

Court File No. CV-21-00000245-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

DARLENE COOK

Plaintiff

- and -

PETERBOROUGH HOUSING CORPORATION

Defendant

STATEMENT OF DEFENCE

1. The Defendant denies that the Plaintiff is entitled to the relief set out in paragraph 1 of the Statement of Claim and, except as expressly admitted herein, the Defendant denies the allegations set out in paragraphs 2-22 of the Statement of Claim.

Background

2. The Defendant, Peterborough Housing Corporation (“PHC”) is a corporation incorporated pursuant to the laws of the Province of Ontario which manages social and affordable housing units in the City of Peterborough and surrounding area and administers rent supplement programs which are funded by the City.

3. PHC was established by the Corporation of the City of Peterborough (the “City”) in or about 2001 when the Province of Ontario downloaded the ownership and administration of social housing to municipalities. The City established PHC to own and operate the social housing units which had been previously owned by the Province.

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Although PHC operates as a standalone corporation, the City is the sole shareholder of PHC and appoints all of the directors to the PHC Board of Directors.

4. Subsequent to 2001, in addition to managing the City's social housing units, PHC began to acquire and manage affordable housing units. In addition, PHC began to manage market housing units on behalf of the City. Market housing units are housing units located on the same property as affordable housing units for which the rent charged to tenants is "at market". The rent from these market housing units is used to offset the rent subsidies provided for affordable housing. In addition, PHC administers rent supplement contracts for properties which PHC manages but are owned by private entities.

5. At all material times, PHC's activities in relation to the social and affordable housing units for which the City is ultimately responsible are governed by a Shareholder Direction and Declaration from the City to PHC dated October 3, 2016.

6. As of January, 2021 and continuing to the present time, PHC managed and/or administered rental and subsidy agreements for a total of 1431 properties comprised of:

- (a) 886 social housing units;
- (b) 277 affordable housing units;
- (c) 29 market housing units;
- (d) 239 rent supplement contracts.

7. All of PHC's activities are funded through the rents collected from tenants and funds provided by the City.

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Plaintiff's Employment

8. The Plaintiff commenced employment with PHC on or about December 6, 2000. At all material times, the Plaintiff held the position of Chief Executive Officer, General Manager. In this role, the Plaintiff was responsible for:

- (a) Overseeing management of the day to day operations of PHC;
- (b) Representing PHC at City Council meetings, meetings of the County of Peterborough and with respect to other regional bodies and community organizations in relation to social and affordable housing issues;
- (c) Overseeing strategic planning for PHC; and
- (d) Working with the City and other stakeholders to develop new affordable housing units for residents of the City of Peterborough and surrounding areas.

9. At the date of her resignation, on or about September 29, 2021, Plaintiff was earning an annual salary of \$150,709 (gross). In addition, she participated in PHC's benefit plans and the Ontario Municipal Employers Retirement System (pension plan) in accordance with the terms and conditions of those plans.

10. At all material times during the course of her employment, the Plaintiff reported to the PHC Board of Directors (the "Board"), who were appointed from time to time by the City, being the sole shareholder of PHC. The Plaintiff had no authority to appoint directors to the PHC Board nor did she have any authority to reject the appointment of any individuals appointed to the Board by the City.

11. At all material times, it was an implied term of the Plaintiff's contract of employment, that PHC could terminate the Plaintiff's employment summarily in the

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event of just cause, or in the absence of just cause by providing the Plaintiff with reasonable notice of termination or pay in lieu thereof.

Consideration of a Government Business Enterprise

12. Over time, the demand for social and affordable housing units in Peterborough has increased. However, the capital costs associated with building new housing projects are significant, and the City is not in a position to incur the debt associated with such projects.

13. In or about 2017, PHC engaged in a review of the properties which it owned and managed for the City. Based on that review, PHC and the City decided that in due course, six of the City's properties which were comprised of both social and affordable housing units would be demolished and replaced with new complexes having a higher number of units.

14. However, because the City had reached its allowable debt capacity, the City was not in a position to fund the construction of additional affordable housing units. In fact, several years ago, the City determined that it would not build any additional social housing units (in addition to the units which had been downloaded by the Province in 2000). Instead, the City decided that it would endeavour to increase capacity in the system by focusing on the creation of affordable housing units by providing capital grants to private entities who would in turn build and operate these units.

15. In 2020, the City engaged a consultant (the "Consultant") to determine how the City could increase affordable housing capacity given its debt constraints. In early, 2021, the Consultant released a report to the City which recommended that the City establish a government business entity ("GBE") also known as a municipal services corporation, an independent legal entity which would operate at arm's length from the City and would oversee the development of new affordable housing units in the City.

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16. In March, 2021, City council approved in principle, the establishment of a GBE in order to further the City's objective of increasing capacity for affordable housing. However, as of the date hereof, the GBE has not yet been established.

