

Introduction:

On 15 March 2005 at 10:30 AM an Examination for Discovery of Defendant Rajbir Singh was conducted at the office of Rosenberger & Weir, Certified Court Reporters.

During the course of the examination, Defendant Rajbir Singh exposed the details which are necessary to understand the cause of the Incident which is responsible for injuring the Plaintiff, Louis Kakoutis, on June 30, 2003.

These uncontested facts are confirmed by both Plaintiff and by an analysis of the Examination for Discovery testimony of Defendant, Rajbir Singh.

Events Leading to Incident:

On Monday 30 June 2003 at approximately 11:30 AM, defendant Rajbir Singh was driving a 24 foot delivery truck which was 102' wide and owned by Don Park Inc.

He was delivering two empty pallets and a skid of patio stones to a residence located at 104 Topham Crescent, next door to the plaintiff who lives at 102 Topham Crescent.

Illustration 1 is a photograph of the actual patio skid that was loaded on the back of the truck that Rajbir Singh was driving.

Illustration 2 shows how the patio skid straddled two wooden pallets which were lying side by side, flush against the back of the truck.

Illustration 3 is a picture of a pump truck, of the sort that Rajbir Singh used to lift/tip the empty wooden pallets and to consequently dislodge the Plaintiff and the patio skid from the back of the truck.

Illustration 1

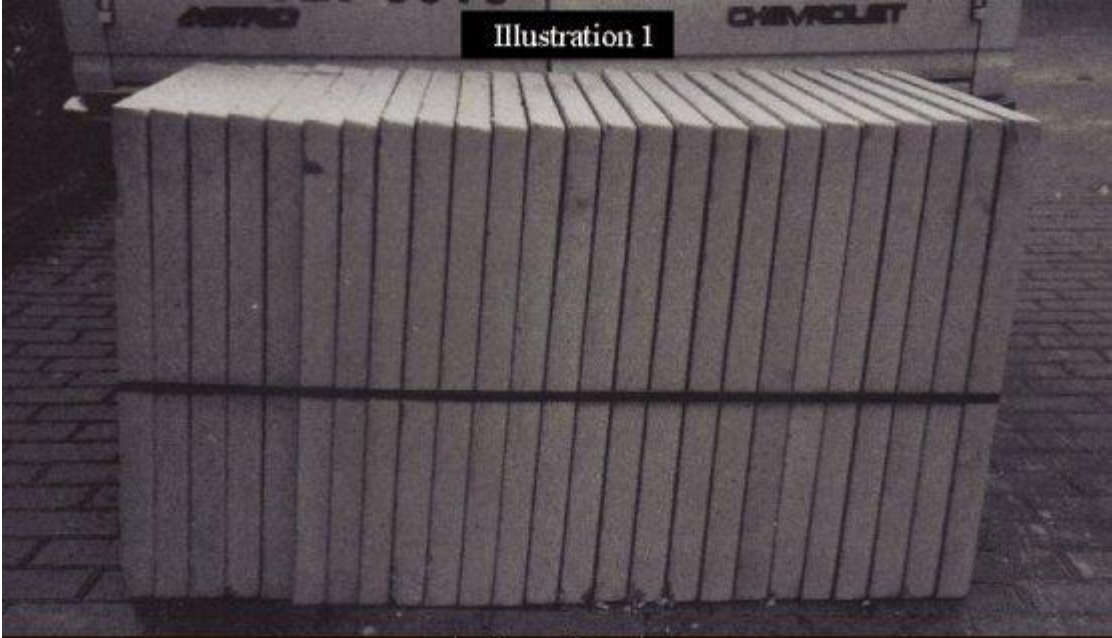


Illustration 2





Illustration 3

All of the above information is confirmed by the Examination for Discovery testimony of Defendant, Rajbir Singh.

Singh indicates on page 14 of Examination for Discovery that he was driving a “G-M diesel truck, twenty-four feet, straight truck.” On page 17, he indicates that this truck is owned by defendant Don Park.

On page 24 of the Examination for Discovery, Singh describes the stones in the following terms: “Twenty-five pieces, twenty-four by thirty inches.”

On page 25 of the Examination for Discovery, Singh confirms that there was a pump truck in the back of the truck and when he was asked about what the pump truck does, he responded likewise: “We place the pump truck under the skid and then pump it. That’s what the pump does. Then we have to pull or push, whatever you want.”

