Servicing heavy photocopiers

Williams v Remington Pty Ltd
Unreported Supreme Court at Queensland, Rockhampton, 23 September 1998.
John Costello, Rockhampton.

John Costello

The Plaintiff was a 30 year old service technician in the employment of the Defendant who alleged that he injured himself during the course of employment on 17 February 1994. The Defendant had previously supplied a number of Selex 7080 photocopiers to Queensland Alumina Limited. One of the machines required servicing and the Plaintiff was directed to perform a task. He had previously attended at the premises of Queensland Alumina Limited to perform similar tasks on this machine. On some occasions, he had been able to ask for and obtain the assistance of an employee of Queensland Alumina Limited to move the machine.

On this occasion, the machine in question had been placed about four inches from the wall and the rear cover, which had to be removed, faced the wall. On 17 February 1994, Mr Williams arrived at Queensland Alumina Limited at about one o'clock in the afternoon but was unable to find any assistance in moving the photocopier. He set about moving the machine himself and felt a sharp pain in his lower back.

The Selex 7080 was a large photocopier. It weighed 195kg. It was fitted with four casters for movement. In addition, on 14 February 1994 the machine had fitted to it a sorter which weighed 40kg. The machine had a capacity to hold 11kg of copying paper so that on the day, its total weight was up to approximately 246kg. Significantly, the sorter was also fitted with wheels but these were fixed to travel along the line of the machine, that is, parallel to the walls. Consequently to pull the machine from the wall, these wheels had to be dragged across the floor. Mr Williams weighed about 57 or 58kg at the time. He placed his hands on the left hand side of the machine near the sorter, his left foot up against the wall and his right hip up against the sorter. Using most of his strength as well as his weight, he dragged the machine outwards until it was about a foot from the wall. He then placed himself behind the machine with his buttocks against the wall. He put his two hands on the machine about a foot apart. Again using most of his strength, he pushed the machine. He turned it as he moved it until it was at an angle of about forty-five degrees to the wall at this point, he felt a sharp stabbing pain across his back and into his buttocks.

The critical issue in this case was whether there was a foreseeable risk of injury in the task Mr Williams was given. He had been given no training about the best method of doing the task. He had been given no training and how to recognise the risk factors in a task. There was no possibility of providing him with a permanent assistant. If he needed help, he was under no illusion that he was expected to seek that from the staff of Queensland Alumina Limited. Certainly, the Defendant had not made any effort to provide the kind of instruction and supervision that is expected of employers. Nonetheless, the Defendant contested the action on the basis that there was no foreseeable risk of injury in the task Mr Williams was given.

In gathering its evidence to present this case, the Defendant engaged an expert who carried out some tests on a Canon Photocopier which weighed only 75kg and which was mounted on casters. At the premises of Queensland Alumina Limited the Selex 7080 rested on vinyl tiles. The Plaintiff also engaged the services of an expert who tested an equivalent photocopier to the Selex 7080. However this machine rested on a steel trowelled finished concrete and not vinyl which was the service upon the Selex 7080 rested on the day in question. Perhaps of more significance, the Plaintiff's expert expressed the opinion that because of the asymmetry of the pull and the consequential torsional loads on the spine, the likelihood of damage to the Plaintiff would be relatively high.

In this case the critical factor was the awkwardness of the first pull and the developing asymmetry of the push. It was very likely that as the Plaintiff pulled the machine out, his shoulder would twist and so place torsional stress on his spine. It was also likely that the way he had placed his hip and foot would keep his pelvis in a fixed position. This would mean there would be considerable torsional forces exerted in the lumbar spine.

The essential problem was that the Defendant really had no idea of the forces to which in performing the task that required him to perform. The court was satisfied that there was a foreseeable risk of injury to the Plaintiff, a man who weighed about 57 or 58kg in requiring him to move on his own the Selex 7080 weighing over 240kg where it was placed in the premises of Queensland Alumina Limited. In those circumstances, the Defendant had the duty to provide adequate instruction on the way to identify risks and ways to avoid the risks. In failing to do this, the Defendant was negligent. As a result of this the Plaintiff was injured and the Defendant was liable in damages. There was no basis for finding a contributory negligence.

The Plaintiff's injury consisted of an acute lower lumbar intervertebral disk protrusion at L4/5. The Plaintiff was assessed as having a disability at 20% impairment of the whole person and with a spinal fusion procedure this would reduce to 15%. Clearly, the Plaintiff was unfit for full-time work. The court assessed future economic loss on the basis of a weekly loss of $280 for thirty years. That loss of economic capacity was assessed at $230,000.

Queensland practitioners might note, that in cases where there is reasonable argument that a Plaintiff is commercially

unemployable as a consequence of a Defendant's negligence, the cases mentioned below may be of some assistance:-

1. *Thomas v O'Shea* (1989) Aust Torts Reports 80-251 at p68,701 the following passage appears:-

"The legal onus of proof of loss of earning capacity rests, of course, on the plaintiff, but once the plaintiff has proved that he has lost his pre-accident earning capacity and has been unable to find alternative employment, or that his condition has prevented him finding alternative employment, an evidentiary burden is cast on the defendant to show what alternative employment opportunities were open, including the state of the labour market and the likely earnings: *Arthur Robinson (Grafton) Pty Ltd* at p. 657 per Barwick C.J.; *Van Velzen v Wagener* (1975) 10 S.A.S.R. 549 at P. 550 per Bray C.J.; and Linsell v Robson (1976) 1 N.S.W.L.R. 249 at pp. 253-254 per Hutler J.A.; and at pp. 254-255 per Glass J.A. In *Baird v Roberts* (1977) 2 N.S.W.L.R 389 it was held that a defendant who seeks to show that the plaintiff can still do "light work" or follow a "sedentary" occupation must adduce evidence that the plaintiff is able to do such work and to obtain it and what the earnings from it would be."

Thomas was considered by Justice White in Bruhn v Power Hotels Pty Ltd (unreported) Supreme Court of Queensland 19 July 1993. Of particular significance in that case, Her Honour followed *Francis v Mayes & Anor* unreported decision of Justice Moynihan J of 22 March 1993 wherein His Honour concluded that where it can be said that there are some tasks which a plaintiff could carry out or which he could be trained to carry out and which would provide him with an opportunity for remuneration, that kind of capacity does not tend to make such a plaintiff commercially employable and unless there is significant evidence bearing upon issues of employment opportunities and likely earnings, such a plaintiff ought to be assessed as hiving had his earning capacity destroyed for all intents and purposes. (see pp. 19 and 20) ■

John Costello is a Barrister and can be contacted on **phone** (07) 4922 2640 or **fax** (07) 4922 7387.

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Thanks to Roland Everingham

from Peter Carter

At the recent Annual General Meeting of APLA, the outgoing National Secretary, Roland Everingham, did not seek re-election.

Great thanks must be given to Roland for his dedicated work as National Secretary for five years since 1993. Roland has played a major role in many of the decisions and directions of the association in this time. The membership and staff greatly appreciate Roland's contributions to APLA in its formative years.