

RETAIL CASE UPDATE



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A Retailer's Duty of Care – Supervision of Independent Contractors

In a recent case, *Woo v. Crème De La Crumb Bakeshop & Catering Ltd.*, 2019 BCSC 1752, the court considered whether a retailer bakeshop could be found liable under the *Occupiers Liability Act*, RSBC, 1996, c. 337 (the "OLA") for catastrophic injuries the 66 year old plaintiff suffered while doing repair work at a bakeshop. The plaintiff was an experienced contractor who was attempting to install diffusers in the 11-foot ceiling when he fell from an 8-foot ladder.

The court grappled with the issue as to whether the bakeshop had an obligation to supervise the contractor while carrying out his repair work. The evidence was such that the bakeshop had no meaningful supervision of the contractor and paid no attention to ensure the activity being conducted was reasonably safe.

Ultimately, it was found that as the bakeshop was an occupier under the OLA, it owed and breached its duty to the contractor to ensure that the ladder he used was suitable for the task at hand. The court was careful to caution tradespersons that it does not excuse them from engaging in unsafe

practices. At the end of the day, it was the contractor who chose an 8-foot ladder for an 11-foot ceiling and continued to use that ladder throughout his work. In this case, the contractor was not free of responsibility for his fall, and his reckless conduct was a significant contributing factor to his injuries. The court apportioned 50% of the liability to the bakeshop and 50% to the plaintiff. The court awarded \$175,000 damages for the plaintiff's pain and suffering and \$150,000 in trust for the family who continue to care for him in his vegetative state.

This case is specific to its facts in that the plaintiff was not found to be a true independent contractor as he did not have a written contract with the bakeshop. Further, the bakeshop was partly owned by the plaintiff's son who was also the sole shareholder of his father's construction company. By virtue of the son's relationship to and involvement with the bakeshop, the plaintiff was not found to be a true independent contractor and as such the bakeshop could not make use of the defense found in s. 5 of the OLA.

The important takeaway from this case is that even when a retailer is working with a qualified tradesperson, it is not necessary to supervise or direct them in every aspect of how they carry out their work; rather, it requires the retailer to take reasonable steps

to protect tradespersons from objectively unreasonable risks at harm. At a minimum, this must involve maintaining an adequate system of supervision and intervening to stop manifestly unsafe activities or procedures.

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