

Josephine Robbins v London Borough of Bexley (2013) EWCA (Civ) 1233

Summary

The recent Court of Appeal decision in *Josephine Robbins v London Borough of Bexley* underlines the importance of considering the separate concepts of duty of care, breach of duty and causation in property damage claims.

Mrs Robbins brought a claim against London Borough of Bexley for tree root subsidence damage caused to her property in 2003 and 2006. A row of mature black poplar trees situated in Danson Park at the rear of Mrs Robbins's property was implicated as being the cause of damage. The trial judge found that subsidence damage had been caused by the trees and the risk of damage was reasonably foreseeable to the council from as early as 1998. In fact, the council had foreseen the risk and evidence was adduced that there had been previous claims for damage caused by the same row of mature black poplars.

The council did not carry out any works to the trees between 1998 and 2006. The judge concluded that if works had been carried out in this period, the trees would have received the same severe pruning that they received in 1998 and in 2006. He held that if the council had a cyclical management programme, as it should have done, the trees would have been pruned on a four-year cycle from 1998 and such pruning work would have probably prevented the damage. Further, had works orders of 2004 and 2005 been carried out promptly, the works would have been the same as that carried out in 1998 and 2006 and the significant further damage that occurred in 2006 would have been prevented. Based on the evidence presented, the judge found the council to be in breach of duty and awarded judgment for the claimant for the 2003 and 2006 damage in the sum of £150,081.48.

The Appeal

An appeal was brought by the council on the grounds that:

1. The judge should not have held the council liable for the 2003 and 2006 damage in the light of his finding that a crown reduction programme of only 25% would have had no effect and the breach of duty found did not cause the damage.
2. He was wrong to find that had the council undertaken the very severe pruning works earlier than 2006, the damage would have been avoided.
3. The judge was wrong to infer that hypothetical contractors would have gone beyond their instructions in 2004/2005 to effect a crown reduction greater than 25%, as the actual contractors had in September 2006.
4. He was wrong to hold that the 2003 damage would have been avoided by a three or four yearly 25% reduction started in 1998.

Causation - the correct test

Mrs Robbins's response was that the correct test to be applied was the test set out in *Bolitho v City & Hackney Health Authority* [1998] AC 232 and not *Beary v Pall Mall Investments (A firm)* (2005) EWCA Civ 415 as advanced by the council. Bolitho established that the test for causation is to assess not only what the defendant should have done in order to fulfil its duty to the claimant, but what the defendant would in fact have done if it had fulfilled its duty to the claimant. The council's duty from 1998 was to take reasonable steps to prevent damage being caused to Mrs Robbins's property by tree roots from its poplar trees. The council's duty was not to undertake any specific programme of works. However, the council's breach of duty was its failure to take reasonable steps to put in place and carry out any programme of cyclical pruning from 1998 onwards to prevent damage especially as the damage was foreseeable (paragraphs 43 – 44). Following from Bolitho and based on the evidence ... "the Judge was justified on the facts, and as a matter of the proper application of the rules of causation, in asking what the Council would in fact have done, had it taken reasonable steps to prevent the damage..." (paragraph 52).

The appeal was dismissed as the Court of Appeal concluded that the judge had reached the correct conclusions as to causation. Plexus Law acted on behalf of the successful respondent.

Practical Points

- In determining negligence, as well as analysing causation, one needs to analyse:
 - Is there a duty of care?
 - Has there been a breach of that duty?
 - Did the breach of duty cause damage?
- It is implicit in Robbins that it is not the law that a breach of duty can only arise after notification of damage has been given
- Robbins serves as a stark reminder to local authorities that failure to implement a reasonable cyclical tree management programme can amount to a breach of duty

Contact Us

For further information please contact:

Julia Wilkinson, Partner

T: 0844 245 4052

E: Julia.Wilkinson@plexuslaw.co.uk

Anna Madichie, Associate Partner

T: 0844 245 4674

E: Anna.Madichie@plexuslaw.co.uk

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www.plexuslaw.co.uk