



Isn't it great when things just click...



Five legal cases that changed your world

20 October 2006

Bust-ups: we love reading about them and construction has more than its fair share to pore over. Lucky for those who make money from sorting out disputes, not so lucky for those who get embroiled in them. But whichever side of the fence you're on, it's vital you know the key construction cases. Roxane McMeeken lists the top five.

1. 1991 – Murphy vs. Brentwood District Council

The birth of the construction lawyer and the collateral warranty

Case

A faulty house in Brentwood was the focus of this case. Brentwood District Council okayed the plans for the house having relied on advice from an external party – a consulting engineer. But there was a problem with the plans. They didn't take account of calculation errors in the design of the foundations. As a result of the dodgy foundations, the walls and pipes of the house were seriously damaged. The householder, a Mr Murphy, ended up selling his house for £35,000 less than its market value. He tried to recover his losses from the council.

The House of Lords held that there was a duty in tort on a builder, and possibly a local authority, to take reasonable care to avoid causing injury or damage through defects in the design or construction of a building. The sting in the tail for Murphy, though, was the next part of the decision. If the faults were discovered before there had been any personal injury or damage to property, other than the defective house itself, then the losses incurred were pure economic loss and not recoverable in tort. So Murphy won nothing.

Consequences

James Foster, head of construction at solicitors Lawrence Graham, describes the case as a "cold shower for the construction industry".

The Murphy case changed life radically for building owners and all third parties with an interest in the building – like funders, tenants and purchasers. Before, the fact they had no contractual relationship with the wrongdoer had not been viewed as a problem because they had relied on the tort principle if they wanted to seek compensation for defects in a building. Now they no longer had a remedy in tort.

Foster says: "Previously, the lack of direct contractual relationships didn't stop third parties with an interest in a building from trying to recover compensation in tort for building defects. Everything changed after Murphy. The industry had to find a way of giving rights to third parties to make developments marketable – this is how the collateral warranty was born. It also gave birth to the construction lawyer as a separate beast from the property lawyer."

Everything changed after Murphy

James Foster, Lawrence Graham

"To be honest, though, collateral warranties are deeply unpopular in the industry because of the time taken up negotiating them." He adds that developers are beginning to use the Contracts (Rights of Third Parties) Act 1999 as an alternative, and cheaper, way to give rights to third parties.

2. 1876 – Thorn vs. London Corporation

What happens when builders design...

Case

This dispute flared up when builder Thorn tried to deliver a replacement Blackfriars Bridge for the Corporation of London. Thorn and other contenders for the job pitched based on a specification drawn up by the council's engineer, a Mr Cubbitt.

Cubbitt had specified caissons on which the foundations were to be built. But when Thorn got to work the caissons kept drifting away. In the end the bridge had to be built in an entirely different way.

The case went all the way to the House of Lords and Thorn lost. The Lords said if the builder is relying on a specification and he promises to build something, he cannot get half way through and suddenly say he can't build it.

Lord Chelmsford said: "It is... said that the usage of contractors to rely on the specification and not to examine it particularly for themselves. If so, it is a usage of blind confidence of the most unreasonable description."

Consequences

It reminds every builder that his basic job is to build and not to design

Tony Bingham, barrister

"This is one my favourite cases," says Tony Bingham, barrister and arbitrator. "It reminds every builder that his basic job is to build and not to design."

The case makes clear that the job of the builder is to ensure the design will work because when the contractor pitches for a job it promises to build the drawings. "Although it was the engineer who suggested building on these caissons, the builder promised he would," Bingham says.

"If the building is built precisely as the architect says but it blows down in the wind the builder is not responsible for it blowing away. Nowadays some builders say they will build it and promise it will stay around – that's a Design & Build contract. This case reminds builders who design that they are taking on significant extra responsibility."

3. 1999 – Macob Civil Engineering vs. Morrison Construction

When adjudication first flexed its muscles

Case

A shopping centre in South Wales was the job that first tested adjudication. The dispute cropped up in 1999, the year the super-speedy 28-day resolution process was introduced.

Morrison Construction was the main contractor on the Greyfriars Centre, Carmarthen. Morrison hired Macob Civil Engineering for groundworks. When the two disagreed on particular valuation, Macob called for an adjudicator.

The adjudicator said Morrison should pay Macob £302,000. But Morrison refused to comply. Macob took him to court in an attempt to enforce the adjudicator's decision.

