

IN THE HIGH COURT OF FIJI AT SUVA
CIVIL JURISDICTION

Civil Action No. 151 of 2017

BETWEEN: **SAMMA PROPRIETARY LIMITED** a limited liability Company having its registered office at Unit 4, Lot 7, Kabani Road, Waimalika, Nadi in the Republic of Fiji.

PLAINTIFF

AND: **DENARAU STORAGE LIMITED** a limited liability company having its registered office at 16 Marina Point, Denarau Island, Nadi in the Republic of Fiji.

DEFENDANT

Before: Mr. Justice Deepthi Amaratunga

Counsel: Ms. L. Prasad for the Plaintiff
Mr. D. Sharma for the Defendant

Date of Judgment: 25.03.2025

JUDGMENT

INTRODUCTION

[1] Plaintiff is claiming damages for liquidated sum of \$93,440.97 and interest on that from 1.3.2017 and also general damages for breach of contract. Plaintiff and Defendant through correspondences contracted for supply and installation of Aluminum windows, louvers with Crime Safe (Crimsafe) screens with warranty, supply and installation of eight BnD Roller Doors (Roller Doors) with automatic operations including two remote controls for each with warranty for parts for two years and fabrication and installation of sixteen front and rear doors (Aluminum doors). These were to be installed on eight storage units newly constructed by Defendant and all installation work to be commenced and completed within three weeks in terms agreed between parties. The

terms regarding Aluminium Doors varied as they were replaced by premium Parkwood Doors by mutual consent of parties. Plaintiff is local agent of Parkwood doors.

- [2] Parties entered in to contract in terms of letter of engagement by letter of 13.7.2018. In terms of that the commencement of all installations was scheduled on 7.11.2016 but only Roller Doors were on site to be installed by that time and no installation commenced by that time. Plaintiff's reason for delay was that the plaster work was not completed by that time to obtain measurements before manufacture of windows and doors, and installation of doors.
- [3] Defendant had admitted that Plaintiff's total cost was around \$180,000 and from that it had paid 50% (P5) and email of 23.1.2017.
- [4] Defendant made four payments to the sum of \$104,197.47 and the remaining sum to be paid upon completion of the work, but when invoiced did not pay.
- [5] Plaintiff could not complete the work on time, and there were damage to Parkwood doors due to inexperienced workmen of Plaintiff. Having seen the damage to Parkwood doors which were premium products, Defendant requested an experienced person from Parkwood along with Plaintiff's workers, to install the doors in order to mitigate the losses from damage to Parkwood doors and also from delay.
- [6] Plaintiff had rectified some defects in Parkwood doors at its cost but there are permanent damages or defects and due to this, they lacked the characters of premium quality product.
- [7] There is no evidence that Plaintiff's workmen had experience in fabrication and installation of Parkwood doors, Plaintiff is an agent of Parkwood doors in Fiji but its principal through its General Manager stated that '*level of competence on site was risking the reputation*' of its premium quality product. This letter was issued to Defendant after its experienced door installer had observed damage done to Parkwood doors by workmen of Plaintiff. (D20)
- [8] There were incorrect drillings, defective cuttings and other type of defective work on the doors and these were stated in the said letter of Parkwood dated 24.2.2017. (D20)
- [9] The defects were visible and all of them, could not be rectified by Plaintiff and remained on 14.2.2017 at the inspection of defects. This inspection was notified to Plaintiff, but it had chosen not to participate in it.

- [10] Defendant did not pay the invoices issued to the sum of \$92, 440.97. It counter claim a sum of \$123,997.76 and the particulars of the counterclaim was provided in letter of Defendant's solicitors dated 19.12.2017 marked as D28 at the hearing. From the said counter claim only depreciation of value of Parkwood doors for sum of \$33,600.00 and cost claimed for overseas door installer for a sum of \$11,666.85 allowed.
- [11] Counter claim for diminution of value of Parkwood doors by Plaintiff and cost of mitigation allowed. No compensation allowed for delay as Parkwood doors arrived to part only on 19.12.2016 and further delayed due to factors beyond Plaintiffs control such as delay in customs, adverse weather due to depression and Christmas and New Year vacation period.

FACTS AND ANALYSIS

- [12] Plaintiff called one witness, Marcus Nand. The Defendant called three witnesses: Peter John Lawlor, Brett Whitaker and Vijay Krishnan. Plaintiff's claim is based on the invoices issued and marked at hearing marked P6, P7, P8 and P9. Defendant had not disputed the said values (see D26) but allege said sum needs to be reduced from the amount stated in the counter claim.
- [13] The Plaintiff was engaged by the Defendant to undertake the following works for supply and install for its eight storage units in newly constructed building after discussion with Plaintiff by way of letter dated 23.7.2016 (the Agreement)(P1) and letter of 26.7.2016 (P2)
- i. Aluminum Louvre Windows and Crimsafe Screens
 - ii. Eight Garage Doors- BnD Roller Doors with Automatic Opener with two remote controls for each, as stated in Performa Invoice dated 22.6.2016 including two year warranty on parts.(P2)
 - iii. Half of the total invoiced on 22.6.2016 was paid by 26.7.2016 and details of Roller Doors were provided for manufacturer in said letter to Plaintiff.
 - iv. Sixteen Aluminium doors (front and rear) manufactured by Plaintiff, including installation of the same. This was later varied with mutual consent to imported Parkwood doors fabrication and installation.
 - v. Installation of Roller Doors and sixteen doors and windows and crime safe screens to be installed from 7.11.2016 and to be completed within three weeks.