17. At all material times, the City envisioned that once the GBE was established, the City, PHC and the GBE would work together to provide social and affordable housing within the following framework:

- (a) PHC would continue to own the 886 social housing units which it currently owns;
- (b) PHC would divest itself of its 277 affordable housing units to the GBE;
- (c) PHC would continue to operate and manage all of the social housing units owned by the PHC and the affordable housing units owned by GBE including performing and/or overseeing the maintenance on these properties, vetting tenants, and administering rent collection;
- (d) GBE would work closely with the City and PHC to obtain and administer grants from all levels of government for the construction of new or redeveloped affordable housing units; and
- (e) GBE would work closely with the City and PHC to oversee development of affordable housing units for the City and surrounding area.

18. Contrary to the allegations in paragraph 7 of the Statement of Claim, the City's decision to move ahead with the creation of a GBE did not result in a decision to demolish six of the Defendant's public housing sites or reduce the number of social and affordable housing units that the Plaintiff was responsible for managing as alleged. In actual fact, the decision to demolish six of the City's social and affordable housing

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properties was made by PHC in or about 2017. However, at all material times, the plan to demolish these properties was part of a broader redevelopment plan which would have actually increased the total number of social and affordable housing units at these sites beyond their current numbers. Accordingly, if and when these six sites are redeveloped, the number of units which PHC will ultimately be responsible for managing will increase and not decrease as alleged.

19. As of the date hereof, the City has not yet established the GBE and accordingly, PHC continues to own the same number of social and affordable housing units as it did as of January, 2021 and continues to manage all of the affordable and social housing units in the City.

Plaintiff's Allegations of Constructive Dismissal

20. In response to the allegations in paragraph 8 of the Statement of Claim, at no time prior to the Plaintiff's resignation did PHC make any changes to the terms and conditions of the Plaintiff's employment nor to any of her job duties as alleged.

21. The Plaintiff and the then Chair of the PHC Board, Bonnie Clark, were openly and publicly resistant to the City's plan to create a GBE and to have the City and PHC partner with the GBE to increase the affordable housing capacity in the City.

22. On June 28, 2021, in an effort to ensure that the PHC Board would support the City's decision to establish the GBE and proceed with the framework outlined in paragraph 17 above, the City revoked the appointments of most of the existing Board members and appointed a new transitional Board.

23. In response to the allegations in paragraph 9, PHC denies that any of the Board members who the City appointed to the PHC Board in June, 2021 had previously made publicly disparaging remarks about the Plaintiff and puts the Plaintiff to the strict proof thereof.

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24. In actual fact, at a City Council meeting on February 16, 2021 where the Consultant's report referred to in paragraph 15 was presented to Council and at a subsequent City Council meeting on February 22, 2021 at which the Consultant's report was discussed, a number of Councillors including Keith Rieil, Dean Pappas and Henry Clark commended PHC on the work the organization had done over the years and remarked favourably on the Plaintiff's contributions and abilities.

25. The fact is that in early 2021, the Plaintiff and Ms. Clark, attended a meeting of the Council of the County of Peterborough, and, without alerting City officials in advance of their intention to do so, made statements at this meeting which were critical of the City's decision to establish a GBE and made representations about the Consultant's report which were inaccurate.

26. After learning of the statements made by the Plaintiff and Ms. Clark to the County representatives, the City arranged to have Sheldon Laidman, Commissioner of Community Services for the City present the Consultant's report at a meeting of the Peterborough Regional Liaison Group on March 25, 2021, which is comprised of councillors from the County and the City. At this meeting, Mr. Riel and Mr. Pappas expressed that they were surprised and disappointed that the Plaintiff and Ms. Clark had seen fit to present their views regarding the City's GBE plans to the County without alerting the City to their intention to do so and advised that some of the information about the Consultant's report which the Plaintiff and Ms. Clark had presented at the earlier Council meeting was inaccurate. However, at the March 25, 2021 meeting, neither Mr. Riel nor Mr. Clark made any disparaging comments about the Plaintiff at this meeting.

Plaintiff Demands a Severance Package

27. Notwithstanding that, as of June, 2021, the GBE had not been established and that none of the Plaintiff's job duties were removed or altered in any way, on or about June 3, 2021, the Plaintiff sent a letter to the PHC Board Chair, Ms. Clark advising that she could no longer continue to serve as CEO of PHC. In her letter, the

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Plaintiff cited the imminent change in the composition of the Board and other alleged changes to her position which had not actually taken place, as being the reason she could not continue to be employed by PHC. The Plaintiff went on to demand a severance package from PHC.

28. Upon receiving this letter, the PHC Board decided that the Plaintiff's request should be addressed by the incoming, transitional Board which was appointed on or about June 28, 2021.

29. Although the PHC transitional Board of Directors was appointed on June 28, 2021, the transitional Board met only briefly in early July, 2021 for the purpose of appointing officers and did not have a business meeting to discuss any operational issues, including the Plaintiff's letter, until September, 2021. In addition, as set out below, shortly after June 3, 2021, the Plaintiff was absent from work. However, between June 28, 2021 and early September, 2021, the transitional Board was unclear as to whether the Plaintiff was on sick leave or vacation given the conflicting information received from the Plaintiff and her health care providers. The transitional Board needed to resolve that issue before responding to the Plaintiff's letter.

