



LEGAL BRIEFING

Propping up

Hart Investments Limited v Terence Maurice Charles Fidler (t/a Terence Fidler Partnership) Larchpark Limited (in liquidation)

(TCC) Mr Recorder Roger Stewart QC [2007] EWHC 1058

The Facts

The claimant sought to hold the first defendant responsible for the collapse of part of a building that the claimant owned. The first defendant was a structural engineer and denied responsibility for the collapse. He was employed by both the claimant and the second defendant building contractor.

The claimant alleged that the first defendant was liable to him in contract, alternatively in tort, for two alleged failings:

1. failing to design any, or any appropriate, scheme for the temporary support of underpinning, which surrounded a deep basement excavation; and/or
2. failing to require the contractor to take precautions so as to support the underpinning when the first defendant allegedly saw that the underpinning was unsupported.

The first defendant argued that he had no contractual responsibility to the claimant for the temporary works, which included the propping of the underpinning. He further argued that: he owed no tortious duty to the claimant to prevent economic loss of the sort claimed; he had in any event designed an appropriate scheme; he had not seen anything to suggest that the contractor had not carried out his design; and he did not in any event cause the collapse in question.

The Issues

The issues before the Court were: what, if any, of the design of the temporary works for the propping had been carried out by the first defendant; what had the first defendant observed prior to the collapse; the extent of the first defendant's contractual responsibility; whether the first defendant owed the claimant a tortious duty; and whether the first defendant's failures caused the collapse.

The Decision

The court held that design drawings showing the necessary propping were in existence prior to the collapse. Accordingly, it was an issue that was in the first defendant's mind. Further, the court held that the building contractor had commenced and indeed progressed the excavations to a level where they were dangerous prior to the first defendant's final site visit before the collapse. The first defendant was, therefore, in breach of contract by not warning the contractor as to the risk of the site collapsing and in not requiring the contractor to take immediate steps to prevent that danger. Such contractual duty was also concurrent with a duty of care in tort to prevent economic loss.

Comment

This case clarifies the extent of a consultant's duty to warn. In this particular case, even though the structural engineer was employed in relation to the permanent works he was obliged to warn in respect of an obvious danger with the temporary works when he had seen the excavations (without any propping) during one of his site visits. Consultants are well advised to keep in mind the extent of this duty when undertaking site visits.

Iftikhar Khan
May 2007