HUMAN RIGHTS TRIBUNAL OF ONTARIO

B E T W E E N:

Alvaro Jose Carol

Applicant

-and-

Shiu Pong Management Limited and York Region Standard Condominium Corporation 1190

Respondents

DECISION

Adjudicator: Jo-Anne Pickel

Date: September 15, 2014

File Number: 2013-14000-I

Citation: 2014 HRTO 1359

Indexed as: **Carol v. Shiu Pong Management Limited**

APPEARANCES

Jose Alvaro Carol, Applicant	)	Jeremy Richler, Counsel
Shiu Pong Management Limited and York Region Standard Condominium Corporation 1190, Respondents	)	Maria Kotsopoulos, Counsel

[1] The applicant alleged that the respondents discriminated against him because of ethnic origin, national origin and race contrary to the *Human Rights Code*, R.S.O. 1990 c. H. 19 (the "*Code*"). The applicant is the owner of a restaurant in a plaza that is operated and managed by the respondents. He alleged that the respondents discriminated against him because of his ethnic origin, national origin and race by enforcing certain condominium rules more strictly against him than against business owners who are of South Asian origin.

[2] At the hearing of the Application, I heard testimony from the applicant. I also heard testimony from the following individuals called by the respondents: Rajeev Narang, a member of the Board of Directors ("Board") of York Region Standard Condominium Corporation 1190 (the "condominium corporation"); Barbara Husain, Senior Property Manager for Shiu Pong Management Limited.; and Parminder Saini, a former member of the condominium corporation's Board.

[3] For the reasons set out below, I find that the applicant has failed to discharge his onus of establishing discrimination on a balance of probabilities.

BACKGROUND

[4] Since the summer of 2012, the applicant has owned a restaurant located in a commercial retail property ("plaza") operated and managed by the respondents in the City of Markham. He is a tenant of a unit in the plaza which is owned by another person. The respondent condominium corporation is governed by a Board pursuant to a Declaration registered under the *Condominium Act, 1998*, S.O. 1998, c. 19. The respondent Shiu Pong Management Limited is a property management company that manages the condominium property on behalf of the condominium corporation.

[5] The applicant testified that his relationship with the respondents began to sour around January 2013. He alleged that the respondents have targeted him for stricter enforcement of the rules applicable to the condominium corporation since this time. He raised the four following forms of alleged discriminatory treatment.

a. That the respondents discriminated against him when they required him to take down certain temporary signage when other business owners were permitted to continue using temporary signage rather than permanent signs;

b. That the respondents discriminated against him when the condominium corporation changed the process for the approval of amendments to the condominium corporation's Declaration.

c. That the respondents discriminated against him with respect to the approval of his permanent signage – specifically, by delaying approval of his request for permanent signage and by failing to approve his request to place permanent signage across both his units; and

d. That that the respondents discriminated against him when they failed to cut the grass near his unit in time for a celebration held on Peru's National Independence Day.

[6] I address each of these allegations in turn below.

APPLICABLE LAW

[7] The *Code* provides that every person has a right to equal treatment without discrimination on the basis of grounds such as ethnic origin, national origin and race in certain social areas including accommodation, services and contracts: ss. 1-3 of the *Code*.

[8] The applicant bears the legal onus of establishing discrimination on a balance of probabilities. To successfully establish discrimination, an applicant must prove that it is more probable than not that discrimination occurred. See *Peel Law Association v. Pieters*, 2013 ONCA 396 at para. 83 ("*Pieters*").

[9] As held by the Court of Appeal for Ontario in *Pieters,* an applicant has the onus of establishing the following three elements to make out discrimination under the *Code*:

a. That he or she is a member of a group protected by the Code;
b. That he or she was subjected to adverse treatment; and
c. That the *Code* ground was a factor in the alleged adverse treatment.

