

An appeal

- by -

Coregenesis Systems Inc.  
("Coregenesis")

- 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:** Carol L. Roberts

**FILE No.:** 2002/288

**DATE OF DECISION:** July 18, 2002

## DECISION

### OVERVIEW

This decision is based on written submissions from Dorn Beattie on behalf of Coregenesis Systems Inc., and Sara Church on her own behalf.

This is an appeal by Coregenesis Systems Inc. ("Coregenesis"), pursuant to Section 112 of the *Employment Standards Act* ("the *Act*"), against a Determination of the Director of Employment Standards ("the Director") dated May 3, 2002. The Director's delegate found that Coregenesis had contravened sections 17(1) and 58(a) of the Act in failing to pay Sarah Church regular wages and holiday pay, and ordered it to pay Ms. Church \$7,164.45 in wages and interest.

### ISSUE TO BE DECIDED

Although Coregenesis does not dispute wages owing, it contends that it has new information that was not considered at the time of the investigation. It contends that, since the determination was issued, it has determined that Ms. Church has wrongfully appropriated Coregenesis property, and that it has no obligation to pay her wages owing until that property is returned.

### FACTS

Ms. Church worked as the office manager of Coregenesis, a software development company, from July 7, 2000 until she was laid off on March 12, 2002. Coregenesis did not dispute that outstanding wages were owed to Ms. Church. The delegate calculated vacation pay from Ms. Church's 2001 T4. Wages, vacation pay and interest were calculated as noted above.

### ARGUMENT

Coregenesis claims that, after the determination was issued, he discovered that Ms. Church was in possession of property, specifically, an internet domain name registration, that belongs to Coregenesis. Mr. Beattie states that Ms. Church has refused to transfer that registration to Coregenesis. Mr. Beattie contends that the value of the property is in excess of what is owed to Ms. Church, and that Coregenesis would like its return prior to paying her what she is entitled to.

Ms. Church's response dealt primarily with the issue of whether the domain name was Coregenesis property. I have not set out her argument here, since I find it is not relevant to the issue on appeal.

### ANALYSIS

The burden of establishing that a Determination is incorrect rests with an Appellant. On the evidence presented, I am unable to find that burden has been met.

Section 21 of the *Act* provides as follows:

- 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.

Although Coregenesis does not dispute that Ms. Church is entitled to outstanding wages, it contends that it should be entitled to withhold those wages until what it asserts is company property is returned.

It is not for this Tribunal to make a determination as to whether an internet domain name registration is the property of Coregenesis. Ms. Church disputes that it is. However, even if the name registration is Coregenesis property, Coregenesis has no legal entitlement to withhold Ms. Church's wages until she transfers it to the company.

The appeal is denied.

## **ORDER**

I Order, pursuant to Section 115 of the *Act*, that the Determination, dated May 3, 2002, together with whatever interest might have accrued since that date, be confirmed.

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**Carol L. Roberts**  
**Adjudicator**  
**Employment Standards Tribunal**