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This week's legal update covers two significant judgments - 1. BDW Trading Ltd v Ardmore Construction Ltd & Ors [2025] EWHC 434 (TCC) 2. Blower v GH Canfields LLP [2024] EWHC 2763 (Ch)

1. *BDW Trading Ltd v Ardmore Construction Ltd & Ors* [2025] EWHC 434 (TCC)

Date: 27 February 2025

Key Words:

Building Safety Act 2022, Building Liability Order, Information Order, Relevant Liability, Associate, Defective Premises Act 1972, Statutory Interpretation, Explanatory Notes, Financial Reserves/Standing, Appropriateness

Summary

BDW Trading Ltd (BDW) sought an information order under s.132 of the Building Safety Act 2022 against Ardmore Construction Ltd (ACL) and its associated entities (R2-R4) to pursue a building liability order under s.130, citing fire safety and structural defects in five projects where ACL was the design and build contractor [2]. The court refused the applications, finding that s.132's conditions were not met [22.2, 37].

Key Themes:

1. ***Building Safety Act 2022:*** *Interpretation of ss.130-132, focusing on building liability and information orders [1-4, 10].*
2. ***Information Orders:*** *Whether BDW could obtain an order for documents from ACL and its associates [1-2].*
3. ***Building Liability Orders:*** *BDW aimed to apply under s.130 against ACL's "associates" under s.131 [2-3].*
4. ***Associated Entities:*** *Whether R4, the ultimate parent, qualified as an "associate" [3-5].*
5. ***Relevant Liability:*** *Whether liability needed to be established before an information order could be granted [10, 13-14].*

Background

- BDW (subsidiary of Barratt Developments PLC) developed five projects (1999-2005) with ACL as the design and build contractor [2].

- Post-Grenfell, defects were discovered; BDW accepted responsibility for remediation [2].
- BDW notified ACL of claims under the Defective Premises Act 1972 and the Civil Liability Contribution Act 1978 [2i-2ii].
- ACL's liability was confirmed in one case via adjudication but is disputed in the others [2].
- BDW, believing ACL lacks financial reserves for the £85m liability, sought a building liability order against its associates [3].
- ACL is wholly owned by R2, which is owned by R3, which is owned by R4 [4].

Legal Issues and Analysis

1. **Interpretation of Section 132(3)(a):** The court addressed what is required to satisfy the condition that "it appears to the court...that the body corporate [here, ACL] is subject to a relevant liability" [19, 20].
   1.1. The court rejected BDW's argument that liability need only be asserted on reasonable grounds [23.9].
   1.2. Liability need not be established before granting an information order [25.4, 26, 27].
   1.3. The court does not determine liability but merely assesses whether an order should be granted [27, 28].
2. **Applicability of Information Order Against Associated Entities:** The court considered whether an information order can be made against R2-4 [17].
   2.1. Orders can only be made against entities "subject to a relevant liability" [17].
   2.2. Since ACL alone was party to the building contracts, R2-R4 could not be targeted [17].
3. **Relevance of Arbitration Act 1996:** The court considered whether section 9 of the Arbitration Act 1996 had any bearing on the matter [27, 28]. The court ruled s.9(1) did not apply, as the application was not "in respect of a matter" for arbitration [28].
4. **Scope of Information Orders:** Orders must relate to associated persons and be appropriate for enabling a building liability application [37-39].
5. **Alternative Bases for the Order:** The court briefly addressed alternative bases for the order, namely, section 37(1) of the Senior Courts Act 1981 and the inherent jurisdiction of the court to make ancillary orders [50-51]. The court determined that, even if it had the power to make the suggested orders against R2-4 under either section 37(1) or the inherent jurisdiction, it could see no good reason for exercising the power [54].

Conclusion

The court refused BDW's applications, holding that conditions under s.132 were not met. It ruled that:

- An order could not be made against R2-4 as they were not subject to a relevant liability [16, 17].
- BDW failed to show ACL "is subject to a relevant liability" to justify an information order [35-37].

Key Takeaway:

The judgment underscores the strict interpretation of s.132, limiting information orders to entities with direct relevant liability. It also clarifies the required standard of proof and the limited role of Explanatory Notes in statutory interpretation when they conflict with the clear wording of the statute [18].

Parting Thoughts

Statutory construction must adhere to precise wording and scope. Explanatory Notes cannot override clear statutory language [18]. Applications must target the correct entity [17] and convincingly demonstrate liability [27]. The purpose of such orders is to facilitate building liability applications, not to serve as a broad tool for assessing potential liabilities or intruding into commercially sensitive information without sufficient justification [29, 44-45].

