



LEGAL BRIEFING

John F Hunt Demolition Ltd v ASME Engineering Ltd

TCC Judge Peter Coulson QC [2007] EWHC 1507

The Facts

This was a preliminary issues hearing relating to a main contract dated 30 June 2002, whereby Kier (Whitehall Place) Ltd (“Whitehall”) engaged Kier Build Ltd (“Build”) to design and construct commercial office premises at Whitehall Place, London. The contract incorporated the JCT Standard Form of Building Contract with Contractor’s Design (1998).

The main contract works required the demolition of much of the existing buildings on site, however certain facades were to remain. By subcontract dated 27 March 2003, Build appointed the claimant, John F Hunt Demolition Ltd, to carry out the requisite demolition work. Hunt, in turn, appointed the defendant, ASME Engineering Ltd, to construct a temporary steel structure to support the existing facades during the course of the demolition works.

Unfortunately, the facades caught fire as ASME was carrying out the temporary steel work construction. Whitehall and Build jointly claimed against Hunt, which Hunt settled for £152,500. Of that sum, it was found that £108,987.12 related to losses suffered by Whitehall due to having to reinstate the retained facades. Whitehall could not recover these losses from Build under the main contract and therefore Build could not pass the losses on to Hunt. In addition, joint insurance for fire damage was in place, which meant that the contractual chain of liability had been broken in that regard. Although there was no contractual liability between Hunt and Whitehall, Hunt believed it had a liability to Whitehall in tort. The remaining £43,512.88 related to Build’s losses as a consequence of the fire, which Build was entitled to pass on to Hunt under the subcontract.

Hunt claimed the £152,500 paid to Whitehall and Build from ASME. ASME argued that whilst Hunt was liable to Build, it was not liable to Whitehall in tort. Further, ASME contended that Hunt’s maximum liability was £43,512.88 and accordingly, Hunt’s settlement figure was unreasonable and did not reflect the true measure of loss.

The Issues

Two main issues arose at trial. The first was whether Hunt owed a duty of care in tort to Whitehall. The second was if the settlement was unreasonable, could Hunt claim a hypothetical amount representing what a reasonable settlement would have been, or did the settlement become irrelevant.

The Decision

Although the matter has yet to be heard in full, Judge Coulson QC held that the maximum value of Hunt’s claim against ASME was £43,512.88.

In reaching his decision, Judge Coulson QC carried out a comprehensive review of the legal authorities, including the well-known case of *Biggin & Co Ltd v Permanite Ltd* [1951] 2 KB 314; a case concerning the measure of damages

following an earlier settlement. In that context, broadly speaking, if an earlier settlement is reasonable and not too remote, it can be taken as the measure of damages, even if it is the upper limit of the “reasonable range”; and even if there was no legal liability on the part of the settling party at all.

In addition, the settling party who is looking to pass on that liability to a third party must be able to demonstrate that the settlement was reasonably foreseeable. However, if it is found that the settlement is unreasonable, the settlement sum will not be relevant as against a third party.

Comment

This case provides a useful summary on the determination of liability in tort where there is damage to property and a contract which provides for joint insurance cover. This case is in keeping with previous authority: a subcontractor in a contractual framework where the employer took responsibility for insurance of the event causing the loss is not liable to that employer in tort.

The court’s discussion relating to the “reasonableness” of a settlement is noteworthy; particularly the finding that a settlement made in the absence of liability would not of itself render that settlement unreasonable. This has significant implications for those seeking to pass claims on and recognises the commercial realities of settlement procedures.

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