

Sharing the pain

Architects need to be proactive when it comes to contributory negligence allegations.

When bringing or defending a claim of contributory negligence, architects must ask themselves three key questions:

- Has the employer or the employer's in-house consultants affected how the architect discharges his or her duties?
- Have any other project consultants or contractors affected how the architect does his or her job?
- Has the architect carried out his or her duties properly?

Statutory background

Under the Law Reform (Contributory Negligence) Act 1945, section 1(1), "where any person suffers damage as the result partly of his own fault and partly of the fault of any other person or persons ... the damages recoverable in respect thereof shall be reduced to such extent as the court thinks just and equitable having regard to the claimant's share in the responsibility for the damage...."

And under the Civil Liability (Contribution) Act 1978, section 1, "any person liable in respect of any damage suffered by another person may recover contribution from any other person liable in respect of the same damage (whether jointly with him or otherwise)."

In practice, this means that an architect facing a claim for negligent design can seek a contribution from any other party who has had involvement in that design.

Case law

Recent cases provide some useful guidelines in this difficult area of law:

⌘ **Involvement of others:** There was a fire at a Sainsbury's store. The architect settled with the employer and sought a contribution from the engineers. The court took the view that the engineers did not have a duty to consider certain fire protection measures. In finding for the engineers, the court also decided that the employer's claim would have been reduced by 20% for contributory negligence, since their in-house architects and engineers' department had taken a directing role in the design and should have spotted errors in one of the architect's drawings. (*J Sainsbury plc v Broadway Malyan* [1999] PNLR 286.)

⌘ **Letter of warning:** The employers engaged project managers for the design and installation of restaurant kitchen equipment. Subsequently, a fire broke out in the restaurant. At first instance, there was a finding of 100% contributory negligence against the employers

for failing (1) to respond to the project managers' letter of warning in respect of the location of a rotisserie, and (2) to take steps to ascertain its safety.

The Court of Appeal allowed the employers' appeal. Firstly, the project managers were contractually bound to avoid the risk of such a fire. Sending a letter of warning did not relieve them of that duty. Secondly, the letter itself was insufficient warning that there was a risk of fire occurring in the way it actually happened. For the letter to constitute a proper warning, the project managers should have explained that the rotisserie had been installed contrary to manufacturers' instructions and in a way that the manufacturers considered to be a fire risk. It was then up to the project managers to decide what action was required and to see that it was taken. (*Six Continents Retail Ltd v Carford Catering* [2003] EWCA Civ 1790, CA.)

⌘ **Giving accurate information:** A fire broke out in a food factory. Despite the employers' concession of 50% contributory negligence, the first instance judge ruled that there was no relevant contributory negligence on their part – since, although the employers were responsible for starting the fire, the architect was solely to blame for it spreading. The architect was in breach of duty in that he failed to advise the employers to fit fire-resistant panels in the room where the fire occurred.

The Court of Appeal allowed the architect's appeal on the issue of contributory negligence and reduced the damages recoverable by the employers by two-thirds. The court found that both parties were responsible for the damage caused by the spread of the fire. This was partly due to the employers' fault in starting the fire and partly due to both parties' failure to fit fire-resistant panels. Although it was the architect's responsibility to identify the cooking processes that would be carried out in the room and to guard against the risk of fire which they posed, the employers contributed to the failure to fit the panels in not giving accurate information about those processes. (*Sahib Foods Ltd (in liquidation) v Paskin Kyriakides Sands* 2003 EWCA Civ 1832.)

Be proactive

In order to avoid a claim for contributory negligence, an architect needs to be proactive and take positive steps both to give a clear warning of a risk and to prevent that risk from materialising. When faced with or bringing a contributory negligence claim, an architect needs to look closely at the impact on his or her actions of what the employer, or other consultants or contractors, do.

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