HUMAN RIGHTS TRIBUNAL OF ONTARIO

B E T W E E N:

Kanagaratnam Ragulan

Applicant

-and-

Toronto Standard Condominium Corporation No. 1989 and Maxine Straker

Respondents

DECISION

Adjudicator: Brian Cook

Date: January 30, 2012

File Number: 2011-08166-I

Citation: 2012 HRTO 218

Indexed as: **Ragulan v. Toronto Standard Condominium No. 1989**

APPEARANCES

Kanagaratnam Ragulan, Applicant	)	Self-represented
Toronto Standard Condominium Corporation No. 1919, Respondent	)	Bradley Chaplick, Counsel
Maxine Straker, Respondent	)	Self-represented

Introduction

[1] This is an Application filed under section 34 of Part IV of the *Human Rights Code*, R.S.O. 1990, c. H.19 as amended (the "*Code*"), alleging discrimination by the respondents on the grounds of race, colour, ancestry, place of origin and ethnic origin. The applicant also alleges that he was subject to reprisal as a result of filing the Application.

[2] The corporate respondent operates a Condominium. The applicant owns two units in the Condominium. The personal respondent was the President of the Condominium Board of Directors.

[3] By Case Assessment Direction dated May 16, 2011, the Tribunal directed that a summary hearing be held. The summary hearing process is outlined in Rule 19A of the Tribunal's Rules of Procedure. In accordance with Rule 19A, the respondents were not required to file a Response.

[4] In a summary hearing, the issue is whether the Application should be dismissed, in whole or in part, on the basis that there is no reasonable prospect that the Application, in whole or in part, will succeed.

[5] In *Dabic v. Windsor Police Service*, 2010 HRTO 1994, the Tribunal made the following observations on the type of inquiry that may be involved in a summary hearing:

> 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.
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> 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.
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> In considering what evidence is reasonably available to the applicant, the Tribunal must be attentive to the fact that in some cases of alleged discrimination, information about the reasons for the actions taken by a respondent are within the sole knowledge of the respondent. Evidence about the reasons for actions taken by a respondent may sometimes come through the disclosure process and through cross-examination of the people involved. The Tribunal must consider whether there is a reasonable prospect that such evidence may lead to a finding of discrimination. However, when there is no reasonable prospect that any such evidence could allow the applicant to prove his or her case on a balance of probabilities, the application must be dismissed following the summary hearing.

[6] For the reasons which follow I conclude there is no reasonable prospect that the Application will succeed because there is no reasonable prospect that the applicant can establish a link between the actions and behaviours of the respondents and the *Code*.

Events Giving Rise to the Application

[7] From 2008 until approximately August 2010, the applicant owned two units in the Condominium. He lived in one unit and rented the other. In approximately August 2010, the applicant sold one of the units and continued to rent the other unit. He no longer resided in the Condominium.

[8] The applicant self-describes himself as a Brown Canadian. He is an accountant by profession.

[9] In May 2009, the applicant was elected to the Board of Directors of the Condominium. The Board elects its own officers and the applicant was elected Treasurer. The personal respondent was the President of the Board and had been in that position for several years.

[10] As Treasurer, the applicant expected to be consulted on the financial affairs of the Condominium. He also expected that he would be asked to sign or co-sign cheques. He alleges that he was not consulted on financial matters and was not asked to sign cheques. He also alleges that his enquiries about financial matters were brushed aside. He alleges that these actions and behaviours were discriminatory and that the grounds of discrimination must have been his race, colour, ancestry, place of origin and/or ethnic origin because he cannot think of any other reason.

[11] At some point in 2010, there was discussion about a proposed change to the Condominium By-Laws that would mean that a person would have to be a resident of the Condominium in order to sit on the Board. This would have affected the applicant because after approximately August 2010, he was no longer a resident, as he sold one of the units he owned and rented out the other unit.

[12] The By-Law change proposal was advanced by the personal respondent. The applicant felt that the proposal was aimed at him and was an attempt to force him off the Board. Other Board members and some of the residents subsequently agreed with the applicant about this. Ultimately, the proposed By-Law amendment was withdrawn and the personal respondent agreed with the withdrawal.

Events after the Application was filed

[13] The Tribunal sent a copy of the Application to the respondents in May 2011. The Application was discussed at the May 2011 meeting of the Board of Directors. By that time, the personal respondent was no longer the president of the Board. The applicant alleges that the new president informed the Board that he felt that the Application at the Tribunal would not succeed. The applicant also alleges that the new president tried to persuade him to withdraw the Application and suggested he would support the applicant if he wished to remain on the

Board after the June 2011 election. The applicant told the president that he was not prepared to withdraw the Application. The minutes of the Board of Directors meeting indicate that the particulars of the Application would remain confidential.

