ECONOMIC LOSS IN THE COUNTY COURT: Alcock and Others v. Liverpool City Council and Fleet (Liverpool) Ltd. 1988 (Unreported)

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The amounts involved in the series of cases dealing with liability for Financial or Economic Loss starting with *Junior Books Ltd v. Veitchi Co. Ltd.* in 1982 up to *"Simaan" v. "Pilkington"* and *"Greater Nottingham Co-op" v. "Cementation"* have all been measured in 10s of £1,000 whereas in *Alcock* the damages, had the Plaintiffs been successful, would not have exceeded £300. Alcock's case was heard by Judge Stannard in the Liverpool County Court and Judgment was handed down on the 13th May, 1988 after a 26 day hearing, 5 of which were taken up by submissions of Counsel. The transcript runs to 115 pages.

Briefly the Plaintiffs were tenants of properties owned by Liverpool City Council ('the Council') which had been renovated and upgraded by Fleet (Liverpool) Ltd. ('the Contractors'). It was decided by the Council that during the extensive works the tenants would remain in occupation of their dwellings. The claims of four Plaintiffs were consolidated into one Action against the First Defendants, the Council, and the Second Defendants, the Contractors. The claims were said not to be representative Actions but the Court was aware that its Judgment would be used as a guideline for other outstanding claims.

The Plaintiffs claimed damages for disruption, discomfort and inconvenience arising from the building operations and for damage to their belongings alleged to have been caused in the course of the works. His Honour was not impressed with the attitude of some of the tenants who gave evidence. Hardships were presented as grievances by tenants who "appeared to have little awareness of

> the difficulties inherent in the operations and little patience with the tribulations which they (the tenants) .... experienced"
>
> ".... another tenant sought legal advice because the supply of gas to her premises had been interrupted for a single night."
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> "In my judgment these considerations throw light on the merits of these Proceedings."

The Form of Contract between the Council and Contractors was J.C.T. 1963 Local Authorities Edition with quantities (July, 1977 Revision).

The following points arose:-

1. The Plaintiffs argued that their permission to the Council to allow the Contractors into their properties was limited as to estimates given by the Council of the time the works would take to complete, and was further conditional upon the work being carried out in a manner which would cause no more disturbance than was reasonably necessary. They argued that these conditions had not been observed and the Council were therefore in breach of their covenant granting quiet enjoyment of the premises to the tenants. The Court rejected the argument.

2. The Plaintiffs then argued that there was, in addition to the formal tenancy, an additional contract between the tenants and the Council whereby, in return for the tenants granting access to their premises, the Council warranted that the works would be completed in a set time or in a reasonable time and subject to a minimum of disturbance and inconvenience to the tenants. The tenants relied on letters sent by the Council before work started. The Court, gaining support from *I.B.A. v. E.M.I. and B.I.C.C.* (1980) in which the House of Lords emphasised the necessity for positive evidence of an intention to contract, again rejected the argument but accepted that the Council did owe the tenants a duty of care to exercise reasonable care and skill in providing the information contained in the letters. The Court felt that the Council had adequately discharged that duty.

3. The Court also rejected arguments based on:-

   a. Housing Act 1961 Section 32, and

   b. Defective Premises Act 1972 Section 4.

4. The Plaintiffs principally relied on negligence as the basis for their Action. There were two aspects:-

   i. The Council and each of the Plaintiffs stood in the relationship of landlord and tenant. There is an ancient immunity at common law for the landlord in respect of the condition of the demised premises. But a line of well known authorities including 'Dutton' and 'Anns' Cases indicate the Court's view that, as regards defects in the

premises which are negligently created by the landlord himself, the immunity is lost. Counsel for the Council did not here seek to rely on that immuity.

ii. The second aspect concerned the Defendants' potential liability to the Plaintiff tenants for damages for inconvenience distress and reduction of the amenities of the premises they occupied. The tenants suffered no physical damage to their persons or property except that some of their personal belongings had been damaged whilst in the demised premises during the works. The Judge considered whether:-

a. The Defendants owed a duty of care to the Plaintiffs,

and

b. If so, whether the scope of that duty extended to prevent the inconvenience, distress etc, of which the tenants complained

The number of cases referred to by Judge Stannard shows why Counsel's submissions and arguments filled 5 days. After a review of the law extending over some 31 pages of his Judgment and having referred to almost 40 cases including some Commonwealth decisions his Honour came to the following conclusions:-

1. There is no precedent which would support claims in negligence for damage for distress, inconvenience and loss of amenities unrelated to actionable damage to their person or property (negligent mistatement or negligent advice excepted – *Hedley Byrne v. Heller*).

