

IN THE HIGH COURT OF FIJI
AT SUVA
CIVIL JURISDICTION

HBC 370 of 2017

BETWEEN : **INTERNATIONAL EMBROIDERY COMPANY LIMITED**

PLAINTIFF

AND : **KAMLESH PRASAD trading as POWERKAM**
ELECTRICAL SERVICES

DEFENDANT

BEFORE : **M. Javed Mansoor, J**

COUNSEL : **Mr. P. Kumar for the Plaintiff**
: **Mr. Patrick Kumar for the Defendant**

Date of Hearing : **26, 27 & 28 January 2021**

Date of Judgment : **24 January 2024**

JUDGMENT

NEGLIGENCE Damage to property – Failure to exercise reasonable diligence – Whether defendant liable for damages

1. The plaintiff's action is based on the defendant's breach of contract and negligence in carrying out power supply to a brand new embroidery machine at the plaintiff's factory at Toorak in Suva. The plaintiff is in the business of performing embroidery on garments, utility items and bags. The defendant provides electrical contracting services.
2. The plaintiff pleaded that after it took possession of a brand new Tajima 12 head embroidery machine from a supplier based in New Zealand for its factory at Toorak, it retained the services of the defendant to provide the power connection to the machine.
3. When the defendant connected the wiring and powered on the machine, the circuit breakers went off with a loud bang and the machine was immobilized. The plaintiff says, the defendant, in breach of its contract and negligently or incorrectly wired the machine to a three phase power supply when the machine is single phased. The plaintiff states that the defendant failed to read the instructions manual and did not inspect the machine and its electrical wiring requirements prior to commencing work. The plaintiff also alleged that the defendant failed to cross check the wiring prior to switching on the power supply to the machine.
4. The defendant denied liability for the losses said to have been incurred by the plaintiff. By its statement of defence, the defendant stated, *inter alia*, that it followed the instructions given by the plaintiff, and obtained assistance from the plaintiff's machine technician and operations manager. The defendant made a counter claim to recover payment for two outstanding tax invoices in the sums of \$140.00 and \$5,060.97. The plaintiff denied the counter claim.
5. The plaintiff alleged that it suffered financial damages in a sum of NZ\$ 17,588.03 as a result of repairs carried out to the machine by the supplier and a further loss

of FJ\$ 72,576.00 as a result of not using the machine during the period 26 April 2017 to 13 July 2017.

6. The parties agreed on the following facts:

[1] “The plaintiff is in the business of embroidery works on shirts, jackets, uniforms, headwear, utility, school bags and the like and operations in Namaka, Nadi and Toorak, Suva.

[2] The defendant is in the business of providing electrical contracting services in Suva.

[3] On or about 2017, the plaintiff took possession of a brand new Tajima 12 head embroidery machine from Walker Sotech Machinery Ltd in Auckland, New Zealand (“machine”) for its factory at Toorak, Suva.

[4] The plaintiff retained the services of the defendant to undertake the necessary power connection for the machine at its factory at Toorak, Suva.

[5] The plaintiff handed a copy of the instruction manual for the machine to the defendant, which, amongst other things, provided the power specifications for the machine”.

7. The parties raised the following issues:

[1] “Whether a contract for service existed between the plaintiff and defendant. If so, did the Defendant breach the said contract?

[2] Whether the plaintiff retained the services of the defendant because of the defendant’s expertise.

[3] Whether the plaintiff relied on the defendant’s expertise to connect power to the machine.

[4] Whether at the material time the defendant was the electrician and or electrical expert present.

[5] Whether the defendant failed to exercise their expertise diligently at the material time.

[6] Whether the plaintiff is entitled to payment of NZ \$17,588.03 and FJ\$ 72,576.00 in damages or any other sum decided by this court.

[7] Whether the defendant is entitled to the sum of \$5, 200.97 for its invoices Nos. 1836 and 1891.

[8] Whether plaintiff is entitled to pre and post judgment interest at such rate as the court thinks fit and /or under the provisions of the *Law Reform (Miscellaneous Provisions) (Death and Interest) Act*".

