

HONG KONG / JUDGMENT

KE PEI KEN v. EASTERN PACIFIC CIRCUITS (HK) LTD

COURT

District Court

DECIDED

12 September 2007

CASE / FILE NUMBER

DCPI1283/2005

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bjbj DCPI 1283/ 2005 IN THE DISTRICT COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE
REGION PERSONAL INJURIES ACTION NO. 1283 OF 2005

BETWEEN KE PEI KEN Plaintiff and EASTERN PACIFIC CIRCUITS (HK) LIMITED Defendant

Coram: Deputy District Judge Abu B. bin Wahab in Court Date of Hearing: 5, 6, 26, 27, 28 March,
27 April and 8 June 2007 Date of Decision: 12 September 2007

JUDGMENT

The Plaintiff claims damages for personal injuries suffered when working for the Defendant. The Plaintiff himself gave evidence. He called no other witnesses. The Defendant called as its only witness a Mr. Lau, Supervisor of the Plaintiff. Mr. Lau has no personal knowledge of what happened to the Plaintiff that material day. I dismiss the Plaintiff's claim. I make an order nisi that (save for costs already provided for) the Plaintiff is to pay the Defendant's costs with certificate for Counsel, such costs are to be taxed if not agreed. The Plaintiff is on legal aid. His own costs will be taxed in accordance with legal aid regulations. I state in paragraphs 4 to 9 below certain findings of fact. They do not seem to involve matters in dispute. The Defendant employed the Plaintiff as an operator at its premises in Tseung Kwan O Industrial Estate. The Plaintiff had been so employed for about 2 years up to the material date. The Plaintiff worked on circuit boards. His duties included manually using a 4-wheeled trolley to transport shelves of circuit boards from cabinets to his workstation for further processing. The tabletop of the trolley had 2 embedded sets of rollers running its depth, one on the left hand side and one on the right. There was a bracket all the way along the outer edge of the rollers. The bracket provided some sort of

roof or lid over the rollers (the Roof). There was vertical space between the Roof and the rollers. The cabinet had an open tabletop. Like the trolley, the tabletop had 2 embedded sets of rollers running its depth on each side with an overhanging bracket alongside. There was some vertical space between that part of the bracket forming the roof or lid (the Lid) and the rollers. The shelf that held the circuit boards had been described as L-shaped (looking at it from the side). It operated like a drawer on the cabinet tabletop it could be pulled out along the top of the cabinet. The body of the shelf would be between the 2 sets of rollers/ brackets. The bottom of the shelf was broader and would rest on the rollers in the vertical space between the rollers and the Lid. Someone else (apart from the Plaintiff) would load circuit boards onto the shelf. The shelf had 2 handholds, one on each side.

9. The trolley and the cabinet were about 3 feet high. To effect smooth transfer of the shelf of circuit boards from the cabinet to the trolley, the top surfaces of cabinet and trolley had to be level with one another. The trolley had to be pushed up against the cabinet. The sets of rollers for the trolley and those for the cabinet had to be aligned. Whoever tasked to transfer the shelf of circuit boards from cabinet to trolley would face the shelf across the trolley and pull the shelf to run along the rollers (of first, the cabinet and then the trolley).
10. A picture paints a thousand words. Photographs of cabinets, shelves and trolleys can be found in Hearing Bundle E pages 1 to 3. In particular, Photograph 1 shows 3 cabinets with shelves on them. Photograph 2 is a photograph of the cabinets and shelves taken from the side. Photograph 3 shows a trolley. Photographs 4 and 5 show a worker pulling a shelf of circuit boards from a cabinet onto a trolley. The Defendant asked a worker to demonstrate the process of transferring from cabinet to trolley. The demonstration was recorded onto a Video Compact Disc (the VCD) found in Hearing Bundle E page 4. The 1st segment of the VCD showed, inter alia, the rather limited vertical space between the rollers and the Lid or the Roof. (It is not clear whether any of the images in the photographs above referred to or in the VCD show the shelf, cabinet or trolley dealt with by the Plaintiff on the material date. The Plaintiff said that most of the cabinets at the Defendant were of the same size as shown Photograph 4. I proceed on the basis that the shelf, cabinet and trolley relevant to this case are materially about the same as those shown in the photographs and the VCD. Indeed, no one ever suggested to the contrary.)
11. Plaintiff s case On 26 September 2002 at about 1p.m., the Plaintiff went about his duties in transferring a shelf of circuit boards from cabinet to trolley. In the course of this, the Plaintiff sprained his back. This injury adversely affected his use of the left leg.
12. It is the Plaintiff s case that the top surface of the cabinet was about inch lower than that of the trolley. In order to transfer the shelf of circuit boards which weighed some 100 pounds, the Plaintiff tried to lift the shelf from the cabinet to put it onto the higher surface of the trolley. There was a sound, the Plaintiff felt great pain, he sweated all over and could not move. He waited 10 odd minutes before he could walk slowly. He rested. He completed the transfer. He went to the hospital that afternoon at about 3 p.m.

