

CONSTRUCTION

Causation/remoteness

High Court holds subcontractor liable for settlement monies paid out by contractor despite arguments on causation and remoteness - *Siemens Building Technologies FE Ltd v Supershield Ltd* [1.5.09]

On 9 October 2001, a nut and bolt connection on a float arm failed and water from a storage tank overflowed into the tank room of a new office building. The water then escaped from the tank room, leading to a flood, which caused extensive damage to electrical equipment in the building.

The owner and occupier of the building brought a claim against the contractor, who in turn issued a claim against the mechanical and electrical subcontractor. Siemens was then joined to the proceedings, as it had contracted with the mechanical and electrical subcontractor to install the sprinkler system. Likewise, Siemens then joined Supershield to the proceedings, as it had contracted with Siemens to install part of the sprinkler system.

Siemens alleged that, in the context of the sub-contract, "the sprinkler system" included the ball valve float arm that operated inside the fire sprinkler water tank (which was installed by a separate company) to regulate the water level. Supershield disputed that the scope of its works included the float arm and denied having installed it. In any event, Supershield maintained that the cause of the damage was not the escape of water from the tank but rather the escape of water from the tank room, which it attributed to the blocking of drains and failure to monitor alarms, which it argued was too remote to be recoverable under the sub-contract.

Siemens settled the Claimants' claims and other claims for contractual indemnity up the contractual chain. It then pursued Supershield to recover those settlement monies.

Decision

The High Court found that, notwithstanding some probable confusion in the description of the scope of works in the sub-contract, Supershield was obliged to fit the ball valve.

The Judge dismissed the evidence of Supershield's foreman that Supershield had not fitted the float arm.

Finally, Supershield argued that it had clear defences on remoteness of damage and causation and that the value of those defences (which had also been available

to Siemens) was insufficiently reflected in the settlements agreed by Siemens up the contractual chain. The room from which the water escaped was equipped with three drains, all of which were blocked at the time of the flood. Furthermore, an alarm system designed to indicate any water escape from the tank was either ignored or not monitored at the time of the incident. Finally, there was a 600mm waterproof bunding above floor level in the tank room that was only exceeded because of a lack of response to the flood.

To be recoverable at law, the relevant damages had to be within the contemplation of the parties within the first rule of *Hadley v Baxendale* [1854].

The tank room where the flood occurred had been designed to prevent any damage occurring due to water escape from the tanks and a similar set of circumstances conspiring to cause such damage had never been encountered by either of the expert witnesses.

In *Koufos v Czarnecki Ltd (The Heron II)* [1967], Lord Reid stated that, "*... a result which, though foreseeable as a substantial possibility, would only happen in a small minority of cases should not be regarded as having been in their contemplation.*"

However, the Judge observed that, "*Drains block or drain pumps malfunction, building management systems do not operate or warnings are not acted upon and maintenance is not always effective.*" He then concluded that, "*... the probable result of a breach of contract [by Supershield] in failing properly to install the nut and bolt would be that there would be an escape of water through the overflow which would, according to the usual course of things, cause a flood and lead to water damage.*"

Supershield was, therefore, found liable to Siemens for breach of contract and the Court considered that, as a matter of causation and remoteness, Siemens could recover from Supershield the sums paid to settle the claim.

Comment

Having found that Supershield had contracted to fit and had fitted the float arm, the Judge took a wide view of what damage would be considered to be within the contemplation of contracting parties. The High Court was of the view that the subject damage was the "probable result" of the breach of contract and the damage that ensued occurred in "the ordinary course of things".

A party claiming indemnity or damages for settlements it has paid "up the chain", must establish (a) that it would have been liable to the party claiming from it and (b) that the measure of settlement was reasonable.

Courts are reluctant to examine closely or criticise a settlement achieved with the

benefit of professional advice. This is understandable given that:

- When it finds a settlement was unreasonable, it appears to have no power to award damages based on its assessment of what would have been a reasonable settlement - instead the claim fails altogether.
- To interfere with bona fide settlements would discourage parties from settling up the chain for fear of finding the sums they paid out irrecoverable "down the line".

An application for permission to appeal has been made to the Court of Appeal.

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