

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-

Wen-Di Interiors Ltd.
-and-
Wen-Di Interiors (B.C.) Ltd.
(the “employer”)

- of a Determination issued by -

The Director of Employment Standards
(the “Director”)

ADJUDICATOR: Kenneth Wm. Thornicroft
FILE NO.: 1999/339
DATE OF DECISION: July 16, 1999

DECISION

OVERVIEW

This is an appeal brought by Wen-Di Interiors Ltd. and Wen-Di Interiors (B.C.) Ltd. (collectively referred to as the “employer”) 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 May 6th, 1999 under file number ER086064 (the “Determination”).

The Director’s delegate determined that the two appellants were “associated corporations” as defined by section 95 of the *Act* and thus were jointly and separately liable for \$10,451.36 in unpaid wages and interest owed to their former employee, Melany Bosch.

The appeal of the Determination has now been scheduled to be heard on September 14th, 1999 at the Tribunal’s offices in Vancouver. Pending the hearing of the appeal, the appellants have requested, pursuant to section 113 of the *Act*, that the Determination be suspended. *These reasons deal only with this suspension request.*

FACTS AND ANALYSIS

Section 113 of the Act provides as follows:

- 113 (1) A person who appeals a determination may request the tribunal to suspend the effect of the determination.
- (2) The tribunal may suspend the determination for the period and subject to the conditions it thinks appropriate, but only if the person who requests the suspension deposits with the director either
- (a) the total amount, if any, required to be paid under the determination,
 - or
 - (b) a smaller amount that the tribunal considers adequate in the circumstances of the appeal.

Counsel for the employer requests that the Determination be suspended upon payment of the sum of \$1,200 to be held by the Director pending the appeal. The Director’s legal counsel, on the other hand, submits that full amount of the Determination ought to be deposited.

In my view, neither proposal is appropriate.

I am concerned about the employer’s financial condition notwithstanding the employer’s counsel’s assurances that the employer is quite capable of paying any amount for which it may ultimately be held liable. The Port Coquitlam store, where Ms. Bosch was employed (from March 1997 to

September 1998), has now been closed. The only other store operated in B.C. by the employer, in Kelowna, is in some apparent financial difficulty and I understand some of the employees of the Kelowna store have also filed unpaid wage complaints under the *Act*. Thus, the employer's exigible assets may well, for the most part, lie elsewhere--in the province of Alberta--and thus collection proceedings, if necessary, may have to target the employer's Alberta assets.

However, as noted by the Director's legal counsel, Alberta is a reciprocating jurisdiction with British Columbia (see section 119 of the *Act*) and, assuming that there are sufficient Alberta assets (something about which I have no concrete evidence), should Bosch's claim ultimately be sustained, collection proceedings, though they may be delayed, are not subject to any legal or procedural barriers.

Bosch's complaint has been dealt with relatively expeditiously although, should her claim be upheld on appeal, it will likely have been nearly one year since her wages were due; on the other hand, she will be entitled to additional interest pursuant to section 88 should her award be confirmed on appeal and, as noted above, the appeal is set to be heard in September, 1999. I am not aware of any collection proceedings having been taken by the Director to date.

The employer asserts that a cash deposit will negatively affect its cash flow but that it does have sufficient assets to pay any monies that might ultimately be found to be owed to Ms. Bosch. Accordingly, it appears to me that an appropriate order would be one that secures Ms. Bosch's claim while, at the same time, does not unduly constrain the employer's cash flow (the employer's interest here goes beyond the amount of this claim as I have before me an essentially identical appeal with respect to another employee who was awarded some \$5,600; this appeal will also be heard on September 14th).

ORDER

Pursuant to section 113(2)(b) of the *Act*, I order that the Determination be suspended, until further order of the Tribunal, but only on the following terms and conditions:

- 1) The employer will forthwith deposit with the Director the sum of \$1 to be held by the Director pending the hearing of the employer's appeal;
- 2) In addition, the employer will also forthwith provide to the Director an 90-day (running as and from the date of issuance) irrevocable letter of credit issued by a Canadian chartered bank in favour of the Director in the amount of \$10,451.36;
- 3) In the event that it appears that a decision with respect to the employer's appeal will not be issued within the 90-day period provided for in the letter of credit, the Director has liberty to apply for a further order.

Kenneth Wm. Thornicroft, Adjudicator