HUMAN RIGHTS TRIBUNAL OF ONTARIO

B E T W E E N:

KimEija Taipaleenmaki

Applicant

-and-

M.T.C.C. 1053

Respondent

DECISION

Adjudicator: Maureen Doyle

Date: June 20, 2013

File Number: 2012-12069-I

Citation: 2013 HRTO 1100

Indexed as: **Taipaleenmaki v. M.T.C.C. 1053**

APPEARANCES

KimEija Taipaleenmaki, Applicant	)	Self-represented
M.T.C.C. 1053., Respondent	)	Tim Duggan, Counsel

INTRODUCTION

[1] This is an Application filed on July 24, 2012, under section 34 of Part IV of the *Human Rights Code*, R.S.O. 1990, c. H.19, as amended (the "*Code*"), alleging discrimination with respect to accommodation because of creed and alleging reprisal or threat of reprisal.

[2] Following a review of the Application, a Case Assessment Direction ("CAD") was issued on October 11, 2012, directing that a Summary Hearing take place. The CAD directed that the applicant would proceed first and that she would be required to make argument about why the Application should not be dismissed as having no reasonable prospect of success, and point to the evidence on which she would establish a link between the respondent's alleged actions and the grounds alleged, and intention to commit a reprisal. The CAD noted that with respect to reprisal, the *Code* only applies to actions that are intended as a reprisal for asserting one's human rights, and referred to *Noble v. York University* 2010 HRTO 878 ("*Noble*").

[3] A Summary Hearing was held in this matter. At that time, the applicant referenced case law that had not been provided in advance. A time frame was established for her to provide the case law to the Tribunal and to the respondent, as well as a time frame for written submissions. The Tribunal has now received and considered the required case law and submissions.

DECISION

[4] For the reasons that follow I find that this matter has no reasonable chance of success.

ANALYSIS

Summary Hearings

[5] 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 or a part thereof will succeed. It is outlined in Rule 19A of the Tribunal's Rules of Procedure:

> 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.

[6] In *Dabic v. Windsor Police Service*, at paras. 8 and 9, 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.

Application to the Facts

[7] The applicant is an owner resident in a condominium at the premises of the respondent. She submits that she has experienced harassment by members of the respondent's Board of Directors (the "Board") after having questioned issues

surrounding the Board's governance, due diligence and fiduciary responsibilities. She alleged that this conduct commenced following incidents that were the subject of a previous Application before this Tribunal. Although the events that were the subject of the earlier Application are not directly in issue here, according to the applicant they provide a partial context for what she alleges is the Board's continuing conduct. In the earlier Application she alleged that even though she had displayed a Christmas plaque outside her unit in 2007 and 2008, it was not until she began to question the Board's actions in the above-noted area, that the Board and its solicitors wrote her demanding that she remove the Christmas plaque in December 2010. She alleged that other residents of the condominium were permitted to display permanent religious plaques and symbols and that she ultimately filed an Application with the Tribunal. These allegations, regarding discrimination on the basis of creed with reference to the display of her plaque, were the subject matter of the applicant's first Application, which was settled at mediation at the Tribunal in December, 2011.

[8] In this Application, she alleges that since the mediation and settlement of the first Application, the Board members have continued to harass her, due to the fact that she had achieved a settlement of the first Application. She alleges that the respondent condominium's Board (the "Board") invited her to meet with them on March 28, 2012 to discuss her concerns regarding certain Board policies and decisions, but that later the Director of the Board advised her that he would bring her concerns to the Board. She alleges that the Board has refused to meet with her on several occasions, denying her a venue to express her concerns and denying her the opportunity to have her concerns included in the Board's minutes which are accessible to all owners. She alleges that she wants the Board to adopt a new non-discrimination policy with respect to decorations for religious holidays of all faiths, and that the current policy is more confusing than the previous one. She also alleges that she wanted to address the Board regarding "The Privacy Act", "The Veterinarians Act of Ontario", a free pick up service offered by the City of Toronto, a monthly maintenance fee increase, a quote for toilet replacement/retrofitting, and the Board's position on "in-suite metering". She alleged that the president of the Board ignored her questions at condominium meetings.

[9] With her Application, she included numerous documents, including minutes of meetings of the Board, budget and reporting information from the Board, extensive correspondence between her and the condominium manager and Board members regarding such matters as developing policy regarding displaying seasonal and other decorations outside condominium units, replacement and disposal of toilets, privacy concerns, and compliance with legislation governing veterinary services and in-suite metering.