13. The Plaintiff alleged liability on various bases including negligence, breach of contract of employment and occupier's liability. No matter what the pleadings say, the quintessence of the Plaintiff's case is that the Defendant failed to take reasonable care. As I understood it, the keystone in the Plaintiff's case is the allegation that the cabinet was at a level lower than that of the trolley. This was due to the wear and tear of the footpads of the cabinet or that of the ball-bearings of its rollers.
14. Matters considered The Plaintiff's version was that he hurt himself on lifting the shelf. It appealed to be a nasty injury (see paragraph 12 above). Why did he, after resting, continue to work to complete the transfer? The Plaintiff explained that he did it out of a sense of responsibility. I do not believe him. I do not think that if he had been injured in the circumstances and to the extent he told me he would return to undertake the same dangerous task.
15. The tenor of the Plaintiff's evidence was that he got hurt immediately on lifting the shelf. It seemed improbable that he succeeded in moving the shelf onto the trolley to any extent. Indeed, one would expect him to have said so if he really did succeed. It therefore appeared that the Plaintiff returned to the cabinet and again lifted the shelf but this time without any mishap! I find this incredible.
16. The Plaintiff explained why he did not go to the hospital immediately. He said he did not have enough money on him. Hence, he waited a few hours till he could take advantage of (free) company transport to Kwun Tong before taking a taxi to United Christian Hospital. I understood the Plaintiff to mean that he could not afford taking a taxi direct from his workplace to hospital. I do not believe the Plaintiff. He could easily have called for an ambulance. In all probabilities, he could have sought the assistance, financial or otherwise, of his colleagues. There was not a scintilla of evidence that he ever attempted to seek such assistance.
17. The Plaintiff said that either there was no regular maintenance check on equipment at the workplace or that he was not clear whether there was such. The Defendant maintained a sizeable operation at the workplace. I accept DW1's evidence (see also paragraphs 18 to 22 below) of there being a maintenance department that regularly checked on equipment every 2 to 3 months. The Plaintiff had been working there for about 2 years. He must have been aware of such regular checks. I consider that the Plaintiff was merely trying to ham up his case against the Defendant for defective equipment.
18. I accept the evidence of DW1. I was particularly impressed when he unhesitatingly agreed that a) it was possible for the tabletop of the cabinet to be at a level lower than it should be due to the wearing away of its legs/ stand; b) the ball-bearings of the rollers of the cabinet might become worn and thus the rollers would be at a lowered level and c) the wheels of the trolleys might become worn and thus the tabletop of the trolleys would be lower. The first 2 points formed the gravamen of the Plaintiff's case. I was also impressed when DW1 agreed that the correct way to pull/ transfer shelves from cabinet to trolley was to use 2 hands and

not one as done by the worker in the VCD.

