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*Judgment: approved by the court for handing down
(subject to editorial corrections)**

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Delivered: 20/03/2025

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

KING'S BENCH DIVISION

ON APPEAL FROM THE COUNTY COURT FOR THE DIVISION OF ANTRIM

Between:

KAMRUL HASAN

Plaintiff/Appellant

and

LYNAS FOOD SERVICE LTD

Defendant/Respondent

and

NISBETS PLC

Third Party

and

GLEN DIMPLEX HOME APPLIANCES LTD

Fourth Party

Mr K Denvir (instructed by Campbell Stafford Solicitors) for the Plaintiff
Mr T Fitzpatrick (instructed by Clyde & Co Solicitors) for the Defendant, Third Party &
Fourth Party

O'HARA J

[1] This is an appeal from a decision of His Honour Judge Gilpin, dismissing the plaintiff's claim for damages for breach of contract. The plaintiff had purchased a gas oven, a Buffalo 6, from the defendant Lynas Food Service Ltd, to develop a new business venture in Portrush. His claim is that the oven was defective and failed almost immediately. Since it was not fit for purpose, says the plaintiff, he is entitled to recover damages for expenditure and for loss of profits.

[2] The plaintiff's contract was with the defendant, but the defendant sourced the oven from Nisbets Plc, the third party, and the oven was manufactured by Glen Dimplex Home Appliances Ltd, the fourth party. As the case has evolved Glen Dimplex has taken over the defence of the claim on behalf of all parties. If the oven was defective, as is alleged by the plaintiff, then Glen Dimplex is liable for the plaintiff's loss.

[3] There was considerable debate about the nature and extent of the plaintiff's loss and whether it flowed directly from the alleged defect in the oven, but that issue is obviously secondary to the question of whether the defendant has proved on the balance of probabilities that there was, in fact, a defect in the oven supplied to him. On this point the law is clear – the plaintiff does not have to prove fault on the part of Glen Dimplex. Either the oven was fit for purpose, or it was not.

[4] The plaintiff was experienced in the food and restaurant business. Prior to March 2016 he had opened restaurants in both Coleraine and Derry. The new venture, to be known as "The Grill" was located in Main Street, Portrush. The oven was delivered there on or about 9 March 2016. Some days later it was installed for the plaintiff by a Mr Butler of A&M Technical Services in Cullybackey, Co Antrim.

[5] The plaintiff opened The Grill for business on Wednesday 23 March. He traded that day, again on Thursday 24 March and then on Good Friday 25 March. On the Friday a chef employed by him named Tommy sustained a burn to a finger because one of the control knobs on the oven had overheated to the extent that it had partially melted. "Tommy" did not give evidence but the plaintiff said that he was present at the time and saw for himself what had happened.

[6] In the event, there is no dispute that not one, but two control knobs partially melted because they overheated. That is accepted by Glen Dimplex. The question for me is why the control knobs partially melted. Two contrasting explanations have been advanced. For the plaintiff, it is contended that there was a design fault because a flexible woven glass fibre braid which was to act as a seal to keep heat in the oven was not sufficiently secure because of the spacing between a number of the clips which held it in place. On this version, the spacing between the clips allowed the braid to sag. That, in turn, led to the escape of heat which led to the control knobs directly above being damaged.

[7] The plaintiff asserts that on the Friday in question, when the overheated partially melted control knob was pointed out to him, he noticed that the braid was sagging. It was not properly held in position.

[8] Mr Butler gave evidence to the effect that he installed the oven safely and correctly, following the instructions in the Glen Dimplex manual which came with the equipment. When he left the premises, having done his work, the oven was working satisfactorily, he said. However, when he went back to the premises after

Good Friday, at the plaintiff's request, he noticed that one of the clips on the braid was not properly in place. He stated that:

"...I received a call from Mr Hasan asking me to come back to have a look at the cooker again, as an incident had occurred that meant that it could apparently no longer be used. On this visit I noticed that the central plastic knobs on the cooker had suffered melting damage. I inspected it and discovered what I considered to be a manufacturing defect, which was that one of the clips of the interior mesh seal was defective and the clip was not properly in place. With repeated door openings and closings, I understand that the clip fell out. I could see that one of the mounting legs was too short. This would cause it to fall out. I do not see how the defendant or the manufacturer could say it was my fault. I did not design or manufacture the clip."

[9] Some support for this explanation is found in photographs taken by Mr Butler, although it appears that they were not taken until 27 May 2016. Mr Niall Cosgrove, Consulting Engineer, gave expert evidence that he inspected the oven in July 2016. By that time the original braid had been replaced. It seems that this was done by Mr Butler two months earlier in May. In Mr Cosgrove's opinion, there was a defect in the design of the oven, but not the one suggested by Mr Butler. According to Mr Cosgrove, that defect was that there was too big a gap (180mm) between the pins or clips which held the braid in place. As a result, the braid sagged, and the seal was not secure so that heat was able to escape.

