelmaschuk v. Dean* [1995] 9 W.W.R. 131) and Tribunal decisions [e.g., *Steinemann*, EST Decision No. 180/96, July 16th, 1996; *Perfekto Mondo Bistro*, EST Decision No. 205/96, July 29th, 1996], the principle of issue estoppel applies and the appellant is not entitled to utilize the present appeal process to, in effect, reopen the determination that has already been issued against FCC.

There are some limited exceptions to the issue estoppel principle (such as fraud in the issuance of the initial corporate determination or the submission of new and relevant evidence that was not in existence at the time the corporate determination was issued) none of which applies here.

Lastly, I might add that none of the statutory defences set out in Section 96(2) of the *Act* are applicable here.

**ORDER**

Pursuant to Section 115 of the *Act*, I order that the Director's determination in this matter, dated January 10th, 1997 and issued under file number 18744, be confirmed in the amount of \$3,556.80 together with whatever further interest that has accrued, pursuant to Section 88 of the *Act*, since the date of issuance.

**Kenneth Wm. Thornicroft**  
**Adjudicator**  
**Employment Standards Tribunal**