Defendant, Rajbir Singh confirms the fact that on June 30, 2003, there was no need to “pull or push” because the obvious consequence of using a single forklift to lift two wooden pallets at the same time is very predictable. When you use illustration 3 to lift illustration 2, there is absolutely no doubt about the consequence and Defendant Rajbir Singh made that very clear on page 55 of Examination for Discovery, wherein he interrupted the interpreter who falsely suggested that he was “pulling” and blurted, “Pump truck pulling me, because

the heavy weight--- “Immediately thereafter, on page 55 of the Examination for Discovery, the following exchange reinforces the predictability of what occurred:

Q. “You told me you jumped off the tailgate onto the ground; is that right?”

A. “Yes. I saw that something was happening. I left the pump truck. Pump truck pulled me, and I jumped to the ground.”

Q. “How did the Plaintiff fall? Did you see?”

A. “No, I didn’t see.”

Q. “So you didn’t see the Plaintiff fall. You just saw him on the ground.”

A. “Yes, I saw him on the ground.”

On page 38 of Examination for Discovery, defence counsel Mr. Chadwick indicates that each patio stone weighed ninety-five pounds -- $25 \times 95 = 2,375$ lbs.

On page 39 of the Examination for Discovery, defendant Rajbir Singh indicated that he did not expect any help to unload/dislodge the 2,375 patio skid from the truck, and his response to a direct question is very clear in that regard:

Q. “On this particular delivery, were you anticipating any help or were you expecting to do this by yourself?”

A. “I was not expecting any help.”

Singh did not require any help because he was physically in control of both the “pump truck” (illustration 3) and the mechanized tail gate. Singh nevertheless coaxed the Plaintiff into standing on the wooden pallets that were used to dislodge the patio stones off the truck and he made his intention obvious on page 42 of Examination for Discovery, wherein he said to the Plaintiff: “You will have to jump in the truck, and you have to help me to pull the skid and to make it straight.”

The tailgate is essentially a ramp in the back of the truck, and Singh explains that on page 37-38 of Examination For Discovery during the following exchange:

Q: "You used the pump truck to raise one of the skids; is that right?"

A: "Before opening the door, I have to open the tailgate with a switch. With the help of the switch, I have to open the tailgate before opening the door."

Q: "Tell me what the tailgate is. Is that a ramp?"

A: "Yes, a ramp."

On page 44 of Examination for Discovery, defendant Rajbir Singh indicated that the tailgate was flat to the body of the truck before he moved it down 6/7 inches, and the following exchange makes that very clear:

Q: "While you were outside pushing the button, the Plaintiff was inside the truck holding on to the skid—right?"

A: "Yes, he was inside the truck."

Q: "So you pushed the button—right?"

A: "Mm-hmm."

Q: "The tailgate moved where: up, down?"

A: "It went down six/seven inches."

The Load

Illustration 1 is a photograph of the actual load that was discharged with the Plaintiff. Defence counsel, Mr. Chadwick confirms the photograph of the "patio skid" on page 39-40 of the Examination for Discovery, wherein he says, "I believe that your client has a picture of the skid on his website though."

Defendant Rajbir Singh confirms the fact that the 25 patio stones were tied with a steel band on page 49 of the Examination for Discovery, wherein he answered the following question:

Q. "The patio skid was tied with a steel band."

A. "Yes."

Defendant Rajbir Singh confirmed the fact that the patio skid was not secured to any of the two, side-by-side wooden pallets on page 49 of the Examination for Discovery, wherein he answers the following question:

Q. "But the steel band does not, in fact, connect it to the bottom skid."

A. "Yes, it was not tied."

Defendant Rajbir Singh cannot justify the fact that the patio stones were not tied to the wooden pallets, as his following response from page 53 of the Examination for Discovery confirms:

Q. "Was there any reason why the patio skid wasn't tied to the bottom of the skid?"

A. "I have no idea. I don't know."

The Dislodge

It is no surprise that when the Defendant used the "pump truck" to raise the empty wooden pallets on the back of the truck, the patio skid and the Plaintiff dislodged. When you straddle a load that weighs 2,375 pounds on two wooden pallets, and use a "pump truck" that is meant to lift one skid at a time, to lift the ends of two separate skids, the result is absolutely predictable.

Clearly, the act of lifting the two wooden pallets predictably produced a propulsion that was so violent, it dislodged over 2 thousand pounds of patio stones from the back of the truck onto the paved driveway at 104 Topham Crescent in a split second. Rajbir Singh described the force of dislodge on page 48 of Examination for discovery, in the following terms:

Q. “Did the skid go head over heels? How did it fall?”

A. “Yes, head over heels.”

It is no surprise that the Plaintiff, who weighed 185 pounds, was also dislodged head over heels, even though the Defendant claims no awareness in that regard:

Q: “How did the Plaintiff fall? Did you see?”