30. Contrary to the Plaintiff's allegations in paragraphs 11 and 12 of the Statement of Claim, the Plaintiff was not on medical leave starting in June, 2021, although the nature of her leave was not resolved by PHC until early September, 2021. Shortly after June 3, 2021, the Plaintiff sought and obtained approval from Ms. Clark to take vacation until the end the August, 2021.

31. On or about June 19, 2021, the Plaintiff sent PHC a letter from a Registered Psychotherapist dated June 18, 2021 which indicated that the Plaintiff was receiving therapy from the Psychotherapist and would "remain off work". However, the letter did not indicate that the Plaintiff was medically unable to work or that she was considering herself to be on medical leave. Indeed over the course of the next couple of months while on vacation, the Plaintiff continued to respond to email communications from PHC staff about operational matters. Accordingly, PHC treated the Plaintiff's

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absence as being a period of vacation and paid her vacation pay during her absence. The Plaintiff at no time objected to PHC treating her absence as a period of vacation and at no time demanded that PHC pay her sick pay rather than vacation pay. The Plaintiff also made no claim for disability benefits under PHC's short term disability policy.

32. On or about August 27, 2021, the Plaintiff sent PHC a letter from her Psychotherapist which indicated that the Plaintiff was continuing to receive psychotherapy treatments. The Psychotherapist recommended that the Plaintiff not return to work at that time, but remain off work and be reassessed in six weeks. Accordingly, PHC allowed the Plaintiff to remain off work and continued to pay her vacation pay for the period up to September 21, 2021 when her vacation entitlement was exhausted. Again, the Plaintiff did not object to the fact that PHC was continuing to pay her vacation pay nor did she make a claim for sick pay or disability benefits.

33. On or about September 20, 2021, the Plaintiff sent the PHC Board Chair a letter advising that she was treating herself as having been constructively dismissed.

34. PHC responded to the Plaintiff by letter dated September 29, 2021. In that letter, PHC disputed that the Plaintiff had been constructively dismissed, but advised that it would accept her resignation if she was, in fact, resigning. In that letter PHC sought confirmation that the Plaintiff was resigning.

35. On October 5, 2021, the Plaintiff's solicitor advised PHC's solicitors that the Plaintiff would not be returning to work and asserted that she had been constructively dismissed.

36. Based on the communication from the Plaintiff's solicitor on October 5, 2021, PHC processed the Plaintiff's resignation effective September 29, 2021.

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Claim for Damages

37. As set out above, to date the City has not established the GBE, and as such, the framework set out in paragraph 17 above has not yet been implemented.

38. Accordingly, to date:

- (a) there has been no reduction in the number of social or affordable housing units which PHC owns and manages on behalf of the City;
- (b) there has been no change to the scope of PHC's operational activities; and
- (c) PHC continues to be actively involved, in collaboration with the City, in initiatives relating to the development of new affordable housing units.

39. The fact is that no aspect of the Plaintiff's job duties changed at any time prior to September 29, 2021. The Plaintiff's assertion that she could not work with the PHC transitional Board is without foundation given that the Plaintiff commenced an extended period of vacation in June, 2021 and never worked with the transitional Board prior to her resignation on September 29, 2021.

40. PHC pleads that the Plaintiff's allegations about the potential changes which would occur to her job duties, scope of her responsibilities and ability to work with the transitional Board never crystalized, are purely speculative and do not amount to a constructive dismissal at law.

41. For the reasons set out above, PHC denies that the Plaintiff was constructively dismissed as alleged or at all. Accordingly, PHC denies that the Plaintiff has suffered any damages for which PHC is liable.

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42. In the alternative, if the Plaintiff has suffered damages for which PHC is liable, which is not admitted, the damages claimed are excessive, remote or not recoverable at law.

43. In the further alternative, if the Plaintiff has suffered damages for which PHC is liable, which is not admitted, the Plaintiff has failed to make reasonable efforts to mitigate her damages.

44. In the further alternative, PHC further pleads that any income earned by the Plaintiff from alternate employment, self-employment, a contract for service or any other sources subsequent to September 29, 2021 should be offset from any damages owing by PHC to the Plaintiff.

45. In response to the allegations in paragraphs 19-21 of the Statement of Claim, the Plaintiff has failed to plead an independently actionable wrong to support an award of punitive damages. Further or in the alternative, PHC pleads that at all material times, it treated the Plaintiff fairly, in good faith and in no manner that would give rise to an award of punitive damages.

46. Based on the foregoing, PHC request that this action be dismissed with costs payable to PHC.

47. The Defendant objects to this matter proceeding under the Simplified Rules on the basis that the claim does fall within the scope of Rule 76 of the *Rules of Civil Procedure*.

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May 18, 2022

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(Plaintiff)

-and-

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(Defendant)

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Proceeding commenced at Peterborough

STATEMENT OF DEFENCE

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