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URS Corporation Ltd v BDW Trading Ltd [2025]] - UKSC 21

The Supreme Court's decision in URS Corporation Ltd v BDW Trading Ltd UKSC 21 is a pivotal authority for developers, designers, consultants, and insurers, clarifying the law on historic building safety and professional liability. The judgement supports the key aim of the Building Safety Act 2022 to hold those responsible for building safety defects accountable. Below is a detailed summary and analysis tailored for the legal market.

Background and Procedural History

- **Parties:** BDW Trading Ltd (a major developer, including Barratt Homes and David Wilson Homes) engaged URS Corporation Ltd as structural engineers to provide structural design for the development of 2 major high-rise residential developments. As structural engineers, URS produced the key structural designs for these buildings, which BDW subsequently constructed and later sold to 3rd parties.
- **Facts:** After selling the developments, BDW discovered serious structural defects post-Grenfell. Without any legal obligation or third-party claim, BDW funded and completed extensive remedial works, then sought to recover these costs from URS, alleging negligence and breaches under the Defective Premises Act 1972 (DPA).
- **Procedural Route:** Initial claims were time-barred under the DPA, so BDW sued in negligence. The Building Safety Act 2022 (BSA) later extended limitation periods, under s1 DPA from 6 to 30 years. BDW amended its claim to include a claim under s1 of the DPA and under Civil Liability (Contribution) Act 1978. URS's appeals failed at each stage, culminating in a Supreme Court hearing on four grounds. After BDW discovered serious structural defects, two key interim rulings went against URS at the preliminary issues trial. Fraser J held that BDW's claimed remedial costs were, in principle, recoverable and not excluded as "voluntary" losses, with causation and mitigation issues left for trial.

and in a separate decision, Adrian Williamson KC allowed BDW to amend its claim following the Building Safety Act 2022, to add causes of action under the Defective Premises Act 1972 and the Civil Liability (Construction) Act 1978. URS's appeals against both rulings were dismissed by the Court of Appeal, upholding the recoverability of the claimed losses and the amended claims. These findings, particularly on scope of duty, limitation and contribution, formed the basis of URS's unsuccessful four ground appeal to the Supreme Court.

Key Legal Issues and Arguments

1. Negligence and Voluntary Losses

- URS's Argument: BDW's costs were "voluntarily incurred" because BDW no longer owned the developments and any potential third-party claims against BDW were time barred. Thus, BDW's losses were too remote or outside the scope of URS's duty of care.

2. Do the BSA's extended limitation periods apply only to claims made directly under the DPA?

- URS's Argument only claims made directly under the DPA would benefit from the extended limitation period. BDW's claim was brought in negligence and contribution. Therefore, the extended limitation period under the DPA did not apply.
- BDW's Argument: BDW is to be treated as having a liability under s1 DPA to homeowners when it carried out the remedial works. As such, its claiming negligence was dependent on part on BDW having a liability to homeowners under s1 DPA.

3. Did URS owe a duty to BDW under the DPA?

- URS's Argument: The DPA protects purchasers, not developers who do not inhabit dwellings. Developers owe duties under the DPA and cannot simultaneously be duties; thus, developers cannot claim under s.1(1)(a).
- BDW's Argument: The DPA's language and policy support developers' standing to claim for defective work.

4. Timing of Contribution Claims

- URS's Argument: A contribution claim under the Civil Liability (Contribution) Act 1978 only arises after a formal third-party claim, judgment, or settlement.
- BDW's Argument: The right to contribution arises as soon as damage is suffered for which BDW and URS are both liable, even if the claimant has not claimed or recovered compensation from either party.

