

**EMPLOYMENT STANDARDS TRIBUNAL**

In the matter of an appeal pursuant to Section 112 of the  
*Employment Standards Act S.B.C. 1995, C. 38*

- by -

Invicta Security Systems Corp.  
("Systems")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** David Stevenson

**FILE No.:** 95/52

**DATE OF HEARING:** November 22, 1996

**DATE OF DECISION:** December 4, 1996

**DECISION**

**APPEARANCES**

for the Appellant:	Ken Taschuk, Esq. Paul Reeve
for the Complainants/ Respondents:	Ivan Caldwell
for the Director:	Adele Adamic, Esq. Shelina Shivji

**OVERVIEW**

This is an appeal, pursuant to Section 112 of the *Employment Standards Act* (the “Act”) by Invicta Security Systems Corp. (“Systems”) from a Determination, Number CDET 000537, dated December 21, 1995 by the Director of the Employment Standards Branch (the “director”). The Determination found Systems, and two other entities, Invicta Security Service Corp. (“Service”) and MPI Security Limited (MPI), to be associated or related entities for the purpose of the Act and, pursuant to Section 95, treated them as one employer. The Determination also ordered the one employer to pay \$75,095.54 to several employees for unpaid wages, length of service compensation and vacation pay. Systems appeals the finding it was an associated or related entity to Service and MPI and seeks to have the Determination varied to exclude it.

**ISSUE TO BE DECIDED**

The sole issue is whether Systems is an associated or related entity to Service and MPI.

**FACTS**

1. Service was incorporated federally in 1978 and was registered in British Columbia as an extra provincial corporation in February, 1980. Service provided security services and was licenced as a security business under the *Private Investigators and Security Agencies Act*, SBC, Chap 45. At the time of its registration in the province Paul Reeve (“Reeve”) was its principal, if not its sole, officer and director
2. Systems was originally incorporated in British Columbia as Promanco Services Ltd. in October, 1986. It changed its name to Systems in June, 1991. Reeve was, at the time of its incorporation, one of the directors of the company. By November, 1989 he was its principal officer and by 1992 he was its sole director and officer. Systems was intended by Reeve to function as a management and consulting company in the security business, but was never used for that purpose before August, 1995. Up to August, 1995, Systems was apparently used to market security devices, such as locks and alarms, on a very limited scale.
3. In February, 1994 a group from Edmonton, Alberta expressed an interest in purchasing Service. Negotiations for the purchase continued until May, 1995 without success. At the same time Reeve had received some interest in purchasing Service from Ian Abramson (Abramson”) and Ken Morey (“Morey”). When the deal with the Edmonton group fell through Abramson and Morey acted quickly to make their own offer to purchase Service. On May 19, 1995 Reeve, Abramson and Morey

signed an agreement for the sale and purchase of the shares of Service. Reeve acted as agent for the other shareholders of Services in the transaction. The transaction contained several key elements:

1. Abramson and Morey were to purchase all of the shares of Service. Morey was to be appointed president and director for the purpose of securing new financing for Service. Reeve would no longer be an officer of Service, but would continue to be a director.
2. Abramson and Morey assumed 50% of an outstanding indebtedness of Service to the Toronto Dominion Bank, which they were required to pay off within 30 days of the agreement and acquire new financing for Service. They were left to determine how the new financing would be secured. Reeve had no input in this decision. Reeve remained responsible for the other 50% of the outstanding indebtedness of Service and the agreement required him to repay that indebtedness through financing acquired from a second mortgage on his home. Service was to make the payments on the mortgage to the bank.
3. Other indebtedness of Service to certain shareholders and individuals would remain the liability of Service.
4. Reeve was to continue to operate Service for Abramson and Morey. In the words of the agreement: "in a way that is in the best interests of Morey and Abramson".
4. The transaction did not contain any reference to how and when the security business licence held by Reeve would be transferred to Abramson and/or Morey.
5. In June, 1995, Reeve, accompanied by Morey, went to the Toronto Dominion Bank and changed the signing authorities on Service to Morey. Some new accounts were opened. Reeve retained some form of signing authority for Service, but was later told by Morey he was not to use it.
6. By July, 1995 Reeve was dissatisfied with the way things were going. He determined to resign as director of Service and to continue the relationship with Service, Abramson and Morey through the vehicle of Systems with Service contracting with Systems for management and consulting. Apparently Systems billed Service bi-weekly for the work performed by Reeve.
7. Abramson and Morey were interested in acquiring other security businesses. In July, 1995 Reeve introduced them to Lawrence Banks ("Banks"), an officer and director of MPI. Shortly after, the operations of MPI were moved to the same location as those of Service. Negotiations for the acquisition of MPI took place between Banks, Abramson and Morey. Reeve was not involved in any aspect of that acquisition. He continued to operate Service and press for completion of his deal with Abramson and Morey and for formalization of the management contract for Systems. He was told by Morey those details would have to wait until he and Abramson concluded the purchase of MPI. After MPI moved to the Service office location, Abramson and Morey began to hold themselves out and operate as MPI/Invicta, a division of MPI Security Limited.
8. Banks operated the MPI portion of the business under an arrangement that appeared similar to that under which Reeve operated Service. In late October or early November, 1995 the relationship

