

**STATE OF NORTH CAROLINA
COUNTY OF WAKE**

**BEFORE THE NORTH CAROLINA
BUILDING CODE COUNCIL**

**IN THE MATTER OF AN APPEAL BY)
LARRY SHAHEEN OF REGIONAL)
CONSTRUCTION AND DESIGN)
REGARDING THE NORTH CAROLINA)
ELECTRICAL CODE)**

ORDER

This case came on for hearing before the North Carolina Building Code Council, hereinafter “Council,” on April 18, 2005, in Raleigh, North Carolina. The Council, having considered the evidence and arguments presented, makes the following:

Findings of Fact

1. This appeal brought by Larry Shaheen, of Regional Construction and Design, hereinafter “Shaheen.” Shaheen appeals a determination by the Mecklenburg County Inspection Department regarding the installation of an industrial warp knitting machine in a building located at 12200 Mt. Holly-Huntersville Road, Suite A, in Mecklenburg County.

2. Shaheen raises two contentions in his appeal. One of these contentions is that the CE mark is the equivalent of a third party certification agency that has been approved by the Council. The second contention is the Mecklenburg County Inspection Department was incorrect when it determined that the knitting machine had to be listed and labeled by a third party certification agency that had been approved by the Council, or field evaluated, in order to comply with the North Carolina Electrical Code, hereinafter “code.”

3. The industrial warp knitting machine, hereinafter “knitting machine,” is a tricot machine with multi-axial weft insertion manufactured by Liba, a German

corporation. The knitting machine was manufactured in Germany. The knitting machine is a approximately 15'x62x12 and weighs approximately 37,000 lbs. It has a “CE” mark, but is not listed and labeled by a third party certification agency that has been approved by the Council.

4. Under N.C. Gen. Stat. § 143-139.1, the Council may provide for testing, evaluation, inspection, and certification of buildings, structures or components manufactured off the site on which they are to be erected, by a recognized independent testing laboratory approved by the Council.

5. No representative of CE was present at the hearing.

6. CE has not applied to the Council for accreditation and approval as a third party certification agency and consequently has not been approved by the Council as a third party certification agency.

7. The Council was not presented with any evidence regarding the standards, requirements or evaluations that are prerequisites of bearing the CE mark.

8. The Mecklenburg County Inspection Department has disapproved the installation of the knitting machine, contending that it is not listed and labeled by one of the third party agencies approved by the Council, and therefore, it does not comply with the code.

9. The scope of the of the code is found in Section 90.2. Section 90.2(A)(1) provides that the code covers the installation of equipment for public and private premises. Section 90.2(A)(3) provides that the code covers the installation of conductors and equipment that connect to the supply of electricity.

10. Equipment is defined in Section 100 of the code as a “general term including material fittings, devices, appliances, luminaries (fixtures), apparatus, and the like used as a part of, or in connection with, an electrical installation.”

11. Fitting is defined in Section 100 of the code as “an accessory such as a locknut, bushing, or other part of a wiring system that is intended primarily to perform a mechanical rather than an electrical function.” The knitting machine is not a fitting as defined in Section 100 of the code.

12. Device is defined in Section 100 of the code as a “unit of electrical system that is intended to carry or control but not utilize electric energy.” The knitting machine is not a device as defined in Section 100 of the code.

13. Appliance is defined by Section 100 of the code as “utilization equipment, *generally other than industrial*, that is *normally built in standardized sizes or types* and is installed or connected as a unit to perform one or more functions such as clothes washing, air conditioning, food mixing, deep frying, and so forth.” (Emphasis supplied.)

Utilization equipment is defined by Section 100 of the code as “equipment that utilizes electric energy for electronic, electrotechnical, chemical, heating, lighting, or similar purposes.” The knitting machine is not an appliance as defined by Section 100 of the Code.

14. Luminaire is defined in Section 100 of the code as “a complete lighting unit consisting of a lamp or lamps together with the parts designed to distribute the light, to position and protect the lamps and ballast (where applicable), and to connect the lamps to the power supply.” The knitting machine is not a luminaire as defined in Section 100 of the code.

15. The knitting machine is not a material fitting, a device, an appliance, a luminaire, or an apparatus, and therefore does not fall under the definition of equipment as defined by Section 100 of the Code.

16. Section 110.2 of the code provides that the conductors and equipment required or permitted by the Code shall be acceptable only if approved. This section of the code does not apply to the knitting machine as it is not equipment as defined in Section 100 of the code.

17. Section 110.3 of the code provides for the examination, identification, installation, and use of equipment. This section of the code does not apply to the knitting machine as it is not equipment as defined in Section 100 of the code.

Based on the foregoing Findings of Fact, the Council makes the following:

Conclusions of Law

1. This matter is properly before the Council, and it has jurisdiction over the parties and the subject matter pursuant to Article 9 of Chapter 143 of the North Carolina General Statutes.

2. The CE mark is not the equivalent of a third party certification agency that has been approved by the Council.

3. There is no comprehensive listing and labeling requirement that applies to all machinery that is connected to the electrical system within a building.

4. The knitting machine is not equipment as that term is defined in the code.

5. The Mecklenburg County Inspection Department's determination that the knitting machine must be listed and labeled is not supported by the language of the code.

6. There may be other requirements of the code that apply to the knitting machine.

Based on the foregoing Findings of Fact and Conclusions of Law, the Council enters the following:

Order

1. The determination of the Mecklenburg County Inspection Department that the CE mark is not the equivalent of a third party certification agency that has been approved by the Council is affirmed.

2. The determination of the Mecklenburg County Inspection Department that the knitting machine must be listed and labeled by a third party certification agency that has been approved by the Council is reversed.

This the _____ day of June, 2005.

Dan Tingen, Chairman
North Carolina Building Code Council