



Building Safety Act 2022 limitation issues to be heard together rules Court of Appeal

In the first case of its kind following the coming into force of the Building Safety Act 2022 (“**BSA**”), the Court of Appeal decided in *URS Corporation Ltd v BDW Trading Ltd* [2023] that two appeals in a claim concerning structural defects should be heard together.

Background

Between 2005 and 2012, the developer, URS Corporation Limited, (“**URS**”) engaged BDW Trading Limited (“**BDW**”) to carry out structural design work for a block of flats (the “**Property**”).

Following the Grenfell Tower disaster a series of investigations were carried out at the Property and structural defects were identified. This triggered a wholesale review of the structural condition of other blocks designed by BDW, as a result of which the same or similar defects were discovered in some of those blocks. It is URS’ position that the structural defects at the Property and other flats are attributable to BDW’s negligent design such that it is entitled to recover the cost of rectifying the same.

Issues of law between the parties were considered on a preliminary basis and the Judge, O’Farrell J, found that most of URS’ alleged losses were recoverable in principle and URS’ cause of action accrued at practical completion and not at a later date.

BDW sought leave to appeal this preliminary decision on the following three grounds:

1. URS’ losses were not within BDW’s scope of duty;
2. URS’ cause of action accrued in 2019 when the defects were discovered (as opposed to at the date of practical completion) at which

point URS had no proprietary interest in the buildings, no obligation to repair defects and no liability to third parties owing to limitation. As such, URS had not suffered the loss alleged for the purposes of establishing a claim in negligence.

3. An earlier Judge, Fraser J, had erred in not striking out URS’ claim as disclosing no reasonable cause of action.

The First Appeal

Permission to appeal against the preliminary decision was granted on all three grounds (the “**First Appeal**”) and a hearing date was set for April 2023.

The Second Appeal

Section 135 of the BSA introduces a new section 4B into the Limitation Act 1980, the effect of which is to retrospectively extend limitation in respect of claims brought under section 1 of the Defective Premises Act 1972 (“**DPA**”) to 30 years. Section 135 came into force on 28 June 2022, prompting URS to apply to amend its claim against BDW to refer also to section 1 of the Defective Premises Act 1972 and the Civil Liability (Contribution) Act 1978.

The Court allowed URS’ proposed amendments and BDW sought leave to appeal that decision (the “**Second Appeal**”). Permission to appeal was granted by the Judge, Coulson LJ, on the basis that:

- While it was arguable that the First Appeal could not succeed owing to the BSA’s longer limitation periods, that did not render the appeal “*entirely academic*”, so it should proceed as planned.
- The issues raised in the Second Appeal should be heard alongside the First Appeal

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because the issues raised were "*closely entwined*", as were the procedural consequences. The appeals related to new legislation (the BSA) and the issues raised were novel in that they had never been considered before. Guidance on the issues would, therefore, be helpful. This constituted "*some other compelling reason for the appeal to be heard*" under CPR 52.6(1)(b).

- Coulson LJ, declined to say whether or not the Second Appeal had a real prospect of success owing to the fact it is not for a "*single Lord or Lady Justice of Appeal at an interlocutory hearing to decide substantive matters which may be relevant to the outcome of a forthcoming appeal*".

In coming to this conclusion and giving the parties some guidance on directions for the upcoming appeal, Coulson LJ warned the parties that they must deal "*with the substance of the issues, not any peripheral skirmishing*".

Analysis

The outcome of these conjoined appeals will be awaited with interest as they raise important questions of how the new limitation provisions of the BSA 2022 will impact future claims concerning damaged and/or defective buildings. The hearing is currently scheduled for April 2023.

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