

An appeal

- by -

Liberato Quefichu aka Liberato Que Fichu, a Director or Officer of
Happy Video & Electronics Ltd.

(the "Appellant")

- 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: April D. Katz

FILE No.: 2002/505

DATE OF DECISION: December 10, 2002

DECISION

OVERVIEW

On April 17, 2000 Daniel Tong (“Tong”) filed a complaint with Director of Employment Standards, (“Director”) in relation to his employment from April 1998 to April 2000. A corporate Determination was issued on November 29, 2000. Three hearings before this Tribunal took place in 2001 as a result of appeals from Happy Video and Electronics Ltd. (“Happy Video”), Tong’s employer. Happy Video was found to owe Tong over \$18,000, which has not been paid.

The Director made a Determination that the directors and officers of Happy Video were liable to Tong for two months’ wages of \$5185.60. Liberato Quefichu aka Liberato Que Fichu (“the Appellant”) was listed as one of the directors in the Corporate Registry.

The Appellant appealed the Determination finding him liable as a Director or Officer on the grounds that he was not a director or officer of Happy Video during the relevant period of Tong’s employment.

This appeal proceeded by written submissions.

ISSUE

Was the Appellant a director or officer of Happy Video during the relevant period of Tong’s employment and therefore liable to Tong for two months’ wages as found in the Determination?

ARGUMENT

In his appeal, the Appellant argued that for the duration of the period in which the alleged unpaid wages were earned, he did not participate in or have any knowledge of the administration or operation of Happy Video. The Appellant argued that his brother, sister-in-law and Han Eng Lim should be liable as directors and officers of Happy Video. Only his brother’s name was ever recorded as a director within the Corporate Registry.

The Appellant stated in the letter filed with his appeal that he resigned in March of 2000 as an officer and director of Happy Video. The Appellant’s actual resignation filed with Happy Video’s registered office is dated March 19, 2001.

The Appellant argued that he was effectively removed from day to day operations of Happy Video in February 1998 by his brother. He provided evidence of two letters. One of the letters was from the Appellant limiting signing authority at the bank and a second letter voided his letter of direction to the bank.

The Director’s Delegate argued that this appeal was out of time and filed after the appeal period. The appeal period ended at 4:30 PM on October 1, 2002 and the Director argued that the Tribunal had allowed an unusually long appeal period and the delay was not justified. The appeal letter was postmarked October 1, 2002 and was received in the Tribunal’s office in the morning of October 3, 2002.

The Director's Delegate argued that the evidence in support of the appeal did not show an error in the Determination. The Director argued that the direction to the bank was not evidence of a resignation of a director but represented a possible dispute within the company. The Director quoted from the Company Act section 130 which sets out how a director may cease to become a director. The only evidence in support of the Appellant ceasing to be a director was his resignation. The evidence of his resignation, a letter to the registered office of Happy Video, is dated March 19, 2001.

The Director argues that throughout the relevant period and until the Appellant resigned in March 2001, the Appellant remained listed in the Corporate Registry as a director of Happy Video. For the relevant period of employment, April 1998 to April 2000, the Appellant was a director of Happy Video and liable for two months' wages to Tong.

FACTS

The Director and this Tribunal found that Happy Video owed Tong \$18,091.19 earned during the two year period prior to his complaint on April 17, 2000.

Throughout this period the Appellant was registered as a director of Happy Video in the Corporate Registry. The Appellant provided a copy of a letter of resignation as a director of Happy Video, which was dated March 19, 2001, which he indicated was sent to Happy Video's registered office.

The Appellant alleged that he ceased to be an active officer and director with any knowledge of operations of Happy Video in February 1998.

Tong's evidence in response to this appeal is that the Appellant was giving direction to staff in January 2000 and even in the Appellant's appeal states that he was a director until at least March 2000.

ANALYSIS

The onus of proving the Director has erred is on the appellant in an appeal to the Tribunal.

An appeal by a director or officer is limited to questions of the status of the appellant as a director or officer or a calculation error in the Determination. There is no allegation of a calculation error

This appeal is based on the Appellant's allegation that he was not a director or officer during the period when the unpaid wages were earned. The evidence shows that he was a director until March 19, 2001. The relevant period of employment was from April 1998 to April 2000. The evidence supports the conclusion in the Determination that the Appellant was a director during the relevant period.

CONCLUSION

Based on the submissions provided there is no evidence to support the appeal. The Determination is therefore confirmed.

ORDER

Pursuant to section 115 of the Act, I order that the Determination in this matter, dated August 23, 2002 is confirmed.

April D. Katz
Adjudicator
Employment Standards Tribunal