[14] The Agreement was varied when the Defendant requested and Plaintiff agreed to replace the sixteen Aluminum Doors made by Plaintiff to premium quality Parkwood Doors from Parkwood Products Ltd in New Zealand (D2) which cost more than twice the price of similar product made by Plaintiff.

[15] The Plaintiff claimed that the Defendant had breached the terms of the Agreement by:

- i. Failing to provide the Plaintiff with suitable cavities in the building for installation of Roller Doors;
- ii. Failing to provide the Plaintiff with consistent plasterworks for installation of Roller Doors;
- iii. Failing to accept the Plaintiff's advice regarding the filling of 13 millimeters gap in the door jambs;
- iv. Failing to allow the Plaintiff to install the Parkwood Doors on its own without assistance from Parkwood Products Ltd;
- v. Failing to pay the outstanding sum of \$92,440.97 upon performance of the contract by the Plaintiff. (Defendant's bundle of documents at tab 14 contained statement dated 2.5.2017 prepared by Plaintiff which contained summary of invoices issued and payments made. These invoices were marked as P6, P7, P8, P9 and P10.

[16] The Plaintiff claims the following reliefs for unpaid invoices by the Defendant:

- i. 'Judgment in the sum of \$93,440.97¹
- ii. Interest at the rate of 5% per month on a cumulative basis on the said sum of \$93,440.97 from 1st day of March 2017.
- iii. General damages for breach of contract;
- iv. Costs of this action; and

¹ this should be \$92,440.97

v. Such further and/or other reliefs...'

[17] Parties after discussion engaged Plaintiff for installation of windows and doors to its eight storage units constructed, on 13.7. 2016. The Agreement is admitted and both parties had acted on that and Defendant had paid for invoices raised by Plaintiff as it agreed and paid 50% of cost of invoices by 15.10.2016 (P1, P2 and D10).

[18] Following Conditions were contained in the Agreement (P1)

“Windows and doors.

1. Installation of windows and front door. Allow for 3 weeks.
2. Samma Installation of doors and window start 2nd November.
3. Samma to inspect finished plastered openings 20th October for final measurement.
4. Deposit of 50% of invoices to be paid 15.10.2016
5. Window and door measurement schedus has not changed.(see attached drawing)
6. Window and door color is silver anodized.
7. Samma to provide thickness of window frame as well as crime safe by Friday 15th July 2016
8. DBP to confirm frame type as per invoice /order.
9. Samma o provide written warranty on windows and doors 20th July 2016.
10. Samma to provide written warranty on windows and doors 20th July 2015.
11. Samma to provide written warranty on crime safe 20th July 2016.
12. Samma to provide written warranty to Diamond louver system.

Garage Doors

1. Installation of 8 X B&D roller doors allow three weeks.
2. Samma Installation of Garage doors start 7th Nov 2016.
3. Samma require 3 month lead time for deposit to install date.
4. DBP to advise on color by 1st August 2016.
5. DBP to pay deposit of 50%1st August 2016.
6. DBP to advise on which side the motor will be placed bu 1st August.
7. Official door finished plastered opening size 4m wide X5m high.

8. DBP to supply official roller door bracket placement drawing and door with by 1st Aug.
9. Samma to provide written warranty by 20th July 2016.

Please confirm the above and add or change any of the above if incorrect.”

- [19] There is no dispute, that the above conditions contained in the Agreement was accepted without changes by Plaintiff. By P2 dated 26.7.2016 Defendant informed Plaintiff that they were making a part payment of \$44,771.00 for Roller Doors ‘*as per our letter of agreement dated 13.7.2016*’.
- [20] On 16.11.2016 Plaintiff was informed of Defendant’s request for variation of eight front doors to Parkwood, but again this was also changed to include all Parkwood doors, including rear eight doors. This change delayed arrival of doors.
- [21] Plaintiff through their email of 16.11.2016 had confirmed it ‘*will organize with Parkwood to go ahead*’, with the said variation. (D2)
- [22] In the submission Plaintiff state that the said request was outside the time stipulated for installation of the doors. Plaintiff had opportunity to state so before acceptance and also to change conditions. Parties had mutually accepted to vary the date of completion of installation of Parkwood doors to be 19.11.2016. This did not eventuate as the Parkwood doors did not arrive Fiji as scheduled, and arrived a month late, on 19.12.2016.
- [23] Parkwood doors arrived Fiji on 19.12.2016 and cleared from customs on 23.12.2016. So the installation of the same got delayed.
- [24] There were delays in installation of Roller Doors and windows with louver and crimsafe screens. Installation of Roller Doors completed by an experienced Australian installer with Plaintiff’s workmen and all parkwood doors were installed by Glen Ruby and Plaintiff’s workmen.
- [25] Experienced Parkwood door installer was engaged due to lack of experience and damage to doors by Plaintiff’s workmen. Plaintiff refused to pay for cost of overseas

installer to Parkwood and Defendant agreed to pay and request deduction of the paid sum.

[26] Plaintiff delivered eight Roller Doors and windows, louvers and crimsafe installation to Defendant on 31.01.2017. Delivery of Roller doors and windows and Crimsafe accepted by Defendant.

[27] The Plaintiff provided a pro forma invoice for installation of all doors, windows louvers but Defendant did not pay for invoices issued after 31.1.2016.

[28] Plaintiff submitted its pending invoices for payment to the Defendant but the Defendant withheld payment and had a defect inspection after informing the same to Plaintiff on 14.2.2017

[29] The Plaintiff's case is based on invoices issued by it and there was no dispute as to the value of the said invoices, but Defendant counter claimed as fully described in particulars of the counter claim provided in Defendant's solicitor's letter marked as D28.

