

“A man does not sin by commission only, but often by omission” – Marcus Aurelius. This was not the case in a recent decision on an omission by an architect to lock the door of an empty property during their visit – *Rushbond plc v The J S Design Partnership LLP* [2020] EWHC 1982 (TCC) (24 July 2020)

Introduction

A recent judgment of the High Court (24 July 2020) may act as a timely warning to those in the property sector who may currently be dealing with empty buildings due to the COVID-19 pandemic.

The owner of an unoccupied cinema in Leeds (the Majestic) had its claim for £6.55 million damages struck out, with summary judgment being granted for the defendant architectural firm.

Facts

Those familiar with the City of Leeds will know the aptly named Majestic building in the centre of the city and the destruction wreaked upon the building by a fire in 2014.

The Majestic was protected by an alarm and door locks. The defendant architectural firm conducted a site visit in 2014, using the key and alarm code provided by the marketing agents to enter the building. The property was left unlocked, and the alarm turned off, for approximately one hour while the architect was inside. During that time, intruders were able to access the building and, although the architect reset the alarm and locked the door when leaving the building, later in the day a fire was started at the property.

The claimant property owner commenced the proceedings in 2019, claiming that the defendant owed it a common law duty of care, arising either from the defendant making an unaccompanied visit or from the defendant disabling the protections (i.e. the locks and alarm) in place during the visit. The claimant alleged that the architect firm breached this duty by failing to exercise proper care for the security of the property, in leaving the door unlocked and unguarded during the visit. The defendant denied that it owed the claimant a duty of care, and in May 2020, issued an application for the claim to be struck out and for summary judgment to be given for the defendant. The court, therefore, had to consider whether the property owner's claim was bound to fail.

The Decision

The claim was in tort (a negligence claim) as the property owner had no contract with the architect firm. In order to establish a negligence claim, there must be a duty of care.

In this case, Mrs Justice O'Farrell concluded that the defendant architectural firm did not owe a common law duty of care to the claimant property owner, and made an order to strike out the claim and give summary judgment in favour of the defendant. This is a striking decision as it means the claimant's case, on the facts, was so clearly bound to fail that it did not warrant full determination at a trial.

The court held that while the architect's failure to lock the door during his visit of the property may have enabled a third party to enter, it did not provide the means by which the third party actually started a fire and was, therefore, not causative of the fire that caused the damage.

In addition, the facts of the case did not give rise to the imposition of an assumption of responsibility on the basis of which a duty of care might be owed. As this case concerned professional services, and the property owner and architect firm had no direct dealings, the defendant did not owe the claimant a duty of care. Mrs Justice O'Farrell noted that, “in a commercial context, it is difficult to conceive of circumstances giving rise to an assumption of responsibility where there are no dealings between the parties.”

While the claimant argued that the architect's possession of the key amounted to a special level of control over the source of the danger, giving rise to an assumption of responsibility, the court found that the architect had not held himself out as having any special skill or expertise in safeguarding property. Therefore, the architect's mere possession of the key during the property visit was not sufficient to give the defendant architect firm responsibility for safeguarding the property from fire damage.

Practical Tips for Property Owners/Agents

The court in this case noted the fact that the defendant architectural firm was not a fire or security expert, a lettings or managing agent for the property in question, and was not entrusted with possession of the property during the building works. Property owners (via agents) may authorise many individuals to access empty properties who fall outside of these categories, including surveyors, interior designers and architects. In order to protect themselves, property owners should consider only allowing accompanied property visits and inspections, where the lettings or managing agent accompanies such visit. Alternatively, property owners may require any visitors to sign a contract confirming their assumption of responsibility before attending a property.

In this case, the letting agents had not instructed the architects that the door should be locked and/or monitored during the visit. Property owners and agents should consider issuing such instructions prior to allowing third-party access.

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