

COURT OF APPEAL FOR ONTARIO

CITATION: Spirleanu v. Transglobe Property Management Service Ltd., 2015

ONCA 187

DATE: 20150318

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Cronk, Gillese and Brown JJ.A.

BETWEEN

Ilie Spirleanu

Appellant

and

Transglobe Property Management Service Ltd.

Respondent

Ilie Spirleanu, acting in person

Martin P. Zarnett, for the respondent

Heard: March 13, 2015

On appeal from the judgment of Justice Andra Pollak of the Superior Court of Justice, dated August 1, 2014.

ENDORSEMENT

[1] The appellant, Ilie Spirleanu, appeals from the order of the Pollak J. dated August 1, 2014, which granted summary judgment dismissing his action against

the defendant, Transglobe Property Management Services Ltd., and awarded costs of \$5,100 in favor of Transglobe.

[2] Mr. Spirleanu moves for leave to file fresh evidence on this appeal. The materials he seeks leave to file consist of three sets of documents: (i) the Landlord and Tenant Board file for application TNL-21855, (ii) the file of the Sheriff's Office dealing with the eviction of Mr. Spirleanu from his residential unit in October, 2010, pursuant to the eviction order granted by the Landlord and Tenant Board, and (iii) miscellaneous correspondence and photographs. Those materials do not meet the criteria for the admission of fresh evidence set out in *R. v. Palmer*, [1980] 1 S.C.R. 759, at p. 775. Specifically, all of the materials were available to Mr. Spirleanu to file as part of his responding materials before the judge on the summary judgment motion. Consequently, we do not grant his motion for leave to file fresh evidence.

[3] Turning to the merits of the appeal, we see no error in the order of the motion judge.

[4] Mr. Spirleanu's statement of claim alleged that Transglobe had unlawfully evicted him from residential rental premises on October 15, 2010. The eviction had been made pursuant to a May 5, 2009 order of the Landlord and Tenant Board, an appeal from which had been dismissed by the Divisional Court for failure to perfect in time. The Divisional Court also dismissed the motion by Mr.

Spirleanu for leave to extend the time to perfect his appeal and for an order for re-entry into the premises.

[5] On September 7, 2012, Mr. Spirleanu commenced an action in the Small Claims Court against Transglobe seeking virtually the same relief as that sought in this action. The Small Claims Court dismissed his claim against Transglobe on November 29, 2013.

[6] Accordingly, the present action was an attempt by Mr. Spirleanu to re-litigate issues previously decided against him by the Landlord and Tenant Board, Divisional Court and Small Claims Court. As well, the allegations of Mr. Spirleanu solely concerned his residential tenancy agreement with Transglobe and the disposition of his possessions in the unit following his eviction. As such, the motion judge was correct in concluding that their adjudication lay within the exclusive jurisdiction of the Landlord and Tenant Board.

[7] While Mr. Spirleanu argues that the motion judge did not consider his evidence, we do not agree. The motion judge applied to the evidence the legal principles the law required her to consider. We see no unfairness in the hearing conducted by the motion judge.

[8] The motion judge did not err in granting Transglobe summary judgment dismissing Mr. Spirleanu's action. We therefore dismiss Mr. Spirleanu's appeal

and order him to pay Transglobe its costs of the appeal fixed in the amount of \$1,000, inclusive of disbursements and H.S.T.

“E.A. Cronk J.A.”

“E.E. Gillese J.A.”

“David Brown J.A.”