

BRITISH TELECOMMUNICATIONS PLC V. JAMES THOMSON & SONS

House of Lords (UK) – 10 December 1998

FACTS

British Telecommunications engaged MDW Ltd. to re-furbish and repair equipment and buildings at a British Telecommunications switching station. MDW Ltd. engaged Thomson to execute steelwork as a sub-contractor.

While Thomson was executing the steelwork, a fire broke out and damaged British Telecommunications' premises. British Telecommunications sued Thomson for damages, but Thomson alleged that it was unfair that a duty of care be imposed on it.

ISSUE

The contract between British Telecommunications and MDW Ltd. provided that British Telecommunications was to be insured for loss by fire. Did the obligation of British Telecommunications to insure for fire mean that it was unfair for Thomson to owe a duty of care to British Telecommunications?

FINDING

The duty of care was imposed as British Telecommunications had not contractually allowed for subcontractors like Thomson to be also insured under the policy.

Therefore, the insurer could (through British Telecommunications) sue Thomson to recover its losses. If there were no duty of care owed by Thomson the insurer would have been unable to recover its losses.

QUOTE

Lord MacKay of Clashfern said:

“It is true, as Counsel for Thomson argue, that British Telecommunications were obliged to obtain insurance cover in respect of the existing structures, together with the contents thereof, owned by them, for the full cost of reinstatement, repair or replacement of loss or damage due to inter alia fire.

The contractual arrangements therefore envisaged in the event of fire, British Telecommunications would be indemnified by its insurers for the full cost of reinstatement irrespective of whether the loss or damage arose due to an act of God or an act or omission on the part of the main contractor or a subcontractor such as Thomson. It follows in my opinion that the terms of the provision for insurance of existing structures in respect of specified perils, while they provide for the recognition of a nominated subcontractor as an insured under the policy or that such nominated subcontractor shall have the benefit of a waiver or any right of subrogation which the insurer may have against him, provide no such protection for any domestic subcontractor [such as Thomson].”

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Jim Doyle
1800 888 783

jdoyle@doylesconstructionlawyers.com
www.doylesconstructionlawyers.com

IMPACT

While this decision is based on Scottish law, it is an interesting example of a subcontractor being affected by the terms of the main contract between the principal and the main contractor.

Subcontractors should carefully examine the terms of the main or head contract to determine their rights and obligations with the principal.

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