

Commercial Buildings - Who Owes A Duty Of Care?

Robt Jones (363 Adelaide Street) Pty Ltd v Abbott Corporation Pty Ltd, unreported, Queensland Supreme Court, White J, 28 October 1997.

When multi-storied commercial buildings are constructed, many different parties are involved including developers, builders, glass suppliers and architects. When something goes wrong with the building, who pays for the repair of the damages caused?

Introduction

This is one of the main issues that the Queensland Supreme Court addressed in the decision of *Robt Jones (363 Adelaide Street) Pty Ltd v Abbott Corporation Pty Ltd*. In this case, the plaintiffs sought damages from the defendants for the losses which they sustained and will sustain as a consequence of having defective glass installed in the building.

Liability Issues

The defendants included the developer, builder, glass supplier and architect in respect of the building. The plaintiffs alleged that liability arose because the glass in question, being fully toughened, had and has a propensity to shatter spontaneously due to the instability of certain nickel sulphide impurities contained within it. The plaintiffs alleged that heat strengthened glass which does not have this characteristic ought to have been used (or advised to be used) or alternatively toughened glass which had been heat soaked to remove those impurities.

Many specific allegations were made by the plaintiffs, however, Justice White observed that certain observations could be made about the scope of the duty, if any, which may be owed by numerous defendants in the context of the construction of a commercial building involving a number of different entities.

Bryan v Maloney Revisited

The plaintiffs relied on *Bryan v Maloney* (1995) 128 ALR 163 to enable them to recover damages for negligence against all the defendants. However, in that case, the High Court appeared to limit the finding that a builder owes a duty of care to a subsequent purchaser of a house, to the precise category of a domestic dwelling. In *Bryan v Maloney*, the dwelling suffered a loss in value because of the inadequacy of the footings which first became apparent by damage to the fabric of the house.

Justice White held that *Bryan v Maloney* does not try to lay down any broad relationship of proximity applicable, for example, in the case of the construction of

a commercial building. In *Robt Jones*, Justice White held that the parties have deliberately involved themselves in a network of commercial and professional contractual relations, the framework of which is sufficiently strong, complex and detailed so as to exclude the recognition of delictual duties between parties who are not already connected by contractual links.

Complex Contractual Relations

The judge noted that there are assumptions and demarcation of authority, responsibility and risk regulation in a complex construction situation which was apparent throughout the evidence of the witnesses particularly on the part of the experienced builders and architects. The parties deliberately chose how their relationships would be regulated by the kinds of detailed contractual agreements into which they entered.

No Basis For Tortious Liability

To impose other obligations upon them outside these arrangements would be to upset the selected parameters of their relationships. Justice White felt that the resultant increase in insurance premiums would be only one outcome. If it were necessary to do so he would specifically find that there was no reliance beyond reliance on the series of contracts and the system chosen by the parties for regulating and providing for risk allocation and responsibility.

That one or other of those involved in the construction of the building might be unable to meet a damages order in contract is no basis, he felt, for imposing tortious liability on those who can. The facts did not suggest that there was any assumption of responsibility by the non-contractual parties to anyone in the position of the plaintiffs.

- Reprinted with permission from Phillips Fox 's Focus.