Clapham v Allflames

Published 28 February 2018

In *CLAPHAM & ANOR v PEACOCK (T/A ALLFLAMES) (2018) QBD (TCC)* a claim arose following a fire in 2012 at a thatched cottage occupied by the Claimants which destroyed the roof and much of the first floor, causing damage to the Claimants' contents and requiring alternative accommodation. The claim was brought against the Defendant in respect of works carried out at the property installing a wood-burning stove and flue.

In 2009 the stove and flue were installed for the owner. The works were subject to the Building Regulations which state that the top of the flue has to be 1.8m above the surface of the roof. The top of the flue was no more than 1.3m above the roof and therefore did not comply with the relevant Building Regulations.

Joint fire experts agreed that the fire had probably been caused by an ember or spark from the flue igniting the thatch.

There was a factual dispute as to whether the Defendant gave advice to the owner that the chimney needed to be increased in accordance with the Building Regulations and HETAS regulations. It was found that the Defendant had not given a warning or advice to the owner that the flue height needed to be increased.

In cross examination the Defendant was honest and straightforward saying he could have confused his recollection with other individuals, agreed that he did not know that a height of 1.8m was required by the Building Regulations and that no reference was made to the need for an increase in emails to the owner or during subsequent sweeping of the flue. The Defendant also signed a HETAS Certificate of Compliance and, accepting his evidence that he was a careful contractor, the Court found that the Defendant would not knowingly have carried out a defective job.

Further, even if a warning or advice had been given, it would not give rise to any argument in causation or contributory negligence because the Defendant had not warned either the Claimants or the owner that the height of the flue gave rise to an unreasonable risk of fire.

The Defendant was found to owe a duty of care to the Claimants as tenants and future occupiers to carry out the works with reasonable care. That the experts agreed that the works failed to comply with building regulations was strong evidence that there was a breach of that duty of care.

On causation the experts agreed that:

- burning unseasoned wood would not have led to the fire;
- the weather conditions did not disturb their opinion that an ember from the flue ignited the thatch;
- lighting the fire with paper was in accordance with instructions; and
- the flue had been appropriately maintained by being swept annually.

The Judge found that the lack of clearance between the top of the flue and the roof was the cause of the fire.

As a result judgment was entered for the Claimants.

Insured sums were allowed in full as they had been loss adjusted and the court attached significant weight to the reasonableness of the sums paid out, *Brit Inns Ltd (In Liquidation) v BDW Trading Ltd [2012] EWHC 2143 (TCC)* applied.

This judgment highlights the importance of witness evidence and that where a wood-burner is installed in breach of Building Regulations then avoidance of liability will be difficult, despite potential causation defences.

DAC Beachcroft acted for the Claimants and their insurer.

Authors

Martin Holmes
Bristol
+44 (0)117 918 2072

Duncan Richardson
Bristol
+44 (0) 117 918 2794

mholmes@dacbeachcroft.com

drichardson@dacbeachcroft.com

DAC BEACHCROFT