



HUMAN RIGHTS TRIBUNAL OF ONTARIO

BETWEEN:

Deborah Coker

Applicant

-and-

York Condominium Corporation No. 60 and Mark Cianfarani

Respondents

DECISION

Adjudicator: Keith Brennenstuhl

Date: April 10, 2012

File Number: 2011-08742-1

Citation: 2012 HRTO 711

Indexed as: **Coker v. York Condominium Corporation No. 60**

[1] This is an Application under section 34 of Part IV of the *Human Rights Code*, R.S.O. 1990, c. H.19 as amended, (the “Code”) alleging discrimination in the area of housing on the basis of race as well as reprisal.

[2] By Case Assessment Direction dated November 8, 2011, the Tribunal directed that a summary hearing be held by teleconference. It stated as follows at paragraphs 6:

The Tribunal’s Registrar will schedule a half-day summary hearing by teleconference. The applicant will proceed first during the summary hearing. The applicant shall make argument about why the Application should not be dismissed as having no reasonable prospect of success, and point to the evidence on which the applicant will prove a link between the respondent’s actions and the grounds cited.

ANALYSIS

Summary Hearings

[3] The summary hearing process is outlined in Rule 19A of the Tribunal’s Rules of Procedure. In a summary hearing the issue is whether an application should be dismissed in whole or in part on the basis that there is no reasonable prospect that the application or a part thereof will succeed.

[4] In *Dabic v. Windsor Police Service*, 2010 HRTO 1994 at paras. 8-10, 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.

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.

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.

Application to the Facts

[5] The applicant self-identifies as a black individual. She owns and resides in a residential unit within a condominium project managed and administered by the respondent corporation. A lien was put on the title of her unit by the respondent corporation for unpaid commons expenses. According to the applicant, this was part of the “abusive and derogatory behaviour in any attempt I make to pay my condominium fees”. She alleges that her race was a factor in the mistreatment she experienced at the hands of the corporate respondent.

[6] It is evident that the applicant disagrees with the respondent corporation’s calculation of her condominium fees. This has become a source of friction between the applicant and staff in the management office of the respondent corporation. However, the applicant, while obviously upset by the situation, was unable to point to any evidence that could establish that the treatment she experienced at the hands of the respondent corporation or the personal respondent was in any way linked to her race.

[7] She indicated for the first time during the course of the hearing that three and one-half years earlier a staff member said that she looked like a supporter of O. J. Simpson and that this somehow set a negative tone for her relationship with the

respondent corporation going forward. I fail to see, however, how this single comment, even if timely and even if factual, could be linked to the calculation of her condominium fees. In any event, it is clear that the applicant would be unable to prove that the comment was ever made as she could not recall who said it.

[8] As for the reprisal allegation, the reprisal section of the *Code* only applies to actions that are intended as reprisal for asserting one's human rights. The applicant failed to point to any evidence whatsoever that could establish such intention and a link to the respondents' alleged actions.

[9] I find that the Application has no reasonable prospect of success. In my view, the interactions between the respondents and the applicant are not related in any way to discrimination based upon race or any other grounds. The conflict between the respondents and the applicant relates to the calculation of condominium fees and such a matter is not the proper subject of an application to this Tribunal.

[10] The Application is dismissed.

Dated at Toronto, this 10th day of April, 2012.

_____ "*signed by*" _____
Keith Brennenstuhl
Vice-chair