

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 -

Philip Ho Fai Lee
("Lee")

- of a Determination issued by -

The Director Of Employment Standards
(the "Director")

ADJUDICATOR: Mark Thompson

FILE NO.: 98/150

DATE OF DECISION: May 21, 1998

DECISION

OVERVIEW

This is an appeal by Philip Ho Fai Lee (“Lee”) pursuant to Section 112 of the *Employment Standards Act*, the *Act* from Determination No. DDET 001145 issued on February 16, 1998 (the “Determination”). The Determination was one of three issued on the same date involving Lee’s General Maintenance & Construction Ltd. and two former employees. Determination No. CDET 007543 found that Lee’s General Maintenance & Construction owed the former employees unpaid wages. The Determination under appeal in this case repeated the factual conclusions and findings of law in Determination No. CDET 007543 and added to it an order that Lee, a Director/Officer of the company, should pay two months’ wages to the complainants, pursuant to Section 96(1) of the *Act*. A third determination found that another director/officer of the company (Mary Lee) should also pay two months’ wages to the complainants. The appeals of all three determinations used the same legal and factual arguments, adding a brief argument to deal with the circumstances of the two directors/officers where appropriate. In BC EST #D215/98, I confirmed Determination No. CDET 007543.

ISSUE TO BE DECIDED

The issue in this case is whether Lee should pay two months’ wages to the complainants.

FACTS

The decision in BC EST #D215/98 discussed the facts of the complaints against Lee’s General Maintenance & Construction Ltd. It is not necessary to repeat the facts in this decision. Stated briefly, however, Steven and Doris Krysanski were employed by Lee’s General Maintenance & Construction as resident caretakers in an apartment building from March 1, 1995 to August 31, 1996. Their employment was terminated when the building was sold and the new owners decided to operate it without resident caretakers. After they received notice of their termination, the Krysanskis filed a complaint alleging that they had not been paid the minimum amount for a resident caretaker required by the Regulation issued under the *Act*. Determination No. CDET 007543 found that the former employer, Lee’s General Maintenance & Construction Ltd., owed the complainants a total of \$2,009.17, including interest.

The Determination under appeal in this case contained the same conclusions of fact and law as Determination No. CDET 007543 and imposed an order against the appellant to pay \$1,803.23 under Section 96(1) of the *Act*. This sum was two months’ wages for the two complainants, since the Determination found that they shared the resident caretaker position.

ANALYSIS

Decision BC EST # D215/98 contains an analysis of the factual and legal issues raised by this appeal. I adopt the conclusions in that Decision as governing this case.

Section 96(1) of the *Act* declares that persons who were directors or officers of a corporation at the time wages were earned or should have been paid are personally liable for up to two months' unpaid wages for each employee. The purpose of this provision is to ensure that employees or former employees receive wages due to them in the event that the employer is not available to meet its obligations. The objective of the Determination in this case was to ensure that Lee would compensate the complaints if the corporation lacked the resources.

Lee's appeal of the section of the Determination that ordered her to pay two months' wages was linked to her arguments against Determination No. CDET 007543. He, another former officer or director of the corporation and Lee General Maintenance & Construction Ltd., filed a single appeal directed against Determination No. CDET 007543 and added a statement that Lee should not be liable for unpaid wages because of defects common to all three Determinations. There was no separate argument directed at the Determination in question, i.e. Lee's personal liability. As an appellant, Lee bore the onus of demonstrating that the Determination was incorrect. All of the issues raised in Lee's appeal have been addressed in Decision BC EST #D215/98, so it is not necessary to deal with the details of those aspects of the appeal.

ORDER

For these reasons, the Determination is confirmed, pursuant to Section 115 of the *Act*.

Mark Thompson
Adjudicator
Employment Standards Tribunal