

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

4/11/16
CASE NO: 40552/2013

(1)	REPORTABLE: NO/YES
(2)	OF INTEREST TO OTHER JUDGES: NO/YES
(3)	REVISED.
(4)	Signature: <i>[Signature]</i> Date: 04/11/2016

DARK FIBRE AFRICA (PTY) LTD
(REGISTRATION NUMBER 2007/013968/07)

PLAINTIFF

and

UDS CIVILS CC
REGISTRATION NUMBER: 2011/062984

RESPONDENT

JUDGMENT

KHUMALO J

INTRODUCTION

[1] In this action, the Plaintiff is claiming for damages against the Defendant in the amount of R165 785.37 it alleges to **be the reasonable costs** for the repair of its fibre optic cable and duct damaged allegedly by the Defendant's employees ("employees") acting within the course and scope of their employment on or about May 2012.

[2] The Plaintiff alleges that the Defendant's employees cut the duct and cables in Plaintiff's fibre optic cable network constructed on, under and along Houghton Drive, near Rodean School in Johannesburg during excavation works in the area.

HISTORICAL BACKGROUND

[3] The Plaintiff is the holder of a licence for an Electronic Communications Network and an Electronic Communications Network Services issued in terms of the Electronic Communications Act, 36 of 2005. One of its principal business is the construction of dark fibre

optic cable network upon, under, along or across streets and/or roads which consists of the laying of underground ducts containing the fibre optic cables, selling the fibre optic cables and leasing space in the fibre optic cable ducts to third parties. It is the service provider of all large cellular companies.

[4] The Defendant's business on the other hand was *inter alia*, conducting excavation works through its Civils Company.

[5] It is common cause that on or about May 2012 the Plaintiff's fibre optic cables and duct under and along Houghton Drive near Rodean School ("site") were damaged.

[6] The Plaintiff alleges in its particulars of claim that the employees of the Defendant damaged the cable acting negligently, in one or more or all of the following respects:

[6.1] They failed to determine the presence and location of the underground networks prior to commencing excavations; by having no regard to Defendant's route markers at the locations; and or

[6.2] failed to exercise due, proper and reasonable care whilst performing the excavations; and/or

[6.3] should have foreseen the presence of underground networks and taken reasonable steps to guard against causing damage to such networks.

And that the amount claimed is for the reasonable costs of repair.

[7] The Defendant has pleaded a Special Plea of misjoinder alleging that the Plaintiff has cited a wrong party. It alleged that the Plaintiff actually entered into a contract, partly written and partly verbal, with a party called Underground Detection Services CC, followed by a bare denial.

[8] An amended Plea filed subsequently by the Defendant did not amend anything.

[9] In Replication, the Plaintiff refuted Defendant's Special Plea pleading that its action is based in delict, and not contractual.

[10] The Plaintiff further pleaded that, if the court finds that Underground Detection Services CC instead of UDS Civils CC (Registration number: 2011/062984/23) caused the damages as alleged in its particulars of claim, in that event it pleads that UDS Civils CC and Underground Detection Services CC act and operate as **alter egos of one another and do not operate as separate corporate entities**. In the premises the court should find that they **should be regarded as one and the same entity** for purposes of attributing liability for damages suffered by the Plaintiff as a result of the negligent conduct of either of the aforesaid entities.

[11] The Defendant's reply to questions raised by the Plaintiff in the pre-trial conference, indicated that its case is that **Underground Detection Services CC was the Company that was the appointed contractor carrying out the excavations**, alternatively tree felling or grounds clearance works on site. It is for that reason its Plea alludes to an existent contract between the Plaintiff and Underground Detection Services. It however did not proceed with the contract allegation.

[12] The issue to be determined is:

[12.1] whether it is the employees of the Defendant's or those of Underground Detection Services' that caused damage to the Plaintiff's fibre and optic cable network.

[12.2] if the Defendant can still be held liable notwithstanding Underground Detection Services being the company contracted to do the work.

