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Concrete, Cracks, and Causation – Claim Against Designer Dismissed – MJS Projects (March) Ltd v RPS Consulting Services Ltd [2025] EWHC 831 (TCC) (09 April 2025)

MJS Projects (March) Ltd v RPS Consulting Services Ltd [2025] EWHC 831 (TCC)

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Key Words:

Design Negligence, Breach of Contract, Construction Errors, Causation of Damage, Expert Witness Evidence, Reliability of Experts, Bolam Test (Reasonable Skill and Care), Slot Drains, Container Yard, Dowels (25mm, 32mm), Mesh Reinforcement, Load Class (E600, F900), Finite Element Analysis (FEA), Mass Concrete Taper (MCT), Pleadings, Workmanship, Settlement, JCT Contract, Novation Agreement, Required Standard (of skill, care and diligence), Dismissal of Claim

Summary

MJS Projects (March) Ltd (Claimant) sued RPS Consulting Services Ltd (Defendant) over alleged design defects in a container park near Felixstowe [1]. The Claimant subcontracted design to the Defendant and construction to MJS Construction (March) Ltd [1]. Damage appeared around the slot drains soon after completion [2, 3]. The Claimant alleged negligence and breach of contract [3]. The central issue was whether the damage stemmed from design failings or poor construction [3, 5]. HHJ Kelly dismissed the claim, finding no negligence or causative breach by the Defendant [218, 222–225], and relied heavily on the Defendant's expert, finding the Claimant's expert unreliable [151, 177, 196, 200-201, 210, 219, 221, 223, 225].

Key Themes:

1. ***Allegations of Defective Design:*** *The Claimant argued the slot drain design was inadequate and caused damage [3, 15(2)a–c, 15(3)a].*
2. ***Construction Errors:*** *The Defendant maintained that MJS Construction deviated from the design, causing the damage [3, 10, 20–21, 112–113].*
3. ***Causation:*** *The issue was whether the damage arose from design defects, construction errors, or both [7, 15(4), 19, 40, 48, 52]. Initially, the Claimant alleged design was the sole cause [10, 16–17].*
4. ***Expert Witness Reliability:*** *The Defendant's expert was found credible; the Claimant's expert was not [5, 7, 72–73, 91–92, 171–172, 200–201, 209–210].*

5. ***The Bolam Test:*** *The court applied the Bolam test to assess the standard of care expected from design professionals [12, 13, 27].*
6. ***The Importance of Pleadings:*** *The court stressed adherence to pleadings and that new arguments must be introduced by amendment [10, 16–17, 20–21, 36–37].*

Background

- The dispute arose from works at a container park near Felixstowe [1].
- MJS Projects (March) Ltd was the main contractor under a JCT design and build contract [1], subcontracting design to the Defendant and construction to MJS Construction [1].
- The container park had a service yard and a container yard (reach stacker yard). The dispute concerned the container yard where drains were required [2]. Three Gatic slot drains were part of the design in the container yard [2].
- The build was completed in August 2017 [2]. By December 2017, deterioration and damage were apparent in the concrete surrounding the slot drains in the container yard [3, 10, 18, 200].
- The Claimant alleged that this damage was caused by the Defendant's negligent design and/or breach of contract [3, 10]. No claim was brought against MJS Construction by the Claimant [3, 60].
- The Defendant argued that the damage was due to negligent construction by MJS Construction, who did not build in accordance with the Defendant's design in several respects, including the size and placement of dowels, missing mesh reinforcement, incorrect concrete thickness, and inadequate sub-base [10, 20-21].
- The design contract was novated to the Claimant on 25 March 2019 [10–12]. The parties agreed the contractual terms remained applicable [12–13].
- The Defendant relied on various guidance materials during the design process, including publications from the Concrete Society (TR66 and TR34), Knapton & Meletiou's work, Interpave guidance, Gatic's installation guidelines, and British Standard EN 1433 [11-12].

Legal Issues and Analysis

- **Breach of Duty/Negligence:** The central legal question was whether the Defendant breached its duty to exercise the "Required Standard" – all the reasonable skill, care, and diligence to be expected of a qualified and experienced member of the consultant's profession undertaking services on similar works [10, 13.5-.8, 27]. The court considered the Bolam test in this context [12, 13.4, 27-28].
- **The Court's Approach to Design:** The court noted that it is concerned with the final design, not necessarily the design process [28]. However, designers may be liable if the design is not "buildable" with ordinary competent workmanship [29].
- **Causation:** The Claimant had to prove that the Defendant's breach of duty caused the damage identified by December 2017 [7, 15(4), 40, 50]. The court considered principles of causation where there are competing causes [26 -36]. The burden of proof for breach of duty and causation remained with the Claimant [35].
- **Analysis of Expert Evidence:** This was a critical aspect of the judgment [188-209].
    - **The Claimant's Expert:** The court found his evidence unreliable for several reasons:
        - His report lacked proper reference to the pleadings [191].
        - His evidence did not make the court confident that he properly understood his duty to the court as an expert pursuant to CPR 35 [190].
        - He did not adequately address the workmanship issues raised in the defence [157, 181, 191-193].