Abramson and Morey had with Banks had deteriorated sufficiently that Banks was fired from his responsibilities with the MPI portion of the business.

9. The business was in serious financial difficulty. The creditors were closing and on or about November 16, 1995 MPI Security Limited filed a proposal in bankruptcy. The Toronto Dominion Bank froze all the accounts of the business. On December 1, 1995 there were no funds in the business to meet the employee payroll for the preceding period. Reeve called Abramson and told him the business needed \$25,000.00 to meet its payroll obligations. Abramson told Reeve he would advance the money. The only bank account immediately available for the purpose of paying the employees' wages was the account of Systems. The \$25,000.00 was provided by Abramson in a bank draft to Reeve and deposited to the account. Reeve and an accountant prepared the wage cheques for the employees of the business. They were short of the amount required by approximately \$17,000.00 and cheques which were prepared for employees in anticipation the shortfall would be made up were voided when the funds did not materialize.
10. Reeve was told there was about \$150,000.00 in receivables payable to the business. On or about December 7, 1995 he decided to pay some of the wages still owing. He borrowed \$10,000.00, placed the money in his personal account and paid wages to employees from that account.
11. Shortly after, Abramson and Morey abandoned the business and it was petitioned into bankruptcy. In late December there was some discussion of selling the business to another security company, Paladin Security. Reeve attended a meeting, at the request of Morey, with representatives of Paladin Security. It is unclear whether any sale occurred, but Reeve now works for Paladin Security pursuant to a management agreement between that company and Systems. He looks after the former clientele of Service, which, it seems, have been acquired by Paladin Security.

## **ANALYSIS**

Section 95 of the *Act* states:

95. If the director considers that businesses, trades or undertakings are carried on by or through more than one corporation, individual, firm, syndicate or association, or any combination of them under common control or direction,
  - (a) the director may treat the corporations, individuals, firms, syndicates or associations, or any combination of them, as one person for the purposes of this Act, and
  - (b) if so, they are jointly and separately liable for payment of the amount stated in a determination or in an order of the tribunal, and this Act applies to the recovery of the amount from any or all of them.

This statutory provision allows the director to pierce the corporate veil and look behind the legal structure, or form, of a business to the relationships of various entities that in reality comprise the substance of the business. There are four preconditions to an application of Section 95 to the circumstances of any matter before the director:

1. There must be more than one corporation, individual, firm, syndicate or association;
2. Each of these entities must be carrying on a business, trade or undertaking;
3. There must be common control or direction; and
4. There must be some statutory purpose for treating the entities as one employer.

The reference to “corporation, individual, firm, syndicate or association in the first precondition is sufficient to capture any legal vehicle through which a business may be conducted. The second precondition requires the entities sought to be included in a Section 95 determination to be “carrying on” a business, trade or undertaking, in the sense that the entity is not defunct or completely withdrawn from the business, trade or undertaking which would bring them into a Section 95 determination. The third precondition is directed toward the manner in which the various entities inter-relate within the common enterprise. One entity may have financial control, another may have operational control and yet another may have *de facto* control through majority shareholding or control of the Board of Directors. These examples are not meant to be exhaustive, but illustrative of how control may be demonstrated. Similarly, direction may be demonstrated in a variety of ways, but generally it will normally be found in an entity which makes significant decisions respecting how the business, trade or undertaking has been, is, or will be, run.

