COURT OF APPEAL FOR ONTARIO

CITATION: O'Regan v. Carleton Condominium Corporation No. 169, 2024 ONCA 647
DATE: 20240829
DOCKET: COA-23-CV-1126

Nordheimer, Gomery and Wilson JJ.A.

BETWEEN

Joseph O’Regan

Plaintiff
(Appellant)

and

Carleton Condominium Corporation No. 169 and Apollo Property Management Limited and Joseph Muchmore

Defendants
(Respondents)

Joseph O’Regan, acting in person

Rod Escayola and Graeme Macpherson, for the respondents

Heard: August 23, 2024

On appeal from the judgment of Justice Jaye Hooper of the Superior Court of Justice, dated September 18, 2023, with reasons reported at 2023 ONSC 5241.

REASONS FOR DECISION

[1] The appellant, Mr. O'Regan, appeals the decision of the motion judge granting the summary judgment motion of the respondents and dismissing his action.

[2] In December 2018, there was a fire in the appellant's condominium unit that caused smoke damage to the common elements of the condominium, primarily the hallways and stairs. After the Carleton Condominium Corporation 169's board of directors (the "Corporation") paid for the remediation, they sought reimbursement of their insurance deductible, totalling $5,000, within 30 days. The appellant failed to pay by the deadline, so the Corporation registered a lien for $6,042.10, which included interest and legal costs. When the appellant wished to renew his mortgage, the mortgagor would not refinance until the lien was discharged. The appellant refused to discharge the lien and, upon the maturity of the mortgage, the unit was sold by way of a power of sale in May 2022. The appellant issued an action alleging oppression against the Corporation, the property manager, and the superintendent of the building.

[3] The appellant submits that the motion judge made errors of law. First, he argues that he ought to have been allowed to amend his claim to cure deficiencies. We do not accept this submission. The motion judge gave reasons as to why she permitted the appellant to amend certain paragraphs of his statement of claim and refused to allow amendments to other paragraphs. We see no error in her analysis.

[4] Second, the appellant submits that the motion judge made an error in law when she accepted the evidence of the respondents' witnesses over the expert opinion of the appellant's witness, Mr. Narraway. We do not agree. The motion judge admitted the appellant's expert report and considered the opinions against the evidence of the building superintendent and the cleaner. The motion judge preferred the latter, which she was entitled to do. She provided reasons for her decision on the expert evidence issue. We see no error in her analysis.

[5] Third, the appellant argues that the motion judge was incorrect in determining that this matter could be adjudicated by way of a summary judgment motion. We also do not accept this submission. The motion judge correctly identified the test for summary judgment and concluded that the case could be determined by way of the summary judgment procedure. We agree with her analysis.

[6] At the appellant's request, we viewed the videos that were made exhibits at the motion. The appellant made the same argument that he advanced before the motion judge: it was impossible for smoke damage to have occurred above the third floor (where the appellant's unit was located). This argument was rejected by the motion judge, as she found that there was smoke and odour that required remediation. The motion judge also accepted the evidence of the witnesses who were present in the building at the time of the fire and thereafter. We agree with her findings and see no error in her reasoning.

[7] Finally, the appellant submits that there was an apprehension of bias on the part of the motion judge, seemingly for her refusal to accede to the appellant's requests for a trial with *viva voce* evidence. There is no merit to this submission and we do not accept it. The motion judge's reasons reveal careful consideration of the appellant's arguments and detailed reasons for her decision. She concluded that the Corporation's actions were not oppressive. The motion judge found that remediation was required as a result of the fire and the cost was reasonable. She determined there was no genuine issue requiring a trial. Her findings are entitled to deference from this court. There was no unfairness in the process.

[8] The appeal is dismissed, with costs of $10,000 inclusive of fees, disbursements, and HST payable to the respondents.

"I.V.B. Nordheimer J.A."

"S. Gomery J.A."

"D.A. Wilson J.A."