

COURT OF APPEAL FOR ONTARIO

CITATION: Sochnyeva v. Ontario, 2012 ONCA 694

DATE: 20121016

DOCKET: C55238

Cronk, Pepall and Tulloch JJ.A.

BETWEEN

Hanna Sochnyeva

Plaintiff (Appellant)

and

Her Majesty the Queen in right of Ontario and Seneca College

Defendants (Respondents)

Hanna Sochnyeva, in person

Erin Rizok, for the respondent Her Majesty the Queen in right of Ontario

Anna Husa, for the respondent Seneca College

Heard: October 10, 2012

On appeal from the orders of Justice Suzanne M. Stevenson of the Superior Court of Justice, dated February 16, 2012.

ENDORSEMENT

[1] The appellant appeals from February 16, 2012 orders of the motions judge granting the respondents' motions for summary judgment and dismissing the appellant's claim.

[2] In her statement of claim, the appellant asserted that her student aid funding had been wrongfully denied by the respondent Crown representing the Ministry of Training, Colleges and Universities and that the respondent, Seneca College, improperly gave the appellant a failing grade in the required subject of Practical Nursing Consolidation. The appellant claimed that the actions of both respondents deprived her of her ability to complete her education and obtain her nursing degree.

[3] The motions judge concluded on the basis of the evidence before her that student aid funding was discretionary. As such, the appellant had no absolute entitlement to such aid. The restriction on funding to the appellant arose because she applied for and received funds to which she was not entitled in and for the same academic year under both the Ontario Student Assistance Program ("OSAP") and the Ontario Student Bursary Program ("OSBP").

[4] Both application forms contained a prohibition on receiving OSAP and OSBP funding for the same academic year. As part of the OSBP application form, the appellant had agreed to promptly repay any funds she received in excess of her entitlement. Despite numerous requests to do so, the appellant refused to refund the over-payment. The appellant has no claim for wrongful denial of student aid in these circumstances.

[5] The motions judge made no finding with respect to the alteration of the Certificate of Loan and it was unnecessary for her to do so given her conclusion.

[6] The motions judge also concluded on the basis of the evidence before her that the appellant had been unable to achieve a passing grade in the Practical Nursing Consolidation course despite being given numerous opportunities to rewrite the examination. There was ample evidence to support this finding.

[7] The appellant raises various other grounds before us such as bias and repayment of the overpayment but these arguments were not advanced before the motion judge.

[8] The motions judge applied the correct legal test as set forth in *Combined Air Mechanical Services Inc. v. Flesch*, 2011 ONCA 764 and determined that the appellant's claim disclosed no genuine issue requiring a trial.

[9] We see no error by the motions judge in the granting of the summary judgment motions and the dismissal of the appellant's claim or her reasoning for doing so.

[10] As for the fresh evidence, the appellant has not met the requisite test for admission. The absence of the fresh evidence from the record before the motions judge reflects a lack of due diligence. Furthermore, the fresh evidence would not have affected the result in any event.

[11] The appeal is dismissed. The respondents are each entitled to their costs of the appeal, fixed in the amount of \$1000 each, inclusive of disbursements and all applicable taxes.

“E.A. Cronk J.A.”

“S.E. Pepall J.A.”

“M. Tulloch J.A.”