

**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 -

543501 B.C. Ltd and 491659 B.C. Ltd.,  
operating as Terrace Fitness Zone  
(the “Employer”)

- of a Determination issued by -

The Director of Employment Standards  
(the “Director”)

**ADJUDICATOR:** Mark Thompson

**FILE NO.:** 2000/486

**DATE OF DECISION:** November 6, 2000

## DECISION

### OVERVIEW

This is an appeal by 491659 B. C. Ltd. (the “Employer”) pursuant to Section 112 of the *Employment Standards Act* (the “Act”) against a Determination by a delegate of the Director of Employment Standards (the “Director”) issued on April 4, 2000. The Determination found that the Employer owed a former employee, Cynthia Peck (“Peck”) \$498.85 for vacation pay, compensation for length of service and interest.

The Employer’s appeal alleged that Peck had received her vacation pay according to the *Act* and that 491659 B. C. Ltd. was not an associated corporation with 543501 B. C. Ltd. as the Director’s delegate had concluded. Neither the Director’s delegate nor Peck commented on the appeal.

This decision is based on written submissions.

### ISSUES TO BE DECIDED

The issues to be decided in this case are first whether Peck received vacation pay and compensation for length of service as required by the *Act*. If those issues are decided in Peck’s favour, the issue of the link between 543501 B. C. Ltd. and 491659 B. C. Ltd. must be decided.

### FACTS

The Employer formerly operated two fitness centers, one in Terrace, and another in Prince Rupert. The business license for the Terrace Fitness Zone was issued to 543501 B. C. Ltd. Peck worked as a receptionist from March 1998 until April 1999 and was terminated when the Terrace Fitness Zone closed its operations. Three former employees, including Peck, filed complaints after their employment terminated. A delegate of the Director issued determinations with respect to all three complainants on April 4, 2000. The Employer filed appeals against two of the determinations, Peck and Grace Mitchell (“Mitchell”). The Tribunal found that the appeals were deficient because Mr. Dwayne Rae (“Rae”), a director of both companies, did not include a copy of the Determinations with the appeals within the time limits established by the Tribunal. Rae then appealed to the Tribunal to extend the deadlines for filing an appeal. In a decision issued on July 7, 2000, the Tribunal extended the time limits until the date when Rae eliminated the deficiencies of the original appeal by providing copies of the determinations.

The appeal in this case concerns Peck only, although the arguments advanced by the Employer appear to be identical with those also advanced for the Mitchell appeal.

The Determination found that Peck did not receive any notice of termination, a conclusion that the Employer did not contest. Therefore, the element of the Determination under appeal concerned Peck’s vacation pay. The delegate found that Peck had earned gross wages of \$5,241.97 during her period of employment and ordered that she be paid four per cent of that

amount for vacation pay. The Employer told the delegate that it paid all wages to employees affected by the closure after some delay.

The Determination also found that 543501 B. C. Ltd. and 491659 B. C. Ltd. were financially linked, as 491659 B. C. Ltd. was the secured party for the assets of 543501 B. C. Ltd. The assets of 543501 B. C. Ltd. reverted to 491695 B. C. Ltd. after the Terrace Fitness Zone closed.

In this case, the Employer stated that Revenue Canada had audited its payroll and found that all monies owed, including vacation pay, had been paid out. This was the same argument the Employer made to the delegate on March 20, 2000 in response to the original complaints. The major part of the Employer's appeal in that case concerned Mitchell's work status, which was not at issue in this case.

The Employer also stated that Rae had been informed by his counsel that liabilities for 543501 B.C. Ltd. could not be transferred to 491659 B. C. Ltd., although Rae was the owner of both companies. Rae explained that his "other company" (apparently 491659 B. C. Ltd.) purchased the assets of 543501 B. C. Ltd. from the bank that had foreclosed the mortgage on the building in which the Terrace Fitness Zone was located. In his view, this purchase did not include any liabilities for wages remaining from 543501 B. C. Ltd. Rae stated that 543501 B. C. Ltd. had been "absolved" prior to the purchase. In its appeal, the Employer acknowledged that Rae was the owner of both companies. The Director's delegate provided evidence of a corporation search indicating that Rae was the president of both companies, and both had the same address as their registered offices.

## **ANALYSIS**

The Employer did not present any new evidence or point to any error of law in the Determination to prove that Peck should not receive her vacation pay. In particular, it did not provide evidence of the contents of the audit performed by Revenue Canada (or the Canada Customs and Revenue Agency, as it now is) or any payroll records to support its argument. Moreover, it is not clear that a federal agency would examine corporate records to ensure that the *Act* has been followed.

Section 95 of the *Act* deals with associated corporations as follows:

*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 that amount from any or all of them.*

The circumstances of this case fall squarely under the rule of Section 95 of the *Act*. One individual, Rae, controlled and directed both companies, so the *Act* regards them as a single entity for the recovery of money owed to former employees, Peck in this case. It was not open to the common owner to transfer assets from one of his companies to another in order to avoid obligations for the liabilities for the company that had been sold.

**ORDER**

For these reasons, the Determination of April 4, 2000 is confirmed. Peck is owed \$468.64 for vacation pay, compensation for length of service and interest, plus additional interest accrued since the date of the Determination pursuant to Section 88 of the *Act*.

***Mark Thompson***  

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**Mark Thompson**  
**Adjudicator**  
**Employment Standards Tribunal**