

2014 ONSC 1063
Ontario Superior Court of Justice

Gledhill v. Better Living Homes Inc.

2014 CarswellOnt 1808, 2014 ONSC 1063, 237 A.C.W.S. (3d) 817

Mark Gledhill, Appellant and Better Living Homes Inc., Respondent

Marrocco A.C.J. Ont. S.C.J.

Heard: February 13, 2014
Judgment: February 18, 2014
Docket: 308/13

Counsel: Appellant, for himself
Douglas H. Levitt, for Respondent

Subject: Civil Practice and Procedure; Property

Related Abridgment Classifications

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

Civil practice and procedure

XXIII Practice on appeal

XXIII.13 Powers and duties of appellate court

XXIII.13.g Reversing findings of fact

XXIII.13.g.ii Finding by judge alone

XXIII.13.g.ii.E Miscellaneous

Headnote

Civil practice and procedure --- Practice on appeal — Powers and duties of appellate court — Reversing findings of fact — Finding by judge alone — General principles

Plaintiff was arrested and charged with mischief to private property after complaint by defendant landlord to police — Charge was stayed — Plaintiff's claim for malicious prosecution was dismissed by Small Claims Court judge — Plaintiff appealed — Appeal dismissed — There was no palpable and overriding error of fact by judge — Supplementary record of arrest and officers' notes summarized therein were admissible in Small Claims Court proceedings as was decision of Landlord and Tenant Board — Together these documents established that police had reasonable and probable grounds to arrest plaintiff.

Table of Authorities

Cases considered by *Marrocco A.C.J. Ont. S.C.J.*:

Kvello v. Miazga (2009), [2010] 1 W.W.R. 45, 69 C.C.L.T. (3d) 1, 464 W.A.C. 260, 337 Sask. R. 260, 395 N.R. 115, (sub nom. *Kvello Estate v. Miazga*) 313 D.L.R. (4th) 330, (sub nom. *Miazga v. Kvello Estate*) [2009] 3 S.C.R. 339, 2009 SCC 51, 2009 CarswellSask 717, 2009 CarswellSask 718 (S.C.C.) — referred to

Statutes considered:

Residential Tenancies Act, 2006, S.O. 2006, c. 17

s. 168(2) — referred to

s. 174 — referred to

Rules considered:

Small Claims Court Rules, O. Reg. 258/98

R. 18.02 — referred to

APPEAL by plaintiff from decision of Small Claims Court judge dismissing claim for malicious prosecution.

Marrocco A.C.J. Ont. S.C.J.:

1 The appellant, Mr. Gledhill, is a former tenant of a rental unit municipally described as unit 702, 540 Sherbourne St, Toronto. Mr. Gledhill was arrested by the police on October 7, 2010. He was then released on bail on a recognizance which required him to stay away from 540 Sherbourne St. The criminal proceedings were eventually stayed.

2 On December 13, 2010 the Landlord and Tenant Board made an order terminating Mr. Gledhill's tenancy at 540 Sherbourne St. The presiding Member was aware of the fact that Mr. Gledhill could not enter the premises at 540 Sherbourne St due to the terms of his recognizance of bail. This order was never appealed.

3 Subsequent to Board's order Mr. Gledhill commenced a proceeding in the Small Claims Court. In that proceeding he claimed that the landlord caused the police to arrest him, that representatives of the landlord harassed him and the landlord then evicted him. Mr. Gledhill informed me that at some point his claim was stayed. He then appeared before a Small Claims Court judge who lifted the stay and directed a settlement conference. Mr. Gledhill attended a settlement conference but there was no settlement. Mr. Gledhill's claim then went to trial.

4 At trial a Small Claims Court judge determined that the Small Claims Court had no jurisdiction over those aspects of his claim that dealt with his residential tenancy. This conclusion was correct: see *Residential Tenancies Act, 2006*, S.O. 2006, c. 17, ss. 168(2) and 174. Mr. Gledhill informed me that, after making this determination, the Small Claims Court judge recast his claim as one of malicious prosecution and then adjourned the claim for trial. A trial of the reconstituted claim took place on June 10, 2013 after which the claim was dismissed.

5 Mr. Gledhill appeals that decision.

6 There was evidence upon which the Small Claims Court judge could dismiss the malicious prosecution claim. For example, the supplementary record of arrest was filed as an exhibit. It discloses that Mr. Gledhill was in conflict with the building superintendents and with other tenants. Specifically, it discloses an allegation that Mr. Gledhill threw chicken bones and other food from his balcony. Police recovered and photographed the bones. The record of arrest was admissible in Small Claims Court proceedings: see Rule 18.02 of the *Rules of the Small Claims Court*, O.Reg. 258/98. The officers' notes summarized in the record of arrest also constitute evidence of reasonable and probable grounds to believe that Mr. Gledhill had committed the offence of mischief to private property.

7 The Landlord and Tenant Board's decision terminating the tenancy, which was also filed as an exhibit and which was never appealed, found as facts that Mr. Gledhill: (1) threw items from his balcony, and (2) he seriously interfered with other tenants' reasonable enjoyment of the property. This document was also admissible in the Small Claims Court proceeding.

8 Together these documents preclude Mr. Gledhill from proving the police did not have reasonable and probable cause to arrest him for mischief to private property, without which his malicious prosecution claim cannot succeed: *Kvello v.*

Miazga, 2009 SCC 51, [2009] 3 S.C.R. 339 (S.C.C.), at para. 3. As a result, I conclude that there are no palpable and overriding errors of fact in the decision appealed from.

9 Mr. Gledhill's appeal is dismissed. Costs are fixed in the amount of \$1,000. No further steps are to be taken in this court concerning the parties to this appeal until this cost order is satisfied.

Appeal dismissed.