

UPDATES FROM THE MASSACHUSETTS COURTS

Supreme Judicial Court Declines to Hold Employer Responsible for Later Acts of Former Employee

Recently, Sloane and Walsh Senior Trial Attorney Gail Ryan successfully argued before the SJC that a MA hospital owed no cognizable duty of care to the future patients of a doctor who had left the hospital's employ to practice in a different hospital in a separate state. The case is *Roe v. Children's Hospital Medical Center*, No. SJC-11533 (Mass. Oct. 1, 2014).

The plaintiffs were former pediatric patients of Dr. Melvin Levine at the University of North Carolina School of Medicine ("UNC"). Dr. Levine had worked for defendant, Children's Hospital Medical Center ("Children's Hospital"), from 1966 to 1985, at which point he relocated to North Carolina and began his practice at UNC. The plaintiffs alleged that Children's Hospital failed to take adequate steps to protect them from abuses allegedly perpetrated by Dr. Levine during his tenure at UNC. Specifically, the plaintiffs claimed that the defendant was aware of

claims of abuse brought against Dr. Levine during his time at Children's Hospital, yet failed to report these claims to UNC or to the proper licensing authorities.¹

Absent any "special relationship" between Children's Hospital and either the plaintiffs or Dr. Levine, the SJC declined to impose a duty on Children's Hospital "to prevent the future behavior of a former employee, with respect to unknown customers and clients of unknown future employers." While recognizing that medical providers may owe a greater duty to protect vulnerable patients than typical employers, the court held that "the geographic and temporal breadth of the duty the plaintiffs [sought] to impose reache[d] too far, and would potentially expose the employer to liability to an essentially limitless class of unknown parties for acts committed long after the employer had any ability to supervise, monitor, or discipline the former employee's conduct."

¹ Children's Hospital disputed the existence of any claims of abuse during Dr. Levine's employment with the hospital, though the SJC treated these factual allegations as true for the purposes of their review. All other claims of abuse against Dr. Levine were brought after he had left the employ of Children's Hospital.

The courts do recognize that the existence of a "special relationship" may create a duty for one person to prevent another from causing "foreseeable harm to a foreseeable class of plaintiffs." However, no such relationship existed here between Children's Hospital and Dr. Levine once his employment ended, nor between Children's Hospital and the "unlimited and unknowable number of people" that could become patients of Dr. Levine under his future employers.

Additionally, plaintiff's argued that the standards of the medical community, the "community consensus" evidenced by various mandatory-reporter laws, and the interest of public policy all support the imposition of a duty on Children's Hospital to potential future patients of its former employees. The SJC, however, disagreed. Though the court acknowledged that the public has a strong interest in protecting children from abuse, this interest does not "create a duty to protect potential future plaintiffs in other states, or require Children's Hospital affirmatively to alert prospective employers that Levine had been accused of sexual abuse."

Accordingly, the SJC affirmed the Superior Court's dismissal for failure to state a claim on which relief may be given.

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Court Finds Insufficient Control to Hold General Contractor Liable for Job-Site Injury



In *Yepes v. C.H. Newton Builders, Inc.*, No. 2012-01823 (Mass. Super. Sep. 4, 2014), the Superior Court granted summary judgment to a general contractor and its site supervisors, declining to hold them liable for injuries to an employee whose company was hired under a separate contract by the property owner.

There, the plaintiff's employer, New England Architectural Finishing Company, LLC ("NEAF"), was hired by the property owner to refinish woodwork in the home. Roughly five months later, the owner hired defendant C.H. Newton Builders, Inc. ("C.H. Newton") as general contractor for extensive renovations to the home. C.H. Newton subcontracted with defendant

Classic Structures Contracting, and its employee, defendant C. Edward Gugler, to act as site supervisors. When plaintiff sustained injuries after falling from scaffolding on the site, he sought to hold defendants liable for failing to adequately supervise and monitor the job-site safety.

The court concluded that defendants owed no contractual duty of care to plaintiff. In C.H. Newton's contract, the owner clearly reserved the right to award separate contracts in connection with the home renovation, in which case the owner or separate contractor would be liable for the work and safety of the contractor's employees. Additionally, the court dismissed plaintiff's argument that 454 Code Mass. Regs. § 10.03(9) imposed a duty on the defendants to ensure plaintiff's safety on the site. Though § 10.03(9) creates for an employer a nondelegable duty of care for its employees' safety, the plaintiff was not an employee of any of the defendants and, therefore, the regulation was inapplicable.

Finally, the court considered whether the defendants retained control of plaintiff's or NEAF's work such that they assumed a duty of care for plaintiff's safety. The SJC has held that one who hires an independent contractor but retains control over the contractor's work may owe that contractor's employees a duty of reasonable care in

ensuring their safety. See *Corsetti v. Stone Co.*, 396 Mass. 1, 10 (1985). Here, however, the court emphasized that this control must rise above general rights to inspect, make recommendations or set schedules; rather, the general contractor must retain the right to control the methods by which the work is performed. Though the matter of control is generally an issue of fact for the jury, the court concluded that the undisputed facts showed that the defendants neither could, nor in fact did, control the manner in which NEAF or the plaintiff's work was performed.

Absent the showing of any duty to the plaintiff, the defendants' motions for summary judgment were granted.

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