

# Judicial Communications Office

13 MARCH 2024

## COURT STRIKES OUT ACTION BY OWNERS OF VICTORIA SQUARE APARTMENTS

### Summary of Judgment

Mr Justice Huddleston, sitting today in the High Court in Belfast, struck out an action brought by Ulster Garden Villages (UGV) against three companies who had a role in the design and construction of residential apartments at Victoria Square, Belfast. UGV is a registered charity which owns 54 of the available 91 apartments. The remaining apartments are owned by individuals some of whom were a party to this action.

For the purposes of the trial, it was accepted that the building comprising the apartments is subject to a defect in a structural column. Upon becoming aware of the defect and having to vacate the building, the plaintiffs had issued proceedings against a large number of defendants although after the hearing of the matter discontinued the actions (by consent) against the CGI defendants – i.e the entities who developed the commercial parts of the Victoria Square Development. The case was therefore continued as against Farrans, Gilbert Ash and Building Design Partnership (BDP) as the parties who had a role in the design and construction of residential development.

The claims were also brought against the two management companies involved in the development and, in relation to part of the action, against Guarantee Protection Insurance Limited. The judgment delivered by the court has no impact on those aspects of the action and so, in essence, is limited to the action brought by the various plaintiffs against Farrans, Gilbert Ash and BDP.

As against those parties the plaintiff claimed that those defendants had breached the statutory duty imposed by Article 3 of the Defective Premises (NI) Order 1975 – the ‘duty to build dwellings properly’ – and/or negligence.

The plaintiff’s action itself was more specifically framed in terms of a ‘combination of the Third Defendant’s failures in relation to the design load [of the affected column] and the First and Second Defendants’ workmanship failures, associated with low strength concrete [and] errors in reinforcing placing’ together with ‘brick spalling’. The plaintiffs also made allegations in respect of certain repair works which they allege to have been carried out and which they say in their pleadings ‘were carried out by various parties’ without identifying which parties they hold accountable or when the works themselves were carried out.

As is common with large developments, the residential development of which the apartments are part were, on completion, sold on long leases to the purchasers. At the end of the development, the developer’s interest was then assigned to the management companies – being those cited in the action. Those management companies were set up and continue to have obligations for the repair and maintenance of the common parts of the development – which include (again not unusually and as is the case here) the structural parts of the development. In the present case that includes the affected column.

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The evidence to the court was that the residential development was completed (at latest) in March 2008. UGV bought the apartments it now owns in September 2011. It was the plaintiff's case that the affected column failed in or around February 2019 leading to the subsequent evacuation of the block of apartments. In the pleadings as regards the repairs no information was provided as to (a) when the disputed repairs were undertaken or (b) by whom they were undertaken.

In strike out applications such as this the court is obliged to take the plaintiff's case at its strongest.

In terms of the case brought under the Defective Premises Order (DPO) the court's conclusion, having considered the evidence, was that it was statute barred by virtue of Article 4(d) of the Limitation (NI) Order 1989. That provision stipulates that cases brought under the DPO must be brought within 6 years of the cause of action. The court highlighted the policy rationale by which the legislature has determined that time limit. The court also considered what it described as the creative arguments brought by the plaintiffs to circumvent that time limit but ultimately concluding on the facts that the plaintiff's claim in this instance was statute barred on the basis that the writs were issued almost 12 years after completion of the works and so well outside the statutory limitation period. The judgment also notes that occupation was assumed by UGV in September 2011 and that, physically, any alleged repairs to the structural column must, therefore, have also been done before that date.

The claims brought in negligence, the court found, were unsustainable on the basis that, as framed, they constituted claims for pure economic loss and so are irrecoverable under the principles applicable to the tort of negligence - again notwithstanding the inventive arguments brought by the plaintiff to circumvent such a conclusion.

The judge quoted a recent decision in England and Wales in which it was concluded:

'the precise extent and limits of the liabilities which in the public interest should be imposed upon builders and local authorities are best left to the legislature'.

The judgment had been delayed to allow decisions of other courts in England and Wales to be handed down but, in the judge's opinion, they did not alter or impact upon the present case. Reference has been made by counsel for the plaintiff about a change in legislation in England & Wales brought about under the Building Safety Act 2022. No such legislation exists in Northern Ireland and the judge, in releasing the judgment, made it clear that he must apply the law as it exists. In concluding, however, he acknowledged the personal impact that the decision would have on the charity and the individual plaintiffs involved.

On the delivery of the judgment, an application was made to stay the Order for 6 months in case that legislation be brought in to extend limitation periods as has happened in England and Wales. The Judge rejected that application on the grounds that it was not for the court to speculate what the legislature may or may not do in the future and that the law as it currently exists is what he must apply.

NOTES TO EDITORS

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1. This summary should be read together with the judgment and should not be read in isolation. Nothing said in this summary adds to or amends the judgment. The full judgment will be available on the Judiciary NI website (<https://www.judiciaryni.uk/>).
2. This was the second of four recordings under the pilot on filming the delivery of judgments by the Court of Appeal in Northern Ireland.

ENDS

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