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A cautionary tale for those who undertake site visits

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Rosalind Cullis

The case of Rushbond plc v The J S Design Partnership LLP [2020] will be of interest to those who carry out site visits. The claimant issued proceedings against the defendant firm of architects for negligence, following a fire at the subject property which occurred a few hours after a site inspection.

The claimant was selling a large disused cinema in Leeds. The property was protected by an alarm system and lockable doors including a side door for which the marketing agents and managing agents held keys. The marketing agents provided the key and alarm code to an architect from the defendant firm in order to undertake an inspection with a quantity surveyor and structural engineer on behalf of a prospective purchaser. Neither the marketing agent nor the managing agent attended to supervise the inspection.

The architect was in the property for about an hour, during which time he left the side door unlocked and the alarm was deactivated. On leaving the building he re-set the alarm and locked the door. However, later on in the evening on that same day, a fire spread through the building causing substantial damage. Whilst it was not alleged that the architect was directly responsible for causing the damage, the assumption was that, during the period whilst the property was unlocked, a third party had gained access to it. The claimant's sought damages of £6.5 million. The defendant applied to strike out the claim and/or for summary judgment.

The key question was whether, in circumstances where the site visit was unaccompanied, and given that it had control of the security arrangements, the defendant owed the clamant a duty of care in relation to the security of the property. Had the architect created, or permitted the creation of a source of danger by failing to lock the door during his visit?

The defendants were successful in their application. The main reasons for this were:

- The general rule is that the common law does not impose liability for negligence in relation to "pure omissions", including loss arising through the criminal actions of a third party. This case concerned a "pure omission". The architect's failure to lock the door allowed vandals access to the building, but it did not provide the means by which they could start a fire and was not causative of the fire.

- There are exceptions to the "pure omissions" rule:
    - Firstly, there may be liability for an omission if there is an assumption of responsibility i.e. in this case if the defendant had control over the third party and should have foreseen the likelihood of the third-party causing damage if the defendant failed to take reasonable care in the exercise of that control.
    - Secondly, where one party held itself out as having a special skill or expertise on which the other relied.

There was no evidence that, on the facts of this case, that either exception applied with the judge commenting that "[*m]ere possession of the key during an inspection of the property was not sufficient to give the Defendant responsibility for safeguarding the property from fire damage. The absence of any dealings between the Claimant and the Defendant preclude any finding of reliance by the Claimant on the Defendant, or any finding that reliance was objectively reasonable*.'

Whilst this case concerned an unfortunate chain of events and, as always turned on its facts, it may, however, make property owners think twice about allowing unsupervised visits. It demonstrates how difficult it can be to prove negligence.

For further information please contact:

Rosalind Cullis
E: rcullis@maplesteesdale.co.uk
T: 020 3465 4311