

Federal Court



Cour fédérale

Date: 20170719

Docket: T-1134-16

Citation: 2017 FC 700

Ottawa, Ontario, July 19, 2017

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

DEVIS DEMIRAJ

Applicant

and

BMO FINANCIAL GROUP

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Mr. Demiraj brings this application for judicial review because he disagrees with a decision made by the Canadian Human Rights Commission [CHRC] to dismiss his complaint against BMO Financial Group [BMO]. Mr. Demiraj's complaint against BMO is that it discriminated against him by denying him a service based on his national or ethnic origin.

Mr. Demiraj, who at the time of the complaint was twenty-seven years old, states he grew up in

Tilbury, living there for over twenty years. He states that he is a member of the only Albanian family in the Regional Municipality of Chatham-Kent.

[2] Mr. Demiraj, who is self-represented, failed to appear on the hearing date. He did not advise the Court or counsel for BMO that he would not appear. On March 1, 2017, he sent a letter to the Court in which he said that he would “abandon [his] involvement at this time with these court proceedings.” On March 3, 2017, a registry officer had a telephone conversation with Mr. Demiraj and explained the process for filing a Notice of Discontinuance if he wished to end the proceeding. Mr. Demiraj did not do so. He later attempted to file a defective motion record with the Court, which was rejected for filing by direction of Prothonotary Aylen on April 12, 2017. This direction and the motion record was returned to Mr. Demiraj and receipt confirmed by the Registry.

[3] I am satisfied from a review of the record that Mr. Demiraj was well aware of the time and place of the hearing:

- he received the Order setting the date, time and place of hearing;
- a registry officer called the number on file for Mr. Demiraj and left a voice message on June 27, 2017, asking him to contact the Court; no response is known to have been received;
- a Direction was issued to the parties on July 6, 2017, indicating it was not necessary to gown for the hearing; no response was received from Mr. Demiraj;
- counsel for BMO indicates he emailed Mr. Demiraj on July 12, 2017, to provide him with the Court of Appeal decision in one of the cases relied upon by BMO; no response was received from Mr. Demiraj.

[4] At the appointed time of 9:30 a.m., when it appeared that Mr. Demiraj was not present, I adjourned the hearing for 15 minutes in case he was having trouble locating the hearing room.

On reconvening at 9:45 a.m., Mr. Demiraj was still not present. I asked the registry officer to call

Mr. Demiraj's name in the hallway three times to verify he was not in the vicinity of the hearing room. After receiving no response to that process I indicated I would proceed in the absence of Mr. Demiraj on the basis of the written submissions of the parties and the existing record: *Ritchie v Canada (Attorney General)*, 2017 FCA 114 at para 4. The Respondent did not object to proceeding in this manner. The hearing was then adjourned pending release of my decision.

[5] For the reasons that follow, this application is dismissed.

II. **Background**

[6] Mr. Demiraj's relationship with BMO began with the purchase of a used car from a dealer in Tilbury, Ontario. That purchase was financed on April 8, 2014, by way of a conditional sales contract with BMO. Mr. Demiraj says he believed he was entering into an automotive loan, but that in reality the conditional sales contract was a lease which enabled the dealer to sell the vehicle without any guarantee of quality, safety standard certificate or warranty. He states that the vehicle did not operate properly or safely. He was also concerned that the ownership of the vehicle was not transferred to his name but remained in the name of the selling dealer.

[7] Mr. Demiraj incorrectly determined that he was not the registered owner of the vehicle which he had purchased. Then, when a credit check he performed showed there was no record of any loan against the vehicle, he stopped making the required monthly payments to BMO. As a result, BMO commenced an action in the Ontario Small Claims Court to recover the balance owing to it. While the action was being litigated, BMO seized and then resold the vehicle.

[8] According to the Small Claims Court judgment (a copy of which was filed by BMO), Mr. Demiraj had previously requested and received from BMO several statements showing the

transactions under the conditional sales contract including his monthly payments and the balance remaining. It is apparent from the CHRC investigation report and the Small Claims Court judgment that Mr. Demiraj believed the balance owing to the bank of approximately \$16,000 was in fact money owing to him by BMO. As a result, on several occasions, Mr. Demiraj attended at various branches of BMO located in Tilbury, Chatham, Windsor and London, where he asked to be paid this money as shown on the statements. Mr. Demiraj was persistent in his demands and eventually a trespass notice was issued against him by BMO. On five occasions, he was escorted from BMO branches by the police. There is also evidence that Mr. Demiraj telephoned BMO's customer service department with his concerns. These calls resulted in 6 ½ hours of audio recordings which BMO says show that Mr. Demiraj was at all times treated fairly and respectfully. Mr. Demiraj alleges the trespass notice and forcible evictions are evidence of discriminatory treatment against him by BMO and citizens of Tilbury based on his nationality or ethnic origin.