[30] Plaintiff was tasked with specific work and they were installation of BnD doors, Parkwood doors and windows with crime safe screens. Each of the three broad categories of work considered separately below.

BnD ROLLER DOORS

[31] Plaintiff issued invoice for eight of Roller Doors with remote control device and also warranty for parts for two years and Defendant had paid half of the sum invoiced. (P2). The quotation stated 'supply and installation' of all eight Roller Doors with remote control and also two year warranty on parts.

[32] The quotation for eight Roller Doors was made on 22.6.2016 even prior to the Agreement which contained more details and time for installation and completion.

[33] By communication dated 26.7.2016 half the invoiced, amounting \$ 44771.00 paid (P2) and Marcus Nand of Plaintiff had emailed on 4.10.2016 that the Roller Doors were scheduled to arrive on 25.10.2016. They were to be stored by Defendant at its site till

confirmation of installation. On the same day Defendant had emailed and confirmed it(D1)

[34] There was evidence of delivery of the eight Roller Doors to Defendant but they were not installed from 7.11.2016 in terms of the Agreement.

[35] As agreed between parties Plaintiff had delivered all Roller Doors to the site of construction, but the installation did not commence till December through an Australian installer who had arrived for installation of Roller Doors.

[36] Email of 23.11.2016 from Bret Whittaker of Defendant, reminded Plaintiff on a week prior of the expected arrival of Australian installer and also requested have accessories arranged for installation of the Roller Doors. (P3). Marcus Nand had replied to said email on the same day promptly within twenty minutes and stated that he had already organized these. (P3)

[37] By 23.11.2016 neither party raised issue for failure to commence installation of Roller Doors on 7.11.2016. Plaintiff's position is that the plaster work was not completed and this is accepted considering there were no correspondence of delay from Defendant. This is in sharp contrast when there were evidence of delay from Plaintiff. It is also safe to assume from evidence that Defendant had completed plaster work for eight Roller Door cavities for installation before 23.11.2016 despite having uneven surface on two or three openings, which only affected them.

[38] If the Plaster work was incomplete Defendant would not have eager to install all eight Roller Doors and await arrival of overseas installer. After installation it was realized that the plaster work was uneven and needed correction in two or three lintels. There was no evidence that this affected all the doors and it affected only two or three doors. There was no hindrance to complete remaining five or six Roller Doors from late November 2016, till departure of installer in late December 2016.

[39] There was evidence that defective plaster work were rectified before end of December, 2016 and no plaster work was done after that. (D22) According to letter of entity engaged plaster work rectified by 28.12.2016.

[40] The situation at the site was evident from email D5 contained in the Plaintiff's bundle of documents in Tab 12 where Brett Whittaker , nearly a month after arrival of Australian Roller Door installer state on 23.12.2016 that Roller Door installation had not completed . In the said email highlighted;

- i Incomplete windows, louvers, fixing of glasses.
- ii Sixteen Parkwood doors are not delivered to the site and even had not stated the status of them.
- iii BnD doors not finished.”

[41] Above email further stated that Plaintiff engaged only one or two persons for about six hours and one was a ‘junior boy’ who was alone installing windows and informed Plaintiff the need to complete work before 15.1.2017 in order to obtain completion certificate for the building and this could not be obtained without completion of the work.

[42] Marcus Nand had replied to the said email around 2.13 pm on the same day and admitted that ‘*louver galleries for the larger windows were delayed due to an oversight on their part*’. So Plaintiff had admitted delay in window installation was due to their fault.

[43] According to Marcus, delay in Roller Door installation was due to three of the door cavities were not having even surface and these were being rectified with Defendant at that time. So why remainder did not complete within stipulated three week time was not explained by Plaintiff.

[44] Brett Whittaker in his evidence stated that said installation did not happen continuously since arrival of Australian installer. Only two lintels had issues regarding uneven plastering that needed rectification. So he asked why remaining six Roller Doors were not installed. According to him only one door was completely installed and another was installed partially. He said that delay was due to Australian installer busy with his schedule in other sites and came to Defendant’s site for very short period of time.

[45] This evidence was corroborated by evidence of John Lawlor of the construction entity engaged.

[45] Upon analysis of evidence of Marcus, John Bowlor and Brett and emails it is proved on balance of probability that Roller Door installer did not complete installation of remaining five or six doors which had no plaster work issues due to lack of time as he was engaged in other sites. He was able to complete only less than two out of remaining five or six doors, where there were no rectification of plaster work.

- [46] It was also evidenced that cavities that had uneven surface were also rectified by 28.12.2016. Installation of Roller Doors did not complete till 31.01.2017. One reason for delay was the inability of Plaintiff's workers to complete installation of Roller Doors after Australian installer had left and requirement for the same person to come again to complete the work. This shows lack of experienced installers to complete the installation of eight Roller Doors within three weeks which Plaintiff committed in the Agreement.
- [47] Plaintiff should be ready to the contingencies that can arise in construction site such as uneven plaster work or other issues and prepared for these. This is critical when the installer is from abroad.
- [48] According to witness who was in charge of plaster work said, their staff waited in anticipation of any remedial work and this was completed within, weeks. If the plaster work was the only issue why only two doors were installed out of remaining five or six doors? Plaintiff could not explain this and it shows that Plaintiff is using uneven plaster work as scapegoat for its inability to install remaining six Roller Doors out of eight within three weeks.
- [49] Sunline Construction stated (D22) that they were informed on 15.12.2017² about the 'garage door reveals were not plumb to fit roller doors. These variations were in Unit 4 and Unit 7.'
- [50] Australian installer had arrived by end of November 2016 and had ample time to install door cavities that had no issues with plaster work. BnD installer had left Fiji by end of December 2016 and came back to complete more than six Roller Doors on 25.1.2017 for three days. This shows the time taken for installation of Roller Doors by an experienced installer.
- [51] This proves that Plaintiff had not planned such variations and possible contingencies in installation. So the delay in installation was not mainly due to uneven plasterwork but the installer flown from abroad could not devote sufficient time to install all the doors and Plaintiffs workmen were unable to complete installation of Roller Doors.
- [52] Eight Roller Doors with remote controls were handed over to Defendant's assistant project manager on 31.1.2017(P13) along with windows, louvers and crimesafe

