

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 -

CORNERSTONE PROPERTIES LTD.
("Cornerstone")

- of a Determination issued by -

THE DIRECTOR OF EMPLOYMENT STANDARDS
(the "Director")

ADJUDICATOR: Ian Lawson

FILE NO.: 97/274

DATE OF DECISION: July 17, 1997

DECISION

OVERVIEW

This is an appeal by Cornerstone Properties Ltd. ("Cornerstone") pursuant to section 112 of the *Employment Standards Act* (the "Act"). The appeal is from a Determination dated April 7, 1997, issued by Mary O'Byrne as a delegate of the Director of Employment Standards (the "Director"). The Determination required Cornerstone to pay \$1,382.45 to Ioannis Katsafaros, an employee who was terminated for cause but who had not been paid holiday pay and who was required to hire his own replacement while on holidays, in contravention of section 21 of the *Act*.

Cornerstone filed an appeal on April 21, 1997. The appeal is now decided without an oral hearing, on the basis of written submissions and the record before the Tribunal.

FACTS

Cornerstone is a property management firm retained by Mr. Jack Gechman to manage an apartment building owned by Mr. Gechman at 885 Craigflower Ave., Victoria, B.C. While I am not certain whether Ms. O'Byrne had the benefit of seeing the "Property Management Contract" between Cornerstone and Mr. Gechman, Cornerstone has provided a copy of this contract dated May 24, 1993 along with its submissions on the appeal. This contract appoints Cornerstone as exclusive agent to operate and manage the apartment building, and includes provisions empowering Cornerstone to employ and dismiss employees, and binding Cornerstone to pay on behalf of the owner all wages owed to such employees. Article 5.3 of this contract reads:

"In no event will the Agent be responsible for any loss arising from acts, negligence or default of any such employees, agents or independent contractors, it being agreed that all such employees or agents, are the employees or agents of the Owner and not of the agent and that all such independent Contractors are contracting with the Owner and not with the Agent."

Cornerstone entered into a written contract of employment with Mr. Katsafaros on June 1, 1993 and this contract is appended to Ms. O'Byrne's Determination as Exhibit "A". The opening paragraph of this contract states "Cornerstone hereby agrees to employ, as Agent for the Property Owners, the Resident Caretaker", who was Mr. Katsafaros. The contract then sets out basic terms of employment, including the following provisions in paragraph 10:

"It is expressly agreed that Cornerstone may terminate the employment of the Resident Caretaker at any time with notice or salary in lieu thereof, where there is just cause for dismissal, and Cornerstone shall be the sole judge of the sufficiency of the said cause."

No issue is taken by Mr. Katsafaros on the sufficiency of the cause advanced for his dismissal, and Cornerstone does not challenge Ms. O'Byrne's findings that several requirements of the *Act* had been

violated. Instead, Cornerstone alleges that it was not the employer. Cornerstone alleges that Mr. Katsafaros had been employed on the premises by Mr. Gechman for several years prior to Cornerstone's retainer as property manager. It is further alleged that the "Property Management Contract" between Cornerstone and Mr. Gechman establishes that Cornerstone was throughout only an agent for Mr. Gechman who, it is argued, is the true employer of Mr. Katsafaros.

ISSUE TO BE DECIDED

This appeal requires me to decide whether Cornerstone was the employer of Mr. Katsafaros and so is liable to pay the sum determined to be owing to this employee.

ANALYSIS

The definition of "employer" in the *Act* 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." This definition focuses on the role played by the putative employer in the workplace, not on the relationship between that employer and another putative employer. In short, the possibility that an employer acts as agent for a principal employer is not a relevant factor in determining the employment relationship.

There is no doubt that Cornerstone was Mr. Katsafaros's employer as this word is defined in the *Act*. Cornerstone had control and direction over Mr. Katsafaros, and it was also responsible for setting the terms of the employment relationship, including the matter of termination. Cornerstone's argument on this appeal is that in doing these things, it was acting as agent for Mr. Gechman, and so Cornerstone should not be liable for the payment owing to Mr. Katsafaros. The agency relationship, however, does not remove Cornerstone from the definition of an employer. To accede to Cornerstone's argument would be to allow persons who direct or control employees, or who are responsible for the employment of employees, to evade the *Act's* minimum requirements.

ORDER

After carefully considering the evidence and argument, I find that the Determination made by Ms. O'Byrne is correct and the appeal should be dismissed.

Pursuant to section 115 of the *Act*, I order that the Determination dated April 7, 1997 be confirmed.

Ian Lawson
Adjudicator
Employment Standards Tribunal