Legal Briefing

Crowley Civil Engineers v Rushmoor Borough Council

[2010] EWHC 2237 (TCC), HH Judge Thornton QC

The Facts

In June 2002, Rushmoor Borough Council (the "Council") engaged Mr Timothy Crowley, trading as Crowley Civil Engineers ("Crowley") to "grub up trees and lay block paving" in a public open space immediately adjacent to a terrace house in Aldershot, Hampshire. The paving works required the excavation of the whole site to a depth of 215mm and the removal of a planter which abutted the flanking wall of the terrace house.

Though the Council had not carried out a site survey or trial pits in order to investigate the ground conditions and foundations of the terrace house, Crowley duly commenced the works in accordance with the Council's instructions. Upon demolition of the planter and excavation of the soil adjacent to the external wall of the house, it became apparent that the foundations were extremely shallow (as this external wall had once been an internal party wall). The planter had been providing substantial structural support to the flanking wall and, once removed, the condition then became extremely dangerous as the works had undermined the stability of the external wall. The Council then instructed Crowley to implement supportive measures, which turned out to be wholly inappropriate.

Within approximately 24 hours, the back extension of the house had partially collapsed.

The home owners commenced proceedings, claiming that the partial collapse was caused by the negligence of both the Council and Crowley. A settlement out of court was reached for the sum of £384,500. However, the Council refused to pay anything. Therefore Crowley took action, claiming a contribution from the Council under s.1(1) of the Civil Liability (Contribution) Act 1978 for the settlement monies he had paid out.

The Issues

(i) Should the Council have undertaken a site investigation to reveal the shallow nature of the foundations and the full extent of the works required prior to engaging Crowley?

(ii) Should Crowley be liable for the consequences of implementing the Council's dangerously inappropriate supportive scheme?

The Decision

HHJ Thornton QC held that the Council was principally responsible for the partial collapse of house and its acts and omissions were the major and predominant cause of the claimants' damage. Accordingly, he apportioned 80% of the damages and costs under the terms of the compromise agreement to the Council.

The judge found on the facts that Crowley had not been hired to design, detail or specify any aspect of the work, but rather had been chosen as a one-man contractor for simple paving maintenance works. He did not accept the Council's argument that it had contracted with an experienced and qualified civil engineer. Crowley's standard estimate form was headed "Proprietor Mr T.D. Crowley" with no professional qualification shown after his name and described the business as being that of "civil engineers". HHJ Thornton QC stated:

> *"The description "civil engineers", when used to describe a contractor, has a different and less formal meaning to the description "Civil Engineer" when used by a qualified professional civil engineer. The former use of "civil engineer" merely describes the activities of a contractor whose business involves anything associated with external structures… The latter use of "Civil Engineer" describes a member of the Civil Engineering profession who has qualifica-*

tions in civil engineering up to, at least, first degree level and who is invariable a member of the Chartered Institute of Civil Engineers."

Therefore, the Council should not have had any expectations regarding his services. Crowley's contract contained no implied terms as to fitness for purpose since the Council was not relying on his skill and judgment in relation to any element of design, detailing or working method. Accordingly, the Council should have carried out a site investigation, arranged for the digging of trial pits, prepared properly designed and detailed contract documents for the work required and inspected and supervised the excavation. The Council should also have taken informed advice once stability of the flanking wall had been compromised. Ultimately, the Council was found liable for negligence, nuisance and breach of statutory duty to observe the provisions of the Party Wall Act.

However, at the same time, the judge also found that Crowley was partially responsible. He should have stopped the excavation when the foundations had been uncovered in order to seek further instructions from the Council. He also should have desisted from undertaking the remedial measures instructed by the Council as the danger of collapse was so obvious and immediate that any further excavation would endanger Crowley's operatives and the occupants of the house. Furthermore, as an independent contractor, he was strictly liable to the home owners for the withdrawal of support from the foundations.

Comment

This case is a timely reminder for those engaging contractors to carry out work. Preparing contract documentation which clearly states the works to be carried out and the standard of care required is imperative. Here, a contractor was engaged for "civil engineering" works, rather than for his services as a "Civil Engineer". There is a significant difference. As a result, when damage occurred, the judge held that the contractor was not liable as to fitness for purpose as not only were there no such obligations in the contract, the contractor had not designed, detailed or specified any of the works. He was required simply to carry out the necessary excavation and paving with reasonable standards of workmanship.

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