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# Fire Safety and Tall Buildings - Recent Cases - an Update

by Jon Miller

## Introduction

1. My first note on this issue *https://www.fenwickelliott.com/research-insight/articles-papers/other/fire-safety-tall-buildings-cases* highlighted the reasons why, in the first three cases to reach the Courts post-Grenfell dealing with cladding and issues relating to fire barriers etc, all of the Claimants failed to recover compensation.

   However, in a recent case the Court decided that a Freeholder's claim for defective cladding and other associated defects did indeed have at least a realistic prospect of success.

## RG Securities (No. 2) Limited v Allianz Global Corporate and Speciality CE and Others[1]

2. The case concerned St Francis Tower in Ipswich – the highest residential block in Suffolk – which contained 16 storeys with 111 flats. St Francis Tower consisted of a concrete frame originally built in the 1960s, but the property was subsequently refurbished between 2006 and 2009. The refurbishment involved covering the existing structure with cladding that was said to be "*highly inflammable*".[2] There were other issues arising out of the refurbishment including alleged defects with the internal fire barriers, and the safety measures preventing the occupants from falling out of windows. The estimate of remedial works before the Court was circa £3.6m.

3. The Freeholder purchased St Francis Tower in 2015. During the course of the negotiations leading up to the purchase the Freeholder asked for "*evidence the finished development of the property complies with the Building Regulations*".

   The answer they received was:

   "*We have sold 116 flats in this block, and there has never been a problem with the building regulation approval, so we are not doing anything further on that. The building regulation approval we cannot find on the portal, but we are writing to the Council for that.*"

4. It subsequently transpired that final Building Regulations' approval had not been given for St Francis Tower. As a result the Freeholder started a claim against the Seller, who the Court accepted had been involved with the refurbishment, under the Defective Premises Act 1972. My previous note *https://www.fenwickelliott.com/research-insight/articles-papers/other/fire-safety-tall-buildings-cases* dealt with the operation of the Act, but essentially it imposes a duty whereby:

1. [2020]EWHC 1646.
2. It was pleaded that the cladding at St Francis Tower was even more flammable than that used on the Grenfell Tower.

*"A person taking on work for or in connection with the provision of the dwelling owes a duty … to every person who acquires an interest (whether legal or equitable) in the dwelling … to see that the work which he takes on is done in a workmanlike or … professional manner with proper material so that as regards to that work the dwelling will be fit for human habitation when completed."*[3]

This will include someone who is "*arranging*" for work to be carried out to a dwelling[4] – such as the Seller here.

5. The Freeholder faced a potential and significant hurdle. Under the Defective Premises Act 1972 a claim normally has to be brought within six years of completion of the Works, and the contract of sale was entered into and the claim commenced after this deadline had expired.[5]

   However, there is a potential exception. The Freeholder relied upon the Limitation Act 1980 which allowed for the postponement of the limitation period if "*any fact relevant to the plaintiff's right of action has been deliberately concealed from him by the defendant*".[6] The Freeholder alleged that the response from the Seller's solicitors, pointing out that they never had a problem with Building Regulation approval, was misleading – there was no Building Regulation approval at all. However, this in turn was countered by the point that even if there was a deliberate concealment, the six-year limitation period had expired before the contract of sale had been entered into.

6. The Court found that the statement by the Seller that there were no problems with Building Regulations' approval was potentially a concealment of the relevant facts. Further, the six-year limitation period which commenced when the refurbishment works were completed, may have indeed expired before the contract of sale was entered into. However here, where key facts were hidden, the six-year period started from the time the "*deliberate concealment*" was discovered (or potentially could have been discovered), not from when the refurbishment was completed. Accordingly the Freeholder had brought their claim in time.

7. It is important to bear in mind that essentially the Freeholder managed to defeat an attempt by one of the Defendants to effectively strike the claim out and enter judgment quickly on the basis that there was no real prospect of the claim succeeding.[7] Based upon the limited facts available to it, the Court rejected this suggestion and allowed the claim to proceed. There was no final determination on who was right or wrong. The matter may now proceed to a trial and we may indeed receive a full judgment in due course.

8. What the case does illustrate is the potential for bringing an action under the Defective Premises Act 1972 for a breach of a duty to ensure that the finished works are not "*fit for human habitation*". More significantly, the case also demonstrated that if a relevant fact is deliberately concealed, the six-year period for bringing an action will commence from the date the deliberate concealment was uncovered, or indeed should have been uncovered. This could extend the deadline for bringing claims considerably.

3. Section 1 (1).
4. Section 4 (4).
5. Section 1 (5).
6. Section 32 (1) (b).
7. Civil Procedure Rules Part 24.2 (a) (i).