[14] The Annual General Meeting of the Condominium owners was held on June 1, 2011. Copies of the minutes of the May 2011 Board of Directors meeting were distributed at the meeting. Not surprisingly, people at the meeting had questions about the Application, including what it was about and whether it would cost the Condominium money.

[15] The General Meeting was chaired by Mario Deo, who is legal counsel to the Condominium. Mr. Deo was asked for his opinion about the Application. According to the Minutes of the General Meeting, Mr. Deo indicated that the applicant's chance of success was low. He added that the situation was unusual, or "funny" because the person who had brought the Application was standing for re-election to the Board.

[16] After this discussion, the election for the vacant positions on the Board of Directors took place. Including the applicant, there were five candidates for three positions. The applicant was not elected.

[17] The applicant alleges that the events at the General Meeting constitute a reprisal against him for trying to advance his human rights and for filing the Application.

Analysis and Conclusions

[18] The applicant in this case clearly believes that he was treated unfairly. The personal respondent, on the other hand believes that she is the one who has been treated unfairly, both in terms of the way she was treated by the Board and in being named as a respondent in this Application.

[19] Whether or not the applicant was treated unfairly is only relevant in the Application if the applicant can show, on a balance of probabilities, that he was treated unfairly and that the alleged unfairness was due at least in part to a *Code*-protected ground, in this case, race, colour, ancestry, place of origin and ethnic origin, the grounds he identified in the Application. As the Tribunal stated in *Forde v. Elementary Teachers' Federation of Ontario*, 2011 HRTO 1389 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* or the intention by a respondent to commit a reprisal for asserting one's *Code* rights.

[20] The applicant agrees that no one concerned ever said anything directly about his race, colour, ancestry, place of origin or ethnic origin. There is thus no direct evidence of discrimination. The applicant suggests there is circumstantial evidence of discrimination but he was not able to identify what this evidence might be, apart from the fact that he felt discriminated against. He said that he was the only visible minority on the Board of Directors. The personal respondent said that this is not correct. She indicated that she herself is a person of colour. The applicant indicated that he believes that another person of Indian descent was harassed some years earlier, although she moved away awhile ago and would not be available as a witness.

[21] It appears that the applicant's perception of discrimination arose first from his perception that his skills and knowledge as an accountant were not respected in terms of his role as treasurer. The applicant was unable to identify any evidence, apart from his feeling, that this perceived lack of respect arose in any way from his race, colour, ancestry, place of origin or ethnic origin.

[22] The second area that caused the applicant to believe that he was being discriminated against related to the proposed By-Law amendment that would

have required a person to be a resident of the condominium in order to be on the Board. Such a By-Law, if it went into effect, would discriminate between resident-owners and non-resident owners. However, this is not a form of discrimination that the *Code* is concerned with.

[23] The applicant noted that the Minutes of the June 2011 General Meeting show that the then president of the Board felt that the proposed By-Law had been targeted specifically at the applicant. Here again, assuming that this was true, the applicant was unable to identify any evidence that might show that any such treatment or targeting was related to his race, colour, ancestry, place of origin or ethnic origin.

[24] Based on the documents in the record and the information provided by the applicant during the summary hearing, I am satisfied that there is no reasonable prospect that the applicant can show discrimination because of race, colour, ancestry, place of origin and ethnic origin.

[25] The applicant believes that he was subject to reprisal as a result of filing the Application. Section 8 of the *Code* provides as follows:

> 8. Every person has a right to claim and enforce his or her rights under this Act, to institute and participate in proceedings under this Act and to refuse to infringe a right of another person under this Act, without reprisal or threat of reprisal for so doing.

[26] The applicant alleges that the reprisal arose at the June 2011 General Meeting. He notes that the fact that he had filed the Application was made known to the members. Copies of the Minutes of the previous Board of Directors meeting, at which the Application was discussed, were distributed to the members. Although the Minutes did not identify the applicant, the Chair of the meeting indicated that the person who had filed the Application was standing for re-election to the Board.

[27] The fact that the Board of Directors let the membership know that an Application had been filed against the Condominium is not, in itself, evidence of reprisal. Filing the Application started a legal action against the Condominium, and raised the potential of legal liability and legal costs for the Condominium. The Board was entitled to tell the membership of these potential liabilities and costs.

[28] The applicant was then not re-elected to the Board. To the extent that this was a form of reprisal for having filed the Application, it may have been reprisal by the individuals who voted. It was not reprisal by the Board of Directors or the Condominium or the personal respondent.

[29] For these reasons, I find that there is no reasonable prospect that the Application can succeed and it is dismissed on that basis.

Dated at Toronto, this 30th day of January, 2012.

"signed by"

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Brian Cook
Vice-chair