² should be 15.12.2016

screens. The delivery was accepted, and no defect identified at that time or defects inspection on 14.02.2017.

[53] Plaintiff had initially provided two year warranty on the parts of the said two roller doors, and no other conditions stated.

[54] According to the counterclaim for Roller Doors, Defendant is claiming materials without specifying parts replaced, so claim for parts rejects. Defendant had also claimed hire of equipment and labour without proof of defect and details at work. In the quotation for Roller Doors, warranty was confined to parts. So the labour charges or maintenance was not included in the incomplete warranty agreed between parties as stated in the quotation. There were no written warranties for the eight Roller Doors other than what was stated in the Performa Invoice of eight Roller Doors. Defendant had paid half of the value of the said invoice and all Roller Doors were installed by 31.1. 2017.

[55] Document marked D26 was a letter written by Defendant for a settlement. The details in that does not prove cost of Roller Doors repair and whether such costs are allowed by warranty without further evidence as to alleged defect and repair.

[56] Defendant had also depreciated BnD Roller doors at 10% and no such depreciation can be allowed. They were new and installed by an experienced person from abroad and there was on proof to allow depreciation for 10%.

[57] The Delay in completion of Roller Door installation did not affect handing over or completion of installation of doors and windows as those work were continuing at that time and completed after installation of all Roller Doors.

[58] There were no conditions of the warranty agreed between the parties as to Roller Doors so normal industry standard warranty for parts only can be implied, but this was not provided as Defendant did not pay full price quoted in Performa Invoice even after installation completed. Such warranty is applicable with proper maintenance.

[59] The claim for not providing a written warranty fails for two reasons one is that warranty is contingent in full settlement of the invoice upon completion of installation that included warranty as condition in said invoice and other implied conditions such as maintenance the Roller Doors by competent person.

- [60] Any mechanical device needs periodic maintenance in order to claim warranty and these were not agreed when Defendant suddenly stopped payment of outstanding invoice after installation of all of them and made a counter claim which was not proved.
- [61] There is no depreciation allowed for eight Roller Doors and there are no defects in all eight Roller Doors at the time of inspection of work on 14.2.2017 or there after proved. There is no proof of parts replaced or defects. It is not cleared whether alleged repairs were done by authorized technician by manufacture as unskilled person may damage Roller Doors. So it is clear that warranty was not blank cheque for Defendant to claim any defect.
- [62] Defendant in the further and better particulars of the claim had claimed \$9,694.30 for Roller Doors but these were not proved. There is evidence is an incident where Defendant complained to Plaintiff that a Roller Door was not working, but Defendant cannot refuse to pay and demand free maintenance by Plaintiff. This evidence is not proof of a defect that required part replacement and covered by warranty stated in invoice.

WINDOWS AND CRIMSAFE

- [63] Brett Whitaker in his evidence of defects of Plaintiff's work did not include defects to the Windows and Crimsafe. There were no complaints regarding windows or Crimsafe as to defective workmanship at the time of installation or at the time of inspection of defective work of Plaintiff on 14.2.2017.
- [64] The delivery dockets stated that the eight BnD rollers and 64 pcs of Regular Crimsafe louvres were supplied and installed which was signed off by Tom Guthrie, who was Assistant Project Manager, of the Defendant Company. (P14 and P15).
- [65] Defendant had not disputed said amounts in the invoices but counter claim is based on particulars contained in the letter marked as D28.
- [66] Similar to BnD doors there was a delay in installation and installation was completed by 31.1.2017 and the delivery was accepted by Tom Guthrie who was the Assistant Project Manager of the Defendant and there is no dispute about the said delivery and acceptance by Defendant.
- [67] Delivery did not affect to delay in completion of the storage units, as Parkwood doors installation did not complete prior to 31.1.2017

- [68] Plaintiff had not provided warranty for the said crime safe as well as windows and it is not clear what will be covered for such warranty or conditions of warranty. Terms of the said warranty never agreed between parties including the most important part which was the time period covered under warranty. No evidence produced on time or conditions.
- [69] There were no quotation which guaranteed warranty (P7), unlike BnD quotation which specifically stated time period and confined warranty to parts only. So windows and crimesafe invoices cannot be deducted for not providing warranty. So the invoices were quoted without a warranty (P7), despite parties agreed for warranty in the Agreement.
- [70] So there was no basis for Defendant to depreciate aluminum windows at 20% and this counter claim of Defendant is rejected.
- [71] There was one instance of a glass being broken but this cannot be attributed to workmanship of Plaintiff as glass can be broken for reasons other than defective installation. Defendant had failed to adduce evidence to prove the defect and also cost of alleged repair.
- [72] It should also be borne in mind there were no complaints regarding poor quality or workmanship of the windows or crime safe screens when the site inspection done by Defendant for identification of defects or prior to that except delay and number of person utilized for said work, or slow rate of completion of work.
- [73] Defendant had not proved the counter claim of \$10,868.20 as a special damage for window and crimesafe as particularized. D26 failed to prove the special damages on windows.
- [74] Defendant failed to prove its counterclaim for windows (Diamond louvre) and Crimsafe screens works done by the Plaintiff and accepted by Assistant Project Manager of Defendant on 31.1.2017.