[13] The parties agreed as recorded in their pre-trial minute that the question of onus would be argued at trial, though Plaintiff bears the onus of proof. In dealing with the evidence I have referred to the Defendant in its name and referred to the witnesses using either their names or surnames, that is only for the purpose of easy reference and not intended for any other purpose. All parties and witnesses held to be of equal standing before the court.

EVIDENCE LED

[14] Evidence was, on behalf of the Plaintiff led by its employee, Lourens Maritz ("Maritz"), Mr Veon Van Niekerk ("Van Niekerk") an erstwhile employee of the Defendant (UDS Civils CC), and Karlien or Colin Jordaan ("Karlien"). On behalf of the Defendant it was led by Mr Andrew Rowse ("Rowse") and Travis Holman ("Holman"), a sole member/director of the Defendant.

[15] Maritz's testimony was that he worked for the Plaintiff as a preventative maintenance officer responsible for ensuring that no breaks happen to their infrastructure. In November 2011 he attended a kick-off meeting with a company that was commissioned or contracted to do the upgrading of the intersection near Rodean School in Houghton ("the site"). Present at the meeting was Veon Van Niekerk whom he identified to be working for the Defendant since he had the UDS Civils CC logo on the door of his truck. Van Niekerk also confirmed his employment with the Defendant and in the minute of that meeting was recorded to be from the Defendant.

[16] They discussed the wayleave, which is a document that indicates to the upgrading company the Plaintiff's services within the vicinity. It put terms and conditions of their performance of the work in relation to such services. K & T Engineering who were the Principal Engineer had applied for the wayleave to be issued to UDS Civils CC, the company it commissioned to do the work. The wayleave specified that the depth of Plaintiff's services or cables under the ground could not be guaranteed and specifically directed that the Plaintiff be called to indicate the location of the route path where the cable was in the ground. The two walked to the road, which according to Maritz was clear where the trench line was and the Defendant marked the area of its locality. Its depth however could not be verified.

[17] Maritz said UDS Civils started to work around the area in February 2012. On numerous visits he made to the site to see if everything was ok he always found Van Niekerk. At some stage the Defendant had dug a pilot hole close to their services to determine how deep they could go. He continued their work which was merely prevention and intervention which they did until May 2012.

[18] However on 24 May 2012 after receiving information about the damaged cable he visited the site and found workers wearing overalls with the Defendant's logo. He took photos

of the equipment and vehicles on site that had a UDS Civils sticker on the windscreen and their license plates. There was also a truck that had the Defendant's marking that took capstones and worked inside the road. The on-site supervisor and a TLB truck operator confirmed the information about the contractor that it was UDS Civils. He personally had always dealt with Veon. He found that 4 out of the 6 cables in the duct were damaged. The situation sanctioned a fine for the disruption of services payable after 4 hours of the duct being gone, so they had to urgently attend to the temporary repair of the duct.

[19] When he was cross examined he said he could not deny that the logo UDS Civils could stand for Underground Detection Services as well. He was referred to an invoice that reflected the logo and the name Underground Detection Services t/a UDS Civils. Save for that question his evidence was not challenged.

[20] Van Niekerk testified that he was employed by the Defendant between the period 2011 and 2012 as a construction manager. When he was applying for the job he was interviewed by the two brothers, Tarso and Travis Holman ("the Holmans") **both controlling directors and they both signed his contract of employment.** They operated under the name USD Civils CC. He was paid a monthly salary by UDS Civils CC and received instructions from the Holmans. **Both UDS Civils and Underground Detection Services were formed by the brothers. However he was contracted and paid by UDS Civils CC.**

[21] On 3 November 2011, he attended the kick off meeting on site on the instruction of his boss, Travis Holman ("Travis"), where the discussion about the whereabouts of the cables, the entity that was going to be conducting the work and their time schedule, took place. They had applied and were issued with a wayleave that points out where the cables are. He met with Maritz who showed them the location of the cables on the road which he marked with a blue spray paint. On the excavation he also worked under the instruction of Travis. It was also part of his work to conduct interviews and organise everybody who needed to do the construction there as a site manager. Maritz was occasionally present on site.