        - His explanations for shortcomings in his report (e.g. time and cost constraints) were unconvincing [194].
        - He unilaterally reran his FE analysis shortly before trial without disclosing the updated results [195-196].
        - He did not adequately explain his FE analysis or its limitations, even suggesting the court could "Google it" [107, 124, 188-189, 196].
        - He lacked significant direct experience in the design of container yards [116, 198].
        - He did not consistently apply the correct legal test for professional negligence, focusing on "reasonableness" rather than whether no reasonably competent engineer would have acted similarly [190-192, 199-201].
        - His opinion on the load class (E600 vs. F900) was inconsistent and ultimately deemed "finely balanced" [132-133, 200, 221].
        - His FE analysis was based on outdated guidance and contained errors [145-147, 195-197, 225].
        - Crucially, he conceded in oral evidence that the December 2017 damage was unlikely to be due to design-related settlement given the timeframe [221, 226].
    - **The Defendant's Expert:** The court found his evidence to be reliable [201, 207].
        - While he initially maintained the necessity of a Mass Concrete Taper (MCT), he revised his opinion after considering the factual evidence that it was not part of the agreed design [97, 188-189, 201, 204, 207]. The court accepted his explanation for this change of view [203-204].
        - He provided detailed analysis and hand calculations [15(3), 112, 124, 130-131, 166, 168, 207].
        - He explained the Defendant's design process and the rationale behind the choices made [207].
        - He had relevant practical experience in similar large infrastructure projects [208].
        - His calculations suggested that the 32mm dowels, if installed correctly, would have been adequate to transfer the loads [171, 219, 220, 224].

- **Findings on Design Negligence:** The court concluded that the Claimant had not established that the Defendant's design was negligent or in breach of contract [208-209, 218]. While some errors were made during the design process, they were corrected before construction [218-219]. The final design, particularly regarding the 32mm dowels, was deemed adequate based on the Defendant's Expert's evidence [219-221]. The court did not find the choice of load class E600 to be negligent [221].
- **Findings on Causation:** Even if the design was negligent, the court found that the Claimant had failed to prove that this negligence caused the damage by December 2017 [223]. The Claimant's Expert's own oral evidence suggested that settlement (a potential consequence of design issues) would not have manifested so quickly in the clay soil [221, 226]. The subsequent lack of further cracking after remedial works using the specified 32mm dowels also supported the conclusion that the design itself was not the root cause of the initial damage [227]. The significant construction defects identified by the Defendant were considered more likely to be the cause of the initial damage [79-80, 93-94, 112-113, 158, 204-205, 213-214].

Conclusion

The Claimant's claim against the Defendant for negligence and breach of contract in the design of the container park was **dismissed** [210-227]. The court found that the Claimant had failed to prove that the Defendant's design was negligent or in breach of contract [218]. Even if it were, the Claimant had

not established that the Defendant's breach of duty caused the damage identified by December 2017 [218-219, 222-223]. The court's decision was heavily influenced by its assessment of the expert evidence, finding the Claimant's Expert's evidence unreliable and preferring the evidence of the Defendant's Expert [151, 177, 196, 200-201, 210, 214, 219, 221, 223, 225].

Key Takeaway:

*The judgment underscores the **critical importance of reliable expert witness evidence in technical construction disputes** [5, 7, 72-73, 91-92, 171-172, 200-201, 210]. Experts must adhere to their duties to the court, provide clear and well-reasoned opinions based on sound methodology and up-to-date knowledge, and properly consider all relevant aspects of the case, including the pleadings and potential alternative causes of the alleged loss [177, 190, 196-197]. The case also highlights that a claimant must clearly establish both a breach of duty and a direct causal link between that breach and the specific damage claimed within the relevant timeframe [24-25, 34-35, 218-219, 222-223]. Finally, the judgment emphasises that parties are generally bound by their pleaded case [10, 16-17, 20-25, 36].*

Parting Thoughts

In the end, the Claimant's case didn't so much collapse under the weight of legal scrutiny as quietly deflate under the pressure of its own inconsistencies, much like the reach stacker tyres it tried to blame. What began as a bold attempt to pin liability on design—armed with slot drains, dowel debates, and a Finite Element Analysis so opaque it might as well have been done on an Etch-a-Sketch—ended with a firm judicial shrug and a reminder that causation is not an optional extra.

The court, plainly unimpressed by an expert witness who appeared to have Googled his methodology and then run with it, preferred the steadier hand of the Defendant's expert—someone who not only revised his views in light of evidence (a commendable departure from the gladiatorial approach adopted by some experts) but also appeared to understand that "design" includes the parts you can actually build.

Perhaps the most damning detail? The Claimant never sued the contractor who actually built the thing. Possibly because that contractor was, awkwardly, themselves. One might think that claiming against your own shadow carries the risk of being hit in the face by your own legal boomerang. And lo, it returned with judicial velocity.

As for the law, we were treated to a well-paced tour of Bolam, The Popi M, and the increasingly fashionable doctrine that one must, at minimum, plead what one plans to argue. The takeaway? If you're going to allege design negligence, do make sure your experts understand what a pleading is, how dowels work, and why quoting technical standards from the last decade is not, in fact, persuasive.

This judgment won't set the world alight, but it will quietly smoulder in the background of future construction disputes, reminding parties that "design defect" is not a catch-all for "something's gone wrong" and that, when all else fails, blaming the drawings only works if you've read them.

#ConstructionLaw #DesignNegligence #ProfessionalNegligence #ExpertWitness #Causation #MJSProjectsVSRPS #ContainerPark #SlotDrains #BuildingDispute #TCC #BolamTest #Workmanship #Engineering #Concrete #Dowels #ConstructionDefects #Evidence #LegalJudgment #Felixstowe #TCC #EnglishLaw #DisputeResolution #DDAlegal

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