

COURT FILE NO.: 578/10
Toronto
DATE: 20101213

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

BETWEEN:)
)
 THOMAS THOMSON) In person , Respondent
)
)
 Appellant)
)
)
)
 - and -)
)
)
 THE SISTERS OF ST. JOSEPH FOR THE) Ms. Dawson & Ms. Boutis, Solicitors for
 DIOCESE OF TORONTO IN UPPER) the Moving Party/Respondent in Appeal
 CANADA)
)
)
 Respondent)
)
) **HEARD:** December 13th, 2010

ENDORSEMENT

JENNINGS J.

- [1] The moving party moves to quash M. Thomson's appeal from an eviction order of the Landlord and Tenant Board dated November 8th, 2010.
- [2] An appeal lies to this court from the Board only on a question of law. This court has the power to quash an appeal under S. 134 (3) of the *C.J.A.* but the power is only exercised in the rarest of cases where the moving party demonstrates that the appeal is manifestly devoid of merit

or is an abuse of process seeking solely to delay. I am satisfied in this case that the moving party succeeds on both grounds.

[3] The background of this matter is fully set out in the decision of Molloy J. in *Audain v. Sisters of St. Joseph November 11th, 2010, 2010 ONSC 6415*. Mr. Thomson and Mr. Audain are the 2 Tenants remaining in what was a 3 building complex purchased by The Sisters for demolition and replacement by a convent. Two of the buildings have been demolished. Mr. Thomson has paid no rent since November 2007, being engaged in a dispute with The Sisters as to the amount of rent to be paid.

[4] On July 29, 2010, Mr. Thomson brought an action in the Superior Court to deal with issues of rental overcharge and maintenance.

[5] Mr. Thomson filed a supplementary notice of appeal and supporting material late last Friday over the objection of counsel for the moving party. I allowed the material to be used on this motion, as well as a further written submission from Mr. Thomson filed this morning.

[6] Mr. Thomson makes submissions on the following points which he says are issues of law.

- a) The Board ought to have allowed the application to stand until his Superior Court action was heard, and he can now not proceed with that action.

This is simply not so – Mr. Thomson can continue with his action if he wishes.

- b) The moving party did not properly complete the forms required by the Board.

The Board found that there was substantial compliance with the Act, pursuant to S. 212. To the extent that is an issue of law, there was no error made by the Board in so finding.

- c) The Board erred in not suggesting to Mr. Thomson that he retain counsel.

That did not happen. The record is replete with Board recommendations that Mr. Thomson seek counsel.

- d) The Board erred in finding that The Sisters made the required payment to Mr. Thomson as damages for terminating his tenancy because of demolition.

In fact it found the payment was made, and at the rent thought to be correct by The Sisters, which is a least 2 ½ times more than is believed to be correct by Mr. Thomson, who nevertheless returned the cheque. It is still available for him to accept.

- e) The Board erred in requiring Mr. Thomson to vacate by November 30th, 2010, preventing him from appealing the Board's order.

In fact, he had appealed by that time.

There is no merit to any of the grounds advanced, and the appeal must be quashed. It is not necessary to consider the abuse of process ground, which was not argued.

[7] Costs

The Sisters seek, and are entitled to, their costs. Counsel submits that by virtue of the allegations made by Mr. Thomson, and the utter lack of merit in his appeal, costs should be on a substantial indemnity basis.

There is some force to that submission. However, Mr. Thomson is not a lawyer, and consideration has to be given to his lack of understanding of the Rules of Pleading. He is not employed and is to be evicted from his home. I think costs on a partial indemnity basis fixed at \$4700.00, inclusive of disbursements and HST of \$1618.00, would be appropriate, to be paid forthwith.

[8] The appeal is quashed.

[9] The eviction is stayed until December 22nd, 2010.

[10] Mr. Thomson's consent to the form and content of this order is dispensed with.



Jennings, J.

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ENDORSEMENT

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**PICK UP
THOMAS
THOMSON
578/10**