

Reference No. HRRT 039/2016

UNDER THE HUMAN RIGHTS ACT 1993

BETWEEN OLIVIA MINH GODFREY

PLAINTIFF

AND GLENDA MAREE HARVEY

FIRST DEFENDANT

AND PHILLIP GEORGE HARVEY

SECOND DEFENDANT

AT WELLINGTON – ON THE PAPERS

BEFORE:

Mr RPG Haines QC, Chairperson
Dr SJ Hickey MNZM, Member
Mr BK Neeson JP, Member

REPRESENTATION:

Mr G Robins for plaintiff
Mr P Drummond for defendants

DATE OF HEARING: Heard on the papers

DATE OF DECISION: 12 May 2017

DECISION OF TRIBUNAL REFERRING COMPLAINT BACK TO
HUMAN RIGHTS COMMISSION AND RELATED ORDERS¹

¹ [This decision is to be cited as: *Godfrey v Harvey (Referral back to Human Rights Commission)* [2017] NZHRRT 18]

Introduction

[1] The plaintiff is blind and relies on a guide dog. The defendants are landlords of a property which was advertised for rent as residential accommodation. The plaintiff alleges the defendants declined to rent the property to her by reason of her having a guide dog. The allegation is denied by the defendants.

[2] A complaint of unlawful discrimination was received by the Human Rights Commission on 3 November 2015 and that complaint, in turn, was notified to the defendants on 30 November 2015. On 7 December 2015 the defendants declined to mediate.

[3] The plaintiff has by statement of claim filed on 18 July 2016 sought a ruling by the Tribunal on her discrimination claim.

[4] The defendants' statement of reply, while dated 22 August 2016, was not filed with the Tribunal until 7 February 2017. At about the same time the defendants changed their legal representation. See the *Minute* dated 30 March 2017 issued by the Chairperson declaring that the original solicitor on the record has ceased to be the solicitor on the record for the defendants.

[5] By email dated 10 April 2017 Mr Phillip Drummond, Barrister gave notice that he is now counsel for the first and second defendants. He also advised that he has instructions that the defendants are now seeking the opportunity to attend mediation and have indicated to Mr Drummond they are open to genuine settlement discussions in the without prejudice environment afforded by Human Rights Commission facilitated mediation.

[6] By email dated 3 May 2017 Mr Robins, the solicitor in the Office of Human Rights Proceedings representing the plaintiff, advised the Tribunal that he and Mr Drummond have conferred and the parties now seek by consent the referral of the complaint back to the Human Rights Commission under s 92D of the Human Rights Act 1993. In these circumstances a teleconference is not presently required.

Discussion

[8] Section 92D of the Act relevantly provides:

92D Tribunal may refer complaint back to Commission, or adjourn proceedings to seek resolution by settlement

- (1) When proceedings under section 92B are brought, the Tribunal—
 - (a) must (whether through a member or officer) first consider whether an attempt has been made to resolve the complaint (whether through mediation or otherwise); and
 - (b) must refer the complaint under section 76(2)(a) to which the proceedings relate back to the Commission unless the Tribunal is satisfied that attempts at resolution, or further attempts at resolution, of the complaint by the parties and the Commission—
 - (i) will not contribute constructively to resolving the complaint; or
 - (ii) will not, in the circumstances, be in the public interest; or
 - (iii) will undermine the urgent or interim nature of the proceedings.
- (2) The Tribunal may, at any time before, during, or after the hearing of proceedings, refer a complaint under section 76(2)(a) back to the Commission if it appears to the Tribunal, from what is known to it about the complaint, that the complaint may yet be able to be resolved by the parties and the Commission (for example, by mediation).
- (3) The Tribunal may, instead of exercising the power conferred by subsection (2), adjourn any proceedings relating to a complaint under section 76(2)(a) for a specified period if it 3 appears to the Tribunal, from what is known about the complaint, that the complaint may yet be able to be resolved by the parties.

[9] Although the defendants initially declined the mediation offer made by the Human Rights Commission it is now evident they have had opportunity to take legal advice and have a better understanding of the challenges faced by all the parties litigating the issues before the Tribunal.

[10] As the plaintiff and both defendants ask that the plaintiffs' complaint be referred back to the Human Rights Commission, the requirements of s 92D(2) are satisfied. That is, it appears to the Tribunal from what is known to it about the complaint that the complaint may yet be able to be resolved by the parties and the Commission (for example, by mediation).

Conclusion

[11] We accordingly conclude the statutory criteria in s 92D(2) have been satisfied and that the complaint is to be referred back to the Commission. There is a clear interest in Ms Godfrey and the two defendants seeking to resolve their differences informally before engaging the Tribunal's adversarial litigation process.

ORDERS

[12] For the reasons given the following orders are made:

[12.1] Pursuant to s 92D(2) of the Human Rights Act 1993 the complaint by Ms Godfrey is referred back to the Human Rights Commission for resolution by the parties and the Commission (whether through mediation or otherwise).

[12.2] So the proceedings are not left in suspension indefinitely, the parties are to provide the Tribunal with a progress report in six months time. Such report must be filed no later than 5pm on Friday 24 November 2017.

[12.3] The proceedings before the Tribunal are stayed in the interim with leave reserved to all parties to seek further directions if and when the need arises.

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Mr RPG Haines QC
Chairperson

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Dr SJ Hickey MNZM
Member

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Mr BK Neeson JP
Member