PARKWOOD DOORS

- [75] The Agreement did not contain sixteen Parkwood Doors, and it was Plaintiff's locally manufactured doors parties agreed on 13.7.2016. According to that all doors and windows with crime safe screens installations were to commence on 7.11.2016 and complete in three weeks. This did not happen and neither party raised this at that time.

- There was no evidence of email correspondence of delay on the part of Plaintiff at that time by Defendant and it is presumed that delay was on the part of Defendant to get the site prepared for installation of windows and doors.
- [76] By email of 16.11.2016 from Brett Whittaker to Marcus Nand of Plaintiff show that both of them had discussions about the doors and initially eight of them were varied to Parkwood doors and these were to be front doors for eight units so rear doors did not vary to Parkwood initially. For this variation time for completion of installation varied to 19.12.2016.
- [77] Later this was varied to all sixteen doors including rear doors. So the intention of Defendant who is the customer of Plaintiff was to pay a higher price to obtain a premium product to have premium quality doors.
- [78] All Parkwood doors were requested with their jambs and all locks.(D2). This was an email dated 16.11.2016 and Marcus Nand replied '*yes that is fine. .will organize with Parkwood to go ahead*'. So Plaintiff had accepted variation of the Agreement. He was aware that Parkwood doors cost more and it is premium product, and price quoted including lacks but incompatible tools were fitted and damage the doors.
- [79] They were expected to be shipped by 1.12.2016 and last date for installation and varied to 19.12.2016. (D2). Marcus Nand had accepted this variation on same day of the email (i.e 16.11.2016), but there was a delay by Parkwood that resulted delay in delivery of Parkwood doors to Fiji.
- [80] By email correspondences marked P3 on 22.11.2016 both parties had further mutually agreed to sixteen Parkwood doors and they were to be shipped from Auckland by 1.12.2016 and Plaintiff had requested 50% of the cost for Parkwood that was varied and this was accepted by Defendant, and also paid.
- [81] It is not in dispute that the Parkwood doors did not arrive as expected by parties. According to D14 B (a letter of 31.1.2017 addressed to Parkwood highlighting the events up to that time regarding Parkwood doors Parkwood doors had arrived to Fiji on 19.12.2016. So the date of installation of the same needs adjustment but neither party sought this at that time. So the delay till 19.12.2016 was not due to Plaintiff's fault. Due to late arrival there are additional factors for delay.
- [82] It is evidenced that the clearance of the said doors from Fiji Revenue and customs also got delayed and these were things beyond the control of Plaintiff. It was

evidenced that the consignment of doors were cleared on the eve of Christmas. So considering the events and the time of the year, delay was inevitable. Plaintiff's workmen not turning up for work around Christmas period was not usual and this factor need to be considered, as parties did not agree on date of completion of installation, and the date agreed by both parties was 19.12.2016 and this required change.

[83] There was evidence that there was some adverse weather due to cyclone season. None of these factors were considered by parties initially as the doors were scheduled to be completed by end of November but this did not happen.

[84] Plaintiff had provided measurements for all sixteen doors to Parkwood by 10.11.2016 by email (marked as P12 A) and quotations were provided accordingly by the manufacturers (Parkwood). (see D 20 a letter of 24.2.2017 from Parkwood) . It stated the 'specifications supplied via SPL (Plaintiff) from DBP (Defendant)' the doors were manufactured.

[85] Plaintiff in its email addressed to Aron Smith of Parkwood on 18.5.2017 had stated, "....Parkwood doors that were ordered and shipped by SAMMA³was installed by Glen/SAMMA staff and was accepted by Denerau Storage Ltd.....'

[86] So Plaintiff had admitted it had ordered and shipped Parkwood doors and also installed them with New Zealand installer Glen and had also invoiced for the same including installation. Defendant had requested an experienced installer due to damage done to the doors by Plaintiff's workmen which Plaintiff had to some extent rectified at its expenses.

[87] It is incorrect to state that the Defendant accepted defective work without raising issues as to the damage to the doors. There was no delivery note similar to Roller Doors and Windows crimsafe issued on 31.1.2017, (P13 and P14) for Parkwood doors. Defendant on 31.1.2017 had informed Parkwood of the defects which were also confirmed by Glen Ruby , the installer who was flown to install sixteen Parkwood doors on the request of Brette Whittaker to work with Plaintiff's workers to complete the installation of Parkwood doors.

³ Plaintiff

[88] Glen Ruby was in Fiji from 25.12.2016 to 1.2...2016 and he had signed said letter confirming what he observed regarding defective works of Parkwood doors by Plaintiff.

[89] Defendant in the email of 16.11.2016 had requested Parkwood doors with locks but Plaintiff had fixed an unsuitable lock due to oversight on the part of Plaintiff. This had damaged the door and affected its premium quality of the products. Doors were cut and fixed incompatible locks and when replaced with suitable lacks, there were holes on the side of doors that looked unattractive or ugly, thus losing premium quality of the products.

