Legal Briefing

(1) Mr Alexander John McMinn Bole (2) Miss Stephanie Van Deen Haak v Huntsbuild Ltd and Richard Money (t/a Richard Money Associates)

[2009] EWHC 483, TCC, HHJ Toulmin CMG QC

The Facts

The claimants engaged the defendant contractor, Huntsbuild, for the construction of their new house in Cambridgeshire. Prior to commencement of construction, Huntsbuild removed trees on the property and engaged a firm of structural engineers, Richard Money Associates ("RMA"), to advise on and provide drawings for the foundations of the house. Following completion of the works in September 2001, extensive cracking shortly began to appear. Numerous investigations were carried out and it was clear that this was caused by heave due to the inadequate depth of the foundations on which the house was built.

The claimants brought claims against Huntsbuild for breach of contract as well as breach of the Defective Premises Act 1972 ("DPA 1972") claiming that it failed to build the house in a workmanlike manner. In addition, they also brought a claim against RMA under the DPA 1972 stating that RMA failed to carry out its work in a professional manner.

Huntsbuild argued that it was only under an obligation to construct the foundations in accordance with the specification and RMA's drawings. RMA admitted that it owed a duty under s.1 of the DPA 1972, however it denied that the work was not carried out to a professional standard. Both parties argued that the dwelling was fit for human habitation, as evidenced by the fact that the claimants continued to live there.

The claimants sought the costs of a full, permanent repair to the foundations which required underpinning to the house, and not a cheaper, localised repair (as argued by RMA) which would not permanently solve the cracking issues.

The Issues

As identified by the parties, the following issues arose:

(i) Was Huntsbuild in breach of contract or in breach of the DPA 1972?

(ii) Did RMA carry out its work in a professional manner in accordance with s.1 of the DPA 1972?

(iii) Was the property fit for habitation within s.1 of the DPA 1972? and

(iv) What loss and damage had the claimants suffered? In particular, which remedial scheme could they recover for and what general damages were recoverable for distress and inconvenience?

The Decision

HHJ Toulmin CMG QC considered the leading authorities on the DPA 1972 and summarised the considerations before the court:

(i) The finding of unfitness for habitation when built is a matter of fact in each case.

(ii) Unfitness for habitation extends to what Lord Bridge described as "defects

of quality" rendering the dwelling unsuitable for its purpose as well as "dangerous defects".

(iii) Unfitness for habitation relates to defects rendering the dwelling dangerous or unsuitable for its purpose and not to minor defects.

(iv) Such a defect in one part of the dwelling may render the dwelling unsuitable for its purpose and therefore unfit for habitation as a dwelling house even if the defect does not apply to other parts of the dwelling. This is also the case under the Housing Act – see *Summers v Salford Corporation*.

(v) The Act [DPA 1972] will apply to such defects even if the effects of the defect were not evident at the time when the dwelling was completed.

(vi) In considering whether or not a dwelling is unfit for habitation as built one must consider the effect of the defects as a whole.

The Judge concluded that Huntsbuild was in breach of the contract with the claimants and also failed to build the property with adequate foundations contrary to s.1 of the DPA 1972. The house was not fit for habitation under s.1 of the DPA 1972 due to the serious nature of the defects. Furthermore, RMA failed to act in a professional manner to discharge its obligations under the DPA.

The Court ordered Huntsbuild and RMA to pay the agreed general damages of £4500 for distress an inconvenience in addition to the costs to permanently repair the defects in the foundations of the house. Though the engineer had proposed a cheaper solution, HHJ Toulmin CMG QC held that it was a "reasonable" request for the claimants to insist on the permanent solution which required underpinning and a piled raft solution as they had already suffered a great deal over the past 7+ years in terms of living with the cracking and remedial works.

Comment

Both contractors and designers need to be aware that the Defective Premises Act 1972 places a strict duty on anyone taking on work in connection with a dwelling. They are required to work in a professional or workmanlike manner, to use proper materials and to see that the completed house or flat is fit for human habitation. Professionals who typically are only required to act with reasonable skill and care should note that in this situation, the bar is raised to a fitness for purpose level, even where there is no contract between you and the client. You can at least take heart that this Act only applies to the erection, conversion or enlargement of a dwelling, and does not extend to repairs carried out on an existing building.

Stacy Sinclair
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