HUMAN RIGHTS TRIBUNAL OF ONTARIO

B E T W E E N:

Milica Dobric

Applicant

-and-

The Board of Directors of York Condominium Corporation #75

Respondent

AND:

Vaso Dobric

Applicant

-and-

The Board of Directors of York Condominium Corporation #75

Respondent

AND:

Milica Dobric

Applicant

-and-

Brookfield Residential Services

Respondent

AND:

Vaso Dobric

Applicant

-and-

Brookfield Residential Services

Respondent

DECISION

Adjudicator: Alan G. Smith

Date: January 23, 2012

File Number: 2011-08576-I; 2011-08577-I; 2011-08674-I; 2011-08675-I

Indexed as: 2012 HRTO 171

Citation: **Dobric v. Brookfield Residential Services**

APPEARANCES

Vaso Dobric, Applicant	)	Self-represented
The Board of Directors and Brookfield Residential Services Ltd., Respondents	)	Donald Balla and Wayne Beaton, Representatives

BACKGROUND

[1] The applicants filed Applications with the Tribunal alleging discrimination in housing on the basis of place of origin and ethnic origin, contrary to the *Human Rights Code*, R.S.O. 1990, c. H.19, as amended (the "*Code*"). In their Applications, the applicants allege, in essence, that the failure of the respondents to properly deal with noise complaints in their condominium was discriminatory.

[2] Pursuant to s. 43(2) of the *Code* and Rule 19A of the Tribunal's Rules of Procedure, a summary hearing by teleconference was held before me on November 30, 2011. The purpose of the summary hearing was to determine whether the Applications should be dismissed, in whole or in part, on the basis that there was no reasonable prospect that they would succeed. The Applications were served on the respondents at the same time as the Case Assessment Direction notifying the parties of the summary hearing. The respondents were advised that it was not necessary to file Responses at that time.

[3] Vaso Dobric participated in the summary hearing both on his own behalf and as Milica Dobic's representative. Both responding parties also participated and made oral submissions. The Applications and the respondent's written submissions were also considered by me.

FACTS

[4] The pivotal facts are not in dispute. The applicants are occupants of a high-rise condominium unit. The respondents are the board of directors of the condominium corporation and the property management company hired by the condominium corporation.

[5] Starting in February 2010 the applicants began complaining to the respondents regarding excessive noise emanating from an adjacent condominium unit. There was a series of correspondence between the parties with regard to the complaints culminating

in a letter sent by the condominium board of directors to the applicants on December 21, 2010. The letter reads in part:

> Please be advised that the Board of Directors has reviewed your complaints regarding noise from unit 601 and has concluded the tenant in it is not being unreasonable in performing household chores. I am sure you can appreciate we all experience a reasonable amount of noise from our neighbours as part of living in a condominium environment.
>
> The board believes management has done everything possible to address your concerns and has instructed management not to respond to any future complaints regarding this matter.

[6] In the Applications the applicants refer to the December 21st letter as a "letter of discrimination".

ANALYSIS

[7] As noted above, the hearing was convened pursuant to Rule 19A of the Tribunal's Rules of Procedure. This Rule reads, in part, as follows:

> 19A.1 The Tribunal may hold a summary hearing, on its own initiative or at the request of a party, on the question of whether an Application should be dismissed in whole or in part on the basis that there is no reasonable prospect that the Application or part of the Application will succeed.

[8] The issue that Rule 19A directs the Tribunal to determine is whether the Application has no reasonable prospect of success. In *Dabic v. Windsor Police Service*, 2010 HRTO 1994, the Tribunal provided the following guidance at para 8 and 9:

> In some cases, the issue at the summary hearing may be whether, assuming all the allegations in the application to be true, it has a reasonable prospect of success. In these cases, the focus will generally be on the legal analysis and whether what the applicant alleges may be reasonably considered to amount to a *Code* violation.
>
> In other cases, the focus of the summary hearing may be on whether there is a reasonable prospect that the applicant can prove, on a balance of probabilities, that his or her *Code* rights were violated. Often such

> cases will deal with whether the applicant can show a link between an event and the grounds upon which he or she makes the claim. The issue will be whether there is a reasonable prospect that evidence the applicant has or that is reasonably available to him or her can show a link between the event and the alleged prohibited ground.

[9] In determining whether an application has no reasonable prospect of success, an application must at least contain *sufficient* facts that, if accepted as true, could reasonably lead to a finding of discrimination. Otherwise, an application has no reasonable prospect of success at a hearing and will be dismissed. See the recent decision in *Macyshyn v. Toronto Catholic District School Board,* 2011 HRTO 1068.

[10] It is also important to keep in mind, as the Tribunal pointed out in *Abdul v. York University*, 2011 HRTO 1851, at para. 17:

> The Tribunal does not have the power to deal with general allegations of unfairness. For an Application to continue in the Tribunal's process there must be a basis beyond mere speculation and accusations to believe that an applicant could show discrimination on the basis of one of the grounds alleged in the *Code*.

In other words, the *Code* is concerned with remedying discrimination in certain social areas on the basis of proscribed grounds. It does not deal with general allegations of unfairness or other social ills.

[11] The applicant's primary allegation appears to be that, by reason of their place of origin and ethnic origin (which they self-identify as "from the former Yugoslavia – Serbian origin") they were treated in an discriminatory manner by the respondents. In neither their Application nor through their oral submissions during the summary hearing were the applicants able to point to any evidence that they have, or that is reasonably available to them, which shows that they were treated differently by the respondents vis-à-vis other occupants of the condominium. However, even if differential negative treatment is *assumed* to have occurred, the key question remains as to whether the Applications have no reasonable prospect of success with respect to proving the link between the grounds alleged and the events in question.

[12] During the course of the hearing I asked Mr. Dobric what evidence he had that the alleged negative treatment he and Milica Dobric received at the hands of the respondents was because of his place of origin and ethnicity. In response, the applicant related a conversation with the then condominium manager Orwell Stewart in October 2010 in which Mr. Stewart asked the applicant "what is your native language?" The applicant advised that he responded, "Serbian", to which Mr. Stewart replied "Uh huh". On being further questioned by me, Mr. Dobric advised that he was unaware of any similar incidents involving Milica Dobric. The respondents indicated they had no knowledge of the alleged conversation between Mr. Dobric and Mr. Stewart.

[13] It is evident that efforts were made by the condominium Board and management to resolve the noise issue raised by the applicants. It is also apparent that the applicants were ultimately dissatisfied by the condominium's efforts. However, given that the single brief conversation with Mr. Stewart was the only link the applicants could offer as to why their Eastern European background was a factor in the alleged discriminatory treatment they received, in my view, there is no reasonable prospect that the applicants can prove a link between the decision of the board of directors not to take further action and the applicants' Eastern European background. The conversation with Mr. Stewart, even if proven, does not constitute *sufficient* evidence to convince me that the applications have a reasonable prospect of success if they were to go on to a full hearing. The Tribunal has before it only a bald allegation of discrimination with virtually nothing to suggest that the actions of the condominium were connected with grounds under the *Human Rights Code.*

ORDER

[14] The Applications are therefore dismissed.

Dated at Toronto, this 23rd day of January, 2012.

"Signed by"

Alan G. Smith
Member