

**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 -

John Petriniotis (a.k.a. John Petris) Director/Officer of Federated Fashion Group  
Ltd. operating as Suzy Creamcheese (Pacific) Ltd.

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Geoffrey Crampton

**FILE NO.:** 96/758

**DATE OF DECISION:** June 25, 1997

## DECISION

### OVERVIEW

This is an appeal by John Petriniotis a director/officer of Federated Fashion Group Ltd. operating as Suzy Creamcheese (Pacific) Ltd. (“Petriniotis”) under Section 112 of the *Employment Standards Act* (the “*Act*”), against Determination No. DDET 00574 which was issued by a delegate of the Director of Employment Standards (the “Director”) on November 29, 1996.

The Director’s delegate found that Petriniotis contravened Sections 18(1) and 20 of the *Act* and that he was liable, under Section 96 of the *Act*, for unpaid wages owing to eleven employees. The Determination required Petriniotis to pay to the Director the sum of \$7,709.37.

Determination No. CDET 004003 was issued by the Director’s delegate on September 18, 1996 and required Federated Fashion Group Ltd. operating as Suzy Creamcheese (Pacific) Ltd. (“FFG”) to pay the sum of \$10,563.01 because it had contravened Section 18(1) and Section 20 of the *Act*. Determination No. CDET 004003 was not appealed to the Tribunal.

In his appeal, Petriniotis denies that he contravened Sections 18(1) and 20 of the *Act* although he admits that he was an officer and director of both Federated Fashion Group Ltd. as well as an officer and director of Suzy Creamcheese (Pacific) Ltd. prior to the times at which they made an Assignment in Bankruptcy.

I have completed my review of the submissions made on behalf of Petriniotis and I have decided to confirm the Determination.

### ISSUE TO BE DECIDED

The issue to be decided in this appeal is whether Petriniotis, on an appeal of a Determination against him as a director of FFG, can properly appeal the issue of FFG’s liability to pay wages under the *Act* or whether he is limited to arguing whether he was a director of FFG and whether the amount of Determination No. DDET 000574 is correct.

### FACTS

Determination No. CDET 004003 which was issued by a delegate of the Director on September 18, 1996 required Federated Fashion Group Ltd. operating as Suzy Creamcheese (Pacific) Ltd. to pay the sum of \$10,563.01 to the Director arising out of a contravention of Sections 18(1) and 20 of the *Act*. That Determination contained the following statements by way of “background” information:

Federation Fashions Group Ltd. (“FFG”) is involved in the purchase and supply of women’s fashions to Suzy Creamcheese stores for sale.

In the Spring of 1992, Federation Fashions Group assumed responsibility for the inventory and purchasing functions of Suzy Creamcheese (Canada) Ltd. ("Suzy Canada") and Suzy Creamcheese (Pacific) Ltd. ("Suzy Pacific"). Federated Fashions Group's operations consisted of purchasing inventory and shipping it to Suzy Creamcheese stores on consignment for sale. Until 1995, Federated Fashions Group received 50% of the suggested retail price of the inventory sold by Suzy Creamcheese stores. Starting in 1995, Federated Fashions Group received 50% of the actual selling price of the inventory sold. Federated Fashions Group paid the head office overhead expenses for its location at 199 West 6th Avenue, Vancouver.

Federated Fashions Group is 100% owned by the Petris Family Trust. The officer and director of Federated Fashions Group Inc. is John Petriniotis (a.k.a. John Petris). John Petris also owns Suzy Creamcheese (Canada) Ltd., Suzy Creamcheese (Pacific) Ltd. and Esmeralda Fashion Boutiques Ltd. either directly or through holding companies, and acts as the sole officer and director of each company. For the purposes of the Bankruptcy and Insolvency Act, all four companies are deemed to be related to one another.

Determination No. CDET 004003 also contained a finding by the Director's delegate that:

Based on the information provided by the employees and the Trustee, Deloitte and Touche Inc., I find the employer Federated Fashions Group Ltd. operating Suzy Creamcheese (Pacific) Ltd. has contravened (Section 18(1) and Section 20) of the *Employment Standards Act*.

Determination No. CDET 004003 was not appealed to the Tribunal. The latest date for an appeal of that Determination was October 11, 1996.

Determination No. DDET 000574 was issued by the Director's delegate on November 29, 1996 and required Petriniotis to pay the sum of \$7,709.37 arising out of a contravention of Sections 18(1) and 20 of the *Act* and the personal liability of a director or officer of a corporation under Section 96 of the *Act*. The wages found to be owing under this Determination pertained to eleven employees (whose names appear in the Determination and the schedules attached to it).

