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All England Law Reports, All ER 1936 - to date, All ER 1995 Volume 3

All ER 1995 Volume 3

ROOM
<i>Bunden</i>
[1995] 3 All ER 268
<i>Delaf</i>
PROPERTY
FILE

**Ruxley Electronics and Construction Ltd v Forsyth
Laddingford Enclosures Ltd v Forsyth**

CONTRACT

HOUSE OF LORDS
LORD KEITH OF KINKEL, LORD BRIDGE OF HARWICH, LORD JAUNCEY OF TULLICHETTLE, LORD MUSTILL AND LORD LLOYD OF BERWICK
27, 28, 30 MARCH, 29 JUNE 1995

Contract - Damages for breach - Measure of damages - Whether cost of reinstatement or diminution in value - Building contract - Performance of contract deficient but no diminution in value - Cost of reinstatement disproportionate to prospective benefit - Contract to build swimming pool - Failure to build pool to specified depth - Defect not diminishing value of pool - Whether cost of reconstructing pool recoverable - Whether full reinstatement to original contractual position reasonable - Whether owner entitled to damages to compensate for loss of amenity or satisfaction of personal preference.

The defendant (the owner) contracted with the two plaintiff companies, R and L (the builders), to build a swimming pool in his garden and a building to enclose it for a total price of £70,178.74. The contract expressly provided that the maximum depth of the pool should be 7 ft 6 in. After the work had been completed, the owner discovered that the maximum depth was only 6 ft 9 in and that at the point where people would dive into the pool the depth was only 6 ft. The owner paid various sums on account and after certain agreed credits the balance of the price due for the construction of the pool and the enclosure amounted to £39,072. The builders claimed the balance of the contract price and the owner counterclaimed for breach of contract. Although it was accepted that the failure to provide the required depth was a breach of contract, the trial judge found that the shortfall in depth had not decreased the value of the pool and gave judgment for R in the sum of £3,903 and for L in the sum of £36,874 but awarded the owner £2,500 general damages for loss of amenity on his counterclaim. The owner appealed, contending that the judge should have awarded damages in respect of the breach or deducted a sum from the contract price to reflect the cost of reconstructing the swimming pool to conform to the original contractual specification and that by itself the award of general damages was too low if he received no other compensation for the breach. The Court of Appeal allowed the appeal, holding that it was not

unreasonable to award as damages the cost of replacing the swimming pool in order to make good the breach of contract, even though the shortfall in the depth of the pool had not decreased its value. The court awarded the owner £21,560 damages against R. R appealed to the House of Lords.

Held – In assessing damages for breach of contract for defective building works, if the court took the view that it would be unreasonable for the plaintiff to insist on reinstatement because the expense of the work involved would be out of all proportion to the benefit to be obtained, then the plaintiff was confined to the difference in value. Furthermore, the plaintiff's intention, or lack of it, to reinstate was relevant to reasonableness and hence to the extent of the loss which was sustained, since if the plaintiff did not intend to rebuild he had lost nothing ~~to~~ **268** except the difference in value, if any. However, where the diminution in value caused by the breach was nil, it was not correct to award the cost of reinstatement as an alternative to the difference in value, since it could not be right to remedy the injustice of awarding too little by unjustly awarding too much. The cost of reinstatement and diminution in value were not the only available measures of recovery for breach of contract for defective building works and the court was not confined to opting for one or the other. Where there had been a breach of performance resulting in loss of expectation of performance, satisfaction of a personal preference or a pleasurable amenity but there had been no diminution in value the court could award modest damages to compensate the plaintiff. The judge's finding that the owner's loss did not extend to the cost of reinstatement because it would be unreasonable to incur the cost of demolishing the existing pool and building a new and deeper one would be upheld and since there had been no challenge to the award of £2,500 general damages for loss of amenity the appeal would be allowed and the judge's judgment restored (see p 270 d, p 271 e f h, p 274 f to h, p 275 c to f j to p 276 e g to j, p 277 b to p 278 b, p 281 h j, p 283 c to e, p 284 b, p 285 c d g, p 286 h j, p 287 d e h j, p 288 d to h, p 289 e to g and p 290 b c, post).

Decision of the Court of Appeal [1994] 3 All ER 801 reversed.

Notes

For measure of damages, see 12 *Halsbury's Laws* (4th edn) paras 1127–1137, and for cases on the subject, see 17 *Digest* (Reissue) 101–111, 109–167.