[10] In *Pieters*, the Court of Appeal held that the Divisional Court had erred in applying a stricter test which required a "causal nexus" between the adverse treatment and the *Code* ground. Despite this finding, the Court made clear that there still must be some nexus or connection between the alleged adverse treatment and one or more grounds protected under the *Code*. While the *Code* ground need only be one factor in the alleged adverse treatment, it must be a factor.

[11] Although the respondent took the position in its Response that this Application does not engage a social area protected under the *Code*, it did not pursue this submission at the hearing. For the purposes of this decision, I accept that the facts of this case engage the social areas of contracts, services and/or accommodation.

REQUIREMENT TO REMOVE TEMPORARY SIGNAGE

Facts

[12] In or around January 2013, Ms. Barbara Husain spoke to the applicant and informed him that he would be required to remove his temporary signage as it did not comply with the condominium corporation's Sign Uniformity Plan which is discussed below. On February 1, 2013, the respondents sent the applicant a letter asking him when they could expect his request for the approval of permanent signage.

[13] The applicant testified that he felt that the requirement that he replace his temporary signage with permanent signs was unfair as quite a few businesses in the plaza had temporary signage in place at the time. He testified that the owners of these businesses were of South Asian origin and that, to the best of his knowledge, the respondents had not asked them to remove their temporary signage.

[14] The respondents' witnesses testified that the rules and authority relating to signage in the plaza have changed over time. Mr. Narang testified that the developer of the plaza where the applicant's business is located began selling units in the plaza in 2010. At that time, the condominium corporation had not yet been legally registered as no Declaration had yet been filed under the *Condominium Act*. The Declaration was

filed on March 8, 2011. Prior to the filing of the Declaration all signage in the plaza had to be approved by the City of Markham. After the filing of the Declaration, all signage applications were required to be submitted to the condominium corporation's Board for approval and were subject to the general rules relating to signage found in the Declaration. The Declaration includes a provision that states that owners are permitted to place signs only in such areas as designated by the condominium corporation and provided that the sign complies with uniform signage design specifications established by the condominium corporation from time to time.

[15] In or around August and September 2011, the previous property management company, acting on behalf of the condominium corporation's Board, sent notices to all business owners and tenants to comply with the signage rules in the Declaration.

[16] Mr. Narang, testified that the respondents sent several notices to all owners advising them of the requirement to obtain approval for their signage from the Board. He testified that, after a year of sending letters and notices, the Board hired someone to remove non-compliant signs. He testified that, for example, the condominium corporation ordered the removal of signs that had been placed by the owner of unit 14 and charged the owner for the expenses relating to the sign removal. Mr. Narang testified that the owner of unit 14 was of South Asian origin.

[17] On May 23, 2012, the condominium corporation approved and put in place a Sign Uniformity Plan ("SUP"). Mr. Narang testified that the SUP is a guideline that aims to establish uniform signage specifications to enhance aesthetics and safety in the plaza. Under the SUP, unit owners are required to have permanent signage. Temporary signage is not allowed. The SUP states that signage is subject to approval by the City of Markham's under its Sign By-law. However, signs must be approved by the Board in accordance with the guidelines set out in the Declaration and more precisely in the SUP.

[18] The evidence admitted at the hearing shows that the applicant was mistaken in his understanding that he was the only person targeted to take down temporary signage

in order to comply with the SUP. Ms. Husain, the Senior Property Manager for Shiu Pong Management, testified that she spoke to all unit owners/tenants who had non-compliant temporary signage around the same time she spoke with the applicant in January 2013. The respondent admitted into evidence letters sent to unit owners or tenants, other than the applicant, requiring them to remove temporary signs from their units. At least two of those letters have the exact same text as letters sent to the applicant on February 1, 2013 and March 5, 2013 respectively.

