URS Corporation Ltd v BDW Trading Ltd [2025] UKSC 21

The Supreme Court has handed down its eagerly anticipated judgment, dismissing URS' appeal on every point and leaving the way open for a trial which will be interesting on issues of causation and damage (particularly, mitigation).

For general purposes, the most striking aspect of the proceedings to date is surely that it is established that the Civil Liability (Contribution) Act 1978 may enable one of two parties who have theoretically been open to claims by a third party to recover "contribution" from the other despite the fact that the third party has made no claim.

Perhaps the most important aspect is that the Supreme Court rejected the proposition that there is a legal "voluntariness" principle which, if it existed, would prevent a claimant recovering for loss where it has chosen to pay for remediation which it was not obliged to undertake. The question whether recovery can be made in such circumstances is fact-dependent.

Any hope that the Court would consider whether to overturn *Pirelli General Cable Works Ltd v Oscar Faber & Partners* [1983] 2 AC 1 has been unfulfilled. The Court did not hear full argument on the point and declined to decide whether to overturn *Pirelli*.

The factual background and the issues for decision

A developer of high-rise flats acted in a socially responsible way, which it was not legally obliged to do, to remedy defects in buildings which, it was assumed, were due to negligent structural design faults. The developer did this years after it had sold all its interests in the buildings for full value. It claimed damages from the designer. The claim gave rise to questions under the Defective Premises Act 1972, the Limitation Act 1980 (as recently amended by the Buildings Safety Act 2022) and the Civil Liability (Contribution) Act 1978. In its decision, the Court of Appeal gave a substantial review of the development of limitation law applicable to professional liability claims based on tort.

The Supreme Court summarised the questions as follows:

1. Is loss that is otherwise recoverable in the tort of negligence irrecoverable if it is incurred (i) without an enforceable legal obligation to do so, and (ii) in respect of property in which the claimant has no proprietary interest, because such loss is voluntarily incurred, and that means it falls outside the scope of the defendant's duty of care and/or is too remote?

2. Do the retrospective extended limitation periods provided for by section 135 of the Building Safety Act 2022 ("BSA") (inserting a section 4B into the Limitation Act 1980) apply to other claims (eg in the tort of negligence) which are dependent on the time-bar applicable to claims under section 1 of the Defective Premises Act 1972 ("DPA")?

3. Does section 1(1)(a) of the DPA apply only to purchasers of properties, or does it also apply to property developers?

4. Is the respondent entitled to bring a contribution claim against the appellant under section 1 of the Civil Liability (Contribution) Act 1978 ("CL(C)A") when there has been no judgment or settlement between the respondent and any third party and no third party has ever asserted any claim against the respondent?

The property developer (BDW) contracted a structural designer (URS) in the construction of a number of high-rise buildings. The buildings were completed between 2005 and 2012 and sold by BDW for full value. In 2019, following the fire at Grenfell Tower, BDW conducted a review of its buildings. There was no physical damage apparent. However, structural defects giving rise to health and safety concerns were identified in properties designed by URS, in the case of one building causing its evacuation. Despite no longer having any proprietary interest in the properties and not being subject to any claims from third parties, BDW proceeded with full investigation, and remedied the defects. Accepting that any contract claim against URS was time-barred, it sued, initially in negligence, to recover the

expenditure from URS. (Among the ways of putting the claim was an assertion of 'reputational' losses. This assertion, which failed at the first High Court stage, has had no importance at the Supreme Court level.)

Three preliminary issues were tried by Fraser J on the basis of a set of facts agreed between the parties. URS also applied for strike out. The focus of URS's arguments at that stage was scope of duty and whether BDW had a complete cause of action. Fraser J found in BDW's favour on each issue in respect of the 'conventional' damages (for investigating and remedying the defect) (but held that the claim for reputational damage fell outside the scope of URS's duty of care). Strike out was accordingly refused. Fraser J held that there was a complete cause of action which had accrued at the point of practical completion of the buildings, in accordance with *Pirelli*.

Following that judgment, the BSA came into force. Its provisions include s.135, which inserts a section 4B into the Limitation Act 1980. This extended to 30 years the limitation period for claims under s.1 of the DPA where the claimant's entitlement to bring an action arose pre-BSA. BDW therefore applied for permission to amend its pleadings to add claims under s.1 DPA, as well as s.1 of the CL(C)A on the basis that both BDW and URS would be liable to others under the DPA. URS opposed the applications, arguing that (a) s.135 of the BSA did not apply to proceedings that were ongoing before the entry into force of BSA; (b) as a developer, BDW was not a 'person' for the purposes of s.1 of the DPA; and (c) contribution proceedings could not be brought absent a claim by a third party. Adrian Williamson KC, sitting as a Deputy High Court Judge, held that the claims were reasonably arguable so allowed the amendments to be made.