2. In order to succeed in an Action in negligence for purely economic loss the Defendant must have voluntarily assumed responsibility towards the Plaintiff – *Junior Books v. Veitchi* : *Simaan v. Pilkington Glass.*

3. Neither Defendant owed a duty or care to the Plaintiffs which extended to the kinds of harm of which they complained. To hold otherwise would in Judge Stannard's opinion be in conflict with current developments of the law and would be a decision of policy inappropriate to the judicial level (County Court) at which the matter was being heard.

Having concluded there was no duty of care on the Defendants, that disposed of the case. Mindful however of a possible appeal Judge Stannard felt under an obligation to consider the standard of care that might otherwise have been required of the Defendants. His views expressed therefore as obiter dicta were:-

1. There was no duty on the Council to supervise their independent contractors – *D & F Estates v. Church Commissioners.*

2. The Council had limited powers to control the independent contractors "there is .... a general principle applicable to building .... contracts that in the absence of any indication to the contrary a contractor is entitled to plan and perform the work as he pleases, provided always that he finishes it by the time fixed on the contract" *G.L.C. v. Cleveland Bridge & Engineering Co.*

3. Neither Defendant was responsible for damage caused by the negligence of the independent decorating sub-contractors.

4. In the absence of negligence or "want of care" by the Defendants there was no liability for damage to carpets or decorations.

5. The Court viewed as contributory negligence on the 'tenants' part a failure by them to cover their possessions or store them in boxes or move them out of the way of the works insofar as it was necessary and practicable for them to do so.

6. General damages for delay in completing the works had earlier been agreed between the parties' Solicitors at £50. per week. The Court was asked to state how, in the absence of this agreement, general damages would have been assessed. Judge Stannard said it was "self evident" that damages would depend on the circumstances. Delay immediately after demolition of walls (? removal of windows) would involve more inconvenience than delay in finishing works (decorating etc.). The Judge indicated:-

   i. 2/3 weeks delay with verandah exposed plus 2/3 weeks major works delayed – £300.

   ii. Being deprived of hot water for one weekend – £45. per person

   iii. 1 week delay – later stages of work – simple non-activity – no physical inconvenience – £25.

7. Judge Stannard then, perhaps exceptionally, referred to the duty of Solicitors who may be asked to advise legally-aided clients in similar proceedings. He agreed with Defence Counsel that

   > "none of the Plaintiffs in these Proceedings would have considered financing them as a paying client irrespective of his or her means."

The Solicitors were referred to Lord Denning's words in *Kelly v. London Transport Executive* (1982) –

> "These then are the duties of Solicitors who act for legally-aided clients. They must enquire carefully into the claim made by their own legally-aided client so as to see that it is well-founded and justified, so much so that they would have advised him to bring it on his own if he had enough means to do so, with all the risks that failure would entail."

List of Cases:-

Esther Alcock and Others v. Liverpool City Council and Another 1988 (Unreported)

Simaan General Contracting Co. v. Pilkington Glass (No 2) (1988) 1 All ER 791 CA

Greater Nottingham Co-operative Society v. Cementation Piling and Foundations Ltd. Times 28.3.1988.

I.B.A. v. E.M.I. and B.I.C.C. (1980) 14 B L R I

Dutton v. Bognor Regis U.D.C. (1972) IQB 373

Anns v. London Borough of Merton (1978) A.C. 728

Hedley Byrne & Co. v. Heller and Partners Ltd. (1963) 2 All ER 575

Junior Books Ltd. v. Veitchi Co. Ltd. (1982) 3 WLR 477

D & F Estates Ltd. v. Church Commissioners for England and Wales (1987) 36 BLR 72

Greater London Council v. Cleveland Bridge and Engineering Co. Ltd. (1986) 8 Const. LR 30

Kelly v. London Transport Executive (1982) 2 All ER 842

ACCESS TO MEDICAL REPORTS ACT 1988
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This Act comes into force on 1st January 1989 and will add yet further to the burden of legislation with which the finanical services industry is having to comply. There has always been a measure, not of conflict, but perhaps of tension, between the Life insurance offices and the medical profession, arising out of the differing need of insurers for medical information. Certainly the Act will make it much more difficult for them to obtain reports and may cause medical practitioners to be un-forthcoming when the information is provided.