[19] One of the business owners who the applicant felt was not complying with the applicable signage rules was Mr. Saini, a former member of the condominium corporation's Board who is of South Asian origin. The applicant ended up approaching the City of Markham about the legality of Mr. Saini's sign. The City sent out an inspector who determined that Mr. Saini did not have proper approvals for his sign because he did not control the unit where the sign was hung. The City advised the respondents of this determination. Shortly after receiving the letter from the City, Ms. Husain wrote Mr. Saini to request that he remove his sign. Mr. Saini testified that he did so the following day.

[20] Ms. Husain testified that the respondents had not initially approached Mr. Saini to remove his sign because it was a permanent sign and they had no way of knowing that it had not been approved by the City. She testified that the respondents did not review whether the permanent signage in the plaza was compliant with the applicable laws, but instead focused on the ensuring that all temporary signage was replaced with permanent signs.

[21] The respondents' witnesses testified that the only business owners who were permitted to keep temporary signs were owners who had their signs approved by the City of Markham before the Declaration and SUP came into force. Mr. Narang testified that these business owners were in essence "grand parented" and permitted to keep their signs since these signs had been put up before the Board took over the authority to approve signs. The respondents' witnesses testified that the respondents approached all business owners whose signs were approved by the condominium corporation's Board in order to make sure that they were complying with the SUP.

Submissions

[22] The applicant submitted that the respondents enforce one set of rules for Board members and one for other business owners. He also submitted that the respondents applied the rules more strictly to him because he is of south American/Peruvian origin, or alternatively, because he is not of South Asian origin.

[23] When I asked the applicant's counsel what evidence he was relying upon to support a link to the grounds of ethnic origin, national origin or race, he submitted that the majority of business owners in the plaza and a majority of the Board of the condominium corporation are of South Asian origin. He also submitted that the applicant is the only business owner of South American origin. In response to the evidence showing that the respondents sent letters to other business owners to require compliance with the SUP, the applicant claimed that the letters sent by the respondents were self-serving and that the respondents only sent them because he had raised concerns that he was being targeted for discrimination.

[24] The respondents submitted that the dispute between the applicant and the respondents is a commercial dispute which the applicant has attempted to reframe as a human rights complaint. The respondent submitted that it treated all business owners whose signs had been approved by the Board equally. In addition, the respondents submitted that when it was advised that Mr. Saini's sign did not comply with the City of Markham's by-law, they requested its removal without delay.

Findings

[25] I find that the applicant has not met his onus of establishing on a balance of probabilities that his ethic origin, national origin and/or race were factors in the respondents' requirement that he replace his temporary signage with permanent signs. The evidence admitted at the hearing shows that, contrary to the applicant's understanding at the time he filed his Application, the respondents had approached several business owners and tenants around the same time they approached the

applicant to ask them to replace their temporary signage with permanent signs. I do not accept the applicant's assertion that the respondents only did so as a self-serving measure to cover up discrimination. The documentary evidence admitted at the hearing shows that some of the letters sent to other business owners were sent on the very same day as the letters that were sent to the applicant. I also accept the unchallenged testimony by Ms. Husain that she spoke to other business owners with non-compliant temporary signs at the same time she spoke to the applicant in January 2013. I also accept as credible Mr. Narang's evidence that the only business owners or tenants who the Board permitted to keep temporary signage were those whose signs were approved by the City before the Board came into existence. The applicant did not advance any evidence that would contradict Mr. Narang's evidence on this point. While the applicant pointed to what he saw as differential treatment between him and Mr. Saini, the evidence showed that Mr. Saini's signage was not approved by the Board but instead by the City.

[26] While I understand that the applicant may have felt that he was being targeted for harsher treatment in relation to his temporary signage, the evidence admitted in the case does not support a finding of discrimination under the *Code*.

AMENDMENT TO DECLARATION RE. CHANGES IN USE

Facts

[27] In or around 2012, the applicant intended to expand his restaurant into an adjacent unit (unit 16) in the plaza. However, unit 16 is not approved for restaurant use in the condominium corporation's Declaration. Schedule H to the Declaration sets out the units that are approved for restaurant use and those that are not. Unit 16 is not approved for restaurant use. Therefore, an amendment to the Declaration is required in order for the applicant to operate a restaurant in unit 16.

