

DEC 16 2021

S2110997

NO.
VANCOUVER REGISTRY



IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

MIRANDA MASSIE

PLAINTIFF

AND:

PROVINCIAL HEALTH SERVICES AUTHORITY

DEFENDANT

Brought pursuant to the *Class Proceedings Act*, R.S.B.C. 1996, c. 50

NOTICE OF CIVIL CLAIM

This action has been started by the plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the plaintiff,

- (a) if you reside in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,
- (b) if you reside in the United States of America, within 35 days after the date on which a copy of the filed notice of civil claim was served on you,
- (c) if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFF

Part 1: STATEMENT OF FACTS

The Parties

1. The proposed representative plaintiff, Miranda Massie, (“Massie”), is a resident of British Columbia and for the purposes of this action has an address for delivery of 2020-650 West Georgia Street, Vancouver, British Columbia.

2. The defendant, Provincial Health Services Authority (“PHSA”) is a society constituted under the *Societies Act*, SBC 2015 c 18. The Defendant provides healthcare services to British Columbians, including at BC Women's Hospital and Health Centre (“BCWH”). In this pleading, a reference to the Defendant includes its agents and employees. Brigitte Cleroux (“Cleroux”) is a person who worked at PHSA from June 1, 2020 to June 30, 2021.

3. The defendant, PHSA has an address for delivery care of British Columbia Women's Hospital and Health Care Centre, Provincial health Services Authority, Children and Women's Health Centre of British Columbia Branch, #700 – 1380 Burrard Street, Vancouver, British Columbia V6Z 2H3.

4. At all material times, Cleroux was employed by PHSA in the capacity as a registered nurse at BCWH when in fact she was not lawfully qualified as a nurse and had obtained her employment using falsified documentation and/or credentials which PHSA knew or should have known about.

5. PHSA failed to properly review Cleroux's credentials as a registered nurse and as a result hired her to work at BCWH where she had inappropriate and illegal contact with multitudes of vulnerable patients including Massie.

The Proposed Class

6. The plaintiff brings this action on her own behalf, and on behalf of a proposed class of individuals, consisting of:

All residents of Canada who were patients at BCWH and who received treatments directly or indirectly from Cleroux from June 1, 2020 to June 30, 2021 (the "Class" or the "Class Members").

Background

7. For many years prior to becoming employed at BCWH, Cleroux had an extensive history of using forged credentials to work illegally as a nurse. Much of this information is a matter of public record. All this information was readily available to PHSA had it exercised a reasonable level of diligence.

8. At all material times, PHSA, had the ability to determine that Cleroux was not a properly registered nurse if it had exercised a reasonable level of diligence before hiring

her, which included but was not limited to, confirming Cleroux's credentials with the British Columbia College of Nurses and Midwives. PHSA failed to do so.

9. Cleroux started working as a registered nurse with PHSA and BCWH on or about June 1, 2020 and continued until on or about June 30, 2021 when PHSA finally discovered she had falsified her credentials as a nurse and terminated Cleroux.

10. Prior to terminating Cleroux, PHSA knew or should have known that Cleroux was not competent to work as a registered nurse, regardless of her professional credentials, based on a demonstrated lack of competency and ethics when interacting with patients.

11. PHSA ignored complaints made against Cleroux relating to her competency and ethics and allowed her to continue working as a nurse.

12. As a result of her incompetence and lack of ethics, Cleroux caused damage and harm to many Class Members.

13. Every Class Member consented to treatment by Cleroux and did so on the representation that Cleroux was a registered nurse and as such every Class Member who received treatments from Cleroux did so without lawful consent and sustained a battery.

14. As a result of learning that Cleroux was not a registered nurse, many Class Members sustained mental distress and nervous shock all of which was foreseeable to PHSA.

15. At all material times, PHSA was vicariously liable for the actions of Cleroux who was employed by PHSA.

16. At all material times, PHSA owed a duty of care to Class Members to take reasonable steps to ensure that the nurses who treated them were properly licensed and reasonably competent.

The Plaintiff's Circumstances

17. On or about January 12, 2021, Massie attended BCWH to receive a gynecological surgery and Cleroux was assigned as her registered nurse who participated during the surgery ("Surgery").

18. At all material times BCWH represented to Massie that Cleroux was a properly licensed and registered nurse. On this basis Massie consented to receiving treatment from Cleroux.

19. Before, during and after the Surgery, Cleroux battered Massie by administering treatments to her in the absence of lawful consent.

