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Indexed as: Yu v. Strata Plan VR812, 2019 BCHRT 129

IN THE MATTER OF THE *HUMAN RIGHTS CODE*,
RSBC 1996, c. 210 (as amended)

AND IN THE MATTER of a complaint before
the British Columbia Human Rights Tribunal

BETWEEN:

Emily Yu

COMPLAINANT

AND:

The Owners, Strata Plan VR812

RESPONDENT

REASONS FOR DECISION
APPLICATION TO DISMISS A COMPLAINT
Section 27(1)(f)

Tribunal Member:

Devyn Cousineau

Counsel for the Complainant:

Nathan Ganapathi

Counsel for the Respondent:

Lisa N. Mackie

I INTRODUCTION

[1] Emily Yu owns a townhouse which is part of the respondent Strata. For a period of time, she rented out up to 15 beds in her unit through Airbnb. The Strata amended its bylaws to prohibit this practice, and to set restrictions on how owners may rent out their property. After Ms. Yu refused to comply with the bylaw, the Strata filed an application at the Civil Resolution Tribunal [CRT] to enforce it. The CRT granted the application and ordered Ms. Yu to stop using her unit as an Airbnb or otherwise in violation of the rental bylaw. Ms. Yu sought leave to appeal the CRT's ruling, which was denied by the BC Supreme Court. She was eventually found in contempt of court for her failure to comply with the CRT's order.

[2] In the meantime, Ms. Yu filed a complaint with the Human Rights Tribunal [Tribunal], alleging that the Strata's failure to grant her an exemption from the bylaw discriminates against her on the basis of her disability, in violation of s. 8 of the *Human Rights Code* [Code]. She says that, because of her disability, she relies on the income from renting out her unit.

[3] I was assigned to manage this case. I sought submissions from the parties at an early stage about whether the CRT process had dealt with the substance of Ms. Yu's human rights complaint, such that it should be dismissed pursuant to s. 27(1)(f) of the *Code*. The parties have made those submissions, and this is my decision with respect to that issue.

[4] For the reasons that follow, I find that the issues that Ms. Yu seeks to raise in this human rights complaint are the same as were before the CRT and the BC Supreme Court. As such, the substance of her complaint has been appropriately dealt with. It is dismissed pursuant to s. 27(1)(f).

II DECISION

[5] Section 27(1)(f) of the *Code* grants the Tribunal discretion to dismiss a complaint where "the substance of the complaint or that part of the complaint has been appropriately dealt with in another proceeding". It is the "statutory reflection" of common law doctrines which aim to "deliver to the litigation process principles of finality, the avoidance of multiplicity of

proceedings, and protection for the integrity of the administration of justice, all in the name of fairness”: *British Columbia (Workers’ Compensation Board) v. Figliola*, 2011 SCC 52 [**Figliola**] at para. 25. In *Figliola*, the Supreme Court of Canada explained:

Relying on these underlying principles leads to the Tribunal asking itself whether there was concurrent jurisdiction to decide human rights issues; whether the previously decided legal issue was essentially the same as what is being complained of to the Tribunal; and whether there was an opportunity for the complainants or their privies to know the case to be met and have the chance to meet it, regardless of how closely the previous process procedurally mirrored the one the Tribunal prefers or uses itself. All of these questions go to determining whether the substance of a complaint has been “appropriately dealt with”. At the end of the day, it is really a question of whether it makes sense to expend public and private resources on the relitigation of what is essentially the same dispute. (para. 37)

[6] The CRT has a limited jurisdiction to apply the *Human Rights Code: Civil Resolution Tribunal Act*, s. 114; *Administrative Tribunals Act*, s. 46.2. For the purpose of this complaint, there is no dispute that the CRT had jurisdiction to apply the *Code* to the circumstances of Ms. Yu’s case. The question then becomes whether the issue which was decided by the CRT, and then upheld by the BC Supreme Court, was “essentially the same as what is being complained of to the Tribunal”.

