

An appeal

- by -

The Copper Mug Pub Ltd. operating as Ridgeview Estates  
(“Ridgeview Estates”)

- 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:** Cindy J. Lombard

**FILE No.:** 2002/61

**DATE OF HEARING:** May 31, 2002

**DATE OF DECISION:** June 10, 2002

## DECISION

### APPEARANCES:

Al Beydak for Cooper Mug Pub Ltd. operating as Ridgeview Estates

Roderick Crockett on his own behalf and Carrie Parr, witness

### OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “Act”) by Roderick Crockett (“Crockett”) of a Determination which was issued on January 21, 2002, by a Delegate of the Director of Employment Standards (the “Director”).

The Determination found that the Respondent Employer, Cooper Mug Pub Ltd. operating as Ridgeview Estates (“Ridgeview Estates”) was liable to pay Crockett wages, vacation pay and interest in the total amount of \$1,656.70 (the “Determination”).

### ISSUES TO BE DECIDED

1. What was the date that Crockett commenced his employment with Ridgeview Estates. Was it January 8, 2001 as alleged by Crockett and confirmed by the Determination or February 1, 2001, as stated by the employer?
2. For the purpose of calculating the minimum wage due to Crockett under Section 17 of the *Employment Standards Act* Regulations what number of residential suites were there in Ridgeview Estates.
3. Does the Respondent Ridgeview Estates have the right to deduct the following sums which it says are due from Crockett:
  - a) West Kootenay Power \$457.28
  - b) Cell phone \$60.20

### FACTS

Crockett was employed by Ridgeview Estates as a resident manager.

#### According to Ridgeview Estates:

Beydak states that prior to hiring Crockett, Ridgeview Estates was managed by Amos Realty, the hallways were vacuumed by the resident of #208 and the lawn was cut by a business in Osoyoos, British Columbia. The intention of the owners of Ridgeview Estates was to sell the units (26 suites) as strata units: however, the market was slow and they therefore decided to rent the suites until the market picked up.

Ridgeview placed an ad in the “Osoyoos Times” on December 6, 2000, looking for:

“reliable couple to rent up and manage apartment building in Osoyoos”

Al Beydak (“Beydak”) a director of Cooper Mug Pub Ltd., interviewed Crockett and hired him. According to Beydak they had no discussion at anytime about a specific start date. When asked in cross-examination why no start date was fixed, Mr. Beydak replied “I don’t know why.” What Beydak says they did tell Crockett was that he might as well move in and get settled and he gave him the keys to the complex as well as to his suite.

Beydak says that Amos Realty was still managing the building in January and that the resident of #208 was vacuuming the halls and further that the lawn company was caring for the lawn.

Beydak says that the monies due to Crockett is \$636.04 calculated as follows:

Wages for January, 2001 (no property management or vacuuming)	\$456.00
Wages for February – June, 2001 \$456.00 x five months =	\$2,280.00
Wages 5 months @ \$18.30 x 23	\$2,104.50
Wages 5 months @ \$4.00 x 3 = (vacuuming front of 3 units)	<u>60.00</u>
Total wages earned	\$4,900.00
4% Vacation pay	<u>\$196.02</u>
Total wages earned	\$5,096.52
Less rent received for six months @ \$525.00 =	\$3,150.00
Less Kootenay Power	\$468.67
Less Cell Phone (money from Petty Cash Account)	\$60.20
Less wages paid	<u>\$800.00</u>
Due before Interest S88	\$617.65
Interest S88	<u>\$18.52</u>
Total Due	\$636.04

#### According to Crockett

Crockett says that he answered the ad in the Osoyoos Times and was interviewed by Beydak on December 16, 2001. In that meeting an agreement was reached that Crockett was hired to rent suites, keep the building clean, do minor repairs and maintain the grounds in exchange for free rent until the suites were rented and then he would be paid a wage.

Beydak gave Crockett the keys to the building and his suite and he and his wife, Carrie Parr, moved in on January 8, 2002.