[22] Under cross examination he testified that his payslip was signed by both the Holmans, Travis as his boss and Tarso as his manager. According to him Travis was the employer, the boss at UDS Civils. They got the 2 businesses from their father. Travis was way above the other Holman coming to all sites they were working on. He denied that Travis was a consultant. He said when he signed his contract it said nothing about Underground Detection Services. The ad said UDS Civils CC and the insignia on the motor vehicles was the same. Their main office description said Lanseria. He was aware of the other company Underground Detection Services's formation in 1999 and was not in its employ but of USD Civils that started only 10 years later.

[23] On re-examination he confirmed that his job interview with UDS Civils was held at Fourways number 95 Leslie Road. Their meetings were always held on Monday mornings at Fourways. His salary slip was from UDS Civils CC with UIF and PAYE deducted.

[24] The third witness to testify on behalf of the Plaintiff was Karlien or Colin Jordaan ("Jordaan"), employed at a Dimension Data Company called Plessy SA as a line manager being part of a maintenance team on the long hole cable route. The job entailed ensuring that services are not affected, so they would drive through the routes, fixing the breaks as soon as they happen wherever, to get the data services running as soon as possible. The main data

services would be for MTN, Vodacom and Cell C. A client reports directly to the knock (which is the operational network) who will then contact them. On site if something is found broken they would take photos first before deciding on what should be done to temporarily repair the break. The turnaround time to repair should be 4 hours from the time the fault is reported. Otherwise the Service Level Agreement of the operational networks and their clients to whom they provide services get affected. They in that instance would get a date from the client for a permanent solution which cannot be in a month's time otherwise access to the temporary splice will not be possible since it may be covered with soil and not be accessible.

[25] The temporary fix is important and lasts for a month up to a year. Its purpose is to get the services running as soon as possible for the companies to be able to comply with their customers' Service Level Agreements. After the services are running they then start with a permanent fix of the ducts and the floating of new fibre is then done. The permanent solution is done as soon as possible thereafter otherwise it would be difficult to get access to the temporary splice as mentioned. Each cable would normally be allocated to a specific customer so all the cables have to be fixed straightaway.

[26] When fixing the cable, the ducts/ sleeves have to be fixed, so trenches must be opened three metres or more apart from the breakage spot, and from each side. A new duct is then inserted and the sub-ducts connected, followed by tests conducted on the ducts to check for any leaks. Each duct has seven sub-ducts with a diameter of 12.10 millilitre which fits in a 50 millilitre duct. After fixing all the sub-ducts, the cable is then floated. That is done by using the air which is pushed in at one side of the duct to float the cable. The cables get fixed from joint to joint, which can cover a 4 kilometre area. In the cities they are much closer because the area has a lot of clients.

[27] Plaintiff had 4 cables damaged which were 550 to 600 metres apart. Plaintiff's ducts were of 72 millilitre diameter, which is four times and amounts to 288 millilitre. The whole of each of the cables was damaged. The length of the Plaintiff's damaged cables were about 2 180 metres. It cost R15,26 per metre. According to him the charge is a set amount that is charged in the industry. Also there was 12 FP ducts that were supplied or about 12 meters thereof which is six meters from the spot on each side. An amount of R25 or R26.80 plus an additional amount of R4.50 for labour was charged or that which he said was acceptable and the price set out by the supplier. R2.50 was charged for the recovery of the cable. He reckoned the recovered cable is not recyclable as it could not be reused. There was also a charge of R3.45 he mentioned for handling a 192 meter slack that he confirmed was reasonable. He said the two cables were pulled together and the fibres fused, which process is called splicing. It happens on both manholes. The total number of splicing is 576 which is 72 times 4 on each side. The labour charged was R97,75 per splice. 72 splice protectors were needed for 72 fibre which was priced at R2.50 each. Thereafter labelling was done to identify that it is the DF (Plaintiff's") Product using 24 labels per joint closure, charging R285 for labour which is a standard price. Coupling was charged at R4,06 each which connects the ducts. The retesting of quality of the pipes and metro configuration took place at R1 001 per metre and labour of R2.15 per metre was charged. He regarded the contractor costs for infrastructure repairs of an amount of R23 055.77, charged by the Plaintiff to be reasonable.

