



LEGAL BRIEFING

Hitting the books

Pearson Education Limited v Charter Partnership Limited (2007)

Court of Appeal, Lord Phillips LCJ, May LJ, Keene LJ, [2007] EWCA Civ 130

The Facts

The appellants, Charter Partnership Ltd (“Charter”) are a firm of architects who designed a warehouse which was leased to the respondents, Pearson Education Ltd (“Pearson”). Pearson suffered financial loss when a number of books it owned which were stored in the warehouse were damaged in a flood. It was agreed that the cause of flooding was inadequate drainage capacity and that in specifying such capacity Charter had failed to exercise reasonable care and skill.

Significantly, eight years before the flood, there had been a similar incident of damage to books stored in the warehouse. Shortly after that event, loss adjusters (who were not acting on behalf of the lessee or landlords at the time) found that the warehouse’s drainage system had been inadequately designed. That finding was not passed on to the lessee or the landlords. In addition, Pearson did not carry out any pre-purchase survey in relation to the warehouse before signing the lease.

Charter appealed against a decision of the TCC that it was liable in damages to Pearson for financial loss suffered by Pearson as a result of Charter’s inadequate drainage design. Charter argued that the earlier flood had brought its liability to an end, as it was reasonable to expect that the event would have led to the identification of the defect. Further, Charter argued that any negligent act or omission it caused fell outside the 15-year limitation period imposed by section 14B of the Limitation Act 1980 (the “Act”).

The Issues

Two main issues arose at trial. The first was whether, having regard to the intervening earlier flood, the damage caused to Pearson’s books was caused by a breach of duty of care by Charter to Pearson. The second was whether, if the damage to Pearson’s books was in fact caused by a breach of a duty of care owed by Charter to Pearson, Charter’s negligent act or omission occurred outside the 15-year limitation period stipulated in the Act.

The Decision

With respect to the first issue, the court held that the first flood and the inspection by the loss adjusters to which it gave rise did not place Pearson outside the range of a duty of care owed to it by Charter, nor did it break the chain of causation between Charter’s lack of care and the damage sustained by Pearson. Pearson did not know nor should have known of the first flood, so they were not obliged to have carried out an investigation as to the adequacy of the rainwater system. In reaching its decision on this point, the court considered and analysed and applied *Hughes v Lord Advocate* (1963) AC 837, where it was held that the test of foreseeability in the context of duty of care did not require foresight of the precise sequence of events that resulted in damage.

Significantly, the court specifically chose not to follow *Baxall Securities Ltd v Sheard Walshaw Partnership* (2002) EWCA Civ 09, (2002) CILL 1837, a case with similar facts, where it was held that the chain of causation between an architect's error in regard to the provision of overflows and two subsequent floods was broken by surveyors acting for a building purchaser, irrespective of whether the surveyors carried out their task competently and identified any defects.

With respect to the limitation period, the court did not accept Charter's argument that the relevant act or omission on the part of Charter was their initial mistake in adopting inadequate capacity for drainage. Rather, it was when Charter specified to Fullflow (the designers and installers of the siphonic system) a design capacity that they knew or should have known was inadequate in January 1989; within the limitation period.

Comment

This case provides a reminder to all those involved in the building industry that negligent work can come back to haunt those responsible for it up to 15 years after the date of the last act or omission was committed in relation to that work.

The court's finding that the chain of causation between Charter's lack of care and Pearson's loss was not broken despite the intervening flood, and an independent loss adjuster finding that the drainage was indeed defective some eight years before the event in question, is significant. It goes directly against the decision in *Baxall* and has swung the pendulum back in favour of holding architects (and all involved in construction projects) liable for negligent work. Arguably, this could be construed as imposing a duty on those who carry out design work to not only investigate any defects in relation to such design over the 15-year period after the commission of the last act or omission in relation to that particular project, but also to rectify those defects and ensure that the owner or occupier of the property is aware of the fault.

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