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 -

Reliable Glass Ltd.
operating as Tiger Glass
("Reliable Glass" or the "Employer")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: Ib S. Petersen

FILE No.: 2000/099 and 2000/102

DATE OF DECISION: May 2, 2000

DECISION

APPEARANCES/SUBMISSIONS

Ms. Scarlett Rigney McGladery	on behalf of Donald Cameron MacKenzie
Mr. Wilfred Michael Thorpe	on behalf of himself
Mr. Ron Bassani	on behalf of himself
Mr. Brian Johnston	on behalf of himself
Mr. Graham Knibb	on behalf of himself
Mr. James Dunne	on behalf of the Director of Employment Standards

OVERVIEW

This is an appeal by the Mr. MacKenzie ("MacKenzie") and Mr. Thorpe ("Thorpe") pursuant to Section 112 of the *Employment Standards Act* (the "*Act*"), against two Determinations of the Director of Employment Standards (the "Director") issued on January 27, 2000 which determined that Reliable Glass was liable for wages to a number of its former employees, for a total of $26,998.52. No determination has been issued against the directors or officers.

FACTS AND ANALYSIS

From the Determination and the submissions, I understand that the Employer was assigned into bankruptcy on July 27, 1999. The appellants were served as directors or officers, though MacKenzie takes the position that he is not a director as he had no involvement with the Employer. Thorpe takes the position that the employees found to be owed money agreed to work for a period after the Employer closed its business on July 16, 1999. At that time, Thorpe says, the employees were informed that "the company was out of business and they had no further employment". The employees were allowed to run the business until the bankruptcy, on July 27, 1999, to make it more likely that the business could be sold as a going concern. MacKenzie adopts Thorpe's submissions with respect to the alleged errors in the Determination. The employees dispute that they agreed to work on the basis that they would not be paid.

The trustee in bankruptcy has not filed an appeal of the Determination against the Employer.

The delegate argues, first, that MacKenzie and Thorpe's appeals are premature because no directors determination have been issued. Second, he argues that they do not have standing to bring this appeal because only the trustee in bankruptcy has the authority to act for the Employer under the federal *Bankruptcy and Insolvency Act*. Third, the delegate also says that, even if Thorpe's appeal is dealt with on its merits, and the employees agreed to work for no wages, it must fail because the fact that the Employer allowed the employees to work and is, therefore, responsible for wages under the *Act*.

I agree with the delegate.

First, MacKenzie and Thorpe do not have status to appeal the Determination against the Employer. Neither are liable under the Determination, nor are they complainants. It does not appear that they are authorized to act on behalf of the Employer. As such, they do not have status to bring this appeal (see, for example, *Sekhon*, BCEST #D234/97 and *Scott*, BCEST #D057/97). It may well be that the Director will issue director/officer determinations at some point under Section 96 of the *Act*. At that time, MacKenzie and Thorpe will have the opportunity to appeal those determinations.

Second, I agree with the delegate that MacKenzie and Thorpe do not have standing to bring the appeal on behalf of the Employer. Only the trustee in bankruptcy has that authority. In *Canadian Neon Ltd.*, BCEST #D080/2000, the Adjudicator noted, at page 2 (QL version):

> "Section 71(2) of the federal *Bankruptcy and Insolvency Act* states that "on an assignment <into bankruptcy>, a bankrupt ceases to have any capacity to dispose or otherwise deal with his property, which shall, subject to this Act and to the rights of the secured creditors, forthwith pass to and vest in the he trustee named in the ... assignment ..." The trustee, in turn, is given wide authority to deal with the bankrupt's property. For example, the trustee may, with the permission of the inspectors, "bring, institute or defend any action or other legal proceeding relating to the property of the bankrupt" (see section 30(1)(d)). Thus, on bankruptcy, the bankrupt's property ... vests in the trustee who is given, for the most part, exclusive authority to deal with that property.

Accordingly, Canadian Neon does not have the legal authority to appeal the Determination as that right lies solely with Canadian Neon's licensed trustee .... Whether this appeal was filed by Fyfe in his personal capacity, or as an agent of Canadian Neon, the same result holds: the appeal is simply not properly before the Tribunal and thus the appeal must be dismissed...."

These principles are applicable to the case at hand.

Third, even if I were to consider the merits of the appeals, there is little merit to the grounds put forward by the appellants. It is clear from the appeals that the Employer permitted the employees to continue working after July 16, 1999. Even if the employees agreed to work to keep the business operating so it could be sold as a going concern, with little or no prospect of getting paid, and thus waive the requirements of the *Act*, such an agreement is, in my view, of no effect (see Section 4). If the Employer allowed the employees to keep working, it is responsible for the payment of wages.

ORDER

Pursuant to Section 114(1)(b) and (c) of the *Act*, the appeals are dismissed.

Ib S. Petersen
Adjudicator
Employment Standards Tribunal