At that time just 7 suites were occupied with three having been sold. In January Crockett proceeded to obtain the vacuum from the resident of #208 and vacuum all floors and as well as admitted by Beydak in cross-examination, install a box for rent cheques (January 18, 2002), replace exit lights (January 10, 2001) cleaning the vacant suites which were necessary to clean because they had been vacant so long and infested with wasps, showing people through and renting suites, answering phone calls about rentals and cleaning up the garbage outside.

One week after Crockett moved in Beydak admitted in cross-examination that he wanted Crockett also to do the banking, look after advertising to rent the suites and collect rents.

With respect to the cell phone and heating, Crockett says that those expenses were paid by the Appellant and no objection made until Crockett left their employ.

According to the letter from Amos Realty dated January 8, 2001, their management of Ridgeview Estates had ceased as at the date of that letter (see Schedule)

## ANALYSIS

**1. What was the date that Crockett commenced his employment with Ridgeview Estates. Was it January 8, 2001 as alleged by Crockett and confirmed by the Determination or February 1, 2001, as stated by the employer?**

Section 1 of the *Act* defines “employee” to include:

- a) a person, including a deceased person, receiving or entitled to wages for work performed for another,
- b) a person an employer allows, directly or indirectly, to perform work normally performed by an employee...

“employer” includes a person:

- a) who has or had control or direction of an employee, or
- b) who is or was responsible, directly or indirectly, for the employment of an employee;

It is clear from the evidence of both Beydak for the Appellant and Crockett that Crockett was an employee of the Appellant during the month of January. We rely on the following evidence:

- 1) Following the interview of Crockett by Beydak on December 16, 2001, Beydak gave him the keys not just to the suite that he was moving into but to the whole building;
- 2) During the month of January, after Crockett and his wife moved in on January 8<sup>th</sup>, he did a significant amount of work including:
  - a) vacuuming;
  - b) cleaning vacant suites;
  - c) install a rent box
  - d) replace exit lights
  - e) cleaning up garbage outside
  - f) renting suites, including advertising, answering the telephone, showing people through suites and banking.

2. **For the purpose of calculating the minimum wage due to Crockett under Section 17 of the *Employment Standards Regulation* what number of residential suites were there in Ridgeview Estates.**

Section 17 of the *Employment Standards Regulation* set out the method of calculating the minimum wage due to a resident caretaker:

Resident caretakers

17. The minimum wage for a resident caretaker is,
- a) for an apartment building containing 9 to 60 residential suites, \$456.00 per month plus \$18.30 for each suite, and
  - b) for an apartment building containing 61 or more residential suites, \$1,554.00 per month.

There are 26 residential suites in Ridgeview Estates and therefore the Director was correct in using that number to calculate the minimum wage due Crockett. Although three were privately owned in January, 2002, no strata council had been formed and Crockett was still responsible for all common areas relating to those suites.

3. **Does the Respondent Ridgeview Estates have the right to deduct the following sums which it says are due from Crockett:**

- a) West Kootenay Power \$457.28
- b) Cell phone \$60.20

Section 21 of the *Act* provides:

21. 1) Except as permitted or required by this *Act* or any other enactment of British Columbia or Canada, an employer must not, directly or indirectly, withhold, deduct or require payment of all or part of an employee's wages for any purpose.
- 2) An employer must not require an employee to pay any of the employer's business costs except as permitted by the regulations.
- 3) Money required to be paid contrary to subsection (2) is deemed to be wages, whether or not the money is paid out of an employee's gratuities, and this *Act* applies to the recovery of those wages.

The Director was correct in his determination that the Appellant Employer does not have the right to deduct from Crockett's wages any claim for a heating and cell phone bill.

**ORDER**

Pursuant to Section 115 of the *Act*, the Determination dated January 21, 2002, is confirmed.

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**Cindy J. Lombard**  
**Adjudicator**  
**Employment Standards Tribunal**