[10] Included in the emails provided is a January 13, 2012 email from the property manager advising her that she would be invited to speak at a Board meeting in March 2012. She also included Minutes of the January 17, 2012 Board meeting which indicated that a Board member had reviewed a number of letters submitted by the applicant and would follow through on her request to speak with him. She also included an email she sent to herself dated March 3, 2012, with the subject line referencing a March 7, 2012 meeting with a Board member. It indicates the following topics: Christmas plaque; toilets; window film vs. window replacements; window washing; window fumigation; bus services; web site password; next AGM elections. Minutes from the next Board meeting, March 27, 2012, indicate that a Board member reported having spoken with the applicant regarding her suggestion that the condominium corporation subsidize the installation of in-suite high efficiency toilets and that "[p]roper protocol for these types of recommendations to the Board is that they be generated by Committees rather than individual residents". Also included with her Application was a May 2, 2012 email from her to the property manager, asking to meet with the Board to discuss "toilet replacement vs. toilet retrofit program" as well as window washing, replacement of windows and metering. In a May 3, 2012 email, the property manager indicates that she would be permitted to speak to the Board. The applicant then sent another email on May 8, 2012, indicating that she was "shocked" when she received her maintenance increase and in which she sought a list of capital projects, in particular "HVAC; Roof; Envelope; Windows; Window vents; Water conservation (toilets in particular); Renewable energy projects such as geothermal, solar, solar thermal". She indicated that the information would "help me in my presentation to the Board". On May 17, 2012,

the property manager sent her an email, withdrawing the invitation to speak to the Board, stating in part as follows:

> The board understands that you seek to discuss anew issues previously drawn to their attention during past meetings and in prior correspondence and discussions. Given that your concerns have been well articulated and your position heard and understood by the board, they respectfully retract their invitation. Please note that the board has a number of Committees as per the Condominium Act. The Committees encourage input from suites in making recommendations to the board. Your concerns are with the respective Committees for consideration. We appreciate your ongoing interest.

It also alerted her to a "Town Hall" meeting scheduled to occur in September 2012 regarding "Strategic Initiatives" and invited her to attend and participate.

[11] The applicant also alleges that she made postings on the condominium's website, but that her postings were deleted when "controversial" postings by other bloggers were allowed to remain. She alleges that she told the Board and Julie Daveys at the condominium management office that if her postings were deleted, she would file a new Application with the HRTO and that she was subsequently banned from the condominium's website. She alleged that this denied her freedom of expression and her right to information posted on the website by the Board, management and other residents and/or owners. She alleged that the fact that the respondent's lawyer sought to hand deliver the letter regarding her use of the website was not standard practice and was an attempt to intimidate and bully her into not proceeding with a new Application. She included a copy of the July 6, 2012 letter with her Application. The letter stated that posts which had been deleted were "among other things defamatory" and noted that personal attacks are not allowed. It advises her that if she made written acknowledgement that she was willing to comply with the condominium corporation's Guidelines, her access to the Forum would be restored.

[12] At the summary hearing, she also made similar allegations relating to events which post-date the Application. Following the summary hearing, she emailed the

Tribunal with information regarding further and ongoing allegations. These allegations do not properly form part of this Application and have not been considered by the Tribunal.

[13] The applicant submitted that because she "successfully argued" her first Application, the Board at the respondent had contempt for her. She alleged that one Board member has referred to her on more than one occasion as a "pit bull". She says that she has done nothing to merit being singled out and that she has simply worked very hard to advance the rights of residents in the condominium.

[14] At the summary hearing, the applicant made submissions regarding the United Nations Convention on Human Rights and its applicability to the Canadian context as well as its importance in relation to the *Code.* Among other things, she referenced the "Constitution of Canada", the "Implied Bill of Rights" and the *Freedom of Information and Protection of Privacy Act,* R.S.O. 1990, c. F31, and spoke about the importance of freedom of expression. She made submissions regarding the *Employment Standards Act*. She made submissions regarding the preamble to the *Code* and submitted that the *Code* has as its aim the recognition of the inherent dignity and worth of each person and the provision of equal rights and opportunities without discrimination. She also submitted that pursuant to s. 45.5 of the *Code*, the Tribunal shall consider policies of the Ontario Human Rights Commission where requested to do so by a party, and where relevant. She submitted that the Ontario Human Rights Commission has adopted a broad definition of creed, which is subjective. She also submitted that the *Code* protects personal beliefs, practices or observances even if they are not essential elements of her creed, provided they are sincerely held. She submitted that harassment on the grounds of creed is a form of discrimination. She also referenced s. 11 of the *Code* and constructive discrimination.

