



An appeal

- by -

Denise Cranna, a Director or Officer of Tiny-Dee Operations Ltd. operating as  
Whiteline Restaurant and Hideaway Cove Seafood Restaurant

("Cranna")

- 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:** Kenneth Wm. Thornicroft

**FILE No.:** 2001/319

**DATE OF DECISION:** July 18, 2001

## DECISION

### OVERVIEW

This is an appeal filed by (and in the name of) Trevis Rene Leduc, apparently on behalf of Denise Cranna (“Cranna”), pursuant to section 112 of the *Employment Standards Act* (the “*Act*”). There is nothing in the material before me to indicate that Ms. Cranna has specifically authorized Mr. Leduc to act on her behalf although the material before me indicates that Mr. Leduc and Ms. Cranna reside together and were co-directors/officers of a company known as “Tiny-Dee Operations Ltd.”. No party has challenged Mr. Leduc’s authority to act on behalf of Ms. Cranna and, therefore, I will proceed on the assumption that this appeal is properly before me (see section 123 of the *Act*) although, in my view, this appeal may well not have been properly filed with the Tribunal.

Ms. Cranna appeals a Determination that was issued by a delegate of the Director of Employment Standards (the “Director”) on March 27th, 2001 pursuant to which Cranna was ordered to pay a total of \$5,599.48 to Robert Lavigne (\$3,000) and Katrina Lavigne (\$2,599.48) on account of unpaid wages and section 88 interest.

The Determination was issued against Ms. Cranna, as a corporate “director/officer”, in accordance with the provisions of section 96(1) of the *Act* which reads as follows:

#### **Corporate officer’s liability for unpaid wages**

96. (1) A person who was a director or officer of a corporation at the time wages of an employee of the corporation were earned or should have been paid is personally liable for up to 2 months’ unpaid wages for each employee.

By way of a letter dated July 5th, 2001 the parties were advised by the Tribunal’s Vice-Chair that this appeal would be adjudicated based on the parties’ written submissions and that an oral hearing would not be held (see section 107 of the *Act* and *D. Hall & Associates v. Director of Employment Standards et al.*, 2001 BCSC 575).

I have considered, in addition to the documents appended to the appeal form, the Director’s delegate’s submission dated May 22nd, 2001 and Mr. Leduc’s reply submission dated June 1st, 2001. Neither respondent employee filed a submission with the Tribunal.

### BACKGROUND FACTS

On February 14th, 2001 the Director’s delegate issued a determination against Tiny-Dee Operations Ltd. (“Tiny-Dee”) ordering that company to pay a total of \$5,712.46 to Robert and Katrina Lavigne on account of unpaid wages and interest. According to the section 96 Determination now under appeal, Robert and Katrina Lavigne’s unpaid wages were earned

during the period July 1st to September 5th, 1999. The determination issued against Tiny-Dee was not appealed; the appeal period expired on March 9th, 2001. The section 96 Determination issued against Ms. Cranna orders her to pay a somewhat higher amount than the corporate determination reflecting additional accrued interest.

The delegate appears to have relied solely on a corporate search to determine Ms. Cranna's status with Tiny-Dee. The delegate conducted a BC OnLine Corporate Registry search on June 23rd, 1999 (Attachment 1 to the Determination). This search indicates that Tiny-Dee was incorporated on January 26th, 1999 and that as of June 15th, 1999, Mr. Leduc and Ms. Cranna were the only corporate directors.

The search does not indicate that Ms. Cranna was a corporate "officer". There are no facts set out in the Determination which would suggest that Ms. Cranna could be held liable as a corporate officer, despite not being so named in the corporate records, by reason of the so-called "functional" test (see *e.g.*, *Penner and Hauff*, B.C.E.S.T. Decision No. D371/96). However, there are some facts set out in the delegate's May 22nd submission that would support a finding of liability based on the "functional" test. For example, Ms. Cranna apparently held herself out as an "owner" of the business; she participated in managerial decisions such as hiring and scheduling staff; and she dealt with a potential investor in the business.

The material submitted by Mr. Leduc indicates that, in fact, Ms. Cranna was appointed as a corporate officer, namely, secretary, immediately after incorporation. There is nothing in the material before me to indicate that she ever resigned that office.

In any event, on May 2nd, 2000 Mr. Leduc signed a "Form 8/9" (Attachment 2 to the Determination) which was filed with the provincial government agent's office in Trail on May 22nd, 2000 and subsequently with the Registrar of Companies on May 25th, 2000. This form indicates that "M. Denise Cranna" ceased to be a Tiny-Dee Director as of June 1st, 1999.

## **ISSUES ON APPEAL**

In the notice of appeal, Mr. Leduc states that "I do not believe Denise Cranna has any liability in this action" and that her "resignation as a director was done properly and legally".

Mr. Leduc does not challenge the delegate's calculations nor does he assert that Ms. Cranna was not a corporate *officer* when Robert Lavigne's and Katrina Lavigne's unpaid wage claims crystallized.

## **FINDINGS AND ANALYSIS**

Mr. Leduc appended a number of documents to the notice of appeal. The first document, dated June 1st, 1999, is headed "TRANSFER of SHARES" and purports to document the transfer of one share from Ms. Cranna to Mr. Leduc. This document does not, of course, in any way

address Ms. Cranna's status as a corporate officer or director; it merely addresses her status as a shareholder. The second document, a "Revocation of Consent to Act as a Director", purports to be Ms. Cranna's refusal to continue to act as a Tiny-Dee director as of June 1st, 1999. The third and final document is a letter dated February 12th, 1999 from a firm of solicitors to Tiny-Dee Operations Ltd. In this letter, the solicitors report that the company was incorporated on January 26th, 1999 and that Mr. Leduc and Ms. Cranna are the only two directors. Further, the letter confirms that both have been appointed officers of the company (Mr. Leduc, president; Ms. Cranna, secretary) and that each holds one of a total of two issued shares in the company.

The documents filed by Mr. Leduc, taken at face value, indicate that Ms. Cranna:

- was a corporate director but that she revoked her consent to act as a director on June 1st, 1999;
- was a corporate officer and, so far as can be determined, has never resigned her office; and
- ceased to be a corporate shareholder on June 1st, 1999 when she transferred her one share to Mr. Leduc.

It may well be that, due to an oversight, Ms. Cranna's resignation as a corporate director was not filed until late May 2000 even though she resigned on June 1st, 1999. It is equally possible, however, that the "Revocation of Consent" was prepared and backdated to avoid liability under the Determination. The Registrar's records create a rebuttable presumption with respect to one's status (see *Wilnofsky*, B.C.E.S.T. Decision No. D106/99) and I am not satisfied that this presumption has been rebutted by Ms. Cranna in this case. I particularly note Ms. Cranna, personally, has not seen fit to file *any* submission or document with the Tribunal, such as an affidavit attesting to her resignation or even a written statement contesting the facts alleged against her that tend to support her liability as a director under the "functional" test.

Quite apart from the foregoing, it is clear, despite the corporate search, that Ms. Cranna was a corporate officer at the relevant time; indeed, there is nothing before me to show that she *ever* resigned her office. Thus, at the very least, she is liable under section 96(1) as a corporate officer even if she was not, when the respondent employees' unpaid wage claims crystallized, a corporate director.

The appeal is dismissed.

**ORDER**

Pursuant to section 115 of the *Act*, I order that the Determination be confirmed as issued in the amount of **\$5,599.48** together with whatever additional interest that may have accrued, pursuant to section 88 of the *Act*, since the date of issuance.

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**Kenneth Wm. Thornicroft**  
**Adjudicator**  
**Employment Standards Tribunal**