



EMPLOYMENT STANDARDS TRIBUNAL

An appeal  
pursuant to section 112 of the  
*Employment Standards Act R.S.B.C. 1996, C.113 (as amended)*

- by -

Mike Combs

- of a Determination issued by -

The Director of Employment Standards

**PANEL:** Ryan Goldvine

**FILE NO.:** 2023/127

**DATE OF DECISION:** January 18, 2024

## DECISION

### SUBMISSIONS

Erica Boyko and Mike Combs

on behalf of Mike Combs

### OVERVIEW

1. This decision addresses an appeal filed under section 112 of the *Employment Standards Act* (“ESA”) by Mike Combs (“Appellant”) of a determination made by Matthew Osborn, a delegate (“Delegate”) of the Director of Employment Standards (“Director”), on June 21, 2023 (“Section 96 Determination”).
2. The Section 96 Determination follows from a determination against Morrissey Creek Building Supplies Ltd. (“Employer”) awarding compensation for length of service and concomitant vacation pay (“Corporate Determination”) to Jeffrey May (“Complainant”), a former employee. The Corporate Determination also imposed a \$500 mandatory administrative penalty against the Employer. I denied the appeal of the Corporate Determination in *Morrissey Creek Building Supplies Ltd., 2024 BCEST 3*.
3. The Appellant says the Complainant was not fired or laid off but instead resigned his employment through his actions of not inquiring about his schedule and not showing up to work when scheduled. The Appellant seeks to introduce documents and testimony to appeal the Section 96 Determination.
4. I have concluded that this case is appropriate to consider under section 114 of the *ESA*. Accordingly, at this stage, I am assessing the appeal based solely on the Determination and Reasons, the written submission filed with the appeal, and my review of the material that was before the Director when the Determination was being made (“Record”).
5. I note the initial Appeal Form was received on July 31, 2023, the deadline for filing the appeal indicated in the Section 96 Determination. While the submissions and documents were received significantly after the deadline for filing the appeal, I have nevertheless reviewed them in their entirety and for the reasons that follow, dismiss the appeal under section 114(1)(f) as having no reasonable prospect of success.

### ISSUE

6. The issue is whether this appeal should be allowed to proceed or be dismissed under section 114(1) of the *ESA*.

### THE DETERMINATION

7. The issue before the Director was whether the Appellant was personally liable for the unpaid wages and interest, and administrative penalty, found to be owing in the Corporate Determination.
8. The delegate confirmed through a BC Registry Services search that the Appellant was a director at all material times, and as the wages owing represented less than two months’ wages, the Appellant was personally liable for the entirety of the wages and interest owing pursuant to section 96 of the *ESA*.

9. The Delegate concluded there was insufficient evidence that the Appellant “authorized, permitted or acquiesced in the contravention(s) of the Employer,” and, accordingly, did not find the Appellant personally liable for the administrative penalties.

## ARGUMENTS

10. While the Appellant indicated the grounds for appeal as being on the bases that the Director erred in law in making the Section 96 Determination, and that new evidence has become available that was not available at the time the Section 96 Determination was made, the submissions before me do not directly address these grounds with respect to director liability.
11. In fact, the Appellant simply appears to repeat the submissions made on behalf of the Employer in respect of the appeal of the Corporate Determination.

## ANALYSIS

12. Section 96 of the *ESA* provides as follows:
- (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 in respect of an individual or group terminations, if the corporation
      - (i) is in receivership, or
      - (ii) subject to an action under section 427 of the *Bank Act* (Canada) or to a proceeding under an insolvency Act
13. Applying the doctrine of *issue estoppel*, the Appellant is limited to the following three issues in this appeal:
- 1) That the person appealing was not a director/officer of the company at the time wages were earned or should have been paid;
  - 2) That the calculation of the director/officer’s personal liability is incorrect; and/or,
  - 3) That the director/officer should not be liable for the penalty, where a penalty has been assessed, on the grounds that he or she did not authorize, permit or acquiesce in the company’s contravention.
14. The Appellant has not disputed that he was a director of the Employer at the time the Complainant’s wages were earned or should have been paid. The Appellant also has not challenged the calculation of his personal liability.
15. Accordingly, I find the Appellant has not advanced any grounds to interfere with the Section 96 Determination and dismiss the appeal under section 114(1)(f) as disclosing no reasonable prospect of success.

**ORDER**

16. The appeal is dismissed.
17. Pursuant to section 115(1)(a) of the *ESA*, the Determination is confirmed along with whatever further interest has accrued pursuant to section 88 of the *ESA*.

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**Ryan Goldvine**  
**Member**  
**Employment Standards Tribunal**