[15] With regard to reprisals, she submitted that the Tribunal and the Ontario Labour Relations Board have traditionally given a liberal interpretation to the reprisal provisions of their respective legislation. She also made submissions regarding the importance of

freedom of expression, freedom of information and freedom of religion. She submitted that all rights are of equal importance. She also submitted that the *Code* has primacy over other legislation.

[16] Citing Tribunal cases including *Chan v. Tai Pan Vacations,* [2009 HRTO 273] and *Bertrand v. Primary Response Inc.,* [2010 HRTO 186] she submitted that Tribunal cases have not required a finding of discrimination contrary to the *Code* to find that an applicant has been reprised against contrary to the *Code* for having attempted to assert his or her rights under the *Code.*

[17] With regard to *Noble*, she submitted that it clarified the difference between reprisals and discipline which is taken according to established policy. She submitted that *Noble* is not applicable to her case, as she has never requested that other peoples' rights be infringed because of her rights. On the contrary, she submitted, she has always said that she does not ask others to remove their permanent cultural or religious symbols from their suite door.

[18] She submitted that there are two things which must be established for reprisal: that an action has been taken against or a threat made to a complainant; that the act or threat is related to the complainant's attempt to enforce a right under the *Code.* She submitted that actions taken by the respondent are sometimes within the sole knowledge of the respondent, and that the evidence of their reasons may come through the disclosure process and cross-examination.

[19] The applicant submitted that she had proven that she was subject to differential treatment and that creed had some role to play in that. She submitted that she has established a *prima facie* case of discrimination. She also submitted that in considering whether she has established a *prima* facie case of reprisal, the Tribunal must be attentive to the fact that the information regarding the reasons for the respondent's actions are within the sole knowledge of the respondent and may come through

disclosure and cross examination. She submitted that she should be given the opportunity for a full hearing with witnesses and cross-examination.

[20] The respondent submitted that the applicant has alleged breaches of various pieces of legislation, but that this is not the proper forum for addressing those alleged breaches. He postulated that the complaints may be more properly addressed pursuant to the *Condominium Act.*

[21] Counsel for the respondent submitted that events underlying the first Application were settled and have no applicability to this Application.

[22] With regard to the allegation that the respondent reprised against her contrary to the *Code*, he cited the requirements stated in *Noble* and submitted that this Application does not provide the basis for an allegation of reprisal.

[23] He submitted that according to the letter of July 6, 2012, it was evident that not all of the applicant's posts were deleted from the discussion forum. Further, he submitted that there was no basis for the applicant's assertion that hand-delivery of the letter was an attempt to bully her.

[24] He submitted that the facts alleged by the applicant cannot, on their face, satisfy the test in *Noble*, and there is no reasonable prospect of success for this Application. He submitted that her submission that she is entitled to documents and the opportunity to cross-examine the respondent's witnesses, underscores the fact that she is unable to "make her case" on the basis of what she has presented.

Creed

[25] The applicant references her previously settled Application regarding an allegation of discrimination on the basis of creed as the reason for the respondent's

alleged reprisals. Beyond her reprisal allegations, it is difficult to ascertain what, if anything, she alleges the respondent has done to discriminate against her on the basis of creed. She has indicated that she finds the Board's new policy regarding the display of decorations outside suites to be "confusing", but has not explained why she believes it discriminates against her on the basis of creed or pointed to evidence she would rely upon to establish that the Board has discriminated against her on this basis. Accordingly, this Application has no reasonable prospect of success with regard to an allegation of discrimination on the basis of creed.

Reprisal

[26] Section 8 of the *Code* provides as follows:

> 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.

[27] At paragraph 33 of *Noble*, the Tribunal stated that for reprisal to be found, the following elements must be established:

> a. An action taken against, or threat made to, the complainant;
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> b. The alleged action or threat is related to the complainant having claimed, or attempted to enforce a right under the *Code*; and
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> c. An intention on the part of the respondent to retaliate for the claim or attempt to enforce the right.

[28] It is important to note that, as the Tribunal stated in *Forde v. Elementary Teachers' Federation of Ontario*, 2011 HRTO 1389 ("*Forde*") 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.