[90] Document marked D20 was a letter signed by General Manager of Parkwood and according to that following defects were observed by Parkwood's experienced door installer

- a. 28 incorrect holes drilled in jambs.
- b. Incorrect locks supplied and fitted.
- c. Incorrect holes drilled in door for incorrect lock.
- d. Face plate required to cover wrong lock hold.
- e. Multiple scratches due to incorrect transport.
- f. Wrong jamb heights.
- g. Doors cut down incorrectly.
- h. Door Joints cut down incorrectly.
- i. Doors which had been damaged due to careless management and handling.
- j. Insufficient tools and consumables available on site to complete a professional installation job
- k. Doors that had been drilled by SPL incorrectly

[91] The above observations were from principal of Plaintiff and also manufacturer of Parkwood doors. Plaintiff as agent of Parkwood is required to provide a premium quality service (installation) to a premium quality product. If not a premium quality product will be wasted at the hand of an agent and customer will not get value for his money. Marcus Nand in evidence admitted Parkwood door cost more than two and half times of Plaintiffs door and it is premium product.

[92] Plaintiff should employ workmen with proper training so that such items are handled with care so that such products will not lose its value. According to Parkwood Plaintiff was found wanting in installation of Parkwood doors which were premium products. It

is proved that Plaintiff did not provide installation and fabrication of Parkwood doors to expected standard, to its principal.

[93] It is proved that Plaintiff failed to fix Parkwood doors with compatible locks and they were cut to fix incompatible locks damaging the doors permanently as to their premium quality.

[94] Plaintiff in their email 22.10.2018 had contradicted D20 and addressed each of the defects stated in that letter, in following manner.

- a. The 28 holes were drilled to install the door jambs at the base of the cavity, leaving room at the top to be filled or covered by flashing plates as suggested by Parkwood(Carver) in his email and discussion with me. All the doors and jambs were 13 mm short and according to Carver and Aaron this was the tolerance allowed by Parkwood. I have emails to prove this!!(no such email produced at hearing)
- b. The locks were agreed to with DBP and was in scope before the customer changed the doors from local manufactured to Parkwood doors.
- c. See note b., we agreed to replace the panels with incorrect lock holes with new panels.. this was discussed with Aaron at the time however he suggested we use the cover plate and that would be a less costly option.
- d. See note c.
- e. We transported the doors in good condition, the scratches if any would have been covered with touch up paint which we had ordered.
- f. The jamb height were done by Parkwood according to the correct cavity sizes we provided, we did not cut these at all.
- g. We did not cut the doors, these were supplied with 13mm tolerance as stated earlier.
- h. What damage are you referring to here , and how do you know that the doors were carelessly handled
- i. We supplied all the tools Glen asked for DBP volunteered to provide tools which was unnecessary.
- j. What incorrect drilling are you referring to here”

[95] In said email which was emailed after discovery of the documents sought a reply from Parkwood but there was none. Before this letter Defendant's Brett Whittaker, Tom Guthrie and Parkwood installer Glen Ruby had identified incorrect holes drilled in

- jamb, incorrect locks fitted by cutting hole in wrong manner, wrong jamb heights in all front and rear doors. It also stated lack of equipment and skills to install Parkwood doors. These facts corroborate damage to Parkwood doors by Plaintiff's workmen.
- [96] Letter of Parkwood marked D 20 was issued by General Manager of Parkwood upon evidence provided by its experienced Aluminum door installer who came to Fiji upon the request of Defendant.
- [97] It is rare for principal to state incorrect statement as to quality of its agent in Fiji. Though the said letter marked D20 is hearsay it needed to be analyzed in terms of Section 6 of Civil Evidence Act 2002, along with evidence of persons who had inspected the Parkwood doors after installation. In the reply to D20 Plaintiff had admitted using incorrect locks when Defendant had requested Parkwood doors with '*locks complete 100%*' in its email of 16.11.2016 (D2) which was confirmed by Marcus Nand on the same day. It is known fact that locks should be compatible to doors. Plaintiff had not considered this.
- [98] Marcus Nand in his reply to D20 in his email of 22.10.2018 state '*locks were agreed with DBP and was scope before customer changed the doors from local manufactured to Parkwood*', but failed to admit that Defendant had requested a lock suitable for Parkwood in its variation on 16.11.2016 which was accepted. This shows that Plaintiff is not accepting its fault in incorrect locks being fitted with wrong cutting of doors for the locks which had affected significantly to a premium product to lose its premium character, despite it can be used with rectification as a door.
- [99] Defendant through its email dated 19.1.2017 informed Aron Smith of Parkwood that Plaintiff had no expertise for installation of Parkwood Doors hence opting to an experienced door installer from Parkwood at their cost. This email was copied to Plaintiff including Marcus Nand. Plaintiff had not contradicted this position. (D11) at that time and acted accordingly. This was after Plaintiff's workmen cut and fixed incompatible locks.
- [100] From the evidence it is proved that Defendant had mitigated the damage to its premium product and sought installation of the same from a person recommended from Parkwood (Glen Ruby)
- [101] Defendant had mitigated the damage of Plaintiff and it had accepted this position and without contradicting this had complied with the request of Defendant Plaintiff had

assisted Glen Ruby of Parkwood by providing fixed doors to the site, and assisted to workmen to install Parkwood doors with Glen Ruby from New Zealand.

[102] Brette Whittaker had also emailed with a photograph as to incorrect installation of a lock resulting door being not able to close. (D11) This was emailed to Marcus Nand, Aron Smith and Plaintiff's sales team. There was no reply from Plaintiff or denial of defective work. Marcus Nand was not on the site to observe these damage to Parkwood doors.