Cases referred to in opinions

- Addis v Gramophone Co Ltd* [1909] AC 488, [1908–10] All Rep 1, HL.
- Atkins (G W) Ltd v Scott* (1980) 7 Const LJ 215, CA.
- Bellgrove v Eldridge* (1954) 90 CLR 613, Aust HC.
- British Westinghouse Electric and Manufacturing Co Ltd v Underground Electric Railway Co of London Ltd* [1912] AC 673, [1911–13] All ER Rep 63, HL.
- Channel Island Ferries Ltd v Cenargo Navigation Ltd, The Rozel* [1994] 2 Lloyd's Rep 161.
- Darlington BC v Wiltshier Northern Ltd* [1995] 1 WLR 68, CA.
- East Ham BC v Bernard Sunley & Sons Ltd* [1965] 3 All ER 619, [1966] AC 406, [1965] 3 WLR 1096, HL.
- Imodco Ltd v Wimpey Major Projects Ltd* (1987) 40 BLR 1, CA.
- Jacob & Youngs Inc v Kent* (1921) 230 NY 239, NY Ct of Apps.
- Jackson v Horizon Holidays Ltd* [1975] 3 All ER 92, [1975] 1 WLR 1468, CA.
- Jarvis v Swans Tours Ltd* [1973] 1 All ER 71, [1973] QB 233, [1972] 3 WLR 954, CA.
- Minscombe Properties Ltd v Sir Alfred McAlpine & Sons Ltd* (1986) 2 Const LJ 303, CA.
- Radford v De Froberville* [1978] 1 All ER 33, [1977] 1 WLR 1262.
- Robinson v Harman* (1848) 1 Exch 850, [1843–60] All ER Rep 383, 154 ER 363.

Sealace Shipping Co Ltd v Oceanvoice Ltd, The Alecos M [1991] 1 Lloyd's Rep 120, CA.
Taylor (C R) (Wholesale) Ltd v Hepworths Ltd [1977] 2 All ER 784, [1977] 1 WLR 659.
Tito v Waddell (No 2) [1977] 3 All ER 129, [1977] Ch 106, [1977] 2 WLR 496.

Appeal

Ruxley Electronics and Construction Ltd, the plaintiff in the first action, appealed with leave of the Appeal Committee granted on 30 June 1994 from the decision of the Court of Appeal (Staughton and Mann LJJ; Dillon LJ dissenting) ([1994] 3 All ER 801, [1994] 1 WLR 650) delivered on 16 December 1993 allowing the ~~£269,000~~ appeal of the defendant, Stephen Forsyth, from the order of Judge Diamond QC made on 13 July 1993 in the Central London County Court whereby he ordered that the defendant pay the plaintiff in the first action the sum of £3,903.73 and the plaintiff in the second action, Laddingford Enclosures Ltd, the sum of £36,874.40 for the construction of a swimming pool at his house at Angle Park, Cranbrook, Kent. The facts are set out in the opinion of Lord Jauncey of Tullichettle.

Bryan McGuire QC and *Michael Furmston* (instructed by *Woolley Bevis & Diplock*, Brighton) for the plaintiff in the first action.

Isaac Jacob and *Andrew Bruce* (instructed by *Brook Martin & Co*) for the defendant.

The plaintiff in the second action was not represented.

Their Lordships took time for consideration.

29 June 1995. The following opinions were delivered.

LORD KEITH OF KINKEL. My Lords, I have had the advantage of reading in draft the speeches to be delivered by my noble and learned friends Lord Jauncey of Tullichettle, Lord Mustill and Lord Lloyd of Berwick. I agree with them and for the reasons they give would allow this appeal.

LORD BRIDGE OF HARWICH. My Lords, damages for breach of contract must reflect, as accurately as the circumstances allow, the loss which the claimant has sustained because he did not get what he bargained for. There is no question of punishing the contract-breaker. Given this basic principle, the court, in assessing the measure of the claimant's loss, has ultimately to determine a question of fact, although the law has of course developed detailed criteria which are to be applied in ascertaining the appropriate measure of loss in a wide variety of commonly occurring situations. Since the law relating to damages for breach of contract has developed almost exclusively in a commercial context, these criteria normally proceed on the assumption that each contracting party's interest in the bargain was purely commercial and that the loss resulting from a breach of contract is measurable in purely economic terms. But this assumption may not always be appropriate.

The circumstances giving rise to the present appeal exemplify a situation which one might suppose to be of not infrequent occurrence. A landowner contracts for building works to be executed on his land. When the work is complete it serves the practical purpose for which it was required perfectly satisfactorily. But in some minor respect the finished work falls short of the contract specification. The difference in commercial value between the work as built and the work as specified is nil. But the owner can honestly say: 'This work does not please me as well as would that for which I expressly stipulated. It does not satisfy my personal preference. In terms of amenity, convenience or aesthetic satisfaction I have lost something.' Nevertheless the