

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 -

Coker Equipment Northwest Ltd.
("Coker Northwest")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: Kenneth Wm. Thornicroft

FILE No.: 2000/047

DATE OF HEARING: June 16, 2000

DATE OF DECISION: June 28, 2000

DECISION

APPEARANCES

Tim Prescott, Barrister & Solicitor	for Coker Equipment Northwest Ltd.
Stanley I. Coker, President	for Coker Equipment Inc.
Henry Sienema	on his own behalf
No appearance	for the Director of Employment Standards

OVERVIEW

This is an appeal brought by Coker Equipment Northwest Ltd. (“Coker Northwest”) pursuant to section 112 of the *Employment Standards Act* (the “Act”) from a Determination issued by a delegate of the Director of Employment Standards (the “Director”) on January 10th, 2000 under file number ER 95-223 (the “Determination”).

The appeal was heard at the Tribunal’s offices in Vancouver on June 16th, 2000. The appellant was represented by Mr. Tim Prescott, Barrister and Solicitor, and the respondent employee, Mr. Sienema, appeared on his own behalf. Mr. Stanley I. Coker, the president of Coker Equipment Inc., appeared via teleconference on that firm’s behalf. The Director’s delegate had previously advised the Tribunal that she did not intend to attend the appeal hearing.

THE DETERMINATION

The Director’s delegate determined that Coker Equipment Inc. and Coker Northwest were “associated corporations” as defined by section 95 of the *Act* and, accordingly, were jointly and separately liable for \$2,221.50 in unpaid wages and interest owed to a former Coker Equipment Inc. employee, Henry Sienema (“Sienema”).

ISSUE ON APPEAL

The only issue before me in this appeal concerns the appropriateness of the section 95 declaration.

FACTS AND ANALYSIS

Section 95 of the *Act* provides as follows:

Associated corporations

95. *If the director considers that businesses, trades or undertakings are carried on by or through more than one corporation, individual, firm,*

syndicate or association, or any combination of them under common control or direction,

- (a) *the director may treat the corporations, individuals, firms, syndicates or associations, or any combination of them, as one person for the purposes of this Act, and*
- (b) *if so, they are jointly and separately liable for payment of the amount stated in a determination or in an order of the tribunal, and this Act applies to the recovery of that amount from any or all of them.*

In determining that Coker Northwest and Coker Equipment Inc. were associated corporations the delegate appears to have relied on her understanding that Coker Northwest was, as is set out at pages 2, 4 and 9 of the Determination, a “division” of Coker Equipment Inc. and that both firms were “controlled” by Stanley Coker. The uncontradicted evidence before me is that there was, in fact, no business relationship between the two entities.

Indeed, the uncontradicted evidence before me is that Coker Northwest (which was incorporated as a Washington state corporation on April 13th, 1998) was, during the relevant period, a “shelf corporation” that was, at all material times, controlled by its incorporating solicitor, Mr. Prescott--an individual who was not involved in the operations of Coker Equipment Inc.

Coker Northwest was incorporated by Mr. Prescott on the instructions of Mr. Sienema. Mr. Prescott was the original (and only) director. However, neither Mr. Sienema nor Coker Equipment Inc. paid the requisite fees and disbursements relating to the incorporation and thus control of Coker Northwest was never transferred to any person in authority at Coker Equipment Inc. or to Coker Equipment Inc. itself.

On March 31st, 1999, pursuant to a director’s resolution, the control of Coker Northwest--which, I might add has never been extraprovincially registered to carry on business in British Columbia--was transferred to a independent third party, Mr. Melville Ray Biggs, who then became the sole director, officer and shareholder. Coker Northwest’s corporate name was subsequently officially changed to MRB Agencies of America Inc. *The uncontradicted evidence before me is that there is not now, nor has there ever been, any business relationship between MRB Agencies of America Inc. and Coker Equipment Inc.*

Although Mr. Sienema apparently had business cards printed up showing that he was the “vice-president” of Coker Northwest, it would appear that Mr. Sienema had these cards printed up on his own motion, without any formal authority to do so from Coker Northwest. The corporate records before me clearly show that Sienema was *never* an officer, director or shareholder or even an employee of Coker Northwest.

Both Mr. Coker and Mr. Sienema concur that, although it was *intended* that there be, there never was, in fact, any business relationship whatsoever between the two firms.

The evidence before me shows that there was no common business enterprise operated by the two firms and, further, no common control, both of which are requisite elements to a section 95 declaration. Accordingly, the appeal succeeds and the Determination must be varied.

ORDER

Pursuant to section 115 of the *Act*, I order that the Determination be varied by expunging the section 95 declaration from the Determination. In all other respects, the Determination is confirmed.

Kenneth Wm. Thornicroft
Adjudicator
Employment Standards Tribunal