#BuildingSafetyAct2022 #BuildingLiabilityOrder #InformationOrder #RelevantLiability #AssociatedEntities #DefectivePremisesAct #StatutoryInterpretation #ConstructionLaw #UKLaw #Grenfell #FinancialLiability #LegalPrecedent #CourtsAndExplanatoryNotes #Appropriateness #BDW #Ardmore

2. *Blower v GH Canfields LLP* [2024] EWHC 2763 (Ch)

Date: 4 November 2024

Key Words:

Professional negligence, Causation of loss, Settlement agreement, Breach of duty, Burden of proof, Standard of care, Trusts (express, resulting, constructive), Transactions at an undervalue, Witness evidence and credibility, Insolvency Act 1986, s 339 and s 323, Adverse inference, Conflict of interest, The fallibility of memory

Summary

Sandra Blower sued GH Canfields LLP for professional negligence regarding advice given in 2015 on a settlement agreement related to claims by the trustee in bankruptcy of her husband, John Blower, concerning transactions at an undervalue [1]. The court dismissed the claim, finding no negligence or causation of loss [132-134]. HHJ Paul Matthews provided a detailed legal and factual analysis.

Key Themes:

1. ***Professional Negligence:*** *The case focused on whether the solicitors failed to provide competent legal advice [1].*
2. ***Burden of Proof:*** *The claimant carried the burden of proving that the advice given was negligent [5-6]. When a defendant raises a defence, they bear the evidential burden of showing some evidence for it [5, 128-130]. For example, Negligence & Res Ipsa Loquitur: If an accident occurs in circumstances where negligence is presumed (e.g., a surgical instrument left inside a patient), the burden shifts to the defendant to explain why they were not negligent.*
3. *The **evidential burden** requires a party to present some evidence to make an issue relevant, whereas the **legal burden** requires proving that issue to the required standard. In **criminal cases**, this is **beyond reasonable doubt**; in **civil cases**, it is the **balance of probabilities**—meaning that if something is more likely than not (i.e. over 50%), it is treated as having occurred. No scientific certainty is required, but the more serious the allegation, the stronger the evidence must be to meet the standard of proof [7].*
4. ***Causation of Loss:*** *The claimant needed to show the negligence directly caused financial loss [2].*
5. ***Settlement Advice:*** *The reasonableness of the solicitors' advice regarding settlement was central [1].*
6. ***Family Finances and Bankruptcy:*** *Complex financial dealings and their impact were key*

considerations [1].

7. ***Trusts:*** *The validity of trusts and their impact on bankruptcy claims were analysed [98].*
8. ***Witness Evidence:*** *The court assessed the credibility and reliability of the witnesses, considering the fallibility of memory and the objectivity of documentary evidence [9-10].*
9. ***Insolvency Act 1986, s 339:*** *The trustee's claims were based on transactions at an undervalue [104].*

10. *Save for a few limited exceptions, in the English legal system, judges are not investigators but adjudicators in an* ***accusatorial*** *system. They decide cases based solely on the evidence and arguments presented by the parties, who bear the responsibility for gathering and presenting their case [8].*

Background

- John Blower, a businessman, later faced bankruptcy [1].
- In 2015, trustee Paul Allen pursued claims against Sandra and Kelly Blower for transactions at an undervalue [1].
- GH Canfields LLP advised the Blower family during mediation, leading to a settlement agreement [1].
- Sandra Blower later claimed negligent legal advice caused financial loss [1].
- The family faced claims over multiple financial transactions, including property sales and bank accounts [107].

Legal Issues and Analysis

1. **Professional Negligence:** The court assessed whether the solicitors breached their duty of care [96]. The standard was that of a reasonably competent solicitor [97].
2. **Burden of Proof and Standard of Proof:** The claimant had to prove negligence and loss on the balance of probabilities [5-7].
3. **Causation:** The claimant failed to establish that negligence led to financial loss [2, 126].
4. **Trusts:** The court examined whether the alleged trust protected assets from the trustee [98].
5. **Transactions at an Undervalue:** The trustee’s claims relied on Insolvency Act 1986, s 339 [104].
6. **Witness Evidence:** Credibility assessments were key; an adverse inference was drawn from Mr Blower’s failure to testify [9, 10, 109].
7. **Settlement Advice:** The court found the advice to settle reasonable in context [2, 120].
8. **Conflict of Interest:** A potential conflict in acting for both Mr Blower and the claimant was noted [95i].

Conclusion

The court dismissed the claimant’s case, finding that the defendant was not negligent in advising the Blower family to enter into the settlement agreement [132]. The claimant failed to prove that the advice given by the defendant fell below the standard of care expected of a reasonably competent solicitor [108]. Additionally, the claimant did not adequately demonstrate that the defendant's alleged negligence caused her or her daughter to suffer a loss [125].

Key Takeaway:

This case underscores the need to prove both negligence and causation in professional negligence claims [96]. It highlights how courts assess settlement advice and weigh litigation risks [2]. The burden rests on the claimant to show negligence and quantifiable loss [5].

Parting Thoughts

A claimant must prove not only a breach of duty but also that the breach caused financial loss [96]. Courts evaluate settlement decisions in context, considering risks and benefits [121-122, 126]. The absence of key witnesses can lead to adverse inferences [5, 109]. A strong case requires compelling evidence of both negligence and its direct impact [5].

#ProfessionalNegligence #CausationOfLoss #SettlementAgreement #BreachOfDuty #BurdenOfProof #StandardOfCare #TrustLaw #TransactionsAtAnUndervalue #WitnessEvidence #InsolvencyAct1986 #AdverseInference #ConflictOfInterest #TheFallibilityOfMemoryTop of FormBottom of Form #Blower #GHCanfields #negligence

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