Part 2: RELIEF SOUGHT

20. The plaintiff, on her own behalf and on behalf of the Class, claim against the defendant as follows:

(a) an order pursuant to the *Class Proceedings Act*, RSBC 1996, c. 50 certifying this action as a class proceeding and appointing the plaintiff as the named representative for the Class;

(b) a declaration that Cleroux committed the Tort of Battery on every Class Member that she treated and that PHSA is vicariously liable for the actions of Cleroux;

- (c) a declaration that PHSA owed the Class Members a duty of care to take reasonable steps to ensure that the nurses who treated them were properly licensed and reasonably competent and a further declaration that PHSA breached this duty of care by hiring Cleroux and allowing her to treat Class Members;
- (d) a declaration that PHSA committed the Tort of Negligence and is liable to the Class Members pursuant to the law of negligence;
- (e) damages for the plaintiff and the Class Members as a result of having been battered by Cleroux and/or the negligence of PHSA;
- (f) punitive damages;
- (g) an order pursuant to s. 29 of the *Class Proceedings Act*, RSBC 1996, c. 34, directing an aggregate assessment of damages;
- (h) the costs of administering and distributing an aggregate damage award;
- (i) pre-judgment and post-judgment interest pursuant to the *Court Order Interest Act*, RSBC 1996, c 79; and
- (j) such further and other relief as to this Honourable Court may seem just.

Part 3: LEGAL BASIS

Tort of Battery

21. Cleroux committed the Tort of Battery by administering treatments to Class Members without proper consent. Every Class Member that consented to treatment by Cleroux did so on the representation that Cleroux was a registered nurse and as such no class member issued proper consent. Every treatment that Cleroux administered to a Class Member constituted the Tort of Battery.

Tort of Negligence by PHSA

22. PHSA owed every Class Member a duty of care to take reasonable steps to ensure they were receiving treatment by properly licenced and reasonable competent nurses. PHSA breached this duty by failing to take reasonable steps to ascertain Cleroux's credentials before hiring her and for failing to respond to her gross incompetence and removing her from providing care to Class Members when PHSA knew or should have known she was incompetent.

Aggregate Damages

23. The damages sought by the plaintiff above can be calculated on an aggregate basis for the Class, as provided by s. 29 of the *Class Proceedings Act*, RSBC 1996, c. 50.

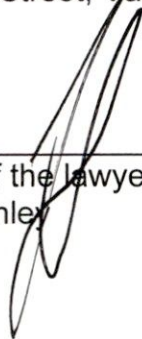
Punitive Damages

24. The plaintiff pleads that PHSA's conduct in unlawfully allowing Cleroux to treat vulnerable Class Members and failing to respond appropriately to complaints made against Cleroux, and exposing the public to an unlicensed and unqualified health care professional was outrageous, reckless, wanton, without care, callous, and a disregard of the rights of the Class and an affront to community standards. Such conduct renders PHSA liable to pay punitive damages.

Plaintiff's address for service: **Murphy Battista LLP**
#2020 – 650 West Georgia Street
Vancouver, BC V6B 4N7

Fax number for service (604) 683-5084
Place of trial: Vancouver, British Columbia
The address of the registry is: 800 Smithe Street, Vancouver, British Columbia, V6Z
2E1

Dated: December 16, 2021



Signature of the lawyer for the plaintiff
J. Scott Stanley

Rule 7-1(1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the Court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
- (a) Prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) service the list on all parties of record.

APPENDIX

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

PHSA allowed Cleroux to work at BCWH as an unlicensed nurse where she committed batteries on patients and otherwise caused them harm and loss. PHSA is vicariously liable for the actions of Cleroux. PHSA is negligent for allowing Cleroux to work at BCWH and is liable to the Class in negligence.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- a motor vehicle accident
- medical malpractice
- another cause

A dispute concerning:

- contaminated sites
- construction defects
- real property (real estate)
- personal property
- the provision of goods or services or other general commercial matters
- investment losses
- the lending of money
- an employment relationship
- a will or other issues concerning the probate of an estate
- a matter not listed here

Part 3: THIS CLAIM INVOLVES:

- a class action
- maritime law
- aboriginal law
- constitutional law
- conflict of laws
- none of the above
- do not know

Part 4:

1. *Class Proceeding Act*, RSBC 1996, c. 50; and
2. *Competition Act*, RSC 1985, c. C-34.