

Case Name:
Tsang v. Wong

Between
Kam Cheung Billy Tsang, Plaintiff, and
Lester Wong, Defendant

[2011] O.J. No. 1426

Court File No. SC-09-00080760-0000

Ontario Superior Court of Justice
Small Claims Court - Richmond Hill, Ontario

P. Gollom Deputy J.

Heard: March 10, 2011.
Judgment: March 21, 2011.

(22 paras.)

Counsel:

Natalie Tam, Counsel for the plaintiff.

Tareq Muinuddin, Counsel for the defendant.

REASONS FOR JUDGMENT

P. GOLLOM DEPUTY J.:--

BACKGROUND

1 The plaintiff owns a penthouse condominium which he agreed to lease to the defendant for a one year term commencing on November 5, 2006. The written lease agreement, dated October 5, 2006, provided that, "*Tenant agrees that the premises will be occupied by only the Tenant and immediate members of the Tenant for residential purposes and agrees not to keep pets and not to smoke in the premises.*" In addition, the lease provided that the defendant would abide by the rules and regulations of the condominium corporation. The written lease was prepared for the plaintiff by his rental agent, Millie Chiang (referred to as "Chiang").

2 When the lease commenced the defendant did not own a pet. The defendant and his wife planned to purchase a house and a golden retriever, after they had the house. The plan was to achieve these two goals by the summer of 2009. After November of 2007 the lease was extended by a month to month tenancy agreement. The defendant made all of the payments required pursuant to the terms of the tenancy. There are no issues regarding the tenancy other than the issue discussed below.

3 The defendant met with a dog breeder during the summer of 2008. He entered into a breeding agreement and paid a deposit for a golden retriever puppy. According to the defendant the breeding agreement stipulated that the puppy was to be bred for birth in the summer of 2009. The defendant and his wife were actively looking for a house during the summer of 2008. They failed in their efforts to find a house but due to an unintended breeding session a golden retriever puppy was born on October 2, 2008. The puppy was available to the defendant to take home in November of 2008. According to the defendant the breeder advised him that the deposit would be forfeited and that no date could be provided for another puppy if he did not accept the available puppy. The defendant did not produce the breeding agreement. The defendant and his wife chose to accept the puppy and brought him to the penthouse in November of 2008. The arrival of the puppy, named Jimmy, gave rise to the problems that ultimately resulted in this claim.

4 Section 14 of *The Residential Tenancies Act*, 2006 S.O. 2006, Chapter 17 (referred to as the "Act") provides that "*A provision in a tenancy agreement prohibiting the presence of animals in or about a residential complex is void.*" When the defendant entered into the written lease agreement he was aware of this section of the Act but took no steps to remove the no pet clause. According to the defendant he did not intend to own a pet during his tenancy with the result he decided that the deletion of the no pet clause was unnecessary. He was fully aware of the clause when he elected to bring Jimmy home in November.

5 The plaintiff was unaware of the fact that there was a pet living in the unit until the property manager contacted him to advise that the defendant had a dog. The plaintiff received a letter, dated December 1, 2008, from the property manager advising him that his tenant was contravening the condominium corporation's rule number 30 which prohibited pets in any units or the common elements. The letter requested the plaintiff to have the pet removed in order to comply with the corporation's rules, declaration, and by-law. The plaintiff contacted the defendant's wife and asked her to remove Jimmy from the unit no later than Christmas of 2008.

6 The defendant took no steps to remove Jimmy from the unit with the result that the property manager referred the matter to the condominium corporation lawyer, Michael Pascu (referred to as "Pascu"). Pascu sent the plaintiff a letter dated January 26, 2009. The letter referred to the breach of articles 3.1(e) and 4.5 of the condominium corporation's declaration with respect to maintaining a pet in the unit. The letter demanded that the plaintiff comply with the declaration and take steps to ensure that the defendant permanently remove all dogs from the unit and common elements no later than February 6, 2009. The letter warned that failure to comply would result in the condominium corporation taking legal action to enforce compliance and would seek to be reimbursed for all legal costs incurred. The letter requested that the plaintiff notify the corporation in writing with respect to any disagreement no later than January 30, 2009. The plaintiff did not file any disagreement. As of January 26, 2009, the condominium corporation had incurred costs of \$450.00, for which it requested payment from the plaintiff.