Supreme Court Judgment: Key Points and Rationale

The Supreme Court unanimously dismissed URS's appeal on all grounds, with detailed reasoning as follows:

Negligence and Voluntariness

- There is no established “**voluntariness principle**” in law that means losses are too remote or outside the scope of duty of care in negligence. On the assumed facts the losses suffered by BDW were foreseeable and directly linked to URS’s negligent design. The extent to which repair costs had been voluntarily incurred may be relevant to questions of causation and mitigation as being concerned with the claimant’s unreasonable conduct. In any event, the Supreme Court held that BDW’s costs were not truly voluntarily incurred as BDW had no realistic alternative to carry out repairs in view of the risk that defects may cause injury to occupants or reputational damage to BDW.
- As a result of the above, the Supreme Court did not need to consider when BDW’s tortious cause of action accrued, and consequently the correctness of the decision in **Pirelli General Cable Works Ltd v Oscar Fabar & Partners [1983] 2 AC 1**. However, the Supreme Court made obiter comment that Pirelli was decided on a false premise, suggesting Pirelli maybe I’ve limited application going forwards.

Extended Limitation Periods under the DPA

- Section 135 BSA applies retrospectively to all claims, that are dependent or collateral to DPA claims. The legislative purpose of the BSA is to hold those responsible for historic defects to account and restricting s135 would undermine this aim. Excluding claims based on the DPA would penalise responsible developers who are proactive in remedy building safety defects. Such penalisation of developers would be contrary to the purpose of the BSA.

DPA Duty Owed to Developers

- The DPA applies to developers as well as purchasers. Developers can owe and be owed duties under s.1(1)(a), reflecting the Act’s protective purpose for the safety and habitability of dwellings. losses incurred by a developer in remedying defects caused by its contractor’s breach of duty are the type of losses recoverable under the DPA.

Contribution Claims Without Third-Party Proceedings

- The Supreme Court rejected both penalties arguments. The right to claim contribution arises once (a) the claimant has suffered damage for which both parties are liable; and (B) a party has paid or been ordered or agreed to pay compensation for the damage to the claimant. At that point, the defendant paying compensation etc is entitled to recover. A contribution from the other defendant. As BDW has paid compensation (in kind) for the damage suffered by the homeowners by carrying out remedial works, it is entitled to claim a contribution from URS.

Accordingly, a developer will not have to wait for a claim to be advanced against it by a homeowner before commencing remedial works. The Supreme Court endorses that a developer can take a proactive approach.

Summary of Judgment Rationale

There is no established principle of voluntariness that renders losses too remote or outside the scope of the duty of care and negligence. The concept of whether the cost of remedial works was incurred voluntarily is irrelevant to fact specific issues of causation and mitigation to be considered at trial.

- The BSA's extended limitation periods apply retrospectively to claims that are dependent upon the DPA, including those ongoing when the act commenced.
- Developers both owe and are owed duties, the DPA can bring claims to recover the costs of remedial works.
- A contribution claim under the 1978 Act does not require a prior third-party claim, settlement or judgment; payment of compensation (including by remediation) is sufficient.

Implications for the Insurance Industry and Precedential Effect

- **Wider Liability Exposure:** Insurers of consultants, contractors, designers, and contractors, now face increased exposure for historic building safety defects, as limitation periods for claims reliant on the DPA are extended and the formality of a judgement, claim or settlement does not prevent developers from potentially recovering the costs of remedial works to rectify building safety risks. this means insurers may face increased claims related to remedial works even for defects discovered years after completion.
- **Claims Handling:** The decision encourages proactive remediation by Building owners and developers, knowing claims can be brought down the contractual chain Insurers may see more claims for remediation costs, even where no third-party claim has been made.
- **Precedent:** This case is now the leading authority on the recoverability of remediation costs, the scope of the DPA, and the operation of contribution claims, setting a strong precedent for future disputes in the construction and insurance sectors.

Conclusion

URS v BDW is a transformative judgment.

It provides support for the key aims of the BSA by seeking to remove potential technical legal barriers to bringing claims against those responsible for creating building safety risks. The decision will be welcomed by proactive developers, as it clarifies that they can in principle recover substantial remediation costs from the contractual chain; claims arising from historic defects that are contingent upon the DPA benefit from generally extended limitation. The clarification on contribution claims will give developers confidence to take a proactive approach to remedy building safety risks. Insurers and the construction industry must adapt to this new landscape, with enhanced risk assessment and policy scrutiny now essential.

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