The final precondition identifies the need for a statutory purpose. One of the purposes of the *Act* is to ensure employees in the province receive the basic standards of compensation and conditions of employment. The *Act* not only sets the basic standards of compensation and conditions of employment but also provides a comprehensive scheme for the enforcement of the *Act*, including some collection procedures such as claims of lien, court order enforcement and seizure of assets in appropriate circumstances. It is in the enforcement provisions of the *Act* where Section 95 has been placed. The statutory purpose requirement is met if the one employer determination is for the purpose of enforcing basic standards of compensation and conditions of employment. It is not inconsistent with that purpose to make the one employer declaration for the purpose of facilitating the collection of wages owing under the *Act*.

In the circumstances of this case, the only real area of dispute was whether there was the necessary “control or direction” between Systems on the one hand and Service and MPI on the other to justify the one employer declaration.

The first, second and fourth preconditions are met. All three companies are separate legal vehicles, each participating in some aspect of the business of MPI/Invicta, a division of MPI Security Limited. Systems, through Reeve, provided the continuity for the customer base of Service which had been acquired by Abramson and Morey. System also provided the operational expertise for Abramson and Morey. Reeve, who is sole officer and director of System, provided the security business licence statutorily required for the continued operation of Service as a security business. At the relevant time each of the three corporate vehicles was actively engaged in some activity that contributed to the totality of the business. The one employer declaration meets the statutory purpose requirement.

#### **Control or Direction**

By late July or early August, Reeve had divested himself of any direct financial or corporate interest in Service. He had sold all his shares to Abramson and Morey. He testified he had resigned as an officer and director. The director argues I should not accept that Reeve had ceased to be a director and officer of Service as there is no record of such resignations filed with the Register of Companies. I place no weight at all on the failure of Reeve to ensure his resignation as an officer and director of Service was recorded. I have two reasons for that: first, Service, and in this case Reeve, had a history of late and incomplete filing with various corporate registries to which it was required to report. In 1990 Service was struck from the Registry for failure to comply with the annual filing requirements of the *Company Act*. Second, and more important, such an argument, if accepted, would allow form to govern substance. This runs against the essence of Section 95.

That does not end the matter. Control or direction is not limited in its application to direct financial or corporate control. The totality of the business and the inter-relationships of the entities must be examined. I accept that Systems is, in all material aspects, represented by Reeve. Even though he had divested himself of all direct financial and corporate interest in Service, Reeve continued to control the operations of Service. He redirected or activated Systems as a corporate vehicle through which to “manage” Service, and to some extent the combined operations of Service and MPI, known as MPI/Invicta, a division of MPI Security Limited. It was apparent from his evidence he had operational control and direction of the employees from Service throughout and by late November had control and direction of the employees of the combined group, MPI/Invicta. He said even as Abramson and Morey were abandoning the business, he continued to maintain service for his old clients and assign staff where required to meet the contractual obligations of the business.

Also, in a very real sense, Systems, through Reeve, held a very substantial aspect of control of the business. Reeve was legally the only person who could operate Service. He held the security business licence. It was an aspect of control which Reeve never relinquished to Abramson and Morey.

The decision of Reeve to contribute to the unpaid wages of the employees of the business is not without significance. Notwithstanding the explanation given by Reeve for making the contribution, it remains he felt at the time he made the contribution he could recover it from receivables of the business, without any documentation or confirmation of that belief from Abramson, Morey or the Receiver-Manager. The contribution was a \$10,000.00 investment in the continued good will and operation of the business. Reeve’s belief he could recover that investment is demonstrative of some perceived ability to on his part to control and direct the business. It has not escaped observation the key elements to the business of Service was its client base, the security licence and the expertise of Reeve. With Abramson and Morey having abandoned their involvement in the business, effectively it would revert to Reeve.

The above circumstances are sufficient to conclude the requirement of “control or direction” has been met and the director was justified in declaring Systems to be one employer with Service and MPI. The appeal is dismissed.

**ORDER**

Pursuant to Section 115 of the *Act*, the Determination, Number CDET 000537, dated December 21, 1995, is confirmed.

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**David Stevenson**  
**Adjudicator**  
**Employment Standards Tribunal**