

An appeal

- by -

Uno Leis, a Director or Officer of 518238 B.C. Ltd. (operating as Central
Canada Contact Lenses Inc.)

("Leis")

- 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: Paul E. Love

FILE No.: 2001/174

DATE OF DECISION: May 16, 2001

DECISION

OVERVIEW

This is an appeal by the employer of a Determination dated February 5, 2001, issued by a Delegate of the Director of Employment Standards pursuant to the *Employment Standards Act, R.S.B.C. 1996, c. 113* (the “Act”). Mr. Leis was found liable as a director or officer of 518238 B.C. Ltd. (“company”), for two months unpaid wages, vacation pay and interest, arising from a corporate determination in favour of Michael Hurd, issued on August 23, 2000. In the appeal submissions Mr. Leis produced a resignation letter from the office of director or officer, and collateral information supporting his lack of involvement with the company. The resignation was submitted to the solicitor for Central Canada Contact Lenses Inc, and the resignation was not registered, with the Registrar of Companies, in a timely way due to an outstanding fee account. The Delegate re-investigated and confirmed that Mr. Leis resigned as a director and officer of the company. I cancelled the Determination.

ISSUE

Did the Delegate err in finding that Mr. Leis was a director or officer of 518238 B.C. Ltd., with liability for the payment of wages pursuant to s. 96 of the *Act*?

FACTS

This case is decided upon written submissions of Leis Uno, and the Delegate of the Director of Employment Standards.

On August 23, 2000, the Delegate issued a Determination against 518238 B.C. Ltd. operating as Canada Contact Lenses Inc. in favour of Michael Hurd in the amount of \$8,757.26. The company appealed the Determination and the appeal was dismissed. The company did not pay the Determination. On February 5, 2001, the Delegate issued a determination against Mr. Leis as a director of the company in the amount of \$6,302.88, representing two month wages, annual vacation pay plus interest from the date of termination. The Delegate issued the Determination on the basis of a BC Online Registrar of Companies Corporate Search performed on June 12, 2000. The Search revealed that all material times (June 1, 1998 to June 1, 2000), Mr. Leis was a director and officer of 518238 B.C Ltd..

Mr. Leis filed an appeal indicating that by a letter dated January 21st, 2000, Mr. Leis resigned as a director and officer of 518238 B.C. Ltd. He forwarded the written resignation to the office of the solicitor for Central Canada Contact Lenses Inc. in Ontario, and also to Michael Stoker, a director of the company. The solicitors did not file the resignation with the Registrar of Companies, in a timely way, as there was an outstanding fee account. Mr. Leis also filed a letter to the Bank of Montreal dated February 16, 2000 asking to be removed as a signing officer. Mr.

Leis submits that at the time Mr. Hurd resigned and failed to receive wages owing to him, Mr. Leis was not involved in the company, and had not had any involvement with the company for a year before Mr. Hurd's situation arose. Mr. Leis is a former employee of Central Canada Contact Lenses Inc, who was terminated by that employer on or about June 14, 1999. He submitted a record of employment dated July 14, 1999 indicated that he was laid off with an unknown date of recall. He never worked again for the company.

As a result of the submissions of Mr. Leis, the Delegate conducted a further investigation and determined that the submissions made by Mr. Leis were correct.

ANALYSIS

The burden rests with the appellant, in this case the Mr. Leis, to establish an error in the Determination such that I should vary or cancel the Determination. I note that liability of corporate officers under s. 96 of the *Act* is a departure from the usual situation of corporate responsibility for corporate liabilities. The Tribunal has held in the past that the Corporate Registry records are proof of the facts, but an appellant can attempt to show that the records were incorrect.

Here, there is clear evidence that Mr. Leis resigned from the office of director or officer. Unfortunately the documents were not registered in a timely way. A companies failure to file the resignation, however, does not invalidate the resignation: *Wilnofsky, BCEST #D106/99 (Thornicroft)*. I am satisfied that Mr. Leis has shown that he was not an officer or director at the time that the wages were owed.

ORDER

Pursuant to section 115(a) of the *Act*, the Determination dated February 5, 2001 is canceled.

Paul E. Love
Adjudicator
Employment Standards Tribunal