[28] Prior to January 2013, the process to approve amendments to the Declaration involved a listing of all amendments to the usage designations on one ballot.

Condominium owners voted on amendments as a group rather than individually. Those who voted "yes" would in effect be voting in favour of all units listed on the ballot being re-designated to permit restaurant use.

[29] Mr. Narang testified that, in late 2012, the condominium developer approached the Board to change the restrictions on the usage of units so that remaining units could be sold more easily. The developer proposed that the Declaration be amended to exchange the units that could be used as restaurants for other units. The Board brought the developer's proposal to a meeting of owners on January 12, 2013. The owners decided that the option to convert non-restaurant units to restaurant units should be provided to all owners. The unit owners suggested that the consent form for the Declaration amendment be broken down to allow owners to agree or disagree to the change in usage of each unit separately.

[30] The applicant claimed that the change in usage he was seeking was more likely to have been approved if all changes in usage were considered as a group, as had been the case under the procedure in place before January, 2013. This is because a popular restaurant was seeking a change in usage to permit restaurant use and his request for an amendment would have been grouped with the request by this popular restaurant. In his Application, the applicant submitted that the change in the voting procedure was undertaken by the respondents as a calculated measure to prevent him from expanding his restaurant into unit 16. At the hearing, the applicant's counsel argued that the change in procedure was discriminatory because it had an adverse effect on the applicant.

[31] The respondents argued that the procedure was changed following a vote of owners at a meeting. They submitted that the change had no connection to the fact that the applicant wished to expand into unit 16. They also submitted that the change in procedure had no connection to a *Code* ground.

Findings

[32] I find that there is absolutely no evidence that the change in procedure for approving amendments to the Declaration was undertaken for discriminatory reasons or that the change had a discriminatory effect on the applicant. The respondent's evidence admitted at the hearing, which I accept, was that the change in procedure arose as a result of a proposal from the developer and that it was approved by all owners at a meeting of the condominium corporation. There is no evidence that the respondents orchestrated the approval or implementation of the changes for any discriminatory reason against the applicant.

[33] I also do not accept that the changes had a discriminatory effect on the applicant. Even if the changes may make it more difficult for the applicant to secure approval for a change in usage of unit 16, this, without more, does not amount to discrimination under the *Code*. There is no evidence of any connection between these alleged adverse effects and the applicant's ethnic origin, national origin, or race. It is not enough for the applicant to claim that he is of a certain ethnic origin, national origin, or race and that he experience adverse consequences. An applicant must link these adverse consequences or effects to his ethnic origin, national origin, or race. There was a complete lack of any evidence of such a connection with respect to the changes made to the process to approve amendments to the Declaration.

ALLEGED DISCRIMINATION RELATING TO APPROVAL OF PERMANENT SIGNAGE

Facts

[34] The applicant requested approval of permanent signage by letter dated March 19, 2013. Ms. Husain acknowledged receipt of the applicant's request on the same day. She also advised the applicant that his request had been submitted to the Board. On March 25, 2013, Ms. Husain wrote to the applicant to advise him that the Board required the consent of the owner of his unit before considering his request for permanent signage. After receiving the required consent on March 27, 2013, Ms. Husain wrote to

the applicant and the owner of unit 15 on April 2, 2013, to confirm that the Board granted the applicant's request with respect to unit 15.

[35] The applicant claimed that the respondents delayed approval of his application as compared to other owners who, he claimed, were granted approval from one day to the next. The applicant also claimed that the respondents discriminated against him by only providing approval for signage on unit 15 and not unit 16. He claimed that the Board permitted a business owner who is South Asian origin to place a sign across three units, two of which are not currently approved for restaurant use.

