

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 -

Design Centre Interiors Co. Ltd.
("Design Centre")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: David Stevenson

FILE No.: 96/793

DATE OF HEARING: April 7, 1997

DATE OF DECISION: April 9, 1997

DECISION

APPEARANCES

for the Appellant:	Randall Boehm
for the Complainants:	no one appearing
for the Director:	no one appearing

OVERVIEW

This is an appeal pursuant to Section 112 of the Employment Standards Act (the “Act”) by Design Centre Interiors Co. Ltd. (“Design Centre”) from a Determination of a delegate of the Director of Employment Standards (the “Director”) under Section 95 of the Act that Design Centre was an associated employer with J.B. Design Centre International Inc. operating as Design Centre International (“JB”). As a result of the conclusion, Design Centre was included in a Determination, Number CDET 004875, dated December 2, 1996, which ordered payment of \$3,796.23 for two persons, Renate Obenaus (“Obenaus”) and H. Lynn Norgard (“Norgard”).

ISSUE TO BE DECIDED

The issue is whether the Director was correct in concluding Design Centre was an associated employer with JB for the purposes of the Act.

FACTS

Design Centre is a company in the business of selling interior design packages. In 1992, the company leased approximately 11,000 square feet of space at 1873 Spall Road in the City of Kelowna. It occupied a portion of the building for its business and subleased the rest. At any time Design Centre had between ten and twenty tenants. As a service to its tenants, Design Centre provided a desk at the main entrance from which a receptionist, an employee of Design Centre, could direct visitors to the building to any of the businesses leasing space. In December, 1994, the critical period of time in this case, the directors and officers of Design Centre were Randall Boehm and Neil Miller.

JB was, and perhaps still is, a company specializing in the design, fabrication and installation of window treatments, such as curtains, draperies and blinds, for, primarily, residential homes. In December, 1994 JB had been in business for approximately thirty years. During that time its sole director and officer was Joseph Boehm, who is the father of Randall Boehm. For some time prior to August, 1994, JB did its business from a location at 315 Banks Road in the city of Kelowna, a distance of about five kilometers from 1873 Spall Road. When Design Centre had a contract which included window treatments, which was not often, it would subcontract that work to JB. Over and above the work it got from Design Centre, JB had its own client base. There is no evidence suggesting, apart from the subcontracting relationship which arose from time to time, either company had any involvement in the business of the other.

In August, 1994, JB took lease space at 1873 Spall Road. The business relationship did not change. The two companies continued to operate and make business decisions independently of one another.

For some time before August, 1994, Randall Boehm had observed his father had begun to exhibit conduct punctuated by excessive mood swings and memory loss. More elements of this unusual conduct became apparent following the move by JB to 1873 Spall Road. Joseph Boehm ignored or insulted customers, refused to return calls, ignored financial obligations to employees, suppliers and his landlord, broke promises made to clients, employees and his son and dismissed or sent home employees for no apparent reason.

By early December, Randall Boehm decided to try to assist his father in his affairs. On December 5, he and Danica Fletcher met with Joseph Boehm. They offered to loan him the money he needed to meet outstanding obligations and he agreed to allow them to recover the loan from the accounts receivable. From that date until the end of December, Randall Boehm and Danica Fletcher, primarily the latter, injected over \$25,000.00 in JB to cover financial obligations, including wages for some of the employees of JB. On or about December 28, 1994 Joseph Boehm accused Randall Boehm and Danica Fletcher of trying to steal from him and threatened to sue them if they tried to interfere in his business in any way.

Randall Boehm sought the assistance of a family friend, a lawyer, to attempt to mediate the situation. Promissory notes and agreements were signed by Joseph Boehm for JB, but he later denied them and refused to carry out their terms. On February 28, 1995, JB was evicted. For a brief time the business was located on Highway 97, but abandoned that location after two or three months. Randall Boehm believes JB is still doing some business but does not know the location. He has not seen his father for over two years. He has been told his father has now been clinically diagnosed as having Alzheimer's Disease.

The complainant Obenaus worked for JB as a seamstress. She never performed any work for Design Centre. The complainant Norgard worked for JB as a Drapery Consultant/Customer Service Representative. Her employment with JB started in November, 1994 and she was terminated on or about December 28, 1994. While employed by JB she was asked by the receptionist for Design Centre, Patricia Fritch, to relieve her at the reception for a short period. Ms. Fritch asked Joseph Boehm to approve this arrangement and he did. There is nothing to suggest this arrangement was anything other than an occasional gratuitous act by Norgard to Ms. Fritch, which had the approval of Joseph Boehm.

ANALYSIS

There is no factual basis for the conclusion reached by the delegate in this case and the finding of association for the purposes of the Act between Design Centre and JB is wrong.

There are four elements to finding two or more companies are associated for the purposes of the Act. One of the requisite elements is a finding of common control or direction. That element can be found in direct or indirect financial control, corporate control, operational control, key financial support and vertical and horizontal operational integration. The list is not intended to be exhaustive, but rather illustrative of the nature of the relationship which must be shown to exist between two or more entities to satisfy this element.

The evidence does not show any common control or direction between Design Centre and JB: no commonality of directors, officers or shareholders; no financial investment or involvement of one in the other (from an operational or business perspective); no operational control of one company in respect of the other; no substantial integration between the businesses; and no indication of residual elements of commonality, such as sharing of resources, employees, equipment, space or work.

The subcontracting relationship and the relief provided by Norgard to the receptionist at Design Centre are insufficient to establish an element of commonality or direction. The former was occasional and there is no evidence the arrangement was less than arms length. When Randall Boehm and Danica Fletcher provided assistance to Joseph Boehm in December, 1994 there was no subcontracting arrangement between Design Centre and JB. The latter was also occasional and had the appearance of an informal arrangement between Norgard and Ms. Fritch. The information I have on that situation is that Norgard asked Joseph Boehm if she could relieve Ms. Fritch and was allowed by him to do so. The situation was neither regular nor required of Norgard by either Design Centre or JB.

Randall Boehm conceded the financial contribution made by he and Danica Fletcher had a business, as well as an obvious personal and familial, aspect. That aspect did not relate to JB's business, but to Design Centre's business. It was an attempt to minimize the potential damage to the goodwill of the Design Centre by the conduct of his father. Randall Boehm wrote, on December 31, 1994, to his father serving notice on JB regarding several matters, including arrears of rent, breach of promise to repay moneys advanced by Danica Fletcher, breach of operating guidelines for tenants at the premises and breach of lease agreement. In the correspondence he stated:

You are destroying the reputation of the Design Centre premises, and affecting the many businesses that operate from here, especially Design Centre Interiors Co. Ltd., because I am related to you and our business names are so similar.

The financial help given by Randall Boehm and Danica Fletcher does not assist in this case to support a finding of common control or direction.

ORDER

Pursuant to Section 115 of the Act, I order Determination Number CDET 004875, dated December 2, 1996 be varied to show the employer only as J.B. Design Centre International Inc. operating as Design Centre International.

David Stevenson
Adjudicator
Employment Standards Tribunal