

Latent Defects:

Out of sight, out of mind? What have we learned from the Court of Appeal decision in *URS Corps v BDW Trading* [2023]?

David Pliener KC
Gatehouse Chambers

Accrual of Cause of Action in Tort

- Contract from date of breach
- Tort from date of damage



- Coulson LJ:

“This appeal had all the hallmarks of a three day examination in construction law”





Assumed Facts

- Capital East and Freemasons Meadow PC 2007 to 2012.
- BDW transferred all interests by 2015.
- Post-Grenfell investigation identified dangerous, negligently designed, structural defects in 2019.
- No physical damage.
- Claim issued in March 2020.

Appellant's Case

- *“URS maintains that BDW never suffered actionable damage, either because they sold the buildings for full value before the problems came to light and/or BDW were not liable to carry out any remedial works and had a complete limitation defence to any claim brought against them by purchasers, so their losses were outside the scope of URS’ duty of care”*



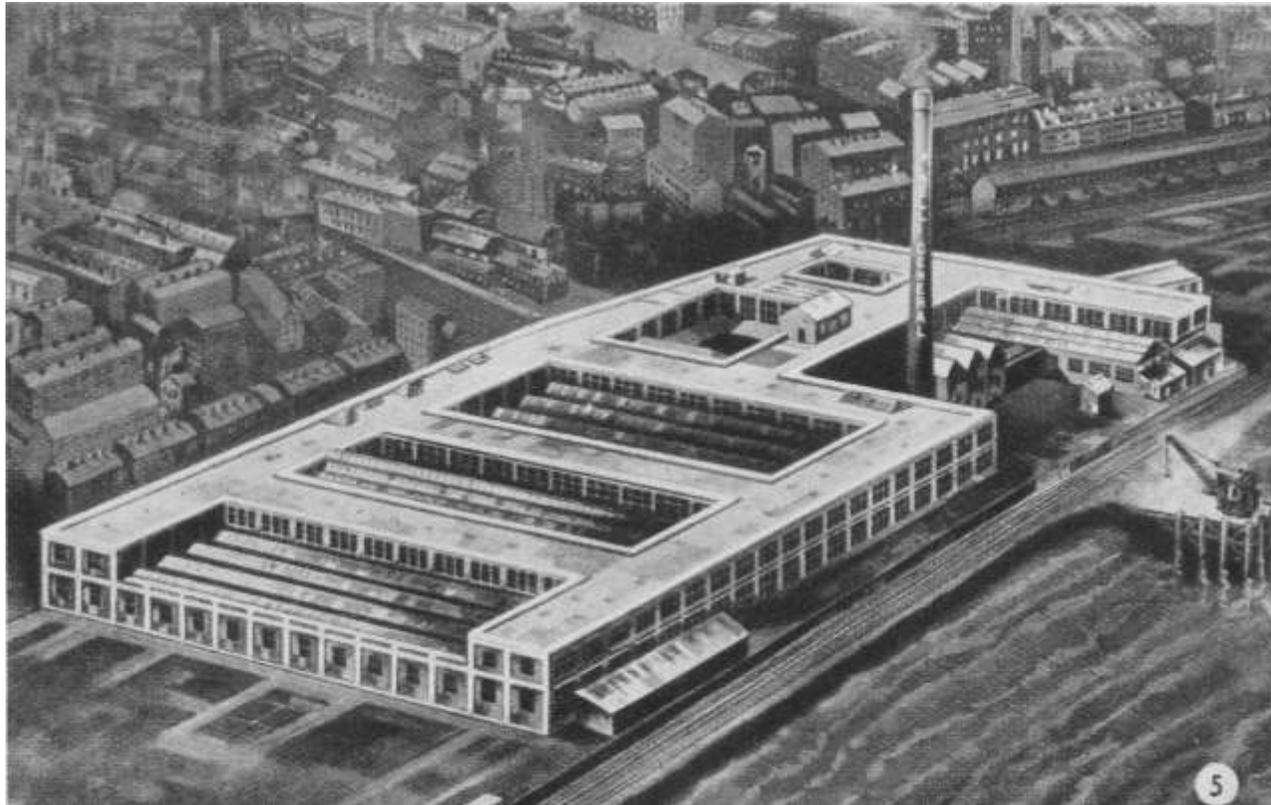
Scope of Duty: Simple answer

- No need to consider the checklist from *Manchester BS v Grant Thornton* [2021] UKSC 20 (but would have passed).
- This was a 'conventional damages' claim not 'reputational damage'.

Scope of Duty: Simple answer

- *Broster v Galliard Docklands* [2011] PNLR 34 distinguished.
- No need for proprietary interest (on pure economic loss claim).

Accrual of Cause of Action: Physical Damage



Pirelli General Cable Works v Oscar Faber [1983] 2 AC 1

- Cracks to chimney; completed 1969, cracks begin 1970, reasonably undetectable until 1972, actual knowledge 1977, claim issued 1978.
- Accrues on damage not knowledge.
- Possible exception if 'doomed from the start'.
- Section 14A Limitation Act.



Murphy v Brentwood [1991] 1 AC 398

“If the plaintiffs had happened to discover the defect before any damage had occurred there would seem to be no good reason for holding that they would not have had a cause of action in tort at that stage, without having to wait until some damage had occurred. They would have suffered economic loss through having a defective chimney upon which they required to expend money for the purpose of removing the defect”.



Abbott v Will Gannon [2005] EWCA Civ 198

- *Murphy* did not overrule *Pirelli*
- Unclear if *Murphy* extends to damage to the building itself before defect discovered.
- But bound by *Pirelli* accrual on date of cracking.
- Otherwise, loss would only be when discovered.

Coulson LJ in *URS*

- Agreed *Pirelli* not overruled. Where there is physical damage, that is when cause of action accrues regardless of knowledge.
- “It is fair to say that there are some difficulties with *Pirelli*”.
- “Even in cases where there is physical damage, *Pirelli* needs careful consideration. But that need not trouble us in the present case because, as both parties agree, this is not a case of physical damage in any event. *Pirelli*, and all the other cases of physical damage, therefore have no application”



Accrual of Cause of Action: Pure Economic Loss

- *New Islington and Hackney HA v Pollard Thomas* [2001] PNLR 20:
 - *Pirelli* meant date of discoverability not relevant for accrual
 - Pure economic loss accrued at latest when handed over in defective condition
- Non-construction authorities consistently say accrual when there is detrimental reliance on negligent advice. Knowledge irrelevant.

Coulson LJ in *URS*

- *New Islington* is correct approach where no physical damage.
- Accrual at latest on PC.
- Akin to 'doomed from the start'.



THANK YOU!

Great job!

You're awesome!

KUDOS!

YOU'RE THE BEST!

Well done!

Potential Problems

- *Pirelli* as good law:
 - On fundamentally wrong premise
 - “*Needs careful consideration*”
 - Competing answer “*incontrovertible*”



Potential Problems

- Why treating damage to thing itself as physical damage?
- How economic loss if can sell at full value?
- More than one cause of action?
- “At the latest” PC?
- Vinci Construction v Eastwood [2023]



Thank you!

Any questions?

david.plienerkc@gatehouselaw.co.uk