

Facts

Mr & Mrs Robinson entered into an agreement with PE Jones, a building contractor, for the construction and purchase of a house.

Twelve years after the construction of the house, following an inspection of the gas flues, it was discovered that PE Jones had failed to construct the flues in the house in accordance with the relevant Building Regulations in force in 1991, when the house was built.

A claim against PE Jones could no longer be made on the basis of a breach of its contractual duties as over 6 years had passed. Instead the claimant argued that PE Jones owed a duty to prevent Mr & Mrs Robinson suffering economic loss, due to a reduction in value of their house due to the building defects.

Key Points

The court concluded that a builder could owe a duty of care in tort but, unless the builder assumed certain responsibilities, the duty would only extend to preventing personal injury or damage to other property of the homeowner or another person and would exclude damage to the actual house itself. The question of assumption of responsibility will depend upon the dealings between the parties.

The court in this case was of the view that professional persons, such as engineers, would likely assume such responsibilities, and expect their clients to act in reliance upon their work product, often with financial or economic consequences. Therefore such a claim might be successful against an engineer, but would not be successful against a builder.

Implications for Engineers

Where an engineer is engaged under a contract, it can also owe a non-contractual duty to the owner of a building to prevent the building itself from being defective.

This is to be contrasted with the position of a builder, who when engaged under a contract, is unlikely to also owe a non-contractual duty to the owner of a building to prevent the building itself from being defective. This is of particular importance in cases where the defects to a building only come to light 6 years after the works complete. In such circumstances any contractual claim is unlikely to be permitted as all contractual claims must be brought within 6 years of the date of breach of that contract. In such circumstances, based on the above case, the engineer (or other member of the professional team) is likely to be the only party against which the claimant can claim, as it will potentially owe a non-contractual duty to the claimant to prevent defective works. An engineer would not be able to seek a contribution from the builder in such circumstances.

Click here for the judgment on [Baillii](#):

RPC is a leading specialist in professional indemnity claims, with a proven track record in defending claims against Engineers and other professionals in the property and construction industries. Recognised as one of the UK's leading insurance law firms ("One hell of an insurance player. It does the work in spades." Chambers UK 2010), the legal directories describe RPC as a professional negligence powerhouse ("Reynolds Porter Chamberlain combines a business- savvy awareness with high-quality technical ability." Chambers UK 2009).

Their partners and lawyers have gained experience in private practice, in-house at surveying practices and within the claims departments of insurers, which gives them a real breadth of experience not available to many others when considering claims. For further information please contact Tom Green on 020 3060 6536.

Howden Insurance Brokers have operated in the Engineering Sector for over 15 years and look after the Professional Indemnity insurance requirements of over 400 engineering firms. If you wish to discuss your insurance requirements please contact Joanne Robinson or Taurai Ushe on 020 7648 7210 / 020 7645 9312 or by email <mailto:jrobinson@howdengroup.com> / <mailto:tushe@howdengroup.com>.

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