



LEGAL BRIEFING

Amsprop Ltd v I.T.W. Ltd (trading as Hobart UK)

[2009] EWHC 2689 (TCC), His Honour Judge Toulmin CMG QC

The Facts

On 9 July 2005, a fire broke out on the ground floor of the Hard Rock Café in London, on the corner of Old Park Lane and Piccadilly in Mayfair. The fire spread throughout the building, causing significant damage. The freeholder of the property, Amsprop Ltd, brought a claim against their kitchen services engineers, Hobart UK, for negligence.

In 2001, a char broiler-cheese maker-solid top griddle fryer (otherwise known as a "Salamander grill") was installed in the Hard Rock Café. The fryer is used for toasting bread and melting cheese on nachos and potato skins. The Salamander grill had issues since its installation and Hobart UK had been called out from time to time to fix the problems with the appliance.

Two days prior to the outbreak of the fire, Hobart UK had been called to the Hard Rock Café to inspect the grill as there had been complaints that it was not lighting. Their service engineer attended the premises and claimed that he had duly fixed and tested the faulty grill.

Amsprop Ltd alleged that the service engineer should have given instructions that the grill was not to be used as it was in a potentially dangerous condition. They claimed that had the engineer given such instructions, the fire would not have occurred. They also claimed that the source of ignition of the fire was that, due to the malfunctioning of the grill which had been identified by the engineer, a flame from the burners on the Salamander grill was drawn into the duct above. This caused the deposits in the duct to ignite into a major fire.

Hobart UK denied this caused the fire and suggested that it could have started as a result of the negligent employee when cooking the food.

The experts instructed by the parties concluded that it was unlikely that flames from the burner were the cause of the fire and there was no evidence to suggest that the burner, recently fixed by the engineer, had deteriorated.

The parties agreed that, subject to liability, the damages totalled £859,984.86.

The Issues

In order to succeed in their claim, Amsprop Ltd had to prove that, on the balance of probabilities:

- (1) the fire was caused by a flame on the Salamander grill as it had been drawn into the duct causing the grease deposits to catch fire (rather than the food catching fire as a result of the employee's negligent cooking); and
- (2) the engineer from Hobart UK owed a duty to take reasonable care and was negligent in not ordering the Hard Rock Café to shut down the Salamander grill following his site visit.

The Decision

Judge Toulmin CMG QC held that, on the evidence put before him, he was unable to conclude that the fire was caused by a flame on the Salamander grill being drawn into the duct. He stated that he would only be speculating if he said that the more possible cause of the fire was the flare up of the food on the grill as a result of the inattention by the employee.

As such, the Judge did not have to consider whether or not the engineer was negligent in not requiring the Hard Rock Café to shut down at the end of his site visit to repair the grill. He stated that if he had to consider the negligence claim, he would have accepted the engineer as a truthful witness and his explanation of his conduct as no expert evidence on this issue had been submitted by Amsprop Ltd. He was satisfied that the engineer had an overriding duty to shut down the grill if he believed it to be unsafe; however, in the circumstances he reasonably concluded that there was no safety risk.

Amsprop Ltd's claim therefore failed and the Judge found in favour of Hobart UK.

Comments

This case highlights important issues with respect to producing evidence in negligence claims.

In order to demonstrate that a professional fell below the standard of care required, it is essential to submit evidence which illustrates the expert opinion of other professionals in that field of work. Without it, the Judge is provided with nothing else to consider besides the defendant professional's own explanation of the situation.

Here, Judge Toulmin CMG QC commented on the expert evidence presented (or more specifically, not presented) in relation to the kitchen engineer's standard of performance on his maintenance visits to the Hard Rock Cafe. Amsprop Ltd was claiming that the engineer had been negligent and suggested that the Judge should apply the test of "the risks which ought to have been obvious to any reasonable competent engineer". The Judge however could not consider this approach as no expert witness had been made available to comment on the standard to be applied to a reasonably competent engineer undertaking this work.

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