



LEGAL BRIEFING

(1) Niklas Zennstrom (2) Catherine Zennstrom v (1) Kevin Fagot (2) Helen Moseley (3) Deborah Patricia Wilks (4) Andrew Ramus (5) Fast-Calc Ltd [2013] EWHC 288 (TCC)

The Facts

During 2009 Mr and Mrs Zennstrom purchased a property in Hamble, Southampton for £1.1m from Ms Moseley and Ms Wilks. The property had been completely rebuilt some 12 months prior to the sale. Unfortunately, the Zennstroms found that the building was structurally unsafe and needed to be demolished.

The Zennstroms commenced proceedings against Ms Moseley and Ms Wilks as well as the architect and contractor who had carried out the rebuilding works and the company that had carried out calculations in relation to the steelwork¹.

On 21 February 2013 Mr Justice Edwards-Stuart considered as a preliminary issue the question of whether or not Ms Moseley and Ms Wilks owed a duty to the Zennstroms under the Defective Premises Act 1972 ("the Act").

The Zennstroms alleged that Ms Moseley and Ms Wilks had always intended to sell the property and were therefore acting in the capacity of property developers. If so, they would be liable under the Act as it provides that a person who, in the course of a business, carries out work for or in connection with the provision of a dwelling is under an obligation to the homeowner or any subsequent purchasers to see that the work is done in a workmanlike or professional manner with proper materials so that the dwelling is fit for habitation on completion.

Ms Moseley and Ms Wilks maintained that their intention when they purchased the property in 2004 was to turn it into their 'dream home'. They maintained that it had never been their intention to resell it and they were not property developers, contending that they had been required to sell the property solely as a result of a change in employment circumstances.

The Issue

Were Ms Moseley and Ms Wilks acting as property developers so that they were liable under the Defective Premises Act 1972?

The Decision

Mr Justice Edwards-Stuart found that there was no evidence that Ms Moseley and Ms Wilks were acting as property developers. He held that in order for the Zennstroms to succeed, they were required to prove that:

- 1 at or before the time when Ms Wilks and Ms Moseley entered into the contract with the contractor for the demolition and rebuilding of the house they intended to sell it as soon as they reasonably could after it was completed; and
- 2 at the same time, they did not intend to occupy it as their home after it had been rebuilt for a period that was more than minimal.

¹ As the Judge pointed out, Ms Moseley and Ms Wilks may have been included in this firing line simply because the architect appeared not to have any insurance and the contractor appeared not to have any assets.

There were a number of factors which influenced the Judge's view. Perhaps most compelling was the evidence that during the period when Ms Moseley and Ms Wilks moved back into the property on completion, they celebrated their civil partnership and instead of gifts they asked their friends to contribute towards a painting specifically commissioned for a particular sized wall in the property. In addition, they did not register as builders or

developers with the NHBC Buildmark Scheme or any similar scheme that would provide a warranty of the construction for the benefit of a subsequent purchaser.

The Judge also noted that it is not necessary for a person in business as a property developer to have previously developed and sold other properties in the past. If this was the case, property developers could circumvent the Act by setting up a separate company for each dwelling that was to be developed. So the fact that Ms Moseley and Ms Wilks were not previously involved in property development was not a decisive factor.

Ultimately the Judge found that Ms Moseley and Ms Wilks did not intend to sell the property when they commenced the rebuilding work, but only came to that view after the work had been completed. If their intention at that time was to develop the house and then sell it on at a profit, they would have got on with it straight away – which, on the facts, was not the case.

Comment

This case confirms that residential property owners will only owe a duty under the Defective Premises Act if they fall squarely within Section 1 of the Act: their actions must be “in the course of a business”. What matters is their intention and actions at the time of the build – not whether they have developed and sold other properties in the past.

Stacy Sinclair
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