[28] He confirmed that it is possible with a TLB to sever the fibre optic cables and also that the wayleave that is provided or furnished cannot be 100 % accurate on where the

underground infrastructure is located. So a kick off meeting will usually be held where the owner will indicate approximately where the route is running and an instruction issued to open up pilot holes on site on either side of the marked location until the actual ducts are found where the work is to be done or at least ten metres apart. It was the witness's submission that if the excavation work was to be carried out on the pavement not on the road it would not have been necessary to dig pilot holes if the proposed construction was not going to affect the cables or the underground structure. Since the infrastructure was on the road if they were not going to work there it would not be necessary to dig the holes. So if Maritz did not tell UDS Civils CC to dig the pigholes there would be nothing wrong. The amount charged for the whole repairs by the Plaintiff was conservative being fair and reasonable.

[29] This witness was not cross examination, his evidence therefore also went unchallenged. The Plaintiff's case was thereafter closed.

[30] For the Defendant, the first witness to testify was Andrew Rowse ("Rowse"), a civil engineer that was in the employ of K & T, the Principal Engineer since January 2011. Rowse, as a senior engineer had started as a consultant and during that period promoted to an associate. He was in K & T's employ until June 2014. His evidence in chief was that he remembered the access upgrades, road construction and storm water upgrade of the intersection near Roedan School in 2012. He was responsible for the design and the administration of that contract as a principal engineer. He is the one who wrote the letter of appointment to the contractor, Underground Detection Services that was to do the intersection upgrade, road works and storm water construction or acces to Rodean. The letter followed a tender process which Underground Detection Services came out as the preferred bidder. He had heard of UDS Civils CC, they probably have been in one of his tender lists but he could not remember when and what kind of contracts they were involved in. However UDS Civils CC was not involved in the Rodean project but Underground Detection Services was the company that was involved.

[31] His testimony under cross examination was that he worked under a principal designer as a design engineer and a contract administrator under a principal engineer. They were in the lowest grade of oversight, managing site meetings and conducting site inspections once a week. He is the one who compiled a tender evaluation report in which he confirmed he would have made recommendations to the client as to which tender would be most suitable to their needs. He held a site meeting on 25 August 2011 with all the tenderers. He confirmed that one of them was UDS Civils CC. In the tender evaluation report no tenderer is referred to as Underground Detection Services. He also referred to UDS Civils CC as one of the companies from which a tender was received. According to the document the UDS Civils CC tender was found to be one of the lowest two tenders. The document also refers to **UDS Civils CC being well known to K & T** and the contract manager of UDS Civils CC to be Travis Haulman. All this information is confirmed in his report but then said he was not sure if Travis was the sole member of UDS Civils CC.

[32] The document further refers to the attendance list for the tender numbered 6481 and list UDS Civils CC, Travis Haulman and his particulars including his e-mail address. He confirms that there is no information in the report about Underground Detection Services. **It was put to him that he said Underground Detection Services won the tender but they do not feature**

anywhere in the documents especially on page 5. He confirmed that Underground Detection Services indeed does not appear anywhere in the report.

[33] On re-examination he confirmed that in the document none of the tenderers are defined either as a CC or Pty Ltd or have their registration numbers detailed, which is also applicable to UDS Civils. The tender evaluation report is dated 11 September 2011 and the letter of appointment to UDS Civils followed the report and was dated October 2011. He confirmed that the letter says that UDS Civils has been awarded the tender whilst in his evidence in chief he said it was awarded to Underground Detection Services. He agreed to a suggestion by Counsel that it may be that the UDS Civils is the colloquial for Underground Detection Services. **He also said that notwithstanding which company is referred to, he predominantly dealt with Travis.** He said he was not sure which company Travis belonged to.

[34] He confirmed that on the company search document the company searched is USD Civils and its registered postal address is Postnet Suit 321 Fourways North, 2086 and the appointment letter was sent to the same address at Postnet and he agreed that the address to which the letter was sent corresponds 100% with the registered postal address of USD Civils. The letter of appointment was sent to a Postnet suite in Fourways.

