

An appeal

- by -

Ruhan Enterprises Inc. operating as Jake and Elwood's Sports Bar
(“Ruhan”)

- 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.: 2002/370

DATE OF DECISION: October 17, 2002

DECISION

This is a decision based on written submissions from Nigel D'Souza, on behalf of Ruhan Enterprises, and Chris Liggett, on his own behalf.

OVERVIEW

This is an appeal by Ruhan Enterprises Inc., operating as Jake and Elwood's Sports Bar ("Ruhan"), pursuant to Section 112 of the *Employment Standards Act* ("the Act"), against a Determination of the Director of Employment Standards ("the Director"). In the original decision, issued October 2, 2001, the Director found that Ruhan had contravened Sections 18, 58 and 63 of the Act in failing to pay Christopher Liggett compensation for length of service and a performance bonus, and Ordered that Ruhan pay \$11,353.96 in wages and interest to the Director on Mr. Liggett's behalf.

Ruhan appealed the Determination. On April 12, 2002 (BC EST #D137/02), I referred the matter back to the delegate to address the issue of whether Ruhan was associated with Page Marketing Group, as I concluded that the delegate had not determined who the proper employer was, and that, if Page Marketing Group was indeed to be determined to be associated, it was to be given an opportunity to respond to the conclusion.

The matter was reconsidered by the delegate on June 27, 2002. Following a further investigation, the delegate concluded that Ashley Page, operating as Page Marketing Group ("Page"), and Ruhan were associated corporations pursuant to s. 95 of the Act, and that they were, therefore, jointly and separately liable for the payment of the amount owing. The delegate sought that an order be made accordingly.

Although the delegate made a finding against Page, he did not advise Mr. Page that he had done so. Therefore, on September 17, 2002, the Tribunal contacted Mr. Page, and provided him with the Determination and subsequent submissions for his reply. Mr. Page was asked to provide his response by October 2, 2002. Mr. Page had not responded as of October 9.

ISSUE TO BE DECIDED

Whether the Director erred in determining that Ruhan and Mr. Page, operating as Page Marketing Group, are jointly and separately liable for the amount determined owing.

FACTS

The facts related to Mr. Liggett's employment have been set out in my earlier decision and will not be repeated, save for the following.

Mr. D'Souza is the sole director and shareholder of Ruhan, which operated Jake and Elwood's Sports Bar. Mr. Liggett worked as the floor manager at the Sports Bar until June 2000, when he went to work at the Black Tusk Pub, which was located next to the Sports Bar. The Pub was leased from Ruhan, and operated by, Page Marketing Group ("Page"). Upon transferring over to the Pub, Mr. D'Souza received no ROE from Ruhan, nor did Mr. D'Souza ask him to return his keys. Mr. Liggett also continued to perform work at the Bar.

The delegate found that, because both the Pub and the Sports Bar were leased by Ruhan, there was no change in his employment, even though he was paid by Page. The delegate found that Mr. Liggett voluntarily decided to work fewer hours in September on a temporary basis to lighten Ruhan's financial burden, and that his employment was terminated on November 9, 2000, without notice or compensation.

The delegate determined that Mr. Liggett was owed 6 week's compensation for length of service. He also found that Ruhan failed to pay Mr. Liggett vacation pay for the period October 1, 1999 to June 15, 2000, and ordered that it do so.

In the course of his consideration of whether Ruhan and Page should be considered to be associated for the purpose of s. 96 of the *Act*, the delegate sought submissions from Mr. Page. Mr. Page, the sole proprietor of Page Marketing Group, acknowledged that he sublet the Pub from Ruhan, but that the two entities were "absolutely separate". The delegate found that Mr. D'Souza of Ruhan controlled and directed the two enterprises, that the businesses were carried on by more than one corporation, individual or association, and that they were in a common business. He concluded that the businesses were associated pursuant to s. 95.

ARGUMENT

Mr. D'Souza contends that Ruhan had no involvement in the operation of the Pub, and that Page Marketing operated independently of the Sports Bar, and that it had its own employees.

Mr. D'Souza also argued that, although the operations exchanged supplies, and credit card transactions were processed through Ruhan's account, that was simply because it had no security deposit.

On June 14, 2000, Mr. D'Souza and Mr. Page entered into an agreement that Page Marketing would "assume all employees of the Black Tusk that stay at the Black Tusk and Ruhan Enterprises to assume all Jake & Elwood employees as of June 16, 2000".

Mr. Liggett contends that he would never have agreed to go to work for Page. However, from June 16, 2000, Page paid Mr. Liggett's wages, directed his work, and received an ROE from Page.

Ruhan contends that it had "nothing to do" with the operation of the Pub, that Page had its own PST, GST and payroll, suppliers were paid by page after June 15, and employees scheduled, hired and fired.

ANALYSIS

I am unable to find that the conclusion of the delegate that Page and Ruhan were associated companies for the purpose of s. 95 of the *Act* was incorrect. The indicia set out in s. 95, and noted by the Tribunal in *Invicta Security Systems Corp.* (BC EST #D349/96) have been satisfied.

There was no dispute to the delegate's conclusion finding Ruhan responsible for compensation for length of service because no notice or cause was demonstrated, or for the bonus payment based on the operation of s. 97 of the *Act*. Given that the companies have been found to be associated, they are jointly and severally liable for compensation for length of service and the bonus payment.

ORDER

I Order, pursuant to Section 115 of the Act, that the Determination dated October 2, 2001 be varied as follows:

The Determination be amended to reflect the employer as Ruhan Enterprises Inc. operating as Jake and Elwood's Sports Bar and Ashley Page operating Page Marketing Group.

The amount of \$11,353.96 is confirmed, together with whatever interest may have accrued since the date of the Determination, pursuant to s. 88 of the *Act*.

Carol L. Roberts
Adjudicator
Employment Standards Tribunal