Legal Briefing

Mr & Mrs Renwick v (1) Brooke Architects (2) Attwell & Associates (3) Aquarend Ltd

[2011] EWHC 874 (TCC), Mr Justice Akenhead

The general rule for a claim in negligence (tort) is that proceedings must be commenced within six years from the date when the damage first occurred. S14A of the Limitation Act 1980 ("the Act") serves to accommodate latent defects by extending this period by three years from the date of knowledge of the claim, with a 15-year long-stop date. In this case, s14A is again put to the test.

The Facts

In 2000, Mr & Mrs Renwick ("the Claimants") decided to extend and refurbish their home in London. The works included the construction of a large basement room beneath their rear garden which came to be known as "the Garden Room". In the period 2000 to 2002, the Claimants engaged Simon Smith and Michael Brooke Architects, William Attwell and Associates (structural engineers) and Aquarend Ltd (a waterproofing contractor).

In 2001, the Claimants engaged Concrete and Clay Underpinning ("the Contractor") to carry out the structural work for the Garden Room. Shortly after the Contractor completed the construction in November 2001, substantial amounts of water flowed into the room. Ultimately, the Claimants terminated the Contractor's contract and engaged Aquarend, on the advice of the Architect, to carry out repair works.

In 2007 damp spots appeared in the ceiling of the Garden Room and by the summer of 2008 water started to accumulate under the flooring and floor coverings became sodden and moldy, with moisture creeping up the walls. Recent photographs even showed standing water.

The Claimants issued proceedings in July 2010 claiming negligence against the first and/or second Defendants. In February 2011 Attwell issued an application for summary judgment on the basis that the claims in contract and in tort were barred under the Act.

The Issue

When had time started to run for the purpose of limitation and were the Claimants therefore barred against bringing a claim against the structural engineers, Attwell Ltd?

The Decision

Attwell argued that there was no realistic prospect that the limitation defence would fail. Any claim in contract runs from the date of the relevant breaches which must have occurred no later than 2002, that being eight years before the proceedings were issued. It also argued that any claim in tort runs from the date when damage first occurred, which was between late 2001 and about March 2002 when the serious flooding occurred. For the purposes of s14A of the Act, Attwell argued that more than enough time had occurred and that the Claimants knew enough about the claim in 2002 to set the three-year time period running.

The Claimants argued that the case was not suitable for summary judgment as there may be separate damage flowing from the possibly negligent involvement of Attwell in 2002 when it advised on the repair works and it did not have sufficient knowledge before 2007

to justify the three-year period to start running.

Mr Justice Akenhead reviewed previous caselaw, the most important being *Haward and others v Fawcetts*, and summarised the law in respect of s14A to be:

> *"(a) The starting date for the three-year period under Section 14A is the "earliest date" on which any given Claimant had the knowledge required for bringing a claim in damages in relation to the damage with which the claim is concerned and the right to bring the claim (Section 14A(5)). Knowledge in this context does not mean certainty but knowledge of sufficient essential facts or matter to institute either a claim or the taking of advice or the collation of evidence will often suffice to institute the "earliest date".*
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> *(b) This "knowledge" is of the material facts about the damage for which damages are claimed and of other facts relevant to the claim (Section 14A(6)). These are such facts as would lead a reasonable person who had suffered the damage in question to consider it sufficiently serious to justify instituting proceedings for damages (Section 14A(7)); such facts include that the damage in question is attributable at least in part to the basic acts or omissions said ultimately to constitute negligence and the identity of the defendant (Section 14A(8)); "attributable" in this context means capable of being caused by as opposed to demonstrably caused by the negligence. It is not necessary to show that the claimant knew that the acts or omissions constituted negligence as such. (Section 14A(9))."*

He held that the Claimants' case would fail on the grounds of Attwell's limitation defence. The Claimants knew that there were serious water and flooding problems and that extensive and culpably poor workmanship was involved, which had been designed and inspected by Atwell. They also had knowledge of the material facts about the damage and knew that they had engaged Atwell as the structural engineers to give structural advice and to design the Garden Room so as to be fit for purpose and watertight, and to inspect the works. Mr Justice Akenhead therefore found that the Claimants must have had the requisite knowledge required for bringing an action in 2002, and therefore the majority of the claims brought against Atwell were brought out of time.

However, there was one claim against Attwell which did not automatically justify summary judgment. The Claimants alleged that the advice Atwell provided in respect of the repair works was negligent. As the damage which resulted from the repair works might have occurred when there was more than an insignificant amount of water penetration, this claim may well be within the limitation period. Therefore, in this regard, summary judgment was not granted as it had a sufficiently arguable prospect of succeeding, subject to proof.

Comment

This case is of course a reminder that those seeking to issue proceedings in respect of latent defects must do so promptly. Whilst the Limitation Act 1980 does extend the six year period, it only does so in certain limited circumstances.

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