8. The plaintiff summoned three witnesses: Rohit Amit Lal, Rohit Verma and Neomi Baleca to give evidence. Rohit Lal is the plaintiff's Suva branch manager. He said that in November 2016 its existing embroidery machine broke down and a new machine was ordered from New Zealand. Before the machine arrived, the witness contacted the company's electrical contractor and asked him to examine the wires for the new machine. The contractor was shown the machine installation location and told that three phase wiring was necessary to connect the machine to the power supply. The witness said the firm has provided electrical services to the plaintiff since 2014. The new machine arrived two weeks after the wiring was done. Ashneel, an employee of the defendant, connected the machine to the power cable and turned it on. As soon as power was switched on, two circuit breakers went off. Subsequently, the defendant inspected the machine. After the plaintiff informed its supplier, Sortek Marketing, from New Zealand, one of its technicians examined the equipment. The supplier informed the plaintiff that certain machine parts were substantially damaged owing to connection of the machine to a three phase line. The witness said that the defendant refused to accept responsibility on the basis that the plaintiff gave instructions to install and connect a three phase line to the machine. The witness said that the plaintiff incurred substantial losses as the machine could not be used. He put the plaintiff's total loss at \$98,463.59.

9. In cross examination, the witness admitted that he instructed the defendant to install a three phase line. He did so on instructions from his general manager, Rakesh Reddy. He conceded that the defendant installed the entire power supply to the machine based on instructions received from the plaintiff. He agreed having advised Kamlesh Prasad to install a three phase line. In turn, Prasad advised the electrician to install a three phase line. The machine arrived two weeks after the power supply was installed. The witness informed his directors that he instructed the defendant to install a three phase line. He came to know

that the machine requires a single phase line only after the supplier's technician from New Zealand visited Fiji to inspect the machine.

10. The witness said that he gave the instruction manual to the defendant's electrician as he could not understand the instructions. He said that after the circuit breakers went off, the electrician tested the wiring and switched on the machine. He denied having asked the electrician to switch it on.
11. Neomi Baleca, a regulatory unit leader of the customer service section of Energy Fiji Ltd (EFL), giving evidence on behalf of the plaintiff, said that the licensing of electricians in Fiji is regulated. She said that in terms of section 46 of the Electricity Act, electrical wiring and installation can be carried out only after making an application and obtaining approval from EFL. The application is lodged by the contractor after it is signed by the customer and the contractor. Thereafter, EFL would inspect the site prior to granting approval. EFL examines the cable size, the name plate of the machine, the rating of the circuit breaker and other items set out in a standard check list. The witness said that even minor work needed EFL approval. The name plate of the machine would set out the voltage or other necessary information. EFL looks at the name plate to see whether the supply could energize the machine. She said a single phase supply is 240 volts and a three phase line 415. Ms. Baleca explained that if no application is made to EFL, the authority would not know of the default unless the meter shows a fault reading. The responsibility of making the application is upon the contractor. If a fault is detected, EFL would issue a defect notice.
12. Looking at the instruction manual, the witness said that the requirement is a three phase line. She admitted that on the basis of the picture of the manual, the contractor could have thought that the machine was three phase. The letters U,V,W was another way of saying that it is a three phase line. She also said that the letters PE and L1 were also indicative of a three phase line. She explained that some machines could be dual phased, but EFL examines the name plate during an inspection. The witness said that the specifications would be mentioned in the power cable and on the name plate of the machine.

13. Kamlesh Prasad, Ashneel Prakash and Atish Narayan gave evidence for the defendant. Kamlesh Prasad said his business Powercam Electrical Services was registered about 7 years ago. The firm is authorised to carry out commercial wiring work. He said that he had been supplying services to the plaintiff for a number of years and there were no previous issues. When he visited the plaintiff's premises to inspect the place, Rohit Lal instructed him to supply a three phase line. He was told that a new machine would arrive to replace the older machine. He asked two of his electricians, Aatish and Ashneel, to install the wiring. He examined the wiring after installation. He said there was no requirement at that time for EFL to inspect the wiring. The requirement was only for the total demand to be notified to EFL. The machine arrived two weeks after the three phase wiring was done by the two technicians, and took two days to complete. He said Ashneel connected the machine to the power supply. When he came to know from the technicians that after the machine was switched on, the circuit breaker had gone off, he went to the plaintiff's factory with his supervisor and checked the wiring after going through the manual. The witness said that the manual referred to the power cord as requiring a three phase connection. He said the power capacity on the name plate showed the machine as requiring a three phase supply. He disagreed that his firm caused losses to the plaintiff as the instructions were to lay a three phase line. Instructions were given by Rakesh Reddy to Ravi Lal when the latter called Mr. Reddy in his presence. The witness said that the plaintiff has not settled his invoices dated 29 March 2017 and 31 May 2017. The invoices were in respect of services provided prior to the supply of the three phase connection to the machine.
14. In their evidence, Ashneel Prakash and Atish Mishra, said the defendant sent them to the plaintiff's factory to provide wiring for a new machine to be located. Both employees of the defendant testified that they did not have the wireman's licence to undertake wiring work at the time they provided the service to the plaintiff.
15. By letter dated 1 December 2017, solicitors for the plaintiff wrote to the defendant and demanded a sum of NZ 17,588.03 (FJ 25,887.59) to carry out repairs to the machine and a further sum of FJ\$ 72,576.00. By letter dated 8