[35] Travis Holman, the owner of UDS Civils CC (Pty) was the next witness to testify. He told the court that he had converted into a (Pty) Ltd since July 2014. Prior he was the sole member of the CC since July 2011 and now the sole director. He was familiar with Underground Detection Services. It was owned by his brother from 2005 until 2012, and he has been in their employ until 2012 **as a consultant construction manager for certain projects.** He received a salary paid to him by EFT. He recalls the Rodean School project that took place during May 2012. He was basically part of it from start to finish as a project manager making sure that it runs smoothly, work done properly and of good quality, checking suppliers and that the construction runs smoothly. He reported to his brother, Tarso Holman who was his employer boss.

[36] **He knew Veon Van Niekerk, he was a site manager on the project who made sure that things went smoothly on site as he was located there.** He worked for Underground Detection Services. He was involved in Van Niekerk's employment. He was there to ascertain if Van Niekerk could do the work and had the correct knowledge for the work to be done. He oversaw his contract and had to make a commitment to employ Mr Van Niekerk on the basis that he could do the work correctly.

[37] He was referred to a tax invoice which he identified as from Underground Detection Services trading as UDS Civils CC addressed to K & F for contract work 6481. He denied that the banking details are for UDS Civils CC. He confirmed that a sticker on the vehicle and TLB that was shown on the photo taken on site was a UDS Civils' sticker and the identification card from the vehicle that was purchased. Similarly that UDS Civils was the owner of the vehicle and the TLB. He said therefore he was the owner of the vehicle depicted in the photos as the owner of the Company that is UDS Civils.

[38] Under cross examination he reiterated that he was employed by his brother from 2005 to 2012. His brother was the only member of the CC. He does not know however where his brother carried his business for the last 7 years. He worked with the brother **as an administrator in the office** either as nominee. He was not sure who issued an invoice from

an entity Underground Detection Services trading as UDS Civils to K & T. It might have been an administrator whose name he is not sure of. He is not sure who carries on business at the address shown on the invoice, which is 95 Lesley Avenue Fourways. When he was told that it is his invoice that he discovered as the Defendant, his response was that he moved offices in 2013 and he was not sure who carried on business thereafter. He was told that the invoice is dated 2012 before the move, he was then asked again who carried on business at that address. He said Underground Detection Services carried on business from there at Fourways. (despite his previous answer that he did not know where the business of Underground Detective Services was carried out.) He said he knew that Underground Detection Services worked from Fourways but did not know where they went to do business.

[39] He was told the last invoice like that was sent on 1 September 2012 and after that they have UDS Civils CC and no more Underground Detection Services trading as UDS Civils. He was asked why it was so. He said he is not sure what happened to the words trading as UDS Civils anymore. He did not do or check any invoices. It could have been an administrator problem. He denied fabricating the invoices for Underground from 1 September 2012 after the incident that gave rise to this claim. He accepted that the incident happened in May 2012 and the cheques were postdated.

[40] He confirmed that he was in court all the time the other witness were testifying on the incident. It was put to him that according to the previous witness the tender was awarded to UDS Civils CC which converted to Pty Ltd and Underground is still CC. He was told that according to the report his company was one of those that attended the tender meeting. He denied that the cell number captured on the report on the attendees was his and said he has not changed his number. He confirmed the email address to be his. He denied that the signature on the report against UDS Civils was his. He also denied that he attended the site meeting. He however admitted to have spoken with someone from K & T regarding the tender evaluation. He said he thinks the company that was liquidated was Underground Detection Services. Indeed Underground was liquidated in 2012 as a CC. He still alleged to have been employed by UDS Civils until 2012 and to have left before the issue of liquidation started. He was not sure if Underground Detection Services carried on with the business after that. UDS Civils leased its infrastructure to Underground Services. They had a contractual relationship that is an oral rental agreement with UDS Civils CC letting its equipment on a month to month agreement to Underground. He confirmed that the TLB that was found in the yard belonged to the Defendant.

