

**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE – PORT ELIZABETH)**

**CASE NO: 2582/08
DATE HEARD: 24/05/2011
DATE DELIVERED: 27/05/2011**

In the matter between

**HELDERBERG CAR & PROPSHAFT CENTRE CC
t/a PROPSHAFT CENTRE**

APPLICANT

and

NEXOR 519 CC t/a PROTEC CRANE HIRE

RESPONDENT

JUDGMENT

ROBERSON J:-

1]The respondent instituted action in this court against the applicant for payment of damages for breach of contract. The claim arose from alleged defective workmanship on the part of the applicant in carrying out repairs to two of the respondent's cranes, a 180 ton crane and a 55 ton crane. The trial proceeded before me and judgment was granted in favour of the respondent for the damages claimed, being the amounts paid to the applicant for the defective work, and the reasonable and necessary costs incurred in repairing the damage caused by the defective work.

2]The applicant has applied for leave to appeal in respect of the quantum of damages only, on the basis that the evidence on behalf of the respondent was inadequate in proving the damages. The application is restricted to the costs of repairing the damage caused by the defective work.

3]The expert witness who testified on the quantum of damages in respect of the 180 ton crane was Bruce Ferreira, a member of the respondent. The damages claimed were made up of a quotation for parts in the sum of R198 823.27, and an invoice from the applicant for repairs effected to the crane after it was damaged, in the sum of R35 368.50. This latter amount has not been paid to the applicant and is apparently the subject of an action in the Magistrate's Court. In the expert notice, Ferreira's expertise was stated as a government ticket in mechanical engineering and 17 years' experience working with cranes. When he testified he said that the respondent does not employ mechanics, and repairs and servicing of cranes are outsourced. He also said that he is not a mechanic nor is he an expert in electronics, hydraulics or brakes. However he has had cranes repaired many times and knew what it cost to repair a crane, and confirmed the opinion in the expert notice that the costs of the repairs were reasonable and necessary. Having regard to the authorities referred to by the applicant and the nature of the damages claimed, I am of the view that there is a reasonable prospect that another court would find that the evidence of Ferreira was inadequate in respect of the sum of R198 823.27. I was of the view that the sum of R35 368.50 was claimed, not because it had been paid, but because the invoice was a method of

quantifying the respondent's damages. However I am of the view that in the light of the fact that it has not been paid, there is a reasonable prospect that another court would find that there was no legal basis for claiming such amount, alternatively that it was not proved that those costs were reasonable and necessary.

4]The damages in respect of the 55 ton crane were made up of 3 invoices: one from Metro Hydraulics for R7 500.00, the second from E & M Electrical Supplies for R22 755.20 and the third from P.E. Airbrakes for R3 810.45. In addition to Ferreira's evidence that the costs were reasonable and necessary, Etienne Herselman, the owner of E & M Electrical Supplies, testified in connection with his invoice, and Deon Knickelbein, the owner of P.E. Airbrakes, testified in connection with his invoice. Herselman was not qualified as an expert, but Knickelbein was, and his evidence about what he charged for repairs was not challenged. Again I am of the view that having regard to the authorities to which I was referred and the nature of the damages claimed, there is a reasonable prospect of another court finding that, with the exception of Knickelbein's evidence, the evidence to prove the damages in respect of the 55 ton crane was inadequate.

ORDER:-

[5] The application for leave to appeal is granted to the Full Bench, except in respect of the amount of R3 810.45, contained in annexure E3 to the

respondent's particulars of claim.

[6] The costs of the application are to be costs in the appeal.

J.M. ROBERSON
JUDGE OF THE HIGH COURT

Appearances:

Applicant: Advocate H de la Ray, instructed by Visagie Vos, c/o McWilliams & Elliot Inc., Port Elizabeth

Respondent: Advocate O H Ronaasen SC, instructed by Richard Lawrence Attorneys, Port Elizabeth