[7] As I have said, it was the Strata which initiated proceedings at the CRT. There, it asked the CRT to order Ms. Yu to stop doing two things: renting out her unit as an Airbnb and keeping more than her two permitted dogs. It sought approval to fine Ms. Yu for violating its bylaws in respect of both of these issues.

[8] Ms. Yu participated in the CRT proceedings. With respect to the rental issue, she argued that the bylaw was not valid or enforceable against her. She agreed that she would comply with the bylaws if the CRT found them to be valid. With respect to the pet issue, Ms. Yu submitted medical evidence which supported her need for two dogs in her unit.

[9] The CRT granted the Strata’s application: *The Owners, Strata Plan VR812 v. Yu*, 2017 BCCRT 82 [**CRT Decision**]. It held that the Strata’s bylaws were valid and enforceable, and that

Ms. Yu's Airbnb business was in violation of those bylaws. In the course of its decision, the CRT outlined background facts, which included that the City of North Vancouver had repeatedly ordered Ms. Yu to stop renting out her unit as an Airbnb. The CRT upheld weekly fines of \$200 for the period of Ms. Yu's noncompliance. With respect to the pets, the CRT noted that the Strata had already granted Ms. Yu an exemption from its pet bylaws by allowing her to keep two pets rather than one. However, it found that Ms. Yu was operating a pet-sitting business from her unit, which was in contravention of the bylaws. It found that Ms. Yu's medical evidence did not support her need to have more than two dogs, or to operate a pet-sitting business. It upheld fines of \$100 per week for the period when Ms. Yu was in non-compliance.

[10] Ms. Yu sought leave to appeal the CRT Decision to the BC Supreme Court. The Court denied leave, thereby upholding the CRT Decision: *Yu v. The Owners, Strata Plan VR 812*, 2018 BCSC 2439 [BCSC Decision].

[11] In her submissions to the Court, Ms. Yu argued that she had disabilities that required her to rent out her unit and, as such, enforcing the Strata bylaw contravened the *Human Rights Code*. She submitted an affidavit and part of a psychological assessment in support of her claim. In her affidavit, she detailed her disabilities and alleged that she had asked the Strata for an exemption from its rental bylaw due to her disability. She argued that the CRT Decision was wrong because it "did not take into account the Human Rights violation". The Court dealt directly with these arguments as follows:

Finally, there was an argument before me today that the Tribunal should have considered that the petitioner suffers from a mental and even a physical disability problem, and that she should therefore be granted accommodations with respect to, in this case, what would be the rental issue. Accommodations, in appropriate circumstances, should be and must be granted pursuant to the Strata Corporation's own bylaws and pursuant to the *Human Rights Code*, R.S.B.C. 1996, c. 210.

However, while the petitioner, through the materials that are before me and through counsel's eloquent words about her, certainly raises sympathy in my mind, and I suspect it did in the Tribunal's as well, there is insufficient evidence before me to come to the conclusion that she

suffers from the kind of mental disability that would permit an accommodation in the sense that the *Human Rights Code* refers to it.

There is a one-paragraph letter from what appears to be a general practitioner, which state that she has long-term post-concussion issues and ongoing disability. That is simply not enough, in my view, to come to the kind of conclusion that I am being asked to come to. There is also what is referred to as a psychiatric assessment, but it is only partially present, two pages of it. I do not know what the rest of it says, but the two pages present, under the heading “Mental state examination” commences with the words, “this was unremarkable”. Consequently, I am unable to come to the conclusion sought on the basis of what is in front of me despite, as I have said, having some sympathy for her. I have no doubt that she is a lady that has some difficulties and that they impact upon the daily life that she lives and the manner in which she deals with and is dealt with by her neighbours. It is unclear how she would be assisted in that regard by an accommodation that permitted her to operate her unit as an Airbnb. (paras. 8-10)

[12] Ms. Yu did not appeal the BCSC Decision.

