

## CONSTRUCTION LAW BULLETIN

### DAMAGE TO HIRED PLANT

#### INTRODUCTION

Towards the end of last year the Supreme Court of Appeal (“SCA”) reminded us of the basic principles governing the relationship between the owner and hirer of plant.<sup>1</sup>

#### THE FACTS

In June 2000 Mutual Construction Company (Tvl) (Pty) Ltd (“Mutual”) hired a CAT 769 articulated dump truck to Komati Dam Joint Venture (“the Joint Venture”) together with the services of an operator.

The Joint Venture comprised a partnership between a number of major civil engineering companies that was engaged in the construction of the Maguga Dam in Swaziland. The Joint Venture required the truck for use in its operations at the site.

In the early hours of 5 October 2000 the operator of the truck fell asleep while driving it along a haul road. The truck left the road and collided with an embankment and was extensively damaged.

Mutual sued the Joint Venture in the Johannesburg

High Court for the cost of repairing the truck as well as for loss of rental income over the period of several weeks that the truck was out of commission whilst being repaired.

The Johannesburg High Court found that the accident was attributable to the negligence of the operator in having fallen asleep. However, it took the view that the Joint Venture ought not to be visited with liability for the operator’s negligent conduct.

Mutual appealed this decision to the SCA in Bloemfontein.

#### THE CONTRACT

The SCA recorded that it is a trite principle of our common law that the hirer of an article is obliged to return it in the same condition in which it had been received at the outset of the period of hire, fair wear and tear excluded.

Accordingly, in the absence of any contractual agreement to the contrary, all the owner of a hired article has to allege and prove, when claiming for damage to the article, is that it was in an undamaged state when delivered and that it was in a damaged state when returned. The onus then rests on the hirer to show that the damage was not caused by any negligence on his part or on the part of any person

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<sup>1</sup> Mutual Construction Company (Tvl) (Pty) Ltd v Komati Dam Joint Venture, Case No 466/2007, date of judgment 23 September 2008.

under his control or for whose acts he is liable.

The case in the circumstances turned on which of the parties was responsible for the negligence of the operator.

There were a few important contractual provisions in the contract of hire which specified that:

- the operator supplied with the truck would be under the sole and absolute control of the Joint Venture who undertook to give the operator clear instructions and to provide responsible supervision for the operator whilst the truck was in use;
- Mutual would not be responsible to the Joint Venture for any damages arising out of the acts or omissions of the operator whilst carrying out his duties on site;
- the Joint Venture agreed to be responsible for all expenses arising from the breakdown, loss or damage to the plant occurring through the Joint Venture's negligence, misdirection or misuse; and
- the risk of loss or damage to the truck would pass to the Joint Venture upon the truck being delivered to site.

The SCA construed these contractual provisions so as to make the Joint Venture liable for the negligence of the operator, despite him being Mutual's employee, and accordingly held that the Joint Venture was liable for Mutual's damages claim.

## **CONCLUSION**

The conditions contained in the contract between Mutual and the Joint Venture were based on the Contractors Plant Hire Association's standard conditions of hire.

It can accordingly be accepted that where plant is hired in terms of these conditions, as a basic starting point, damage caused to plant due to the operator's negligence whilst the plant is in use by a hirer will be the hirer's responsibility.

The SCA referred to one of its previous decisions on the same contract conditions<sup>2</sup>.

In this case a crane had collapsed and been damaged when the owner's operator, acting under the supervision of the hirer's rigger, attempted to lift a heavy load that was beyond its capabilities.

The court upheld the owner's claim for damages on the basis that:

- the damage was caused by the operator's negligence, for which negligence the hirer was liable in terms of the contract; and
- the hirer had not proved that its own rigger, for whose negligence it was liable under the common law, had not been negligent.

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<sup>2</sup> RH Johnson Crane (Pty) Ltd v SA Iron and Steel Industrial Corporation Ltd, Case No 207/87, date of judgment 31 March 1987.