ANALYSIS OF THE EVIDENCE

[41] The Defendant did not only did not proceed with the Special Plea (alleging that a contract was concluded between the Plaintiff and Underground Detection Services) but it clarified through the testimony of Travis Holman, the sole director of the Defendant that the contract it was referring to in the Plea was an oral rental agreement between itself and Underground Detection Services CC for the rental of infrastructure.

[42] It is clear from the evidence especially that of Maritz, the Plaintiff's witness that the entity that was involved is the Defendant, UDS Civils. Maritz's uncontested evidence is collaborated by that of the Defendant's erstwhile employee Veon Van Niekerk whose evidence was also not challenged that he worked for the Defendant at the time. The two witnesses confirm that they attended a kick-off meeting prior or at the beginning of the

project, Veon in his capacity as the site manager on behalf of the Defendant. It is also backed by the report that was completed and signed by Van Niekerk on behalf of the contractor "UDS Civils". Maritz's further testimony that the vehicle on site and the BLT used for excavation were that of UDS Civils bearing stickers and insignia of the Defendant and registered in UDS Civils's name was also not refuted but instead confirmed by Travis.

[43] Van Niekerk's allegation that he was employed by the Defendant was not refuted by the Defendant. He articulated his stance clearly on who he served or his boss was, the location of their offices, which are the Defendant's registered office in Fourways, the unchanged personal details, the payment of his salary by the Defendant and his involvement in the project under the instruction of Travis Holman. He also indicated that their meetings were also held at their offices at Fourways. It was not suggested or put to him that, that was not true or that Travis will testify and deny that Van Niekerk was in UDS Civils CC employ or deny that their registered offices were in Fourways were they carried on their business. Van Niekerk was actually not challenged on any of his entire testimony except to be quizzed on the possibility of the Defendant's name being used as an abbreviation of Underground Detection Services. His evidence stood uncontested with Travis confirming that he actually did employ him.

[44] Maritz pointed out the presence of the equipment and motor vehicles on site that had an insignia of the Defendant which indicates that they belong to the Defendant. The information was corroborated by Van Niekerk and the Defendant's sole director, Travis Holman, who confirmed that the equipment used indeed belonged to the Defendant, even though he explained that fact away by alleging that there was an oral rental agreement in terms of which the equipment was hired out to Underground Detection Services, the company WHICH . It alleges was the one contracted. Van Niekerk confirmed that he was driving a truck that belong to his employer, the Defendant. The driver of the TLB truck and the supervisor on site all confirmed to Maritz that they worked for the Defendant.

[45] Both witnesses' evidence, was consistent, uncontradictory, and overwhelmingly against the Defendant. Its reliable nature unquestioned. The Plaintiff's witnesses proved on a balance of probabilities that the Defendant was the entity whose employees damaged its infrastructure. So at the beginning of the Defendant's case the Plaintiff had discharged the onus upon it, therefore there was a prima facie case that the Defendant had a duty to rebut.

[46] The evidence by the Defendant's witnesses on the converse substantiated the fact that the Defendant was the entity involved notwithstanding their denial in the Plea. Rowse, The author of the tender evaluation report, in his evidence in chief denied the involvement of UDS Civils and could not recall working with Travis. However, his report indicated UDS Civils as one of the tenderers mentioned all over the document. A fact that he could deny. Travis, the sole member of UDS Civils is identified in the document as the contract manager. His attendance of the meeting for the briefing of tenderers held on site on 25 August 2011 is also noted. The list of the tenderers annexed to the report include UDS Civils and Travis' particulars are cited as the details of the designated person at UDS Civils. His recommendations, as it was pointed out to him during his cross examination are for UDS Civils to be awarded the tender. Nowhere is the name of Underground Detection Services mentioned in the report or letter awarding the tender. A fact that Rowse could not explain, when he was confronted with that fact during cross examination.