III. **Other proceedings between the parties**

[9] In September 2014, BMO commenced the Small Claims Court action to recover the balance of owing to it under the loan. BMO later amended its plaintiff's claim to reduce the claimed damages by the amount recovered from auctioning the vehicle.

[10] In April 2015, Mr. Demiraj sued BMO in the Ontario Superior Court of Justice for \$1 billion. By endorsement dated May 12, 2015, his statement of claim was struck without leave to amend, as it disclosed no cause of action. Costs payable to BMO were fixed at \$1500.

[11] In July 2015, Mr. Demiraj counterclaimed against BMO in the Small Claims Court action. Mr. Demiraj sought to recoup the monthly payments he had made while in possession of

the vehicle and payment to him of the balance he believed was owing to him under the contract at the time the vehicle was seized.

[12] By judgment dated July 20, 2016, the Deputy Judge of the Small Claims Court determined that no further amount was owing by Mr. Demiraj to BMO, nor was any money owed to him from BMO. The Deputy Judge found there was a valid contract between the parties, but that the vehicle had sold at auction for less than its actual value. Because of that discrepancy, credit was given to Mr. Demiraj for \$2,072.37, which was the amount remaining on BMO's claim against him. As the Small Claims Court judgment was not before the CHRC, it has no bearing on the validity of the CHRC's decision; I have used it solely to assist me in understanding the history and nature of the dispute between the parties: *Delios v Canada (Attorney General)*, 2015 FCA 117 at paras 44-45.

IV. **The CHRC investigation**

[13] On November 6, 2015, Mr. Demiraj filed a complaint with the CHRC alleging discrimination by BMO in the provision of services based on his national or ethnic origin. He named four different BMO branch locations in Ontario. An investigator was assigned on November 26, 2015, and the investigation report was concluded March 22, 2016. The investigator interviewed Mr. Demiraj, the BMO branch manager in Chatham and the former branch manager in Windsor. He also reviewed documentary evidence provided by the parties.

[14] The investigation report indicates that Mr. Demiraj confirmed to the investigator that he had no bank accounts with BMO and the banking service about which he was complaining was the conditional sales contract. The investigator concluded that Mr. Demiraj's dispute was a contractual matter which was not linked directly or indirectly to a human rights issue. The

investigator noted that Mr. Demiraj had not provided any evidence that the conditional sales contract was terminated due to his national or ethnic origin. The evidence before the investigator was that the bank managers with whom the investigator spoke did not know the national or ethnic origin of Mr. Demiraj and that his background had nothing to do with the decision to end the conditional sales contract. The investigator recommended pursuant to subparagraph 44(3)(b)(i) of the *Canadian Human Rights Act*, RSC, 1985, c H-6 [*CHRA*], that the Commission dismiss Mr. Demiraj's complaint because further inquiry was not warranted.

V. **The CHRC decision under review**

[15] After receipt of the investigator's report, the parties made written submissions to the CHRC. In a very brief written decision dated June 16, 2016 [the Decision], the CHRC confirmed that it had reviewed the investigation report and the submissions received from the parties in response to it. The CHRC then accepted the recommendation of the investigator by dismissing the complaint because further inquiry was not warranted. As no separate reasons were provided by the CHRC, the investigation report serves as the reasons for the Decision: *Sketchley v Canada (Attorney General)*, 2005 FCA 404, at para 37.

VI. **Standard of review**

[16] Mr. Demiraj states that the question on this judicial review is whether the CHRC chose an appropriate standard of review and properly applied it. He submits that the Decision is reviewable on a correctness standard.

[17] Mr. Demiraj's submission treats this application for judicial review as an appeal of the Decision rather than a review. It is well established that the standard of review of a decision by the CHRC to dismiss a complaint under subparagraph 44(3)(b)(i) of the *CHRA* is a question of

mixed fact and law reviewable on a standard of reasonableness: *Wong v Canada (Public Works and Government Services)*, 2017 FC 633 at para 26; *Ritchie v Canada (Attorney General)*, 2017 FCA 114 at para 16.

