

FSM SUPREME COURT TRIAL DIVISION

MANUELA ROOSEVELT,)	CIVIL ACTION NO. 2008-1112
)	
Plaintiff,)	
)	
vs.)	
)	
TRUK ISLAND DEVELOPERS and MYRON)	
HASIGUCHI,)	
)	
Defendants.)	
_____)	

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Ready E. Johnny
Associate Justice

Trial: June 22-23, September 28-29, 2010
Decided: October 11, 2010

APPEARANCES:

For the Plaintiff:	Sabino Asor, Esq. P.O. Box 95 Weno, Chuuk FM 96942
For the Defendants:	Stephen V. Finnen, Esq. P.O. Box 1450 Kolonias, Pohnpei FM 96941

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HEADNOTES

Employer-Employee; Torts – Duty of Care

An employer has a duty to exercise ordinary or reasonable care commensurate with the nature of the business to protect the employee from the hazards incident to it, and the employer is bound to exercise this degree of diligence in providing his employee with a safe working place. Duty of care is one of the four elements of a negligence cause of action. Roosevelt v. Truk Island Developers, 17 FSM Intrm. 264, 265-66 (Chk. 2010).

Employer-Employee; Torts – Wrongful Death

When the employer instructed the employees to use safe procedures such as pulling rebars out (or inserting them) from the oceanside and not the roadside and when the employer provided its employees with a safe working place and did not knowingly permit unsafe procedures to be used, it did not breach its duty of care to its employees. Accordingly, since the plaintiff has failed to prove this essential element of a wrongful death claim, she cannot prevail. Roosevelt v. Truk Island Developers, 17 FSM Intrm. 264, 266 (Chk. 2010).

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COURT'S OPINION

READY E. JOHNNY, Associate Justice:

The plaintiff, Manuela Roosevelt, presented her case-in-chief on June 22-23, 2010. On June 23, 2010, the defendants moved to dismiss the case on the ground that the plaintiff had not shown any right to relief. That motion was denied on August 4, 2010. Roosevelt v. Truk Island Developers, 17 FSM Intrm. 207 (Chk. 2010). Trial resumed on September 28, 2010 and concluded on September 29, 2010. Based upon their testimony and the evidence admitted, the court makes the following

FINDINGS OF FACT.

Defendant Truk Island Developers, owned by defendant Myron Hasiguchi, employed Tekson Ludwig, a thirty-year old male, as a laborer on the construction of the Chuuk Small Business Development Center, a project the defendants had been hired to complete. They had not been involved in the project's design or location. Nor had they been the original contractor on the job, but had been the winning bidder when the project had been re-bid after the original contractor had failed to complete more than the first floor. To finish the job within the time specified by the contract, the defendants often had their employees work overtime.

The defendants had provided their workers with safety boots, hard hat, and, on occasion, safety gloves for use while performing their duties. The workers had also been instructed to take certain safety measures. These included instruction that when inserting or removing rebars, the rebars were to be put in from or pulled out toward the oceanside of the building, and not put in from or pulled out toward the roadside of the building.

The Chuuk Public Utility electrical wires run alongside the road close to the Chuuk Small Business Development Center site. Due to frequent power outages during the day, those wires often were not live – did not have electricity running through them. Some sort of insulators could have been put on those wires but not were available on Chuuk. Nor had any ever been available on Chuuk and it was unclear who (CPUC or the defendants) would have been responsible for their acquisition, cost, and installation. Also unknown was whether insulators could have been acquired in time for use on Small Business Development Center job.

Sometime after 6:00 p.m. on November 12, 2008, the project inspector determined that some rebars had been improperly laid six inches apart on the second floor and had to be removed and reinserted at the required four-inch spacing. A supervisor ordered that the changes be made. Tekson Ludwig removed one rebar by pulling it toward the roadside of the building. When he did so, the rebar touched the CPUC power lines, which were live. Tekson Ludwig was electrocuted and fell one story to the ground. He died shortly thereafter.

If Tekson Ludwig had removed the rebar by pulling it toward the oceanside, he would not have been injured.

Based on these findings the court makes the following

CONCLUSIONS OF LAW.

An employer has a duty to exercise ordinary or reasonable care commensurate with the nature

of the business to protect the employee from the hazards incident to it, and the employer is bound to exercise this degree of diligence in providing his employee with a safe working place. Amayo v. MJ Co., 10 FSM Intrm. 244, 250 (Pon. 2001). Duty of care is one of the four elements of a negligence cause of action. See Kileto v. Chuuk, 15 FSM Intrm. 16, 17 (Chk. S. Ct. App. 2007) (elements of actionable negligence are the breach of a duty of care on the part of one person to protect another from injury, and that breach is the proximate cause of an injury to the person to whom the duty is owed). The plaintiff's wrongful death claim is based on the employer's alleged breach of its duty of care to provide a safe workplace. Under the circumstances, the defendants did not breach their duty of care by failing to provide insulators for the CPUC electrical wires.

In Fabian v. Ting Hong Oceanic Enterprises, 8 FSM Intrm. 63, 65 (Chk. 1997), the court held that when an employer is aware that unsafe procedures are being used and safe procedures are possible but the employer does not demand them, the employer breaches its duty of care toward its employees. That is not this case. In this case, the employer instructed the employees to use safe procedures such as pulling rebars out (or inserting them) from the oceanside and not the roadside.

Thus, since Tekson Ludwig's employer provided its employees with a safe working place and did not knowingly permit unsafe procedures to be used, it did not breach its duty of care to its employees. Accordingly, since the plaintiff has failed to prove an essential element of her wrongful death claim, she cannot prevail.

The clerk shall therefor enter judgment for the defendants. Costs are to be borne by the parties.

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FSM SUPREME COURT TRIAL DIVISION

FSM DEVELOPMENT BANK,)	CIVIL ACTION NO. 2002-004
)	
Plaintiff,)	
)	
vs.)	
)	
YALMER HELGENBERGER and)	
MARILYN HELGENBERGER,)	
)	
Defendants.)	
_____)	

ORDER DENYING STAY

Ready E. Johnny
Associate Justice

Decided: October 13, 2010

APPEARANCES:

For the Plaintiff:	Michael J. Sipos, Esq. P.O. Box 2069 Kolonias, Pohnpei FM 96941
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