HUMAN RIGHTS TRIBUNAL OF ONTARIO

B E T W E E N:

Brenda Adams

Applicant

-and-

Community Life Care Inc., Metzie Lacroix, Ed Broderick, Mick McDonald and Margo Emo

Respondents

DECISION

Adjudicator: Douglas Sanderson

Date: September 26, 2012

File Number: 2010-07551-I

Citation: 2012 HRTO 1838

Indexed as: **Adams v. Community Life Care Inc.**

APPEARANCES

Brenda Adams, Applicant	)	Jeffrey Robles, Counsel
Community Life Care Inc., Metzie Lacroix, Ed Broderick, Mick McDonald and Margo Emo, Respondents	)	Noel John Hennessy, Representative

[1] This is an Application filed on December 6, 2010, under section 34 of Part IV of the *Human Rights Code*, R.S.O. 1990, c. H.19, as amended (the "*Code*"), alleging discrimination with respect to employment because of colour, creed, association with a person identified by a prohibited ground of discrimination and reprisal.

[2] In the Application, the applicant indicated that she worked as a Personal Support Worker in a long-term care facility operated by the organizational respondent. The applicant stated that she complained to the organizational respondent of harassment, a poisoned work atmosphere and also expressed concerns about the care of residents in late November and early December 2009. The applicant allegedly asked for a transfer as a result of her work environment. The applicant was assured that the respondent's management would conduct an investigation. Rather than deal with her concerns, the applicant alleged that she was called to a meeting with management and a union representative where she was forced to resign her employment and sign Minutes of Settlement under duress. The Minutes of Settlement are dated December 14, 2009.

[3] The applicant alleges her union did not represent her properly regarding her complaints or during the meeting where she alleged she was forced to resign. The applicant alleged that the union took over six months to accept her grievance regarding her workplace issues and termination, but did not pursue it properly. The applicant filed an unfair labour practices application with the Ontario Labour Relations Board (the "OLRB" or the "Board") against her union, on the basis that it had failed in its duty of fair representation, contrary to s. 74 of the *Labour Relations Act, 1995*, S.O. 1995, c. 1, as amended (the "*LRA*"). The Application also indicates that the applicant filed a grievance through her union, but states that it was not related to her allegations of discrimination.

[4] The respondents filed a Response in which they requested early dismissal of the Application because the applicant signed a full and final release with respect to the same matter and because the proceeding before the OLRB appropriately dealt with the substance of the Application.

[5] The applicant replied to this request and submitted that the Minutes of Settlement are void because she lacked the requisite mental capacity to fully understand the consequences of her actions. The applicant also submitted that the OLRB proceeding addressed only her claim that her union breached its duty of fair representation and did not address alleged violations of the *Code*.

[6] By letter dated March 22, 2012, the Tribunal ordered a preliminary hearing by conference call to determine whether the Application should be dismissed because the substance of the Application has been dealt with in another proceeding or dismissed as an abuse of process because the applicant has signed a full and final release with respect to the same subject matter. The hearing was held on May 23, 2012.

Submissions

[7] The respondents submitted that the applicant's union, the Service Employees International Union, is a very well-organized and well-managed union that is knowledgeable about human rights matters. The respondent submitted that the union carefully considered the settlement discussions that led to the resignation of the applicant's employment. Accordingly, the respondents submitted that the applicant was well represented by her union, which would have ensured she understood the Minutes of Settlement.

[8] The respondent cited paragraph 5 of the Minutes of Settlement, which states as follows:

> The Grievor and the Union acknowledge the at (sic) the payment of the sums in paragraph 6 is inclusive and exhaustive of all possible entitlements to pay, pay in lieu of notice, severance pay, benefits, damages, penalties, interest (sic) accommodation to the point of undue hardship, or any other entitlements in respect of the Grievor's employment and the end of that employment or related to any issue to the grievance whether pursuant to tort, common law, equity, contract, the Collective Agreement, the Labour Relations Act, the Employment Standards Act, the Human Rights Code, the Workplace Safety and Insurance Act, the Occupational Health and Safety Act, the Pay equity act (sic), or otherwise.

The respondents pointed out that this paragraph specifically refers to the *Code* and also noted that the applicant acknowledged in the Minutes of Settlement that the union had properly represented her. The respondent submitted that the document was discussed with the applicant, who understood what it meant before she signed.

[9] Regarding the OLRB proceeding, the respondent noted that the Board found the union had not violated the *LRA* when it refused to pursue a grievance in the face of Minutes of Settlement resolving the termination of the applicant's employment (See *Adams v. SEIU Local 1 Canada*, 2011 CanLII 23482 (ON LRB). The respondents submitted that the applicant was trying to circumvent a settlement with which she was dissatisfied. The respondents submitted that the OLRB already decided that she should be held to her bargain and that section 45.1 of the *Code* avoids abuse of the system by preventing applicants from trying to achieve different results in different legal forums.

[10] The applicant submitted that there had been two proceedings: her grievance and the duty of fair representation application to the OLRB. Neither proceeding, submitted the applicant, dealt with the substance of the Application to the Tribunal. According to the applicant, her grievance concerned issues relating to harassment during her employment, not violations of the *Code*, and the OLRB application dealt with her claim that the union breached its duty of fair representation by acting in an arbitrary and bad faith manner. The applicant submitted that the OLRB did not address violations of the *Code*. Consequently, the applicant submitted that section 45.1 of the *Code* does not apply to this Application.