A: “No, I did not see.”

The Defendant is clearly not telling the truth when he claims he did not see the Plaintiff fall off the truck because the patio skid and the Plaintiff were simultaneously dismounted by the same mechanism. Regardless, there is no surprise about the Plaintiff’s “head over heels” dismount because the Plaintiff would have otherwise been crushed to death and Defendant, Rajbir Singh makes that very clear on page 54 of the Examination for Discovery:

Q: “Did any part of the skid land on top of the plaintiff, or any of the stones?”

A: “When I saw, it was not like that. I don’t think so.”

Q: “So you never saw any stone or skid on the plaintiff.”

A: “No. He would have died, if he was under the stone.”

Conclusions

- The patio skid was loaded by a minimum of 3 people who straddled 25 patio stones on two empty wooden pallets like books on a shelf. It would require one person to stand on one end to keep the 1st patio stone from tipping over and another to hold the 25th stone upright, while yet another wrapped a steel band around the 25 patio stones. Rajbir Singh claims he doesn't know who loaded the truck but that is not believable because he knows how long it took to load and he is therefore simply protecting the identity of people who are essentially as responsible as he is, for endangering the life of the Plaintiff by stacking a load that was too heavy to load or unload, by forklift.

This conclusion is verified by illustration 1, illustration 2 and the following testimony on page 29 of the Examination for Discovery:

Q. "So it must have taken a little bit of time to get the truck loaded—right? How long did it take?"

A. "The loading was done in ten to fifteen minutes."

The truck was obviously loaded manually, one patio stone at a time, and on page 23 of Examination for Discovery, Rajbir Singh confirms the fact that the truck was not loaded in the usual way:

Q. "So your job was not to load the truck, just to drive it; is that right?"

A. "Sometimes, I have to load using hand pump."

Q. "But this day, you didn't."

A. "No."

- The patio skid was deliberately dislodged because it is not possible to unload the truck without cutting the steel band. Illustration 1 is a picture of

the load that fell off the truck and the steel band is clearly intact. On page 52 of the Examination for Discovery, Rajbir Singh confirms the accuracy of Illustration 1 when he describes the patio skid that fell onto the driveway:

Q. “The stones themselves; were they still together in the steel band or had they come apart?”

A. “They were tied, but some of them were broken and loose.”

In fact, the patio stones were not broken, they were chipped because the defendant had lowered the tailgate a mere 6 to seven inches, as previously indicated, to allow the patio skid to roll off the truck as soon as the wooden pallets were lifted.

- Whenever the defendants intended to unload patio stones without incident, they cut the steel band, as indicated during the following Examination For Discovery testimony on page 33.

Q. “These patio stones; were they for a patio in the front of the house or the back?”

A. “That guy works—like, he’s an air-conditioner mechanic. He has a business of air-conditioning and he works from home. Before when I did delivery to this address, he would come out—the guy would come out and he would cut the band, and he would—like, unload by himself.”

Q. “When you delivered before, this gentleman would come outside, cut the band himself and unload.”

A. “He would not unload. He would help me—like...”

Q. “Help unload.”

A. "Yes, help unload."

- When one reviews the deliberate actions of the defendants, the only consequence that was not predictable is the fact that the Plaintiff survived. Clearly, when 2 objects are violently dislodged at the same time, one weighing 2,375 lbs., the other 185 lbs., the heavy load should crush the light load when it falls off a truck that is four and a half feet off the ground.
- Plaintiff survival was accidental. After being violently stretched forward, he instinctively used his hand and his right leg to hurl to safety. There was no thought process involved, it was merely a fight-or-flight, counter-force response that taxed every single muscle and joint, to the point where the ones that were most directly impacted have been permanently damaged.
- The Defendants are liable for an intentional tort because the actions leading to the incident were very predictable with substantial certainty, but for the good fortune of a head over heels dismount that evaded what should have been certain death.
- It has not been possible to determine the motivation behind the deliberate Defendant actions that are responsible for dislodging Plaintiff and patio skid off the back of the truck on June 30, 2003 because the defendants have been extremely deceptive and evasive.

This concludes the assessment of the Examination for Discovery of Defendant, Rajbir Singh, to determine the cause of dislodging both the Plaintiff and the "patio skid" from the back of a 24 foot delivery truck on June 30, 2003.

