

**In the House of Lords**

## **King - v - Rotten Contractors Ltd**

Caroline and Charles King bought Clopton Grange, a large sixteenth-century farmhouse in the Lake District, in 1993. A structural survey of the house, undertaken at that time, recommended both extensive renovations and the employment of a specialist damp-proofing firm to conduct a damp survey and to carry out any necessary remedial work.

In response to the structural survey Mr and Mrs King employed a local builder, Mr Mark Tyson, to carry out the recommended renovations. They also asked Mr Tyson to conduct the damp survey and carry out any necessary remedial work. Mr Tyson, feeling himself unqualified to conduct the damp survey, subcontracted the work to Rotten Contractors Ltd (RCL), a firm which he had often used in the past, instructing RCL to conduct a full damp survey of the whole of Clopton Grange.

Having conducted the survey, RCL reported that there was an area of dry rot in one of the bathrooms, and that there was "no other sign of dry rot infestation". Mr Tyson engaged RCL to carry out the necessary remedial work in the affected bathroom.

In 1996 Mr and Mrs King decided to sell Clopton Grange, and were dismayed to find that their purchaser's survey revealed extensive dry rot infestation, not only in the bathroom where the remedial work had been carried out, but also in the dining room, entrance hall, and kitchen. Remedial work to deal with the dry rot had to be carried out by Nettor Damp-Proofing Ltd (Nettor) before the sale of Clopton Grange went ahead, costing Mr and Mrs King a total of £25,000.

Anxious to know why RCL had not discovered the full extent of the dry rot infestation, Mr and Mrs King commissioned a survey from a dry rot expert, Mr Christopher Goodfellow, who reported that the dry rot in the entrance hall had had its origins in the late 1980s, that it should have been easily discoverable by RCL when it conducted its survey in 1993, and that it had become considerably worse since then. Mr Goodfellow's report also revealed that RCL's remedial work in the bathroom had been entirely inadequate to deal with the problem, and that as a consequence the condition of the bathroom had deteriorated, and rot had spread from the bathroom to the dining room and kitchen.

Discovering that Mr Tyson had become bankrupt due to the effect of a down-turn in the building market, Mr and Mrs King were advised to proceed against RCL. At trial before Thynne J their counsel conceded that they had had no contractual relationship with RCL, who had contracted solely with Mr Tyson.

Thynne J accepted Mr Goodfellow's report in its entirety. He found that RCL had been negligent in stating that there was "no other sign of dry rot infestation", and in carrying out inadequate remedial work in the bathroom. He also found that RCL's negligence had caused both the deterioration in the entrance hall and bathroom, and the spread of dry rot to the dining room and kitchen.

He further held:

- that RCL was not liable to pay compensation to Mr and Mrs King for the cost of the Nettor's remedial work in the bathroom, dining room or kitchen, since although the necessary causation was established, the loss suffered was purely economic, and so irrecoverable in accordance with *Murphy v. Brentwood District Council* [1991] 1 AC 398 (HL); and
- that RCL was liable to compensate Mr and Mrs King for the cost of Nettor's work to cure the deterioration of the entrance hall consequent upon RCL's negligent misstatement, as this was an entirely suitable case for the finding of a special relationship in accordance with *Hedley Byrne & Co. Ltd v. Heller & Partners Ltd* [1964] AC 465 (HL).

Mr and Mrs King appealed to the Court of Appeal against Thynne J's decision on the first ground above. Their appeal was unsuccessful, as was the RCL's cross-appeal on the second ground above. Mr and Mrs King now appeal to the House of Lords on the first ground above, and RCL cross-appeals on the second ground above.

*Note:* Team A (listed as appellants) represent Mr and Mrs King as appellants on the first ground (A leader) and as cross-respondents on the second ground (A junior). Team B (listed as respondents) represent RCL as respondents on the first ground (B leader) and as cross-appellants on the second ground (B junior).

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*This problem is taken from the quarter final of the Observer-ESU-Lovell White Durrant Mooting Competition 1997-98, and was provided courtesy of the English Speaking Union.*