19. DW1 had been working with the Defendant for some 22 years. He started when the Defendant was known by another name. As Supervisor, DW1 would oversee the work of the workers and patrol the work-place. I understood that it was also his duty to make sure that all equipment was functioning properly. Although he was Supervisor, DW1 would actually perform some of the tasks of the workers. He would assist by transferring shelves of circuit boards from cabinets onto trolleys. He would do this 6 to 7 times a day.
20. DW1 did not witness what happened to the Plaintiff. He learned about the incident later. He said he had never heard of anything like that (alleged by the Plaintiff) happening to a worker. Regarding the different pads for the legs of cabinets, he said that they were like that when he took charge of the cabinets in around 1997 or 1998. I took it from DW1 that he had never heard of a cabinet (regardless of whatever footpads it had) being at a level lower than that of a trolley. DW1 told me that he had not seen a cabinet lower than a trolley with the resultant need to lift the shelf of circuit boards onto the trolley. DW1 also said that he had not come across the situation where the ball-bearings of rollers for the cabinet had become so worn out that the rollers were lowered (although he agreed if there was such wearing out, the rollers would become thus). I consider that if, for whatever reason, a cabinet had become lower than a trolley or rollers had become sunk, DW1 would have had knowledge of it. Based on DW1's evidence, I am satisfied that at all material times there was no cabinet lower than a trolley or with sunken rollers. I reject the Plaintiff's case on these vital aspects.
21. DW1 said that the Lid would prevent the shelf from being lifted about inch as alleged by the Plaintiff. As I understood DW1, his evidence was that though the bottom part of the shelf might occupy the vertical space between the Roof and rollers of the cabinet, there was still a little bit of leeway. This was necessary otherwise the shelf would not be able to slide out. The leeway, however, did not permit the lifting of the shelf by inch. His experience with the equipment and the transfer process told him so much. Counsel for the Plaintiff pointed out that DW1 said he had never come across or had the experience of any worker lifting a shelf on the cabinet by about inch. DW1's evidence must not be taken out of context. I think this part of his evidence must mean that it was impossible to so lift the shelf and DW1 had never even heard of it being done. I find that the Plaintiff could not have lifted the shelf by about inch.
22. DW1's evidence included saying that if the trolley had been lower than the cabinet, then it might still be possible to transfer the shelf (but not when the cabinet was at a lower level). I consider what DW1 meant was that since the trolley was at a lower level, the shelf would just drop (by its weight) to the level of the trolley and, provided always that the Roof did not get in the way, transfer would be possible. However, if the cabinet were at a lower level, the weight of the shelf (with its load of circuit boards) would be too heavy to be lifted (this was without regard yet to the consideration of the sufficiency or otherwise of leeway between rollers and Lid).

23. Some attention was directed during trial to the training the Plaintiff received from the Defendant. One must bear in mind that the training relevant to this case is that concerning the transfer of shelf from cabinet to trolley. On this, I think minimal (if not nil) training or instruction is required. The process appealed as requiring nothing more than the use of common sense. Indeed, the Plaintiff himself said that everyone knew what was the safe posture to adopt (in the shelf transfer process) and that one could see (without any training) the need to align rollers of the cabinet with rollers of the trolley. In any event, the Plaintiff stated that for his 1st week of employment, he was assigned to follow and observe how a colleague worked. I also accept DW1's evidence that foremen would instruct as and when necessary. I do not think that the Defendant can be said to have failed in its duty to instruct or train the Plaintiff in the transfer of shelves.
24. In the 1st segment of the VCD, there was what the Plaintiff and his Counsel described as a jerking motion. This appeared to be what happened when the shelf was pulled out and hit the trolley viz. the trolley separated a bit from the cabinet. The Plaintiff went on to say that the jerking motion was due to the cabinet (seen in the VCD) being at a level lower than that of the trolley. One cannot see clearly this difference of levels from the VCD. For all we know, the separation of trolley from cabinet could have been due to mal-alignment of the two with the result that the emerging shelf hit one of the brackets on the trolley. Suffice to say I do not find this jerking motion in the VCD helpful in this case.
25. I find the Plaintiff disingenuous. In particular, I do not believe his evidence as to how and to what extent he was injured the afternoon in question. As indicated, I accept the evidence of DW1. For the reasons herein, I make the orders stated in paragraph 2 above.
26. In assessing damages, the Court relies to a large extent on the evidence of the Plaintiff - how he was injured, the extent of injury and the effect of those injuries on him. I have already found the Plaintiff not worthy of credence. I see no point in proceeding to assess damages. (Abu B. bin Wahab) Deputy FORMTEXT District Judge Representation: Mr. C. Y. Li instructed by Messrs. Au Yeung, Cheng, Ho & Tin for Plaintiff Miss Joanna Molloy instructed by Messrs. W. H. Chik & Co. for Defendant PAGE - PAGE A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V A B C D E F G H I J K L M N O P Q R S T U V &`#\$@\\Hc-oa-ws-656\\HP LaserJet 1200 Series PCL 6 Ne00: winspool HP LaserJet 1200 Series PCL 6 \\Hc-oa-ws-656\\HP LaserJet 1200 Letter HP LaserJet 1200 Series PCL 6 Hjc)b 97wfj B]gT)Yn@{i9Z -9]pVvr) \\Hc-oa-ws-656\\HP LaserJet 1200 Letter HP LaserJet 1200 Series PCL 6 Hjc)b 97wfj B]gT)Yn@{i9Z -9]pVvr) Normal.dot setup Microsoft Word 9.0 Title Microsoft Word Document MSWordDoc Word.Document.8

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Prepared on 26 October 2026 · Esheria