[47] Now looking at all the supporting documents and the evidence of Rowse in all probability the tender was awarded to UDS Civils CC, the Defendant. Under cross examination Rowse's evidence was that the Defendant was actually well known to K & T, his employer and to him in particular as he predominantly worked with Travis. A turnaround from his initial assertion in his evidence in chief that he only have heard of UDS Civils CC, probably they being in one of his tender lists but he could not remember when and what kind of contracts they were involved in. Overall he was an impressive witness and his evidence had to be considered with some apprehension. He was contradicted by the documents he tried to rely on to strengthen the allegations he made to rebut the Plaintiff's evidence. An exercise at which he was dismally unsuccessful.

[48] Travis was from the beginning compromised as he was in court during the testimony of the Defendant's witness. He therefore had struggled to navigate through his evidence which he tried to tailor make so that it should not contrast with his witness. Regrettably the result was that he was such an uninspiring witness. He even contradicted himself, contesting evidence that he had in chief submitted to the court. Some of the contentions were unnecessary and unexplainable. It is disconcerting that he would deny his own business' registered address where he carried on business and suggest not to know where Underground Detection Services conducted its business when he has claimed to have been in their employ for as long as they were in business since 2005 to 2012. In all probability the only reason he would do that would be to try to dissuade the court from knowing the true facts.

[49] Furthermore, even though Travis would like the court to believe that Underground Detection Services was involved and he was only acting on behalf of his brother, Taso, the latter's name was negligibly mentioned in the defendant's whole evidence. The witness Rowse only interacted with him. He too, did not mention any role that was played by Taso in the whole contract or incident. It is therefore unlikely that Taso would not be involved in the procurement of the tender and the delivery on the tender. Travis also could not explain away the UDS Civils employees that were on site and his explanation of the equipment being rented to Underground Detection Services unconvincing. The operators of the TLB and the presence of Maritz who were from UDS Civils CC, Travis' attendance at the briefing meeting as UDS Civils representative, the letter awarding the tender to UDS Civils, the reference in Rowse's report to UDS Civils, the invoice sent to K & T even after the liquidation of Underground Detection Services, point in all probability overpoweringly to UDS Civils to have been the entity that was awarded the tender and whose employees were carrying on the excavating operations on site and who damaged the Plaintiff's infrastructure. No evidence was tendered that could prove the contrary.

[50] Even though the Defendant's Counsel argued that Underground Detection Services traded as UDS Civils as indicated in the invoice issued prior to the latter's liquidation, that was not the evidence that was led by the Defendant's witnesses. Counsel would also have liked the court to believe that UDS Civils was just being mentioned as an abbreviation for Underground Detection Services or as insignia not because it was trading as the other Company. Whilst Travis said the explanation for the insignia on the equipment and vehicles is because the Defendant, UDS Civils let it to Underground Detection Services. Now what is the truth from all these propositions.

[51] The Defendant therefore failed to discharge the duty to rebut the Prima facie evidence of the Plaintiff proving the liability of the Defendant.

QUANTUM

[52] On the quantification of the damages, Plaintiff led the evidence of Mr Colin Jordaan whose expertise or evidence was not challenged. Mr Jordaan confirmed the damages as suffered by the Plaintiff, also each and every cost charged for each of the items constituting the damages and the reasonableness of the costs. Mr Jordaan was of much assistance to the court. He thoroughly and simplistically dealt with the costs and the damages explaining the justification of the repairs and the material required. The plaintiff made a good case for the amount of the damages sought to be granted.

[53] Under the circumstances I make the following order

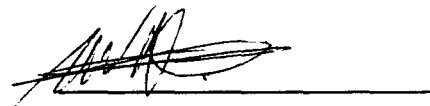
[53.1] The Plaintiff's claim is upheld with costs.

[53.2] The Defendant is ordered to pay:

[53.1.1] an amount of R165 785.37 (One Hundred and Sixty Five Thousand Seven Hundred and Eighty Five Rand Thirty Seven Cents);

[53.1.2] interest on the aforesaid amount at the rate of 15.5% per annum, from date of service of Summons to and including date of payment thereof;

[53.1.3] Costs of suit.



N V KHUMALO J

**JUDGE OF THE HIGH COURT
GAUTENG DIVISION: PRETORIA**

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Ref: J vn Greunen/UDS 1/0032