

IN THE COUNTY COURT AT CENTRAL LONDON
TCC LIST

Thomas More Building
Strand
London WC2A 2LL

Thursday, 2 December 2021

BEFORE:

HIS HONOUR JUDGE JOHNS, QC

BETWEEN:

MAY & CROWN LIMITED

Appellant

- and -

(1) PATRICK SHIPTON
(2) RITCHIE CHARLES SHIPTON

Respondents

MR S KELLY appeared on behalf of the Appellant

MR N ISAAC, QC appeared on behalf of the Respondents

APPROVED JUDGMENT

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1. HH JUDGE JOHNS QC: This is an appeal against a party wall award. The award was made on 6 April 2021 by a third surveyor, Mr Alexander Frame. By the award, he determined that May & Crown Limited (**the appellant**) was liable to pay to Mr Patrick Shipton and Mr Ritchie Charles Shipton (**the respondents**) the sum of £16,850.72 for losses from works which damaged a sewage pipe. The appellant is the building owner of 20-22 Station Road, London, E4. The respondents are the adjoining owners of 18 Station Road.
2. The appeal is brought by virtue of section 10(17) of the Party Wall etc Act 1996, which gives a right of appeal to the County Court and provides that the court may:
 - "(a) rescind the award or modify it in such manner as the court thinks fit; and
 - (b) make such order as to costs as the court thinks fit."
3. The appeal is governed by CPR part 52. Accordingly, it is in the nature of a review rather than a rehearing unless the court considers it would be in the interests of justice to direct a rehearing (see CPR 52.21). There has been no such direction here. On the contrary, the order of HHJ Parfitt of 25 May 2021 gave directions on the appeal on the expressly recited basis that the appeal would proceed as a review. Mr Kelly, appearing for the appellant, accepted it was proceeding as a review.
4. Further, and again by CPR 52.21, the appeal will be allowed where the decision below was wrong or unjust because of serious procedural or other irregularity.
5. There are a series of grounds of appeal. I believe they can fairly be summarised as follows:

- (1) The award was made without jurisdiction as the works which caused the damage were not works under the Act. Rather, the damage was caused by earlier trial pit works, not piling works carried out under the Act.

(2) There were procedural irregularities which make the award unjust.

(3) There were errors in calculating the sum to be awarded which mean the award should be modified.

6. The respondents accept that there were errors of calculation in the award but otherwise oppose the appeal; Mr Isaac QC submitting for the respondents that the award was made with jurisdiction and that the procedural criticisms made are no proper basis for setting aside the award.

7. I start with the first basis of the appeal as summarised, namely lack of jurisdiction. Mr Frame identified clearly the works under the Act he was concerned with. Paragraph 9.03 of his award reads:

"I have noted that the works are for building a wall on the line of junction, various works to the party wall and excavation using piles. It is, however, works resulting from the excavation for piling that is in question as it is this that relates to the alleged damage."

8. He then identified this issue going to jurisdiction, saying at 9.04 of his award:

"I have seen many emails concerning this matter which mostly revolve around the following:

(a) Is it a party wall matter?

(b) The damage was caused to the drains not by the piling but by the trial pits excavation."

9. His conclusions were expressed in this way at 10.01 and 10.02:

"I therefore consider the matter and determine that the damage caused can certainly be covered under the Party Wall etc Act 1996. The mere fact that the argument presented that the damage was caused by the trial pits does not take away the damage that was further caused by the piling. It would seem that the initial damage was not revealed until sometime later when problems with the drainage system evolved. In any event, the damage caused by the building owner is acknowledged and clearly must be rectified regardless of how it was caused. However, in this particular case, the major damage was caused by the notifiable works and thus is covered under the Act."

10. He found, then, that the major damage was caused by works under the Act. In my judgment, that was a finding he was plainly entitled to make. The material before him included a letter dated 26 February 2021 from the builder who repaired the sewage pipe, a Mr Roberts. That letter included this:

"The piles for the next-door site had been driven through the clay sewer pipe, completely destroying it and stopping foul waste passing through. I had to break through the piles, creating an opening big enough to be able to install a new pipe and make two new connections either side of the piles, repairing the pipe, allowing sewage to flow again."

11. I do not ignore the other material before Mr Frame, including a report by a Mr Royal, which was sent to me during the hearing by way of supplement to the appeal bundle. But none of that material shows Mr Frame's conclusion to be plainly wrong.
12. The question of jurisdiction rested on a finding of fact by the third surveyor which he was entitled to make. This first complaint therefore provides no basis for saying that his award was wrong.

13. Nor, in my judgment, do the procedural criticisms. None amount to serious irregularities making the award unjust.
14. It is complained that Mr Frame did not visit the site. I cannot see how that is a serious irregularity. Judges often decide property disputes without visiting the site. Mr Frame had photographic evidence and, indeed, I understood Mr Kelly to accept that the dispute was capable of determination without a site visit. I would add that it is not clear to me that a site visit would have been very helpful. The damage had, by the time of the award, been repaired.
15. A number of the complaints under this head were of failure to take account of evidence. But most of those complaints, when explained by Mr Kelly, related to evidence which could have been obtained but was not and rested on a suggested duty on Mr Frame to investigate matters himself. I cannot see how it can be unfair for Mr Frame to have failed to have regard to evidence which could have been supplied to him but was not. Nor do I consider that there was some duty on him to investigate. No authority for that proposition was produced.
16. As to suggested failures to take account of evidence which was before him -- and, in this regard, Mr Kelly emphasised some emails from Mr Royal – the fact that items of evidence were not specifically mentioned by Mr Frame in his award is not sufficient for me to find that he had no regard to them, especially given the brevity of the award. The starting point should be a presumption that he had regard to all the evidence before him, whether or not he specifically referred to it, and there is nothing to displace that presumption. On the contrary, within the very brief award, he records (as I have already read) at 9.04 that he has seen many emails on the issues before him.
17. In the course of the submissions today, a debate broke out between counsel as to whether there was a duty on Mr Frame to give reasons. But the grounds of appeal do not rely on a failure to give reasons in breach of any duty to do so. In any event, the authorities do seem to me to be to the effect that there is no such duty. I would add that Mr Frame did, anyway, give reasons in that he stated the finding of fact on which his decision rested, as I have said.

18. Finally, it is complained that Mr Frame had no qualifications for assessing business or other losses. But judges, as well as holders of quasi-judicial roles bodies (such as third surveyors), arrive at conclusions all the time on evidence in areas where they are not themselves qualified. It is to be noted that The Party Wall etc Act provides for determination of disputes by surveyors - not, say, forensic accountants.
19. The stance which Mr Frame took, as appears from his emails to the parties, was that he would make an assessment based on material sent to him by the parties. That stance seems to me right. And I note the material included some from accountants, namely Reece & Co. Again, I cannot see that there is any serious irregularity here.
20. It follows from all I have said that I will not set aside the award as being wrong or unjust by reason of any irregularity and, to that extent, the appeal will be dismissed.
21. However, I have already indicated that there is an acceptance by the respondents that the calculation of the sum to award must be corrected and I will, to that extent and by consent, modify the award. I will be corrected by counsel if I am wrong but I think the modified figure is agreed, in a sum which gives the maximum allowance for error to the appellant. I understand the corrected sum to be £8,890.28.

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This transcript has been approved by the judge.