

HONG KONG / JUDGMENT

LI MEI YUNG v. EASTERN PACIFIC CIRCUITS (HK) LTD

COURT

Court of Appeal

DECIDED

8 May 2007

CASE / FILE NUMBER

CACV9/2007

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bjbj SEQ CHAPTER \h \r 1 CACV9/2007 IN THE HIGH COURT OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION COURT OF APPEAL CIVIL APPEAL No. 9 of 2007 (ON APPEAL FROM DCPI No. 1683 of 2005)

BETWEEN: LI MEI YUNG Plaintiff (Appellant) and EASTERN PACIFIC CIRCUITS (HK) LIMITED (formerly known as WONG S CIRCUITS (HK) LIMITED) Defendant (Respondent) Before: Hon. Yuen JA in Chambers (open to the public) Date of hearing and decision: 8 May 2007

DECISION

Hon. Yuen JA: This is an application by the Defendant for security for costs of an appeal. In the action, the Plaintiff sued the Defendant (who was her employer) for common law damages for personal injuries suffered when she took out some circuit boards from a lift at her place of work. Judge C.B. Chan gave judgment for the Plaintiff in respect of liability but quantified her damages at a total sum of \$192,515.06 only. As the Defendant had already paid the Plaintiff employees compensation in the sum of \$229,786.01, the Plaintiff's common law claim was dismissed and the judge further ordered that she pay the costs of the action to the Defendant. The Plaintiff has lodged an appeal, the judge having given leave on 2 January 2007. Application for security for costs of appeal This gave rise to the Defendant's application for security for costs of the appeal in the sum of \$200,000 on the ground of the Plaintiff's impecuniosity under Order 59 rule 10(5) of the Rules of the High Court. Principles The relevant principles governing applications for security for costs of an appeal have been summarized by the Court of Appeal in *Chung Kau v Hong Kong Housing Authority and others* [2004] 2 HKLRD 650 and in determining this application, I would apply those principles. Plaintiff's impecuniosity The first matter to be examined was whether the Defendant has shown that the Plaintiff is impecunious. The

Defendant relied upon the fact that the Plaintiff was given legal aid at the trial below. Moreover, in the Plaintiff's affirmation filed on 1 March 2007 in opposition to this summons, the Plaintiff has in para. 6 acknowledged that she was impecunious. So it is clear that if the Plaintiff were to fail on appeal, it is unlikely that the Defendant would be able to recover its costs of the appeal. Merits of the Plaintiff's appeal The next stage is to consider the merits of the Plaintiff's appeal. The Plaintiff has already had her day in court. The trial took 2 days. The Plaintiff has had judgment given in her favour but for a smaller amount than what she sought. She now wishes to appeal against that finding. The Defendant having demonstrated that it would be unlikely to recover the costs of the appeal from her, it is for the Plaintiff to demonstrate countervailing factors which would militate against an order for security being made. Has the Plaintiff shown that she has such strong merits on appeal that the court should exercise its discretion not to order security? I have considered the grounds of appeal set out in the Notice of Appeal. I consider that the Plaintiff's case is not that strong that I should exercise my discretion against security for costs. Although the judge gave leave to appeal, it is clear from the judgment that there was evidence (both expert medical evidence and video evidence) on which the judge was entitled to come to the conclusion that the Plaintiff's case on the extent of her injuries was exaggerated. At this hearing, the Plaintiff alleged that the VCDs had been shown to the court without any opportunity for her to explain the actions as shown in it. However the Court file confirms what Mr Leung, the Defendant's solicitor says, that the VCDs and surveillance reports had been disclosed in the process of discovery to the Plaintiff's solicitors on 15 August 2006, about a month before the trial. The judge's findings are findings of fact not law, and it is well-established that an appellate court would be very slow to interfere with findings of primary fact (see e.g. the Court of Final Appeal's judgment in *Ting Kwok Keung v Tam Dick Yuen* [2002] 1 HKC 601). Estimate of costs As for the estimate of costs, I consider that a sum of \$120,000 would be a reasonable estimate of the costs involved. Order I would therefore order that the Plaintiff do within 28 days pay \$120,000 into Court as security for the costs of and occasioned by her appeal, and that until such security is given, the appeal be stayed, and that in default of the security being furnished within the 28 days, the appeal stand dismissed without further notice or order, with costs of the appeal to be taxed if not agreed and paid by the Plaintiff to the Defendant. The Defendant having previously sought security for costs in correspondence and the Plaintiff not having offered any sum, and having heard submissions on costs, I would order that the Plaintiff pay the costs of the summons for security for costs. (MARIA YUEN) Justice of Appeal The Plaintiff (Appellant) in person, present. Mr Peter Leung of WH Chik & Co for the Defendant (Respondent). - PAGE - - PAGE - - PAGE - @\\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 Judiciary Hong Kong Title Microsoft Word Document MSWordDoc Word.Document.8

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