CITATION: Keays v. Arjohuntleigh Canada Inc., 2021 ONSC 4790
COURT FILE NO.: CV-16-58580
DATE: 20210707

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:	)	
	)	
Rita Keays	)	Self-Represented
	)	
	)	
	)	
Plaintiff	)	
	)	
- and -	)	
	)	
	)	
Arjohuntleigh Canada Inc.	)	Matthew Owen for the Defendant/Moving Party
	)	
	)	
	)	
Defendant	)	
	)	
	)	
- and -	)	
	)	
	)	
	)	
St. Joseph's Healthcare Hamilton	)	Not present
	)	
	)	
Third Party		**HEARD:** June 29, 2021

RULING

PARAYESKI, J.

[1] The defendant brought a motion for summary judgment dismissing the plaintiff's claim. I heard the motion and reserved my decision with written reasons to follow. These writings are my decision and reasons for the same.

[2] The plaintiff alleges that she received an electrical shock while being placed into a bathtub manufactured by the defendant. She was entering the tub by means of a lifting device also, perhaps, manufactured by the defendant. She alleges that she was injured by the shock and claims damages as a result, based on the defendant's alleged "negligence". In essence, this is a product liability case. I used the word "perhaps" because the plaintiff asserts that the lifting device was of "Hoyer" type. The defendant does not and did not manufacture Hoyer lifts. It did manufacture and supply chair lifts. The defendant did manufacture tubs used in the relevant ward at St. Joseph's Hospital as well as the chair lifting devices used with those tubs.

[3] At the relevant time, that said by the plaintiff to be September 1st, 2014, she was an involuntary patient at St. Joseph's Hospital. She had been diagnosed as being schizophrenic.

[4] The defendant brought a third-party claim against St. Joseph's Hospital. It initially defended as against the plaintiff's main action, but later withdrew that pleading. It remains a third-party at the suit of the defendant. It did not participate in the motion before me.

[5] While the defendant took something of a shotgun approach to its motion, the thrust of its argument is that the plaintiff's action should be dismissed as there is no issue requiring a trial in order to make the determination that the claim cannot possibly succeed.

[6] I agree. I do so because of the utter lack of crucial evidence in the hands of the plaintiff despite the fact that we are approaching the seventh anniversary of the alleged incident.

[7] The onus of proving both liability and damages on the balance of probability rests upon the plaintiff. I am to assume that in response to the present motion the plaintiff has "led trump", or, in other words, disclosed the extent of her evidence. Other than her own inconsistent recollections of the alleged incident itself and her complaints, she has no evidence whatsoever.

[8] On the liability front, the plaintiff has no expert (or, indeed, non-expert) evidence which proves any negligent design or manufacturing process carried out by the defendant. There is no evidence that the defendant failed to meet national or international standards relevant to its devices. By contrast, the defendant provided evidence that standards were met, and that when it first learned of the alleged incident by means of being served with the statement of claim, it undertook a thorough inspection of the tub and chair lift device in the ward in which the plaintiff had been a patient. Neither item had been changed, and both were in perfect working condition.

[9] The plaintiff cannot rely upon the doctrine of *res ipsa loquitor* (or, in other words, the notion that there had to be something wrong with one or both of the defendant-made devices because, according to the plaintiff she suffered an electrical shock and all of this speaks for itself). Reliance cannot be had because the doctrine in question has not been recognized in Canada as a valid one for many years now. A plaintiff now must produce evidence of negligence or some other tort on the part of the defendant in order to meet the onus of proving liability.

[10] Relative to the issue of damages, the plaintiff has not produced a single medical report by a doctor which gives any diagnosis, prognosis, or opinion on causation. Rather, the plaintiff has diagnosed herself with various problems, recently adding post-traumatic stress disorder to the list. While all of the missing elements are important, perhaps the most important is an opinion on causation. There is no expert opinion that the kind of mild electrical shock which the plaintiff describes is the likely cause of some or all of her complaints. The plaintiff's own apparent opinion that because she has these complaints after the incident they must be the result of it is not sufficient, or, with respect, even logical. It is worth noting that the hospital records produced reveal that the plaintiff had complained of being subjected to electrocution by unknown people on several occasions before the subject incident.

[11] A trial is not required to make the determination that no evidence on crucial issues (which the plaintiff has the onus to prove) is inadequate. The plaintiff cannot possibly succeed at trail in these circumstances. She does not even appear to be inclined or able to gather the evidence she needs. Of course, it would be improper to base my ruling on speculation that such evidence might materialize. I must address the evidence as disclosed in the context of the motion before me at this time.

[12] It is unnecessary for me to address the other issues raised by the defendant. The lack of evidence is fatal and more than sufficient to rationalize dismissal of the plaintiff's case.

[13] I do not for a moment doubt the sincerity of the plaintiff's beliefs that she received an electrical shock, that she suffered injuries as a result, and that, somehow, the defendant is responsible. These beliefs are not capable, unsupported by other evidence as they are, of proving the plaintiff's case to the degree required by law.

[14] The defendant's motion to dismiss the plaintiff's action is allowed. Her action is dismissed with costs, if demanded. If costs are demanded and cannot be agreed upon as between the parties, they may make written submissions regarding the same. Each set of submissions, if any, may not exceed three double-spaced typed pages in length. There shall be no attachments whatsoever save and except a costs outline. If law is to be cited, it must be contained within the page limit set out above.

[15] If costs are not demanded or are agreed upon, I am to be notified of the same on or before July 30th, 2021. If submissions are to be made, those of the defendant are due on or before September 7th, 2021 with those of the plaintiff being due on or before September 27th, 2021. All notifications or materials are to be sent in hardcopy to my attention at the John Sopinka Courthouse in Hamilton.

"Parayeski, J."

Released: July 7, 2021

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B E T W E E N:

Rita Keays

Applicant

- and –

Arjohuntleigh Canada Inc.

Defendant

RULING

Released: July 7, 2021