December 2017, the defendant's solicitors replied the demand and denied that the defendant is liable. The letter stated that the manual described the machine's power cord to be three phase and that the plaintiff also confirmed that it is a three phase power supply.

Evaluation of evidence

16. The evidence given by Rohit Lal and Neomi Baleca seem consistent with the position taken in the defendant's letter dated 8 December 2017. Mr. Lal admitted that he advised the defendant to lay a three phase supply to the machine. This may have happened through a misapprehension. Ms. Baleca looked at the machine's manual and opined that the instructions were suggestive of a three phase power supply. Confusingly, the nameplate shows the voltage as 240 and 440 volts. The defendant would not have seen the name plate as the machine arrived about two weeks after the wiring was installed.
17. Mr. Lal said that he instructed the defendant to supply a three phase connection to the machine. The connection was provided about a fortnight before the machine arrived at the factory. It will not suffice for the defendant to say he relied on the plaintiff's instructions. He was contracted based on his skill to provide the required service.
18. The defendant has not shown that he made a proper examination to ascertain the correct power specifications. The defendant places reliance on the instructions given by the plaintiff, whose officers are not skilled in wiring and supplying power to the machine. It is in evidence that the defendant's two technicians were not licensed to perform electrical wiring as required by regulation. The defendant's technicians – Atish and Ashneel – admitted this in cross examination. Another failure was to obtain the approval of Energy Fiji Limited to carry out wiring, as required under section 46 of the Fiji Electricity Act 1966. The plaintiff said such approval was not necessary. On another occasion, Mr. Prasad said that approval was sought, but no evidence of that is before court.
19. While the plaintiff's misconceived instructions, the instruction manual and the machine's name plate may have led to a certain amount of confusion, the

defendant did not do himself any favours in the way the task was performed. Ms. Baleca said in her evidence that EFL would have examined the machine and ascertained the correct power specifications. This may have avoided the damage to the equipment. The risk taken in employing two personnel who were not qualified to carry out wiring was not reasonable on the defendant's part. The defendant did not exercise reasonable care in the overall service that was provided to the plaintiff. The firm's lack of care must be taken as having caused damage to the plaintiff's machine.

20. The plaintiff sought damages in the sum of \$72,576.00 for unproductive hours. This was for losses during the period 26 April 2017 to 13 July 2017, covering 1008 hours when the machine was damaged and under repair. The plaintiff based its losses saying it could have done three runs an hour and earn \$2.00 for 8,000 stitches.
21. The evidence does not say why the machine was out of commission for more than 2 ½ months. The claim is based on the rate, which does not take into consideration any direct expenses associated with running the machine. There is also no evidence as to what steps the plaintiff took to mitigate losses. It is not known whether the plaintiff explored the option of subcontracting the work during the period the machine was under repair. These aspects apart, considering the overall circumstances, it would seem that the claim for economic loss is too remote from the physical damage to the machine. The plaintiff's claim for unproductive hours is declined.
22. The defendant's counter claim is allowed. The defendant produced the relevant invoices. The plaintiff did not deny receiving the services for which the defendant issued the invoices. Mr. Lal admitted that some of the defendant's invoices were not paid.

ORDER

- A. Plaintiff is granted judgment in the sum of NZ\$17,588.03 or its equivalent.
- B. Plaintiff is to pay the defendant \$5,200.97.
- C. The defendant is to pay the plaintiff costs summarily assessed in the sum \$3,500.00.

Delivered at **Suva** this **24th** day of **January, 2024**.



A handwritten signature in blue ink, appearing to read "M. Javed Mansoor".

M. Javed Mansoor
Judge