



SUMMARY

Case: Holden & Anor v Smitheram & Ors – PROCEDURAL ORDER NO. 7

File No: TRI 2008-101-000109/ DBH 05331

Court: WHT

Adjudicator: R Pitchforth

Date of Decision: 1 September 2009

Background

In this Procedural Order, the Tribunal deals with applications to remove and join certain parties. In particular the Tribunal looks at the role of suppliers and whether they are responsible for the misapplication of their products.

Consolidation of Claims

This claim has been consolidated with TRI 2009-101-000048 for the purposes of the hearing to ensure that evidence are dealt with efficiently

Removals

Roger Walker Architects Ltd (RWA Ltd)

RWA Ltd applied to be removed on the grounds that it completed the work of designing the building more than ten years before the application for the assessor's report on 5 August 2008 and that the claimants' cause of action must have arisen within 6 years before that date to be a valid claim.

The Tribunal held that the current evidence did not establish the claims against RWA Ltd are so untenable in fact and law as to be incapable of success. The claimants referred to plan, variation documents and architect's directions, and a letter relating to the project all dated after 5 August 1998. In addition, it appeared that there may be genuinely disputed issues of fact. Therefore it would not be fair and appropriate to order the removal at this stage in the proceedings.

Joinder

K Road No 1 Ltd

RWA Ltd applied to join K Road No 1 Ltd. As there was no opposition to the joinder, K Road No 1 Ltd was duly joined

Equus Industries Ltd (Equus)

RWA Ltd applied to join Equus on the grounds that the Equus system was used but that Equus breached its duty of care and was negligent in the following ways:

- Failing to instruct the applicator how to install elements of the Equus system so that water penetration would not occur
- Promoting a system without ensuring that the approved applicator was properly instructed in the correct method of installing the Equus system; or
- Failing to prevent non-approved applicators from installing a system that required professional and superior trained tradesmen to install all aspects of the Equus weathertight cladding system

All parties agreed that Equus was not involved in any way on site and did anything other than supply materials.

The Tribunal was not satisfied from the information provided that there were grounds for joining Equus to these proceedings. The Tribunal's grounds for refusing the joinder application were:

- RWA Ltd's contentions did not show that Equus owed a duty of care to the applicant in the current situation as it was too remote to foresee that if the training was inadequate, the trainee (as an employee of another contractor) would apply the coating to a house which would leak
- There was no evidence showing that the misapplication of the cladding was the result of poor training rather than inattention or carelessness
- There was no claim made in contract for the damage and there was none proven in this case

Mrs Papadopolous

The application to join Mrs Papadopolous was deferred as the applicant had not served the application