[36] The respondents argued that any delay in approving the applicant's application arose due to the time it took for him to submit the consent of the unit owner. The respondents also submitted that the Board's decision to approve the applicant's application for unit 15 only was not discriminatory. According to the respondents, the Board did not approve signage for unit 16 because that unit has not been approved for restaurant use. The respondents admitted into evidence several letters the Board sent to the owner of the units mentioned by the applicant who has placed restaurant signage over units that are not approved for restaurant use. The respondents submitted that they are still in the process of taking steps to bring the unit into compliance.

Findings

[37] I find that the applicant has failed to establish that respondent's actions with respect to his signage request were discriminatory. The evidence admitted at the hearing does not support the applicant's contention that the respondents unduly delayed approving his request. As noted above, the applicant had not submitted consent by the unit owner as required. The applicant submitted his request on March 19, 2013. He submitted the unit owner's consent March 27, 2013 and the Board approved his request April 2, 2013. In these circumstances, I am not persuaded that there was any undue delay on the respondents' part. Even if there were a delay, there was absolutely no evidence that any such delay was linked to the applicant's ethnic origin, national origin or race.

[38] I also do not accept that it was discriminatory for the Board to only approve the applicant's request for signage over unit 15 and not unit 16. The condominium corporation has advanced a rational explanation for this decision – that is, that the Declaration continues to designate unit 16 for non-restaurant use. While the applicant claimed that he is being treated differently than another restaurant owner who has been permitted to have restaurant signs across units that are not approved for restaurant use, the evidence at the hearing showed that the respondents have not in fact permitted such conduct. Although they may not have taken action as quickly as the applicant would like, they have taken steps to bring this other business owner into compliance with the applicable rules. Overall, I am not persuaded that the applicant is being treated differently than this other business owner due to his ethnic origin, national origin or race.

FAILURE TO CUT GRASS

Facts

[39] The applicant requested that the respondents arrange for the grass to be cut near his restaurant in advance of a celebration he was planning for Peru's National Independence Day. The applicant made the request to Ms. Husain. Ms. Husain testified that the grass in question was located on a City boulevard and therefore the expense was not budgeted. As a result, she had to obtain the approval of two Board members before she could direct the respondents' contractors to cut the grass in question. She received one approval and was awaiting the second. Ms. Husain testified that she told the contractors to be prepared to proceed once she obtained approval to cut the grass for the applicant and also for another business. Ms. Husain testified that the contractor proceeded to cut the grass near the other business without her approval because they wanted to get a jump start on the work. According to Ms. Husain, she was not able to get the approval of a second Board member before the applicant's celebration.

[40] The applicant submitted that the respondents did not cut the grass in time for his celebration as a reprisal for filing his Application and/or for discriminatory reasons. The

respondents submitted that the failure to cut the grass in time was simply an unfortunate misunderstanding.

Findings

[41] I understand how the above events may have been frustrating for the applicant. I also understand how the fact that the contractor had cut the grass next to another unit may have led the applicant to believe that he was being treated unfairly. However, I find that the applicant has not provided any evidence to support his contention that the respondent's failure to cut his grass in time for the celebration was in any way linked to his ethnic origin, national origin or race. The respondents have provided a reasonable explanation for the delay related to the cutting of the grass near the applicant's unit. I find there is insufficient evidence for me to infer any discriminatory motive on the respondents' part. That is, there is insufficient evidence for me to infer that the respondent's delayed in their approval of the grass cutting because of the applicant's ethnic origin, national origin or race, or that they did so as a reprisal for the filing of this Application.

ORDER

[42] Overall, the evidence admitted in this case made clear that the parties are engaged in an ongoing commercial dispute. However, for the reasons set out above, I find that the applicant has failed to satisfy his onus of showing that any of the respondents' actions or inactions were discriminatory based on his ethnic origin, national origin or race.

Dated at Toronto, this 15th day of September, 2014.

"Signed by"

_____

Jo-Anne Pickel
Vice-chair