

IN THE SUPREME COURT OF FIJI

Civil Jurisdiction

Civil Action No. 159 of 1979

Between:

BISH LIMITED

Plaintiff

and

SEATRANS (FIJI) LIMITED Defendant

Mr. D. Whippy for the plaintiff

Mr. A.H. Rasheed for the defendant

JUDGMENT

The plaintiff's claim against the defendant is for the sum of \$12405.84, the balance alleged to be owing for engineering work carried out by the plaintiff on a vessel the "Wha Yang No.82" and the cost of materials supplied at the request of the defendant.

In the Statement of Defence in paragraphs 2 and 3 thereof the defendant set up the defence that it was the agent for the owner of the vessel and that the principal was liable for the repairs.

2.

At the hearing Mr. Rasheed for the defendant company asked leave to amend the Defence. He asked for deletion of paragraphs 2 and 3 of the Defence and admitted that on the contract the defendant was either a principal or an agent who was liable for the principal's debt.

It was alleged in the Defence that the plaintiff had charged over 400% on the cost of labour. Mr. Rasheed amended the figure to read 252%, a mark up figure on labour costs which is not in dispute. Mr. Rasheed also admitted that an item of \$1039.04 for slipway charges was no longer in dispute.

These amendments and admissions left one main issue to decide and that is whether the labour charges of \$15,069.76 which formed the bulk of the original account of \$20,661.66 was an excessive charge. The defendant had by certain payments reduced this amount to the balance sum now claimed by the plaintiff.

There was also an allegation in the Defence that due to the incompetence of the plaintiff's workmen the cost of certain work was unreasonably inflated.

It is not in dispute that the defendant did not ask for a quote for the work to be carried out on the vessel. It is also not in dispute that the plaintiff completed the work it contracted to do. This is a case where the plaintiff is entitled to reasonable re-

## 3.

muneration for the work it has done and the burden of establishing that its charges are reasonable lies on the plaintiff. Apart from the allegation that costs were incurred by the incompetence of the plaintiff's workmen in respect of one aspect of the work carried out the sole issue is whether a charge out rate of 252% on the cost of labour employed on the work is excessive.

Very detailed particulars of the work carried out by the plaintiff on the vessel were filed in Court. These particulars included full details of all men employed on the vessel by the plaintiff, their wages and hours of work, overtime etc. In the agreed correspondence is a summary of the costs totalling the sum of \$20,069.76. Of this sum labour accounts for \$15,069.76. This sum of \$15,069.76 is the actual cost to the plaintiff of labour employed on the vessel plus its mark up rate of 252%.

On the face of it a mark up rate of 252% appears excessive as the defendant contends. This mark up rate however does not represent the profit the plaintiff made on the work it carried out.

Mr. K. McCallum, the Manager of the plaintiff company, explained in detail the mark up rate the plaintiff company adopted. The mark up rate of 252% on labour costs took into account all the actual overheads of the company and included a 20% margin for profit.

4.

He said this mark up rate was adopted for all work done by the plaintiff company.

Mr. Bing, the Manager of the defendant company, said he considered a mark up of 100% to 150% was reasonable and was the mark up his company adopted. To the Court he said a profit of 10% to 20% would be reasonable but he could not say whether 20% profit would be reasonable in the case of the plaintiff. He considered their charges excessive.

Mr. McCallum's evidence was not seriously challenged in cross-examination nor was he challenged on his statement that the mark up rate of 252% on labour costs allowed for a profit margin of 20%.

No doubt a mark up of 100% in the defendant's business is reasonable and allows for a 10% to 20% profit margin. That business cannot be compared to the plaintiff's business - an engineering firm where the capital outlay and overheads must be heavy. I have no evidence as to what the overheads are. All I have is evidence; which has not been rebutted, that a mark up of 252% on cost of labour allows for a 20% profit margin. That business cannot be compared to the plaintiff's business - an engineering firm where the capital outlay and overheads must be heavy. I have no evidence as to what the overheads are. All I have is evidence; which has not been rebutted, that a mark up of 252% on cost of labour allows for a 20% profit margin. That margin in my view is reasonable.

5.

The plaintiff has established to my satisfaction, and I so hold, that its charges for work done on the vessel is reasonable.

There remains only the defendant's allegation that costs were inflated due to the incompetence of the plaintiff's workmen.

Mr. McCallum did admit that after re-assembling the shaft of the vessel and fitting it back in the vessel it was found that the engine was out of alignment and the engine had to be properly aligned. Additional work was involved. He explained that in a case where the shaft showed so much wear as it did in the vessel concerned there was no way of checking whether alignment of the engine was correct before re-assembling the shaft. Mr. McCallum is a highly qualified chartered engineer with 30 years experience. He was an impressive witness and I accept his explanation.

Mr. Bing purported to give evidence about the unnecessary work and costs in connection with the fitting of the shaft but under cross-examination he had to admit he was relating what the captain of the vessel had told him and had no personal knowledge of the work involved. I am satisfied that the cost of the work was not inflated by the incompetence of the plaintiff's workmen as alleged by the defendant.

6.

The plaintiff is entitled to reasonable remuneration for the work it did on the vessel and on the evidence before me I am satisfied that their charges are reasonable.

There will be judgment for the plaintiff for the sum of \$12,405.84 and costs.

( R.G. Kermode )  
JUDGE.

Suva,

11th January, 1980.