

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 -

No. 289 Taurus Ventures Ltd. -and- Prema Systems Ltd. -and-
544553 B.C. Ltd. -and- 546414 British Columbia Ltd.
(associated pursuant to Section 95 of the Employment Standards Act)
("the companies")

- of a Determination issued by -

The Director of Employment Standards
(the "Director")

ADJUDICATOR: David B. Stevenson

FILE No.: 2000/652

DATE OF DECISION: December 22, 2000

DECISION

OVERVIEW

This is an appeal pursuant to Section 112 of the *Employment Standards Act* (the “Act”) by No. 289 Taurus Ventures Ltd. -and- Prema Systems Ltd. -and- 544553 B.C. Ltd. -and- 546414 British Columbia Ltd. (associated pursuant to Section 95 of the *Employment Standards Act* (“the companies”) of a Determination which was issued on August 28, 2000 by a delegate of the Director of Employment Standards (the “Director”). The Determination concluded that the companies had contravened Part 3, Sections 17(1), 18(1) and 27(1), Part 7, Section 58(3) and Part 8, Section 63(2)(b) of the *Act* in respect of the employment of John Babcock (“Babcock”) and ordered the companies to cease contravening and to comply with the *Act* and to pay an amount of \$253,544.83.

This appeal has been filed by Byron J. Seaman, a former director of Prema Systems Ltd. (“PSL”). Mr. Seaman has primarily appealed the Determination as it relates to PSL, as he was neither a director or officer of any of the other companies. Mr. Seaman says, generally, that PSL was neither the employer of Babcock nor was it an associated or related corporation to the other corporations and raises several grounds of appeal, which can be summarized under the following points:

1. Babcock was not employed by PSL.
2. Alternatively, and additionally, Babcock was not employed by PSL during the period that Mr. Seaman was a director of PSL (from sometime in 1995 to May 10, 1999).
3. Alternatively, and additionally, the Director erred in finding that Babcock was an employee of the companies for the entire period from November, 1994 to April 20, 2000 and that each company was liable, as one of the associated companies, for the full amount ordered to be paid in the Determination.
4. Alternatively, and additionally, the Director erred in finding Prema Concrete Products Ltd. was a non-existent company.
5. PSL had no involvement with the work for which Babcock claims wages.
6. The Director made findings of fact regarding PSL that were not justified on the facts.

The Tribunal has concluded an oral hearing is not required to address the issues raised by this appeal.

ISSUE

The issues raised by this appeal are framed in the above summary of the grounds of appeal.

PRELIMINARY ISSUE

The Director has raised a preliminary objection to the appeal. The Director says that Mr. Seaman does not have the legal authority to bring an appeal on behalf of PSL as that company has made an assignment in bankruptcy.

The preliminary objection is accepted for the same reasons given in *Re No. 289 Taurus Ventures Ltd. and others*, BC EST #D547/00, where I noted the decision of the Tribunal in *Re Fyfe*, BC EST #D080/00, which stated:

Section 71(2) of the *Federal Bankruptcy and Insolvency Act* states that: “on an assignment [into bankruptcy], a bankrupt has ceased to have any capacity to dispose of or otherwise deal with his property, which shall, subject to this *Act* and to the rights of secured creditors, forthwith pass and vest in the trustee named in the . . . assignment.” The trustee in turn is given wide authority to deal with the bankrupt’s property. For example, the trustee may, with the permission of the inspectors ‘bring, institute or defend any action or other legal proceeding relating to the property of the bankruptcy [see s. 30(1)(d)]. Thus, on bankruptcy, the bankrupt’s property (subject to certain conditions that have no application in this case) vests in the trustee who is given, for the most part, exclusive authority to deal with that property.

Accordingly, Canadian Neon does not have the legal authority to appeal the Determination as that right lies solely with Canadian Neon’s licenced trustee - in this case, KPMG Inc. Whether Fyfe filed this appeal in his personal capacity, or as an agent of Canadian Neon, the same result holds: the appeal is simply not properly before the Tribunal and thus this appeal is dismissed. (emphasis added)

I note there is nothing on the file indicating the trustee in bankruptcy has given Mr. Seaman the authority to file an appeal of this Determination on behalf of the bankrupt companies.

The Director also argues that even if no assignment in bankruptcy had been made, Mr. Seaman lacked capacity to appeal the Determination because he had ceased to be a director prior to the issuance of the Determination. In light of my conclusion on the first basis for objection, I do not need to address this argument.

Counsel for Mr. Seaman says that to deprive Mr. Seaman of the opportunity to appeal the Determination would be a denial of natural justice. Counsel further submits that the appeal is not being filed on behalf of PSL, but on behalf of Mr. Seaman in his capacity as a director of PSL.

In reply to the above submissions, first, the decision of the Tribunal is dictated by the provisions of the federal bankruptcy and insolvency legislation. Second, as I noted in *Re No. 289 Taurus Ventures Ltd. and others*, BC EST #D547/00, this decision does not foreclose Mr. Seaman from filing an appeal against any Determination issued by the Director pursuant to Section 96, imposing liability on him as a director and/or officer of PSL, and in the particular circumstances it is improbable that the Tribunal would not address the merits of this Determination and consider the arguments made by Mr. Seaman.

ORDER

Pursuant to Section 115 of the *Act*, I order the Determination, dated August 28, 2000, in the amount of \$253,544.83 be confirmed, together with any interest that has accrued pursuant to Section 88 of the *Act*.

David B. Stevenson

David B. Stevenson
Adjudicator
Employment Standards Tribunal