This was a hugely significant case. It proved that the courts would support adjudication

John Redmond, Osborne Clarke

Morrison's defence argued that the adjudicator had made a technical error during the adjudication. But in the Technology and Construction Court Justice Dyson ruled that whether the adjudicator had made an error relating to either the facts or the law, his decision was binding. He ordered Morrison to comply with it until the dispute was finally settled by legal proceedings, by arbitration or by agreement between the parties.

Consequences

Bingham at the time said the case meant "adjudication had arrived". John Redmond, head of construction at solicitors Osborne Clarke in Bristol, says: "This was a hugely significant case. It proved that the courts would support adjudication. Before, no one knew whether the courts would quash it because after all it was such a strange idea."

Judge Dyson said that any other ruling would have seriously undermined adjudication. He said: "The intention of parliament in enacting the Construction Act was plain. It was to introduce a speedy mechanism for settling disputes in construction contracts on a provisional interim basis, and requiring decisions of adjudicators to be enforced pending the final determination of disputes."

4. 1996 – Forsyth vs. Ruxley Electronics & Construction

Construction law shows its sensitive side

Case

Stephen Forsyth employed Ruxley Electronics & Construction to build a swimming pool in his garden in Kent. He wanted it seven feet six inches deep. Client and contractor went to court because the pool was built to a depth of only six feet.

Forsyth claimed he needed £23,000 to dig out the pool so it complied with the contract. The surprise came when the court agreed that Forsyth had a claim but ordered the builder to pay only £2,500 of damages. The reasoning was that Forsyth was unlikely to bother carrying out remedial work on the pool. After all, you could still happily swim and dive in it.

I like that the law, instead of saying, 'you have not built to specification therefore knock it down' is showing sensitivity

Tony Bingham, barrister

The case went to the appeal court and then on to the House of Lords. Bingham says: "In the court of appeal the five judges said Forsyth was entitled to full damages and it didn't matter whether he spent the money on changing the pool or taking his wife on a cruise."

However, the Lords said Forsyth was not entitled to the full cost of rebuilding his pool. It reasoned that the defect was "technical" and affected neither the use of the pool nor the overall value of Forsyth's property.

Consequences

Bingham says: "I think this was a lovely case for the construction industry because although there was a breach of contract and the remedy was to pay for digging out the pool, the House of Lords felt that Forsyth was not entitled to a remedy at all costs – rather it was about what he had lost."

The circumstances of the loss can be better understood if you image the owner had been an Olympic swimmer – in which case the proportions of the pool would have been far more important.

Bingham says: "I like that the law, instead of saying, 'you have not built to specification therefore knock it down' is showing sensitivity. If there is a bit of dodgy brickwork it doesn't mean you knock down the whole building."

5. 2005 – Great Eastern Hotel vs. John Laing Construction

Construction management loses its teflon coat

Case

I don't see as many CM deals cross my desk as before

Paul Brampton, Taylor Wessing

When a luxury London hotel upgrade overran by a year and cost almost double the original budget the client sued the construction manager, John Laing. This was the first time a construction management job had ended up in court.

Under a construction management arrangement it was widely thought the client would always foot the bill, no matter how much it mushroomed. The client was supposed to carry the bulk of time and cost risk under the approach because although the CM plans and programmes the work, the trade contractors actually carry out the work and they contract directly with the client.

But when the Great Eastern Hotel project came in at £61m instead of £38m, the client broke the mould. "Great Eastern weren't happy with the way Laing hand managed the trade contractors. They took Laing to court and to everyone's surprise they won", says Paul Brampton, solicitor with Taylor Wessing.

Laing was found to have breached its obligations and was ordered to pay £10m to the client, a joint venture between Conran and US hotelier Wyndham

International.

Consequences

"Before the Great Eastern case everyone thought construction managers were bullet-proof – whatever the cost of the project, the client had to pay, not the construction manager," says Brampton.

"The case has caused people to approach construction management with caution. Those who are naturally risk averse, like banks and funders, are very wary about jobs procured on a CM basis. If you lend money to a CM project and it goes wrong, everyone will say it was your own fault. I don't see as many CM deals cross my desk as before."

He reckons the case showed that construction management is only suitable for more sophisticated employers carrying out simple projects. "Where it's not suitable is when you have a new swanky design that has not been tried before and that the client just wants to build as quickly as possible."

Source: QS News

Postscript: Have we missed any mighty league battles?
Send your nominations for legendary legal cases to qsnews@cmpi.biz

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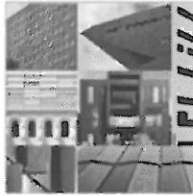
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