

**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 -

Greg Darroch, Director/Officer of 548402 B.C. Ltd.  
operating as ILD Services and Design  
("Darroch")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Cindy J. Lombard

**FILE NO.:** 1999/484

**DATE OF HEARING:** October 7, 1999

**DATE OF DECISION:** October 25, 1999

**DECISION**

**APPEARANCES**

Greg Darroch appeared on his own behalf.

Michael Mallo appeared on his own behalf.

**OVERVIEW**

This is an appeal by the Director/Officer of the Employer, 548402 B.C. Ltd. operating as ILD Services & Design (“Darroch”) pursuant to Section 112 of the *Employment Standards Act* (the “Act”) of a Determination of the Director of Employment Standards (the “Director”) issued on July 13, 1999. In that Determination, the Director ordered that pursuant to Section 96 of the Act that Darroch as a Director or Officer is liable for payment of unpaid wages owing to Michael Mallo (“Mallo”) by the employer in the amount of \$3,123.82.

**ISSUES TO BE DECIDED**

The Appellant argues that the sum of \$10,000.00 which was paid by the employer to Mallo to pay wages of other employees was a loan which should be set off against monies determined by the Director to be owing to Mallo by the employer.

**FACTS**

The employer provided ground maintenance services for the Kelowna Condominium Association. Mallo was a manager. Darroch was an owner, director and officer of the employer. Another owner and director, Garth Dietrich, went bankrupt. In approximately March, 1999, Mallo had discussions with Darroch about purchasing the employer-company with a partner. At the same time, the company was having trouble meeting a payroll and several employees refused to work. Kelowna Condominiums called a meeting making it clear that the workers must get back to work so that the services could be provided.

Darroch says that at that point he loaned Mallo the sum of \$10,000.00 to pay the employees’ unpaid wages, which Mallo did do, the dispute being that Darroch says that it was a loan and Mallo says it was not.

Mallo did not follow through with purchasing the employer-business as his partner backed out.

Darroch admits that the wages determined to be owing to Mallo are owing but he claims a set-off of the monies which he says were a loan to Mallo thereby leaving no monies owing.

Furthermore, Darroch admits that he is an officer and director of the employer-company.

Section 96 of the *Act* provides that:

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.
- (2) Despite subsection (1), a person who was a director or officer of a corporation is not personally liable for
- a) any liability to an employee under section 63, termination pay or money payable under a collective agreement in respect of individual or group terminations, if the corporation is in receivership or is subject to an action under section 427 of the Bank Act (Canada) or to a proceeding under an Insolvency Act,
  - b) vacation pay that becomes payable after the director or officer ceases to hold office, or
  - c) money that remains in an employee's time bank after the director or officer ceases to hold office.
- (3) This Act applies to the recovery of the unpaid wages from a person liable for them under subsection (1).

Darroch admits that the total outstanding wages and holiday pay owing amounts to \$3,081.00 plus accruing interest.

A set-off of any claim for monies loaned to Mallo cannot be determined in this forum as it is not an *Employment Standards Act* matter. If this claim is legitimate, then Darroch has other legal avenues to pursue that claim.

## **ANALYSIS**

Having considered all the circumstances, I am not persuaded that the appeal can succeed.

## **ORDER**

Pursuant to Section 115 of the *Act*, I order that the Determination in this matter dated July 13, 1999, be confirmed.

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**Cindy J. Lombard**  
**Adjudicator**  
**Employment Standards Tribunal**