[103] There was no denial of this or explanation or remedy for this situation. This shows that Plaintiff's workmen were inexperienced for installation of Parkwood doors. So Plaintiff had breached the Agreement as varied by parties. The primary purpose of any door is lost if that cannot be closed completely so there was a requirement to mitigate the situation. If not complete replacement of doors would have required.

[104] Letter of General Manager of Parkwood, dated 24.2.2016(D20) further stated that even the reputation of Parkwood was at risk due to level of competence of Plaintiff shown in regard to installation of Parkwood doors by Plaintiff. This was a serious accusation and a principal will not make such damaging statement to its agent without a reason.

[105] Parkwood was concerned of their products and how they are dealt at the hand of Plaintiff. The reputation of Parkwood may affect due to poor handling and defective installation. In such situation a premium product will be wasted due to poor delivery of service by installer which is the final part of the delivery of the product.

[106] So bad handling coupled with incorrect installation can reduce the value of a premium product, to a cheap or inferior quality product, which is unattractive.

[107] Plaintiff's workmen had admitted to Defendant that they had not installed Parkwood doors and conduct of Plaintiff proved this fact. There was no evidence contrary to show Plaintiff had experience with Parkwood doors earlier or the workmen were experienced to handle them, considering damage done.

[108] Defendant had timely stopped all installation of Parkwood doors by Plaintiff's workers having observed the damage already done. It is also observed that there was no experienced person on the site in charge for supervision of the workmen of Plaintiff. So Brett Whittaker's request for experienced installer from Parkwood was justified.

[109] The evidence on the balance of probability shown that Plaintiff's staff had no prior experience in Parkwood doors and due to their actions had damaged the doors before Brette Whittaker had stopped Plaintiff from installation. There was no reason for Brett Whittaker to stop installation of Parkwood doors when there was a delay in completion of installation without a good reason.

[110] Without having required experience in the installation Plaintiff had damaged and devalued Parkwood doors. Plaintiff had rectified some of the defects at its cost. This proves that there were damage to Parkwood doors by Plaintiff's workmen that required rectification at its cost.

[111] Plaintiff stated in its written submission that Brette Whittaker unreasonably demanded the Plaintiff to deliver the Parkwood doors within 30 minutes on 27.1.2017.

[112] This is far from the correct position, Brette Whittaker had through email on 24.1.2017 informed the arrival of and experienced Parkwood door installer on the following day and had informed that he would be in Fiji from Wednesday to Saturday (25th to 28th January 2017) and had informed that he will be in site by 1.30 pm on 25.1.2017. So Plaintiff had ample time to fix the doors and deliver them to the site to be installed by Glen who was specially flown for the purpose. (see D12)

[113] Plaintiff had replied to above email on the same day promptly and stated as;

'Yes I have received the materials from NZ and will be delivered to your site tomorrow morning and will also organize the boys who will be handing the doors to be there on time for tomorrow.'

[114] So Plaintiff had ample notice to bring Parkwood doors before 27.1.2017, but had not done so.

[115] Email of 27.1.2017 from Brett Whittaker stated that though Glenn from Parkwood was on site for more than two days four of the front doors were still not on site even as late as 2.41 pm on that day. So the request to immediately deliver remaining doors cannot be taken in isolation and cannot be considered as unreasonable. They were received at least a month prior but was unable to deliver them to the site.

[116] Brett Whitaker produced (D21) a letter dated 21 .3. 2017 by John Caprani the Workshop Manager of First Windows and Doors who allegedly remedy all Parkwood doors. Strangely, no invoice of such remedial work or payment produced to court. This

letter was written more than a month after 11.2.2017 letter of demand and notification of legal proceedings including a winding up action which did not proceed.

[117] Defendant has failed to prove the cost of remedial work from D21 and or D26. There was no evidence to prove remedial work and cost.

[118] Brett Whitaker wrote to Parkwood on 31.01. 2017 (D14B) alleging certain actions of Plaintiff such as cutting down a door to incorrect size, cutting down jams, all locks were incorrectly fixed. In cross examination he admitted that Glen Ruby had not seen such actions, but these defective work by Plaintiffs workmen resulted Glen Ruby to come to fix Parkwood doors.

[119] Brett Whitaker emailed Marcus Nand on 11 2 2017 and informed him that all correspondences were to be forwarded to their solicitors from that day. On following day requested a site inspection with them for identification of defects and Plaintiff had not attended to that site inspection. This can be a reason not to participate promptly, but there is no reason to reject such inspection completely. In a joint inspection visible defects could be identified by parties themselves. Defendant had made no effort to see the defective works of its workmen regarding Parkwood doors.

[120] Defendant had taken photographs on 14.2.2017 of the defects in Parkwood Doors so he supported oral evidence of the witnesses called by Defendant with photographs marked as D14. This shows damage to doors in all eight storage units.

[121] Upon analysis of all the evidence and email correspondence it is proved on balance of probability it is proved that Plaintiff was found wanting in the installation of Parkwood doors in more than one aspect. So on balance of probability it is proved that Parkwood doors had lost its expected value from premium quality product to an inferior quality or unattractive, cheap product.