URS appealed both decisions; the Court of Appeal found in BDW's favour on all issues.

Part of URS's analysis was described by Coulson LJ as resulting in a legal 'black hole', whereby BDW suffered no loss at the point when they were owed the full professional duty of care as the defects were unknown; but that when the defects were known and costs of remedial works incurred, BDW were not entitled to recover the costs because

they no longer had a proprietary interest. Instead, it was held that an inherent structural design defect was actionable damage regardless of physical damage. The risk of economic loss as a result of structural defects that required remedy was within the scope of the designer's duty.

Further, the Court of Appeal held that:

- S.4B of the Limitation Act 1980 was to be treated as having always been in force such that it applied to litigation that pre-existed BSA.
- A developer is a 'person' entitled to bring a claim under s.1 of the DPA.
- A claim by a third party is not a condition precedent for a claim under s.1 of the CL(C)A.

Outcome in the Supreme Court

The appeal was heard by a panel of seven justices, because the question of overruling *Pirelli* might be considered. In the event it was held unnecessary to consider that, although some observations were made about it [paragraphs 71-77].

The justices were unanimous in dismissing the appeal. The main judgment on the first three questions was written by Lords Hamblen and Burrows, with whom Lords Lloyd-Jones, Briggs, Sales and Richards agreed; on the fourth question (on the CL(C)A) they agreed with the judgment of Lord Leggatt. Although he agreed with the conclusions on the first three issues of Lords Hamblen and Burrows, Lord Leggatt gave his own reasons on those points. Anyone dealing with questions of mitigation, particularly in professional liability matters of all kinds, will be interested in what he wrote about that subject, which, among other things, shows the interest with which he had considered Andy Summers' *Mitigation in the Law of Damages* (OUP, 2024).

On the first question, URS submitted that, as a matter of law, BDW could not recover on the basis of negligence because the claimed loss was incurred voluntarily. So, it was said, the loss was outside the scope of the duty and/or was too remote. The Court

held that there was no such rule of law [paragraphs 67, 174, 184]. The question whether the loss is recoverable in a negligence claim is fact-dependent.

On the second question, as to the effect of s.135 of the BSA (s.4B of the Limitation Act):

a) It was not disputed that the section applied to claims under s.1 of the DPA [paragraph 96];

b) The section applies also to claims, within the purview of the Act, based on negligence or rights of contribution, which would, but for the Act, be prevented by a claim under the DPA having become time-barred [paragraph 125, 270].

On the third question, the correct interpretation of the DPA has the result that a party, such as the defendant, who carries out work for a relevant building, will owe a statutory duty to the commissioning party, even where the commissioning party and the party doing the work both owe such a duty to the person acquiring the duty [paragraphs 159, 196, 207]. Accordingly, the defendant may be liable to the claimant under that Act.

Lastly, the CL(C)A provides a statutory remedy (a payment entitled "contribution") where both the party claiming contribution and the party from whom it is claimed have become exposed to a potential claim from a third party. This remedy is available where damage has been suffered by the third party for which both the party claiming contribution and the party from whom it is claimed are liable to the third party, and the party claiming contribution has paid, or been ordered to pay, or has agreed to pay, compensation (even if that compensation is paid in kind, as, here, by procuring remediation). It is not necessary, for the making of a claim to contribution, that the third party should actually have made a claim [paragraphs 162 and 212]. It is emphasised [paragraph 243] that statutory interpretation begins with the words used, rather than with case-law on earlier legislation on the same subject (cf. the references to interpretation of consolidation statutes, whether with or without amendment, in *Sheldon v R H M Outhwaite (Underwriting Agencies) Ltd* [1996] A.C. 102 at p.144 F-H).

Comment

- The case had the tantalising prospect that the decision in *Pirelli* might be overruled. That prospect is now for another day.

- Instead it has been a case involving difficult issues of interpretation of three statutes. One may feel that in respect of different issues there has been some difference of approach as to the extent to which context and policy may have a bearing on interpretation of language, but this is not a case on rules of statutory interpretation.

- The BSA has a powerful retrospective effect where it applies, depriving relevant parties of accrued limitation defences. The Court emphasises that the effect is to change the law with retrospective effect, but not to change the facts. In judging whether a party was negligent, the matter is concerned with the facts as they actually were: see paragraphs 121 and 286.

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CLARE PARKHOUSE

Hailsham Chambers

22 May 2025