

**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 -

Brent Hardy, Director/Officer of Black Forest Properties Ltd.  
("Hardy")

- of a Determination issued by -

The Director Of Employment Standards  
(the "Director")

**ADJUDICATOR:** Hans Suhr

**FILE NO.:** 97/716

**DATE OF HEARING:** November 20, 1997

**DATE OF DECISION:** November 25, 1997

**DECISION**

**APPEARANCES**

Brent Hardy                      on his own behalf and on behalf of Black Forest Properties Ltd.

Jacob (Jack) J. Aikema        on his own behalf

M. Elaine Bellamore            on behalf of the Director of Employment Standards

**OVERVIEW**

This is an appeal by Brent Hardy (“Hardy”), a director/officer of Black Forest Properties Ltd. (“BFP”), under Section 112 of the *Employment Standards Act* (the “Act”), against a Determination dated September 3, 1997 issued by a delegate of the Director of Employment Standards (the “Director”). Hardy alleges that the delegate of the Director erred in the Determination by concluding that Jacob J. Aikema (“Aikema”) and Abdel O. Jimenez (“Jimenez”) were employees of BFP and owed wages in the total amount of \$8,441.32.

**PRELIMINARY ISSUE**

The delegate of the Director issued 3 Determinations on September 3, 1997.

The first Determination was issued against Black Forest Properties Ltd. This Determination was sent by certified mail to the last known address of Black Forest Properties Ltd. and was returned as “unclaimed”. This Determination has not been appealed by Black Forest Properties Ltd.

The delegate of the Director submits that the business address for Black Forest Properties Ltd. is at a building owned by the father of Mr. Hardy and also that a copy of the Determination was sent to the Registered & Records Office of Black Forest Properties Ltd.

The second Determination was issued against Matthew Loewen, director/officer of Black Forest Properties Ltd. and sent by certified mail to the address for Loewen as shown on the Registrar of Companies search. This Determination has not been appealed by Loewen.

The third Determination was issued against Brent Hardy, director/officer of Black Forest Properties Ltd. and sent by certified mail to the address for Hardy as shown on the Registrar of Companies search. This Determination was appealed by Hardy on September 29, 1997.

The delegate of the Director submits that as the Determination issued against Black Forest Properties Ltd. was not appealed, the Tribunal should not consider any arguments on the merits of the issues which formed the basis of that Determination and further, that the only issue that should be considered by the Tribunal should be whether or not Hardy was a director/officer of Black Forest Properties Ltd. at all material times.

Hardy submits that the Tribunal should consider this appeal as an appeal on behalf of both Black Forest Properties Ltd. and himself as director/officer of Black Forest Properties Ltd.

Hardy was unable to state clearly whether he had received the Determination being appealed at his home address or from the Registered & Records office.

I note that on the appeal form submitted by Hardy, he identifies the appellant as "Brent Hardy" and further, when asked to indicate whether he was "Employee, Ex-Employee, Employer, Other (explain)" he indicated "Other - director of company that hired the sub-contractor".

There was no evidence of any appeal being received from an appellant named as Black Forest Properties Ltd.

Based on the evidence provided and on the balance of probabilities, I conclude that the only Determination under appeal is the Determination issued against Brent Hardy, Director/Officer of Black Forest Properties Ltd. The Determination against Black Forest Properties Ltd. was not appealed within the time limits set for appeal and I am not prepared to entertain submissions on the merits of that Determination.

### **ISSUE TO BE DECIDED**

This issue to be decided in this appeal is whether Hardy was a director/officer of Black Forest Properties Ltd. at all material times.

### **FACTS**

The Registrar of Companies search conducted by the delegate of the Director on August 20, 1997 indicates that the directors/officers of Black Forest Properties Ltd. were Hardy and Loewen.

### **ANALYSIS**

Section 96 of the *Act* states that:

*Section 96, 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.*

*(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 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).*

Hardy was a director/officer of Black Forest Properties Ltd. at all times material to the case at hand.

Based on the evidence provided, I conclude that Hardy, as director/officer of Black Forest Properties Ltd. is, pursuant to the provisions of Section 96 of the *Act*, personally liable for up to 2 months' unpaid wages for each employee, Aikema and Jimenez.

**ORDER**

Pursuant to Section 115 of the *Act*, I order that the Determination dated September 3, 1997 against Brent Hardy, director/officer of Black Forest Properties Ltd. be confirmed in all respects.

---

**Hans Suhr**

**Adjudicator**

Employment Standards Tribunal