[11] The applicant submitted that the Minutes of Settlement were void and unenforceable because she lacked the requisite capacity to understand the implications of the settlement when she executed them. In this regard, the applicant submitted that she was diagnosed with Adjustment Disorder with Depressive Mood after signing the Minutes of Settlement. The applicant pointed to clinical notes confirming this diagnosis, dated "2/3/10", which indicates they were taken in either early February or March of 2010.

[12] The notes, however, also record that the applicant had "no formal thought disorder or cognitive impairment", which I pointed out to the applicant's counsel. Given the date of the notes, I also inquired when the applicant's symptoms began. Counsel for the applicant indicated that it was not clear when she suffered symptoms, but submitted that the doctor's notes were sufficient to raise concerns about the applicant's capacity that merits further investigation.

Analysis and Decision

[13] The *Code* does not explicitly bar applications where an applicant has executed a release in favour of the respondents. See *Bielman v. Casino Niagara*, 2009 HRTO 123. Section 23(1) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, however, provides that a tribunal may make such orders or give such direction in proceedings before it as it considers proper to prevent abuse of its processes. The Tribunal has found on number of occasions that filing a human rights application after executing a full and final release amounts to be an abuse of process and dismissed the applications in question. See for example *Shams v. Genivar Inc.*, 2012 HRTO 163, and *Perricone v. Fabco Plastics Wholesale*, 2010 HRTO 1655.

[14] First, it is necessary to consider whether the Minutes of Settlement contain release language and whether that language encompassed claims under the *Code*. As noted above, paragraph 5 of the Minutes of Settlement states that the consideration paid by the organizational respondent was in respect of any and all remedies available to the applicant, including under the *Code*. The Minutes of Settlement also contain the following statement:

> Whereas the Union filed a grievance on behalf of the Grievor and without any admission of liability or wrongdoing by any party and without prejudice to the respective positions of the parties and without precedent to any future and/or similar matter(s) between them, the parties agree to the final and binding settlement and any and all other claims or potential claims against the Employer by the Employee based on the following terms

The parties did not use the comprehensive release language sometimes seen in these

cases and the term “release” does not appear in the Minutes of Settlement, but I am satisfied that the parties intended the Minutes to be a final settlement and the applicant was not entitled to pursue any further remedies regarding her employment or the termination of her employment, including remedies under the *Code*. See*: Better Beef Ltd. v. MacLean*, 2006 CanLII 17930 (ON SCDC), at paras. 46-48, in which the Ontario Divisional Court confirmed the principle that where “the literal and ordinary meaning of the release” demonstrates a clear intention on the part of the parties to fully and finally release the respondent from all claims, it should not be easily disturbed.

[15] In *Pritchard v. Ontario (Human Rights Comm.)*, 1999 CanLII 15058, 35 C.H.R.R. 39 (ON S.C.), the Court set out factors for determining whether a release should be set aside. *Pritchard* was decided under section 34 of the old *Code*, which invoked bad faith rather than abuse of process, and concerned access to the since repealed investigative procedure of the Ontario Human Rights Commission rather than the right to an oral hearing before the Tribunal. However, the Tribunal has found that the *Pritchard* factors can be useful in determining whether it would be an abuse of process to proceed with a hearing on the merits: *Douse v. Hallmark Canada*, 2009 HRTO 1254. The *Pritchard* factors look to (1) whether the party fully understood the significance of the release; (2) whether she received sufficient and fair consideration for signing the release; (3) evidence of economic pressure; and (4) evidence of psychological or emotional pressure amounting to duress.

[16] I do not find that any of the *Pritchard* factors, or any other factors that might warrant overriding the language of the Minutes of Settlement, have been established in this case.

[17] The medical evidence falls short of establishing that the applicant lacked the capacity to understand the Minutes of Settlement, as she argued. The clinical notes the applicant presented indicated that she suffered from Adjustment Disorder with Depressive Mood, but there was no indication that this condition affected her ability to understand the Minutes of Settlement. To the contrary, applicant’s counsel was unable to state when she began to suffer symptoms of psychological distress. Consequently, I

cannot find that she was suffering such symptoms at the time she executed the Minutes. In any event, the clinical notes stated that the applicant did not suffer from any formal thought disorder or cognitive impairment, which indicates that her ability to understand was not impaired, regardless of when the symptoms occurred.

[18] The applicant asserted in the Application that she signed the Minutes of Settlement under duress, but did not pursue this argument at the hearing and made no submissions regarding other factors that may warrant overriding the settlement language.

[19] In my view, the applicant has not established that she was incapable of understanding the terms of the Minutes of Settlement. To allow the Application to proceed in light of the clear language of the Minutes of Settlement prohibiting claims under the *Code* would amount to an abuse of process.

[20] Having found the Application to be an abuse of process, I need not address the issue of whether the OLRB proceeding appropriately dealt with the substance of the Application.

Dated at Toronto, this 26th day of September, 2012.

"Signed by"

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Douglas Sanderson
Vice-chair