



LEGAL BRIEFING

The Patchetts v Swimming Pool & Allied Trades Association Ltd

[2009] EWCA Civ 717 Lord Clarke of Stone-Cum-Ebony MR, Lord Justice Scott Baker and Lady Justice Smith

The Facts

This case is of interest to all those who market their business on the internet and make statements on websites as to what the consumer can and cannot expect from the company.

It is an appeal from the Birmingham County Court. In the summer of 2006, Mr and Mrs Patchett were looking to build a swimming pool in the garden of their home. Using Google, Mr Patchett came across the website of the Swimming Pool & Allied Trades Association Ltd ("SPATA") in his search to engage an appropriate contractor. SPATA is a well-established, incorporated trade association and its members include most of the major swimming pool installers in the UK. From the website, Mr Patchett obtained the names and contact details of three of its members. Of the three, a quotation from Crown Pools Ltd was obtained and accepted and the works duly commenced. Prior to completion, Crown Pools Ltd became insolvent and ceased trading, leaving the works unfinished.

The dispute between the parties arises out of statements made on SPATA's website. Amongst other assertions, the website represented that Crown was a member of SPATA, that SPATA members have high standards, that Crown had been checked for creditworthiness and the quality of its work and that Crown was a member of SPATA's unique Bond and Warranty Scheme. Furthermore, it stated that this Bond and Warranty Scheme offers "customers peace of mind that their installation will be completed fully to SPATA Standards – come what may!"

The Patchetts claimed that they relied upon the representations on the website by choosing Crown Pools Ltd and entering into the contract. As it happened, the representations were untrue. Crown Pools Ltd was only an affiliate member of SPATA and as such was not covered by the Bond and Warranty Scheme. The Patchetts claimed damages of approximately £44,000 as a result of SPATA's breach of duty to take reasonable care in making these representations.

In the Birmingham County Court, HHJ Worster held that SPATA did not owe the Patchetts a duty of care in making certain statements on its website. The essential reason given was that while SPATA no doubt knew that the representations on their website would likely be acted upon, it would not expect consumers to do so without further enquiry. The website had clearly stated that an information pack, including a contract check list setting out questions for potential tenderers and installers, was available in addition to the information provided on the website.

The court found that the third criteria necessary for establishing a relationship between the maker of a statement and the recipient who relies on that statement, as set out in the case of *Hedley Byrne v Heller*, was not satisfied:

"it is known, either actually or inferentially, that the advice [or representation] is likely to be acted upon by the advisee without independent inquiry."

The Patchetts appealed against this decision.

The Issues

Was there sufficient proximity between the Patchetts and SPATA and would it be fair, just and reasonable to impose a duty of care upon SPATA with respect to the accuracy of the statements made on its website?

The Decision

The Court of Appeal agreed with the conclusions of the Birmingham County Court and dismissed the appeal by a majority of 2:1, with Lady Justice Smith dissenting. The Master of the Rolls, Lord Clarke of Stone-cum-Ebony MR, held that it would be expected that a potential customer would obtain the information pack prior to appointing an installer. He stated that the parties were not in a relationship of adviser and advisee, and as such, there was not sufficient proximity between the parties to give rise to a duty of care. It could not be fair for SPATA to assume a legal responsibility for the accuracy of the statements on the website without the consumer inquiring further, which the website itself encouraged.

Furthermore, Lord Clarke held that SPATA had not given a warranty that Crown Pools Ltd were at all times creditworthy, but rather that its financial record and previous work had been checked in the past and had been up to SPATA standards.

Though academic, it is interesting to note that Lady Justice Smith found that the website did little more than offer the information which was contained in the information pack. She did not see that the website held itself to be merely 'the first step in the process' for the consumer to obtain all of the requisite information and respectfully disagreed with the other members of the court.

Comment

This case is an important reminder to those who promote their business on the internet. As the Master of the Rolls reminds us:

"it is important that information put into the public domain is accurate".

Though it was not the case here, depending on the situation, a company could be liable for false statements and misrepresentations made on its website. Equally, consumers must take care to check all information obtained from the internet. Websites need to be read as a whole and where the website encourages further information to be obtained, consumers should certainly do so.

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