[122] Defendant had depreciated Parkwood Doors at 60% of its valued at \$33,600 and an engineer who had depreciated gave evidence to justify said depreciation. When considering defects which are permanent it is clear that Parkwood doors had lost its premium quality due to inexperienced workers of Plaintiff. It is not justified to replace the same with new products as its utility is served though all defects were not rectified and cannot be transformed to premium quality product. Defendant had paid more than two and half times of a similar product locally produced in order to have premium quality finished product. Due to defects Parkwood doors have lost its premium quality

character. So 60% depreciation or \$33,600 is allowed for diminution of its value from premium quality to interior quality. Plaintiff had not produced any valuation to contradict the said value. Marcus Nand had not visited the site after installation to examine the defects on the doors. So Defendant's claim for depreciation of Parkwood doors accepted. In UK (HL) decision Ruxley Electronics and Construction Ltd v Forsyth; Laddingford Enclosures Ltd v Forsyth [1995] 3 All ER 268 it held that when replacement is not justified, diminution of value is granted as damages for breach of contract. Plaintiff breached the contract and had damaged the Parkwood doors. [See James v Hutton [1949] 2 ALL ER 243 Tito v Waddel (No. 2) [1977] 3 ALL ER 129 at 3 Linden Gardens Trust Ltd v Lenesta Sludge Disposal Ltd and others [1993] 3 ALL ER 417].

[123] Apart from that \$11,665.85 claimed as payment for installer engaged at their cost is allowed as it was a cost incurred in mitigation of further damage to premium products by inexperienced workmen of Plaintiff. It is evidenced that Parkwood had requested initially from Plaintiff and it had refused and directed to Defendant. Defendant through their letter dated 9.2.2017 (D15) had indicated that it will pay Parkwood's expenses and deduct the same from what is due to Plaintiff. Since Parkwood had claimed from its agent, Plaintiff their expenses the amount was known to them. Plaintiff had not contradicted said sum. If the amount claimed by Defendant was a different value it could have produced that evidence to contradict the amount .Plaintiff had asked Parkwood to claim all the expenses from Plaintiff (see Plaintiff's bundle of documents No 32). Plaintiff had agreed to pay cost of Plates and said it would not quote to customer. This was also evidence through oral evidence of Marcus Nand who stated that Plaintiff had not claimed for remedial work on the doors including labour and paints. Having done some rectification of damage to Parkwood doors, Plaintiff is estopped from denying diminution of premium quality Parkwood doors.

[124] According to Marcus Nand Plaintiff it had borne cost of correction of defects so Defendant must pay remaining invoice amount. This cannot be accepted considering defects that remained and are permanent and had devalued premium product. If such remedial work was not carried out by Plaintiff award for damage for diminution of value will be higher.

[125] Defendant had not produced any invoice to receipt of payment to support payments it alleges for rectification of defects. These are special damages which only Defendant is required to prove and there is no proof of that.

[126] Vijay Krishnan who had seen the defects stated poor condition of the doors and it is proved that Parkwood doors had lost major part of its premium character though it can serve as a door. Brett Whitteter stated the poor quality of the finished doors that had visible defects as well as structural defects such as not able to fully seal the storage from rain or storm surges. This is due to larger gaps on the door. It was also evidences that these doors were defective and did not serve the purpose of a premium product of similar nature to a storage of Defendant.

[127] From the counter claim only depreciation of 16 doors at \$33,600(D26) and payment for mitigation cost of \$ 11,665.85 D26) allowed.

LOSS OF RENTAL INCOME

[128] Defendant had claimed for \$47, 088.00 as loss of rental income Defendant has claimed for one month and two weeks. There is no proof of such a loss. It has not proved time period of delay due to Plaintiff's actions. Plaintiff delivered Roller Doors and windows Crimsafe installation by 31.01.2017. Installation of Parkwood doors delayed due to culmination of several factors and Plaintiff is not responsible for all, and discussed earlier in the judgment.

[129] The defects identified and shown in Photograph taken on 14.02.2017 and Defendant must prove that how they were remedy and time and cost involved through invoices, and evidence of work completed.

[130] Defendant had failed to prove rentals for eight storage units. No rental agreements produced to prove rentals even after remedial work. So claim or lost rental which is special damage not proved. So there was no proof of six weeks, and rental and also remedial work and cost involved as they were special damages.

CONCLUSION

[131] Unpaid total of invoices of Plaintiff is \$92,440.97⁴ . Defendant had proved that parkwood doors which were premium products had lacked its premium quality and lost its premium quality value to Defendant. For this \$33,600 is allowed along with cost of mitigation of the damage for a sum of \$11,665.85. After deduction of counter claim Plaintiff is entitle for judgment for remainder and 6% interest is allowed from the date of institution of action. Cost of this action is summarily assessed at \$5,000.00

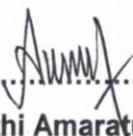
Calculation

Plaintiff's claim	92,440.97
Counter Claim	
Depreciation of 16 Parkwood Doors ⁵	\$33,600.00
Cost paid to Parkwood for installation ⁶	\$11,665.85
<u>Total</u>	<u>\$45,265.85</u>
After deduction of counter claim remaining sum	47,175.12
Interest at the rate of 6% for 7 years 9 ½ months	22,052.75
<u>Total payable</u>	<u>\$66,227.87</u>

FINAL ORDERS:

- a. Defendant is ordered to pay a sum of \$66,227.87 to Plaintiff.
- b. Cost of this action is summarily assessed at \$5000 to be paid by Defendant to Plaintiff.




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Deepthi Amaratunga
Judge

At Suva this 25th March, 2025.

Solicitors

R Patel Lawyers

Sherani & Company

⁴ Tab 14 of Defendant's bundle of documents(P6,P7, P8,P9, P10 invoices)

⁵ D26

⁶ ibid