

2010 CarswellOnt 4196

Clarke v. RioKim Holdings (Ontario) Inc.

Nathaniel Clarke, Applicant and RioKim Holdings (Ontario) Inc. o/a The Albion Shopping
Centre, Respondent

Ontario Human Rights Tribunal

Mark Hart Adjud.

Judgment: June 14, 2010

Docket: TR-0099-09

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Counsel: Brian Noble, Selwyn A. Pieters, for Nathaniel Clarke, Applicant

Alexandra Lev-Farrell, for RioKim Holdings (Ontario) Inc., Respondent

Subject: Constitutional

Human rights.

Mark Hart Adjud.:

1 This is an Application made under s. 53(5) of the Ontario *Human Rights Code*, R.S.O. 1990, c. H.19, as amended (the "*Code*"), dated March 13, 2009. The underlying complaint was filed with the Ontario Human Rights Commission (the "*Commission*") on April 13, 2006.

2 The purpose of this Interim Decision is to address the applicant's request to add the trustees of RioCan Real Estate Investment Trust ("*RioCan REIT*") as party respondents to this Application.

3 This Application arises out of two incidents that occurred at The Albion Shopping Centre ("*Albion*") on January 23 and February 21, 2006, in which the applicant alleges that he experienced racial discrimination and reprisal in relation to how he was treated by certain security guards working at Albion.

4 The materials in the Tribunal's file state that Albion is owned by the corporate respondent, RioKim Holdings (Ontario) Inc. ("*RioKim*"). There appears to be no dispute that RioKim is jointly owned by RioCan REIT and Kimco Realty Corporation, which each holding a 50% interest in RioKim.

5 The issue for me is whether there are facts alleged that, if proven, could support a finding that the proposed respondents violated the applicant's rights under the *Code: Pieters v. Liquor Control Board of Ontario*, 2007 HRTO 22 (CanLII) at para. 7.

6 The mere fact that RioCan REIT is a 50% shareholder of RioKim is not, in my view, in and of itself sufficient to support a finding either that the trust itself or the individual trustees may have violated the *Code* on the basis of the allegations raised in this proceeding. The question is whether the applicant has alleged any further facts which could support such a finding.

7 The applicant appended several materials in support of his request. One is a printout of RioCan REIT's property portfolio, which shows it as having a 50% ownership interest in Albion. I do not see this as anything more than a reflection of the trust's status as a 50% shareholder of RioKim.

8 The applicant also has appended a sign for the Albion Centre, which includes the statement "owned & managed by Rio Can". This statement is at odds with the material provided by the respondent, at least to the extent that it is stated that Albion in fact is owned by RioKim and not by "Rio Can". That having been said, there is no evidence before me to establish that the "Rio Can" referenced in the signage is RioCan REIT as opposed to some other Rio Can entity.

9 For example, the documents filed by the respondent in this matter include a security services contract dated February 1, 2006 relating to the provision of security services at Albion by a security company called SIR Investigation & Security Agents Inc., which employed the two security guards whose conduct is at issue in this proceeding. Of note is that the purchaser of these services is described as "RioCan Property Services Inc. as trustee for RioCan Property Services Trust (RPS) as agent for (the "Owner")". There is also a cleaning services contract for Albion, dated June 1, 2004 in which the purchaser of these services is described as "RioCan Property Services Inc. as trustee for RioCan Property Services Trust (RPS) as agent for (the "Owner") RioKim (Holding) Ontario Inc."

10 There is nothing before me to establish whether the "Rio Can" identified on the signage as the owner and manager of Albion is RioCan REIT or RioCan Property Services Inc. or RioCan Property Services Trust or some other RioCan entity. In these circumstances, I am not satisfied that the applicant has alleged sufficient material facts which if proven could support a finding of liability as against RioCan REIT or its individual trustees.

11 Finally, the applicant has submitted a photo of a "For Lease" sign identifying RioCan REIT which was posted on property located adjacent to Albion. As this sign relates to adjoining property and not to Albion itself, I do not regard this signage as relevant to the issue before me.

12 Finally, the applicant asserts that it is important for the individual trustees to be added as party respondents so that disclosure of documents can be obtained from RioCan REIT, particularly in relation to certain policies at other shopping centres owned or managed by "Rio Can". I do not express any view on whether or not any such documents are relevant to the matters at issue in this proceeding, as that issue is not before me. However, I note that the

ability to seek production against a person is not alone a proper basis upon which to seek the addition of that person as a respondent, in the absence of some alleged facts which provide a basis to support a finding of a violation of the *Code*. The Tribunal's Rules do provide the Tribunal with the power to order disclosure as against a non-party: see Rule 4.3(k).

13 For all of these reasons, the applicant's Request is denied.

14 I am not seized.

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