In his appeal of Determination No. DDET 000574, Petriniotis denies that he contravened Section 18(1) and Section 20 of the *Act*. He also made the following written submission:

Federated Fashions Group Ltd. did not carry on business as Suzy Creamcheese (Pacific) Ltd. The status of those companies is as follows:

- (a) Federated Fashions Group Ltd. is an independent company of which I was an officer and director but not a shareholder. Federated Fashions Group Ltd. was incorporated under the provisions of the *Company Act* of British Columbia in 1981. As hereinafter noted, Federated Fashions Group Ltd. made an

Assignment in Bankruptcy under the provisions of the *Bankruptcy Act* on the 31st day of January, 1996 when its proposal to creditors was defeated;

- (b) Suzy Creamcheese (Pacific) Ltd. was incorporated under the provisions of the *Company Act* of British Columbia in 1989. I was an officer and director of Suzy Creamcheese (Pacific) Ltd. and either directly or indirectly owned all of the shares of Suzy Creamcheese (Pacific) Ltd. As hereinafter noted, Suzy Creamcheese (Pacific) Ltd. made an Assignment in Bankruptcy under the provision of the *Bankruptcy Act* on the 8th day of February, 1996;
- (c) I resigned as an officer and director of both companies immediately upon their respective Assignments into Bankruptcy.

Petriniotis also states that none of the employees were employed at any time by Federated Fashions Group Ltd. but, to the best of his knowledge, "...were employed solely by Suzy Creamcheese (Pacific) Ltd." Petriniotis disputes the accuracy of certain findings which the Director's delegate made. He also states, in respect of four specific employees, that "...Suzy Creamcheese (Pacific) Ltd. was assigned into Bankruptcy at the request of the Royal Bank of Canada, a secured creditor..." However, according to Petriniotis:

The Royal Bank of Canada seized the funds in the account of Suzy Creamcheese (Pacific) Ltd. and refused payment of the cheques issued to the above employees notwithstanding they were aware the cheques had been issued on February 6, 1996.

## **ANALYSIS**

I find that I must reject Petriniotis' appeal of Determination No. DDET 000574.

Petriniotis acknowledges in his appeal that he was director and officer of Federated Fashions Group Ltd. as well as Suzy Creamcheese (Pacific) Ltd. until his resignation which was effective upon the dates of their respective Assignments into Bankruptcy.

An earlier decision of the Tribunal [*Kerry Steinemann Director/Officer of Pacific Western Vinyl Windows and Doors Ltd.*, BC EST # D180/96] observed, at page 8, that:

The intent of Section 96 of the *Act* is to provide the Director of Employment Standards with a way of collecting wages that are owed by a company to its employees. It ensures that employees are protected against insolvent employers ... through making directors and officers liable, within limits, for the payment of wages. This section of the *Act* was not meant to provide a company with a further opportunity to dispute the company's liability for wages.

The *Steinemann* decision relied on the doctrines of *res judicata* and issue estoppel to prevent a director of a company from re-arguing the issue of the company's liability to pay wages.

Section 96 of the *Act* creates a personal liability for officers and directors to pay unpaid wages, as follows:

96. (1) *A person who was a director or officer of a corporation at the time wages of an employee of the corporation were earned or should have been paid is personally liable for up to 2 months unpaid wages for each employee.*
- (2) *Despite subsection (1), a person who was a director or officer of a corporation is not personally liable for*
- (a) *any liability to an employee under section 63, termination pay or money payable under a collective agreement in respect of individual or group terminations, if the corporation is in receivership or is subject to action under section 427 of the Bank Act (Canada) or to a proceeding under an insolvency Act,*
  - (b) *vacation pay that becomes payable after the director or officer ceases to hold office, or*
  - (c) *money that remains in an employee's time bank after the director or officer ceases to hold office.*
- (3) *This Act applies to the recovery of the unpaid wages from a person liable for them under subsection (1).*

On his own admission, Petriniotis was an officer and director of Suzy Creamcheese (Pacific) Ltd. until February 8, 1996. Thus, he was a director at the time wages "...were earned and should have been paid."

Under Section 1(1) of the *Act*, the definition of "wages" includes "...money required to be paid in accordance with a determination or an order of the Tribunal."

As noted by the Tribunal in the *Steinemann* decision, "...a director may reargue the merits on liability where there has been 1) fraud, or 2) fresh evidence which is decisive and which was not previously available." There is nothing in Petriniotis' submissions in this appeal which satisfies me that either of these factors are present to support his appeal.

For all of these reasons I have decided to deny this appeal.

**ORDER**

I order, under Section 115 of the *Act*, that Determination No. DDET 000574 be confirmed.

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**Geoffrey Crampton**  
**Chair**  
**Employment Standards Tribunal**

GC/da