7 After receiving the Pascu letter the plaintiff consulted a lawyer, Mr. Eng who apparently, advised him that it was against the law to prohibit pets from residential units. According to the plaintiff he understood that only the condominium corporation could deal with the issue. The plaintiff also consulted with his rental agent, Chiang. She spoke with the defendant and informed him of the problem. The defendant advised Chiang that he was actively looking for a place to move and would provide the plaintiff with 60 days' notice once he found alternate accommodation. Chiang also reported to the condominium corporation's lawyers regarding the progress. A number of e-mails were exchanged between them in late January and early February of 2009.

8 Chiang sent Pascu an e-mail on February 5, 2009, advising that the defendant contacted her on February 4, 2009, and requested the corporation's indulgence for up to six months to give him an opportunity to find another place. Pascu advised that he would obtain the board's instructions regarding the extension. He noted that if the extension was not granted then the plaintiff would need to immediately terminate the defendant's tenancy. The e-mail noted that she had received a call from the defendant on February 3, 2009 at 9:30 p.m. The defendant advised her that he would consult a lawyer and get back to her. She discussed the lease agreement and the obligation of the defendant to abide by the condominium rules and regulations. She told him that he had to save the plaintiff harmless from any claims and damages.

9 Chiang sent Pascu an e-mail on February 24, 2009, asking if he had received any update from the condominium corporation. He responded on February 25, 2009 and indicated that the defendant had not removed the dog and that he seems intent on fighting the corporation, and the plaintiff's efforts to remove the dog.

10 On March 4, 2009, the defendant met with the condominium corporation's property manager and board president. According to the defendant the parties agreed that he would continue to look for a new home and would move out as soon as possible. The condominium corporation agreed to put the matter on hold in the interim. The defendant entered into an agreement of purchase and sale for a house in March 2009. He gave notice to the plaintiff to terminate the month to month tenancy on or about April 1, 2009. The defendant moved out of the unit in Mid-May of 2009.

11 Subsequent to the move the property manager sent the plaintiff a letter, dated July 17, 2009, which included three invoices totalling \$3,746.01 for legal costs incurred by the corporation with respect to the pet in his unit. The letter advised that if the fees were not paid then the unit would be subject to a lien. The plaintiff sent the defendant copies of the three invoices and requested that he contact the property manager to resolve the matter. As no response was forthcoming, the plaintiff sent the defendant a letter, dated September 23, 2009, advising that the defendant was responsible for all the legal costs incurred as he knowingly violated the lease agreement by keeping a dog in the unit; by refusing to remove the dog which resulted in the generation of the legal fees; and by refusing to honour his agreement to remove the dog after receipt of the first warning letter. The letter noted that the plaintiff was contemplating bringing an action in Small Claims Court but he preferred to resolve the matter out of court. The defendant did not respond. On October 2, 2009, the plaintiff commenced this claim.

DISCUSSION

12 The parties attended a settlement conference on February 2, 2010. The settlement conference was adjourned sine die to allow the parties an opportunity to have the three accounts assessed pursuant to the *Solicitor's Act*. The Deputy Judge presiding at the settlement conference stated in a

written endorsement that, *"on the face of it the time expended by the solicitor on this matter is unreasonably high for a dispute concerning a pet in the Condominium unit leased by the Plaintiff to the Defendant (though of course, there may be a reasonable explanation for it) and the resulting account for fees charged much too high."* The parties were to arrange to assess the accounts but the plaintiff was self-represented and apparently, did not understand the mechanics required to assess the accounts. He wrote to the Deputy Judge setting out the extent of his confusion.

13 Fortunately, the plaintiff retained counsel to represent him at the trial. It was agreed during the trial that I would determine which party was liable for the payment of the three accounts but I would not determine the quantum. After the release of the judgment the parties are at liberty to take steps to assess the three accounts should they wish to submit the accounts for assessment. If the accounts are assessed then the judgment will be for the assessed amount. Should they choose not to assess the accounts then the judgment will be for \$3,746.01. The plaintiff has not remitted payment of the three accounts to the property manager as payment is pending the outcome of this claim once liability for the payment is determined.

14 The plaintiff submits that the defendant is liable for the payment of the accounts because he signed the lease agreement whereby he specifically agreed not to keep pets in the unit, and agreed to abide by the rules and regulations of the condominium corporation. At the time of the initial warning letter the condominium corporation's legal costs were limited to \$450.00. The defendant's failure to remedy the problem resulted in the additional legal fees. The defendant received the benefit of the legal services rendered by the condominium corporation's lawyer as he ultimately occupied the unit from November 2008 until May 2009 with his pet. In addition, the plaintiff retained a lawyer and instructed Chiang to resolve the problem. He incurred fees for these services and pursued all reasonable steps to resolve the problem.