[10] The defendant challenged that analysis and explanation of events through a number of witnesses and by reference to documentary evidence. One witness was Mr Thomas Robb, an incorporated engineer, with the Institute of Mechanical Engineers. He did not examine the actual oven provided to the plaintiff by the defendant because it had been disposed of by the time he became involved in the case. However, Glen Dimplex provided materials which he used to do a mock-up of the original. In addition, he had access to Glen Dimplex laboratory tests and to a report of another investigation carried out elsewhere.

[11] Mr Robb's opinion was that the main flaw in Mr Cosgrove's identification of a defect in the spacing between the clips or pins was that any escape of heat arising from that source would not nearly be enough to cause the control knobs to melt. In his opinion, the only escape of heat which would explain that would be brought about by the doors being left open. Moreover, he contended that there was simply no evidence that an additional pin or clip would have made any difference at all – there would only have been an escape of heat sufficient to melt the control knobs if the doors were left open.

[12] Evidence to a similar effect was given by Mr Paul Taylor of Glen Dimplex who was head of engineering – test and verification, a post he held for more than 17 years. He testified as to the widespread use in the industry of the same type of seals as were found in the Buffalo 6. He stated:

“The same type of seal as complained of by the plaintiff is widely used in our industry in the design and manufacture of commercial ovens for use in commercial kitchens. GDHA has used this type of seal in other products without complaint and, indeed, on pyrolytic ovens which are a particular type of oven that can produce extremely high temperatures, potentially 450°C. There has been no history of problems with performance of that seal in such pyrolytic ovens or, indeed, any other ovens and even extreme heat does not cause it to alter its performance or its properties.”

[13] Mr Taylor referred, in particular, to the fact that other users of the Buffalo 6 oven had complained of the melting of control knobs but that tests had been conducted which showed that it was not possible to recreate a flue-like effect sufficient to damage control knobs without leaving the doors open.

[14] It is, therefore, the evidence for the defendants from these two witnesses that:

- (i) There is no design defect in the spacing of the clips or pins as suggested by Mr Cosgrove.
- (ii) Even if there was such a defect, the escape of heat would not and could not explain the partial melting of the control knobs.
- (iii) The amount of escaping heat required to cause the damage to the control knobs could only have been caused by the doors having been left at least partially open.

[14] I must also refer to the evidence of Mr Gerry McManus, a gas safe engineer, who attended the plaintiff's premises at The Grill in Portrush on 29 July 2016 at the request of the defendant, Lynas Food Service Ltd. The others who attended that day were Mr Slegg of Glen Dimplex, Mr Paul Taylor (a different Mr Paul Taylor) of Lynas Food Service Ltd, Mr Cosgrove and the plaintiff. The purpose of that attendance was to inspect the Buffalo 6 oven which the plaintiff had purchased from Lynas, and which had been manufactured by Glen Dimplex.

[15] Mr McManus felt that the oven was not safe to be used and he issued a warning notice. His concerns did not, however, relate to the plaintiff's complaint in these proceedings about the door seal, but rather “that the entire gas installation and

set-up of the plaintiff's kitchen was unsafe. In my opinion, the gas installation was unsafe from the date of installation and should never have been used."

[16] Mr McManus also expressed a view that the door seal which he saw on 29 July 2016 was one which could be taken off and put back on again without difficulty and, in his view, the oven itself was safe to use. The seal, he said, was a serviceable item which could be removed entirely and replaced, a short job taking just a few minutes and costing something in the order of £250. In his opinion, the cooker itself was safe to use in the condition in which he found it at the inspection. His concerns were not that the seal rendered the cooker unsafe but, rather, the gas installation as a whole was unsafe.

[17] Mr McManus's evidence was not directly relevant to the question of design fault, but it does chime with a number of inconsistencies and contradictions in the plaintiff's claim for financial loss. For instance, the dates of the business opening and closing are given for different periods in different documents, there is an issue about whether his own accountant's report is correct in estimating the loss of profits and whether the business closed because simply put, it failed, rather than because of the allegedly defective oven.

Conclusion

[18] I am grateful to counsel for their very helpful and detailed written submissions.

[19] In his submission, Mr Denvir, submitted on behalf of the plaintiff that:

"It is undeniable the cooker knobs melted. It is undeniable that melting control knobs is a health and safety issue and compromised the product. Control knobs should not melt in normal use."

[20] I agree with that submission to the extent that I agree that control knobs should certainly not melt in normal use. However, the overwhelming evidence in this case is that the reason they melted must have been because the oven doors were left open. On the expert evidence of Mr Robb and Mr Taylor, the knobs simply could not have melted just because of a small sagging gap in the braid (if there even was one) which left the seal incomplete. Much more than that would have been required. The only plausible explanation, directly contrary to the plaintiff's own evidence, is that the oven doors were left open. They did not swing open because of a fault – they were left open. That explains what happened and directly contradicts the evidence of the plaintiff who denied that the doors were open.

[21] In my judgment, that does not constitute normal use for an oven of this type. I conclude that the oven was fit for purpose and that there was no design or construction flaw of any type including the type suggested by Mr Cosgrove. In

these circumstances, the plaintiff's claim for damages for breach of contract fails and the decision of the learned County Court Judge is affirmed.