[29] The applicant complains that she was not permitted to speak at Board meetings and that the president did not recognize her questions at condominium meetings and that this was by way of reprisal for the fact that she had filed and settled a previous application at the Tribunal. She has filed numerous emails she sent to the respondent regarding issues of concern to her. She has also sent an email in which she was invited by the Board to speak to them at a meeting. She has also sent an email in which that invitation was withdrawn due to the fact that the issues she indicated she wished to discuss had already been canvassed by the Board, were with Committees for consideration, and inviting her to participate in an upcoming Town Hall meeting.

[30] The applicant has the onus of showing that there is a reasonable prospect that she would be able to establish that the respondent's Board's failure to meet with her or the president's failure to include her questions at condominium meetings was by way of reprisal. In the voluminous documentation filed by the applicant with her Application, it is evident that the respondent provided her with a legitimate explanation for its decision to withdraw the invitation to meet. In doing so, it also invited her to continue to be involved in discussions at the condominium. She has also asserted that the condominium president did not include her questions at condominium meetings, but she has pointed to no particulars or evidence which would establish that this was intended reprisal by the respondent. While it may be difficult for an applicant to provide evidence regarding a respondent's intention, the applicant has not been able to point to any evidence reasonably available to her to establish that the respondent intended to reprise against her in withdrawing its invitation to the Board meeting or in the condominium president not addressing her questions at condominium meetings nor has she pointed to evidence from which such an inference may reasonably be drawn. Accordingly, these allegations of reprisal have no reasonable prospect of success and they are dismissed.

[31] The applicant also alleges that the respondent reprised against her by removing her posts from its website and by removing her ability to post to the website. She has included a letter from the respondent's counsel in which she was advised that her posts were "defamatory" and in which she was invited to continue to post to the website, providing she signed an agreement to be bound by the rules for posting. In my view the letter from respondent's counsel is not evidence that assists the applicant in attempting to establish that the respondent's decision to delete her postings or ban her from the web forum were intended as acts of reprisal for asserting her rights under the *Code*. At best, the letter is simply evidence that the respondent continued to be of the view that the applicant should stop posting what it characterized as defamatory remarks on its forum and they were taking further action to prevent that. Simply because she threatened to file an application at the Tribunal if her postings continued to be removed, and then she was banned from further posting, does not establish reprisal as she still needs to show that the intent was to reprise for claiming or enforcing *Code* rights.

[32] She has not disputed that her posts were defamatory, and has merely said that other people were permitted to make "controversial" posts. She has not indicated how the posts of other people were similar to her own but were subject to differential treatment by the respondent (either on the basis of a *Code* ground or otherwise). I also note that she testified that at the time her postings were initially deleted, her objection to this was on the basis that this denied her freedom of expression and her right to access information being posted. These are not rights protected under the Ontario *Human Rights Code* and the fact that she asserted these interests undermines her own claim of *Code*-related reprisal. The summary hearing was her opportunity to point to evidence she would rely upon to establish her allegation, but instead, she has provided evidence that appears to support a non-*Code* related intention (i.e. concerns about defamation) as the reason for the respondent's actions and simply made a bald assertion that the respondent's intentions were none-the-less *Code*-related. Similarly, I note the serious tone of the letter delivered to her regarding her posts and I do not find that there is any basis upon which to conclude that the fact it was hand-delivered would establish an intent to reprise for claiming or enforcing *Code* rights. In the absence of any indication of

what evidence she has or is reasonably available to her to establish her claim, this allegation of reprisal has no reasonable prospect of success and it too is dismissed.

[33] It is clear that the applicant and the respondent have had ongoing disagreements regarding condominium matters and she feels aggrieved by the way in which her concerns have been considered. As stated in *Forde*, however, the Tribunal cannot deal with general allegations of unfairness. For the Application to proceed, the applicant must be able to establish how her allegations relate to a violation of the *Code* or an intent to reprise against the applicant for asserting her *Code*-related rights. As the Tribunal stated in the October 11, 2012 CAD, "[t]o proceed with the allegations of reprisal, there must be a reasonable basis to believe that the applicant could establish such intention and a link to the respondent's alleged actions".

[34] While it is clear that the applicant does not enjoy the kind of relationship with the respondent or its Board which she would like, she has not been able to point to evidence which she has or which is reasonably available to her which would establish, even by way of interference, an intent to reprise against her for having filed her first Application with the Tribunal or otherwise claiming or enforcing her rights under the *Code*, or that would establish that the respondent has discriminated against her on the basis of creed. Accordingly, this Application is dismissed.

[35] I find that there is no reasonable prospect that the Application will succeed and it is dismissed.

Dated at Toronto, this 20th day of June, 2013.

"Signed by"

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Maureen Doyle
Vice-chair