CITATION: Roberts v. Bay and College Physiotheraphy & Rehab, 2011 ONSC 1923

Court File No. CV-09-393297

Date: 20110325

SUPERIOR COURT OF JUSTICE ONTARIO

BETWEEN: CATHERINE GRIFFIN ROBERTS, Plaintiff

AND:

BAY AND COLLEGE PHYSIOTHERAPY & REHAB., VIOLETTA SOFFE

and ONTARIO MASSAGE THERAPIST ASSOCIATION. Defendants

HEARD:

March 25, 2011

BEFORE: K.W. Whitaker J.

COUNSEL: Fawad Siddigui for the Plaintiff

Fraser Gow for the Defendant, Bay and College Physiotherapy & Rehab

ENDORSEMENT

- This is a motion for summary judgment brought by the defendant Bay and College Physiotherapy & Rehab ("CP"), resisted by the Plaintiff Ms. Catherine Griffin Roberts.
- Ms. Roberts claims to have been injured when she fell from a massage table during a session with the Defendant massage therapist Ms. Violetta Soffe. This occurred in premises owned and operated by CP.
- I have been advised that the other Defendants take no position on the motion and for this 131 reason chose not to appear.
- The issue between the parties on this motion is whether a trial is required to determine if CP can avoid liability by virtue of section 6(1) of the Occupiers' Liability Act, R.S.O. 1990, c. 0.2, s.6:

Liability where independent contractor

- 6.(1) Where damage to any person or his or her property is caused by the negligence of an independent contractor employed by the occupier, the occupier is not on that account liable if in all the circumstances the occupier had acted reasonably in entrusting the work to the independent contractor, if the occupier had taken such steps, if any, as the occupier reasonably ought in order to be satisfied that the contractor was competent and that the work had been properly done, and if it was reasonable that the work performed by the independent contractor should have been undertaken.
- At the outset of his submissions, counsel for Ms. Roberts conceded that Ms. Soffe was an independent contractor and that two of the three requirements in section 6.1 have been satisfied.

- [6] The very narrow issue then, which was clarified during the motion, is whether there is an issue that requires a trial concerning
 - ...if the occupier had taken such steps, if any, as the occupier reasonably ought in order to be satisfied that the contractor was competent and that the work had been properly done...
- Having considered the affidavits filed, it is fair to say that the steps taken by CP to be satisfied that Ms. Soffe was competent and that her work was done properly, consisted principally in a reliance on her professional training and credentials as a member of the Ontario College of Massage Therapists. In other words, there was no attempt made by CP to monitor on an ongoing basis the quality of massage therapy services being provided by independent contractor therapists, operating within its facility.
- [8] Consistent with this information, the clinical director of CP indicated during his examination that CP did not exercise any degree of control over the manner in which services were provided by Ms. Soffe.
- [9] Despite this assertion, it is apparent that there were in fact internal practice guidelines developed by CP for use within their facility. It is not clear, however, that there was any mechanism to ensure these internal guidelines were adhered to.
- [10] I conclude that the Defendant CP has not persuaded me there is no issue requiring a trial. More precisely, that issue is whether CP had taken any steps to ensure that Ms. Soffe was competent and her work was being done properly.
- [11] The motion is dismissed.
- [12] On agreement of the parties, costs to Ms. Roberts are fixed at \$5397.00 inclusive of taxes and disbursements, payable forthwith.

K,W. WHITAKER J.

Released: March 25, 2011