[13] On April 10, 2018 – one month before the BCSC hearing and Decision – Ms. Yu filed this human rights complaint. The focus of her complaint is on the Strata’s rental bylaw restriction, its attempt to enforce the bylaw through the CRT, and its refusal to grant her application for an exemption, made after the CRT Decision but before the BCSC Decision. She seeks remedies that require the Strata to: withdraw its CRT application; grant her an exemption from the rental bylaw; and withdraw all fines issued against her.

[14] On October 24, 2018, the BC Supreme Court granted the Strata’s application to find Ms. Yu in contempt of court for failing to comply with the order of the CRT.

[15] I am satisfied, in all the circumstances, that the proceedings before the CRT and BC Supreme Court concern essentially the same issue as what is being complained of to the Tribunal. That issue is whether Ms. Yu has a disability that would necessitate or warrant an exemption from the Strata’s rental bylaw to allow her to use her unit as an Airbnb. While the CRT did not deal directly with that issue, the BC Supreme Court did. In that forum, Ms. Yu – represented by legal counsel – made arguments about the nature of her disability and the

Strata's obligations under the *Human Rights Code*. The Court addressed, and dismissed, those arguments. To allow this complaint to proceed would require the parties to litigate, yet again, the same issue in a different forum.

[16] I agree with the Strata that Ms. Yu essentially asks this Tribunal to judicially review the Court's decision – a power it certainly does not have: *Figliola* at para. 38. As the Supreme Court of Canada has said:

... When an adjudicative body decides an issue within its jurisdiction, it and the parties who participated in the process are entitled to assume that, subject to appellate or judicial review, its decision will not only be final, it will be treated as such by other adjudicative bodies...

Figliola at para. 38

Ms. Yu's proper remedy in this case was to appeal the BCSC Decision. She cannot come to this Tribunal seeking a different result on the same issue.

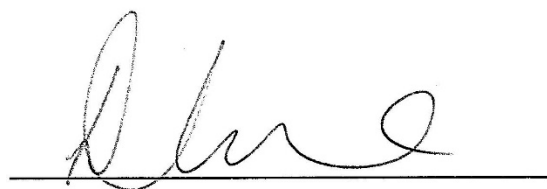
[17] Ms. Yu asks the Tribunal to exercise its discretion to allow her complaint to proceed. She argues that her complaint raises novel issues that "could potentially affect many marginalized women" and that to dismiss it would result in a "miscarriage of justice". I do not find that these considerations can outweigh the principles of "finality, fairness and the integrity of the justice system": *Figliola* at para. 36. Ms. Yu has had an opportunity to advance her case in front of the CRT and then the BC Supreme Court. I can see no principled reason to allow her to re-litigate the same issue again, this time in a different forum. As the Supreme Court of Canada has said: "Form shopping for a different and better result can be dressed up in many attractive adjectives, but fairness is not among them": para. 36.

[18] In reaching this conclusion, I reject Ms. Yu's argument that the test that this Tribunal should apply under s. 27(1)(f) is the "plain and obvious" test for striking pleadings in a civil case. Section 27(1)(f) has its own distinct considerations, captured in the Supreme Court of Canada's decision in *Figliola*. That is the law that applies.

III CONCLUSION

[19] In sum, the CRT and BC Supreme Court had jurisdiction to apply the *Human Rights Code*. The issue before those bodies was essentially the same as the one which Ms. Yu seeks to bring before this Tribunal. Ms. Yu had the opportunity to present her arguments about discrimination in those fora and did so. The fact that she was unsuccessful cannot support the re-litigation of the same issue before this Tribunal.

[20] I conclude that Ms. Yu's complaint has been appropriately dealt with in another proceeding. It is dismissed pursuant to s. 27(1)(f) of the *Code*.

A handwritten signature in black ink, appearing to read 'Devyn Cousineau', is written over a horizontal line.

Devyn Cousineau, Tribunal Member