

CONSTRUCTION LAW FOCUS

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Ng Huat Seng and another

v

Munib Mohammad Madni and another

[2016] SGHC 118

Coram: See Kee Oon JC
22 June 2016

Tort – negligence – causation – vicarious liability – independent contractors – non-delegable duties – ultra-hazardous acts

This was an appeal against part of the judgment of the District Judge below (the “DJ”), which is reported as *Ng Huat Seng and another v Munib Mohammad Madni and others* [2015] SGDC 315.

The appellants and respondents are neighbours, being respective owners of two adjacent detached residential properties.

The properties are located on a slope, and are separated by a boundary wall. The appellants’ property lies further down the slope and is at a lower elevation than the respondents’ property.

The respondents engaged a company (the “Contractor”) as their builder to demolish an existing house on their property, and build another in its place.

In the course of demolishing the existing house, debris from the respondents’ property fell and caused damage to the boundary wall and the appellants’ house.

The appellants commenced the proceedings below, alleging negligence and claiming damages against the respondents and the Contractor.

The DJ dismissed the claim against the respondents and allowed the claim against the Contractor.

The appellants brought this appeal against the dismissal of their claim against the respondents.

Held: appeal dismissed with costs.

1. The respondents are not vicariously liable for the Contractor’s negligence because the Contractor was an independent contractor.

- The imposition of vicarious liability for the acts of independent contractors would not meet two important policy aims that underpin the doctrine of vicarious liability, namely (a) effective compensation for the victim, and (b) deterrence of future harm. Furthermore, a principled moral basis for the imposition of liability is required, as tort law is still primarily a system of norms of personal responsibility.
- The independent contractor carries on business for his own benefit, and any risks of harm arising from the independent contractor’s conduct should properly fall on the independent contractor alone.
- In order for vicarious liability to arise, two cumulative conditions must be satisfied: (a) the relationship must be capable of giving rise to vicarious liability, and (b) the tortious act must bear a sufficient connection with the said relationship.
- The applicable legal test for determining if a person is a servant or independent contractor was “whether the contractor was performing services as a business on his own account”.
- The Contractor was clearly an independent contractor: (a) it had engaged the various consultants and sub-contractors in its own name; (b) it hired its own employees and was solely responsible for their management and supervision; (c) it took out insurance in its own name; and (d) it maintained a separate account

and regularly received lump sum payments from the respondents, which it retained as profits.

2. The respondents had exercised due care in selecting and appointing the Contractor as their builder.

- No negligence on the respondents' part could be established as there was no causal link between the alleged breach of duty in selecting and appointing the Contractor and the Contractor's negligence.
- In any event, the respondents had exercised due care: they, as laypersons who desired to construct their own home and who employed the Contractor on a "turnkey" basis, had (a) consulted and received favourable reports from their friends who had worked with the Contractor; (b) ascertained that the Contractor had the requisite license from the relevant authority; (c) obtained assurance from the Contractor that it would obtain the necessary approvals and take the requisite safety precautions before proceeding; and (d) relied on their personal interactions with the Contractor, whom they had consulted when they viewed various properties with a view towards purchasing one.

3. The demolition works were not ultra-hazardous and no additional duty of care arose under the general law of negligence.

- A non-delegable duty of care is one in which the duty extends beyond being careful in the performance of one's own acts, to procuring the careful performance of work delegated to others. Breach of such a duty gives rise to personal liability, to which it is no answer to say that the act had been performed by another.
- In order for an act to be considered ultra-hazardous and give rise to a non-delegable duty of care, it must be "exceptionally dangerous whatever precautions are taken", and "a dangerous operation in its intrinsic nature".
- The performance of demolition works was not ultra-hazardous, as (a) it was never argued that performing the demolitions works *per se* was ultra-hazardous; and (b) the proximity and relative elevations of the houses do not go towards

showing that the demolition was a dangerous operation in its intrinsic nature.

- Even under the general law of negligence, the respondents did not owe any additional duty, over and above the duty of care in selection of the Contractor, to ensure that reasonable care was taken by the Contractor to avoid harm to the appellants and their property. The parties' relationship lacked the requisite proximity to justify such a finding, and finding a duty of care here would (a) undermine the well-established legal principle that persons are not liable for the acts of independent contractors; and (b) expose the respondents and other homeowners in like situation to a potentially indeterminate vista of liability.

Editorial comment

The doctrine of ultra-hazardous acts has received much criticism arising largely from the inherent difficulties in determining what constitutes such acts. Although See JC did not consider that it was open to him to abolish the doctrine, his decision adopts the restrictive approach taken by the English courts, and effectively narrows the application of the doctrine in Singapore.

We understand that the appellants have since been granted leave to file a further appeal, for the Court of Appeal to review the existing criteria defining who is an independent contractor, and what constitutes an ultra-hazardous act. Regardless of whether the Court accepts the doctrine as part of Singapore law, or follows in the footsteps of the High Court of Australia in abolishing the doctrine, the outcome of the appeal is likely to be directly relevant to the rights and liabilities of many homeowners in land scarce Singapore.

Readers with any questions or comments on the contents of this article are welcome to write to **Chan Neo LLP at 133 Cecil Street, Keck Seng Tower #16-02, Singapore 069535** or send an email to admin@channeo.sg.

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