[18] A decision is reasonable if the decision-making process is justified, transparent and intelligible resulting in a determination that falls within the range of possible, acceptable outcomes which are defensible on the facts and law: *Dunsmuir v New Brunswick*, 2008 SCC 9 at para 47. In addition, it has been held that the CHRC has been given broad discretionary powers and this court is not to intervene lightly with a decision made under subparagraph 44(3)(b)(i) of the CHRA: *Walsh v Canada (Attorney General)*, 2015 FC 230 at para 19.

VII. Analysis of Mr. Demiraj's written submissions

[19] Mr. Demiraj filed the Notice of Application in this matter on July 12, 2016. He seeks judicial review of the Decision on the grounds that the CHRC disregarded the evidence presented to it. He also alleges that the investigator ignored all material evidence presented to him including "habitual human rights violations the peoples [sic] within Tilbury, Ontario".

[20] Mr. Demiraj failed to point to specific evidence that was ignored either by the CHRC or by the investigator. The only evidence that seems to align with his allegations of "habitual human rights violations" is that Mr. Demiraj was removed by police from BMO branch offices and that he was served with trespass notices. Based on the information in the investigator's report, this evidence was not ignored; it simply did not show any discrimination against Mr. Demiraj on grounds of his nationality or ethnic origin. The actions appear to have been taken because Mr. Demiraj repeatedly attended at the premises to discuss the conditional sales contract and the money he wrongly believed he was owed by BMO. In fact, the statement to which he

referred reflected the balance of the money he owed to BMO after he stopped the monthly payments under the conditional sales contract.

[21] Mr. Demiraj submits there is no evidence to support the allegation that BMO affiliates did not act against him based on his ethnic origins. That submission reverses the onus; it was Mr. Demiraj who had to provide the investigator with evidence to support his claim of discrimination. The CHRC found Mr. Demiraj failed to provide any such evidence. To the contrary, the evidence was that the representatives of BMO were not aware that Mr. Demiraj is Albanian.

[22] Mr. Demiraj also submits that the conclusion by the investigator and by the CHRC that further inquiry was not warranted is incorrect, that BMO had no right to issue trespass notices against him and that it had no legal authority to enter into the conditional sales contract. Other than these bald allegations, Mr. Demiraj submits no evidence to support his position; nor does he point to any error in the investigator's report.

VIII. Conclusion

[23] There is no evidence in the record before me that speaks to any ground of discrimination by BMO against Mr. Demiraj. The evidence which is present actually speaks to the contrary; representatives of BMO spent many hours trying to answer Mr. Demiraj's questions and explain the mechanics of the conditional sales contract to him.

[24] Mr. Demiraj admitted to the investigator that no one from BMO made comments to him about his national or ethnic origin. It was more than reasonable for the CHRC to conclude that this was purely a contractual matter between the parties.

[25] Based on the reasons provided by the investigator and adopted by the CHRC, I am satisfied that the outcome, which is that an inquiry is not warranted by the Tribunal, falls within the range of possible, acceptable outcomes and it is defensible on the facts of this case as well as being in compliance with the existing law.

[26] The application is therefore dismissed.

[27] BMO, as the successful party, is entitled to its costs. Mr. Demiraj resides in Tilbury, which is west of Toronto, yet he requisitioned this hearing to be in Ottawa. This was done despite the request of counsel for BMO to have it heard in Toronto, where he is located.

[28] Had Mr. Demiraj responded to the voicemail message left for him by the registry officer or replied to the email received by him from counsel on the eve of this hearing to indicate he would not be attending at the hearing, then the Court would have been able to proceed on the written submissions alone without the attendance of counsel in person. As a result, costs payable to BMO shall be increased by \$500 to compensate for the unnecessary inconvenience and additional expense to BMO in having counsel travel to Ottawa only to have the matter proceed based on the existing written submissions. This increase is in addition to, rather than in lieu of, the disbursements that BMO undoubtedly incurred to have its counsel travel to Ottawa.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed with costs to the Respondent, to be assessed according to Column III of Tariff B. The Assessment Officer shall increase the costs and disbursements that would otherwise be assessed by \$500.

"E. Susan Elliott"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1134-16

STYLE OF CAUSE: DEVIS DEMIRAJ v BMO FINANCIAL GROUP

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: JULY 13, 2017

JUDGMENT AND REASONS: ELLIOTT J.

DATED: JULY 19, 2017

APPEARANCES:

Not applicable

FOR THE APPLICANT
(ON HIS OWN BEHALF)

Frank Cesario

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Hicks Morley Hamilton Stewart
Storie LLP
Barristers and Solicitors
Toronto, Ontario

FOR THE RESPONDENT