15 The defendant submits that the condominium corporation had no legal right to prohibit pets in the units and common elements in the condominium declaration. The plaintiff had no right to include a no pet clause in the lease. The defendant relies upon section 14 of the Act. He submits that it was legal for him to have a pet in the plaintiff's unit. The defendant further submits that the plaintiff failed to take steps to mitigate the damages. According to the defendant the plaintiff should have retained a lawyer to deal with the problem, and he should have attended the meeting with the property manager and board president on March 4, 2009. The defendant did not intend to own a pet during the tenancy but due to the unexpected availability of the puppy in November 2009, he submits that he had no choice but to accept Jimmy. The defendant asks that he claim against him be dismissed.

CONCLUSION

16 The plaintiff seeks payment from the defendant for three legal accounts delivered to him by the condominium corporation for the fees charged to the corporation by its lawyers. The legal fees arose from the fact that the defendant permitted a pet to occupy the condominium unit. The three accounts are itemized and total \$3,746.01. It is clear from the accounts that both the plaintiff and the defendant retained lawyers to deal with the problem. The account, dated February 28, 2009, itemizes telephone calls, e-mails, and letters exchanged between the condominium corporation's lawyer and the lawyers for the two litigants. A review of the three accounts clearly establishes that the legal services rendered related to the issues arising from the presence of the pet in the unit.

17 The defendant signed the lease agreement knowing that it contained a no pet clause. At the time he signed the agreement he was fully aware of section 14 of the Act. On signing he made no effort to delete the no pet clause. The lease also contained a clause whereby he agreed to be bound by the rules and regulations of the condominium corporation. Article 3.1(e) of the declaration contained a prohibition against keeping pets in any unit. The defendant testified that he did not have a copy of the declaration. He was free to request copies of all of the condominium rules and regulations but apparently, failed to do so. On February 3, 2009, Chiang informed the defendant that he would have to save the plaintiff harmless from any claims or damages. The defendant was fully aware of the issues by this date and should have been familiar with the relevant sections of the declaration.

18 The defendant testified that he had to accept Jimmy in November of 2009 due to the breeding agreement. The breeding agreement was not produced. Apparently, the defendant did not seek to enforce the stipulation in the agreement requiring the delivery of the puppy in the summer of 2009. The defendant knowingly permitted a pet to occupy the unit notwithstanding that he signed the no pet clause and agreed to be bound by the rules and regulations of the condominium corporation. He did not advise the plaintiff in advance that he intended to bring home a pet. The plaintiff found out about the pet upon receiving the December 1, 2008 letter from the property manager. The plaintiff immediately dealt with the problem by instructing Chiang to contact the defendant to try to resolve the problem. When the problem failed to resolve the plaintiff retained Mr. Eng, a lawyer to assist with the resolution.

19 It is understandable that the defendant was not prepared to give up his dog, Jimmy. However, he agreed to the no pet clause and to be bound by the rules and regulations. He breached the lease agreement by failing to abide by these clauses. There were options open to the defendant such as negotiating a new breeding agreement with the breeder to require the breeder to deliver a puppy in the summer of 2009, as stipulated; to move to temporary premises while continuing his search for a new home; or to arrange alternate accommodation for Jimmy pending the move from the plaintiff's unit. The defendant acknowledged that he took a 2.5 week vacation to Europe during which time Jimmy was placed in a kennel.

20 It is not disputed that section 14 of the Act prohibits no pet clauses from residential tenancy agreements but in this case the defendant expressly agreed with the plaintiff that he would not keep a pet in the unit. He made no effort to remove this clause from the lease notwithstanding that he was fully aware of section 14 on signing. He also agreed to abide by the rules and regulations of the condominium corporation but made no effort to acquaint himself with these rules during the tenancy period from November 2006 to May 2009. The defendant is bound by the lease agreement. His actions triggered the events that generated the legal fees incurred by the condominium corporation, which in turn were charged to the plaintiff.

21 I find that the defendant is liable to the plaintiff to pay these fees. As stated above, I will not determine the quantum. I leave it to the parties to take steps to assess the accounts if so advised.

22 The plaintiff is entitled to costs which I fix at 15% of the amount of the claim being \$562.00. In addition, he is entitled to his assessable disbursements. Prejudgment interest is not claimed. Post judgment interest is fixed at 3.0% per annum pursuant to the *Courts of Justice Act*.

P. GOLLOM DEPUTY J.