

2014 ONCA 97
Ontario Court of Appeal

De Pinto v. Toronto Community Housing Corp.

2014 CarswellOnt 1159, 2014 ONCA 97, 236 A.C.W.S. (3d) 883

**Michael De Pinto and Roquelina C. Moravus, Plaintiffs
(Appellants) and Toronto Community Housing and
Toronto Police Services Board, Defendant (Respondents)**

Robert J. Sharpe J.A., David Watt J.A., M.L. Benotto J.A.

Heard: January 27, 2014
Judgment: January 27, 2014
Docket: CA C57058

Proceedings: affirming *De Pinto v. Toronto Community Housing Corp.* (2013), 2013 ONSC 2479, 2013 CarswellOnt 7825 (Ont. S.C.J.)

Counsel: Michael De Pinto, Roquelina C. Moravus, for themselves
Amy Murakami, for Toronto Police Services Board
Douglas Levitt, for Toronto Community Housing Corporation

Subject: Civil Practice and Procedure; Public; Torts; Property

Related Abridgment Classifications

For all relevant Canadian Abridgment Classifications refer to highest level of case via History.

Civil practice and procedure

X Pleadings

X.2 Statement of claim

X.2.f Striking out for absence of reasonable cause of action

X.2.f.v Cause not known in law

Law enforcement agencies

I Police

I.3 Liability of others for acts of police

I.3.b Police administrators

Real property

V Landlord and tenant

V.20 Residential tenancies

V.20.m Miscellaneous

Headnote

Civil practice and procedure --- Pleadings — Statement of claim — Striking out for absence of reasonable cause of action — Cause not known in law

Plaintiffs were residents of housing complex owned and operated by Toronto Community Housing Corporation (TCHC) — Plaintiffs sued TCHC and Toronto Police Services Board (TPSB) for damages in negligence of \$500,000,

claiming that superintendent of housing complex failed to control number of residents for allegedly harassing them over extended period of time, and that police failed to arrest and bring third parties to answer to law — Motion judge struck out claim on basis that it failed to disclose reasonable cause of action — Plaintiffs appealed — Appeal dismissed — Plaintiffs failed to allege any facts that would make landlord TCHC legally answerable for any damage inflicted by third parties, and failed to plead facts that gave rise to any actionable duty by TPSB to conduct proper investigation — Moreover, most of alleged incidents occurred outside applicable limitation period — Motion for fresh evidence was dismissed as it related to incidents that arose after date of statement of claim and had no bearing on legal issues arising on appeal.

Law enforcement agencies --- Police — Liability of others for acts of police — Police administrators

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Real property --- Landlord and tenant — Residential tenancies — Miscellaneous

Plaintiffs were residents of housing complex owned and operated by Toronto Community Housing Corporation (TCHC) — Plaintiffs sued TCHC and Toronto Police Services Board (TPSB) for damages in negligence of \$500,000, claiming that superintendent of housing complex failed to control number of residents for allegedly harassing them over extended period of time, and that police failed to arrest and bring third parties to answer to law — Motion judge struck out claim on basis that it failed to disclose reasonable cause of action — Plaintiffs appealed — Appeal dismissed — Plaintiffs failed to allege any facts that would make landlord TCHC legally answerable for any damage inflicted by third parties, and failed to plead facts that gave rise to any actionable duty by TPSB to conduct proper investigation — Moreover, most of alleged incidents occurred outside applicable limitation period — Motion for fresh evidence was dismissed as it related to incidents that arose after date of statement of claim and had no bearing on legal issues arising on appeal.

APPEAL by residents of housing complex from judgment reported at *De Pinto v. Toronto Community Housing Corp.* (2013), 2013 ONSC 2479, 2013 CarswellOnt 7825 (Ont. S.C.J.), granting motion by landlord and police services board to dismiss action in relation to alleged harassment by third parties.

Per curiam:

- 1 The appellants sued the Toronto Community Housing Corporation and the Toronto Police Services Board in negligence for damages of \$500,000. They claimed that the superintendent of their housing complex failed to control a number of residents for allegedly harassing them over an extended period of time.
- 2 The motion judge struck the claim on the ground that it disclosed no reasonable cause of action. We see no error.
- 3 The appellants failed to allege any facts that would make their landlord legally answerable for any damage inflicted by third parties. Moreover, most of the alleged incidents occurred outside the applicable limitation period.

4 Likewise, with respect to the Toronto Police Services Board, the appellants failed to plead facts giving rise to any actionable duty to conduct a proper investigation and almost all of the incidents alleged in the claim occurred outside the limitation period.

5 Finally, the motion for fresh evidence is dismissed as it relates to incidents that arose after the date of the statement of claim and has no bearing on the legal issues arising on this appeal.

6 The appeal is dismissed. Costs to Toronto Community Housing Corporation fixed at \$300 inclusive as requested. Costs to the Toronto Police Services Board fixed at \$1000 inclusive.

Appeal dismissed.

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