

An appeal

- by -

Dale Clarke, Director/Officer of Lonestar Custom Sandblast & Paint Inc. and
by Debbie Clarke, Director/Officer of Lonestar Custom Sandblast & Paint Inc.
("the Clarkes")

- 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: David B. Stevenson

FILE No.: 2003A/240 and 2003A/241

DATE OF DECISION: October 29, 2003

DECISION

SUBMISSIONS

Dale and Debbie Clark on behalf of themselves

Luke Krayenhoff on behalf of the Director of Employment Standards

OVERVIEW

This decision addresses an appeal pursuant to Section 112 of the *Employment Standards Act* (the “*Act*”) brought by Dale Clarke, a Director/Officer of Lonestar Custom Sandblast & Paint Inc. and Debbie Clarke, a Director/Officer of Lonestar Custom Sandblast & Paint Inc. (“the Clarkes”) of two Determinations that were issued on July 22, 2003 by a delegate of the Director of Employment Standards (the “Director”). One of the Determinations concluded that Dale Clarke was a director/officer of Lonestar Custom Sandblast & Paint Inc., an employer found to have contravened provisions of the *Act*, and, under Section 96 of the *Act*, was ordered to pay an amount of \$1,963.87. The other Determination found that Debbie Clarke was a director/officer of Lonestar Custom Sandblast & Paint Inc., an employer found to have contravened provisions of the *Act*, and, under Section 96 of the *Act*, was also ordered to pay an amount of \$1,963.87.

In their appeal, the ground selected by the Clarkes is that new evidence has become available that was not available at the time the Determination was being made. The appeal submission, in its entirety reads:

Please accept this as our appeal on the following grounds:

It has come to our attention that the legal documents for share transfer and the resignation of the original directors of the company have not been completed.

We are asking the Tribunal to cancel the decision from the Director against Dale and Debbie Clarke.

ISSUE

The issue raised in this appeal is whether the Clarkes have shown the Director erred in issuing the Determinations against them.

THE FACTS

The Determinations set out the following facts:

- Lonestar Custom Sandblast & Paint Inc. was incorporated on February 3, 1999;
- The complainants unpaid wages were earned between February 3, 1999 and August 2001; and
- The Clarkes were both listed as directors and officers of Lonestar Custom Sandblast & Paint Inc. at the time the complainant’s wages were earned and became payable.

ARGUMENT AND ANALYSIS

The burden is on the Clarkes, as the appellants, to persuade the Tribunal that the Determination was wrong and justifies the Tribunal's intervention.

I do not find anything in the appeal that would indicate an error in the Determination. The Clarkes do not say they were not directors or officers at the time the complainant's unpaid wages were earned and became payable.

There is some suggestion from comments made in the appeal that the Determinations against the Clarkes might be cancelled if there were other directors or officers of the company who might also be liable. If that suggestion is being made, it would be incorrect. The *Act* neither prohibits the Director from imposing a personal liability on each director or officer of a corporation individually nor require the Director to proceed against all directors or officers. The only limitation is that the Director cannot collect from directors or officers an amount greater than the total liability of the corporation under the *Act* (see *Douglas H. Corbett, a Director or Officer of Alya International Inc.*, BC EST #D165/01).

There is also a suggestion the Clarkes might be relieved of their personal liability because the company is no longer in business and has had its assets seized. There is, however, no indication in the appeal and certainly no evidence that Lonestar Custom Sandblast & Paint Inc. was subject to action under section 427 of the *Bank Act (Canada)* or to a proceeding under an insolvency Act at the time the Determinations were issued.

The above two matters are the only arguments that might, by inference, arise from the appeal. Neither have any merit. The appeals are dismissed.

ORDER

Pursuant to Section 115 of the *Act*, I order the Determinations dated July 22, 2003 be confirmed.

David B. Stevenson
Adjudicator
Employment Standards Tribunal