

Contract – privity – remoteness of damage

Tort – negligence – duty of care – remoteness of damage

IN THE COURT OF APPEAL (CIVIL DIVISION)

Smith and Executors of the Estate of Beswick v Slow & Bideawhile

David Beswick lived in his council house for 25 years, 15 as a married man and 10 as a widower. The Council asked him, by letter, in November 2010 if he wanted to buy the property at a 40 per cent discount on the market price. He received the letter shortly before the Christmas holidays and was inclined to refuse the offer. His daughter was married with three children and lived three miles away. That Christmas Day her family visited and Mr Beswick told them about the offer. His son-in-law, Mr Peter Smith, had just been made redundant. The family agreed over the Christmas turkey that the Smiths would sell their house and move in with Mr Beswick. The proceeds from the sale of the Smiths' house would pay off the Smiths' mortgage, and pay for a small extension to Beswick's home.

In the New Year Beswick went to his local solicitors, Slow & Bideawhile, and told them that he intended to buy the house. He handed the Council's offer letter to them and asked them to make the arrangements for the purchase. Beswick told the solicitors about his agreement with the Smiths. After a week Slow & Bideawhile asked Mr Beswick for the deposit money. Mr Beswick was in poor health and about to go into hospital for an operation so he arranged for a building society cheque for the whole of the purchase price to be paid to Slow & Bideawhile, 'So I do not have to do anything more'. Slow & Bideawhile put the money into their client account. On the day that the deposit was paid, 7th February 2011, Peter Smith instructed Slow & Bideawhile in respect of the sale of his house and told the partner concerned (a different one from the partner dealing with the Beswick purchase) of the intended arrangements with Beswick. Contracts for the sale of Peter Smith's house were exchanged on 18th February 2011; completion was to take place on 18th March 2011. Friday 4th March 2011 was the date for completion of the Beswick purchase.

David Beswick was in hospital on 4th March for an operation on his heart. Slow & Bideawhile failed to pay the balance of the purchase money to the Council. This was not unusual for Slow & Bideawhile or indeed any solicitor dealing with the Council, which tolerated a day or two's delay as a matter of course in 'right to buy' cases. The contract of sale provided that the Council need not complete and could declare the deposit forfeit in its absolute discretion if the purchase moneys were not paid on the contract date. This term had never been relied upon by the Council. Slow & Bideawhile did not contact Mr Beswick about the error. However the senior partner contacted the local authority's solicitors to inform them of the error and that they intended to complete on Monday. David Beswick died over the weekend. Slow & Bideawhile were informed of the death on Monday morning and the local authority through their solicitors informed Slow & Bideawhile that in the light of the death of Mr Beswick they would no longer complete but that the deposit would not in the circumstances be forfeit. Were Mr Beswick still alive, they would have completed, but, they said, there was no sense in the sale at a 40 per cent discount if there was no tenant in the property.

Slow & Bideawhile were responsible for Mr Beswick's will which left all his property, real and personal, to his daughter and son-in-law, who were also named executors.

In the circumstances Mr and Mrs Smith decided not to complete on their own sale and agreed damages with their purchaser in the sum of £10,000. That sum was less than the costs they would have incurred in completing the sale and arranging a fresh purchase. They then sued Slow & Bideawhile as joint plaintiffs with Mr Beswick's executors. The damages sought to be recovered were:

- i) Mr and Mrs Smith's £10,000; and
- ii) the value of the 40 per cent discount.

The judge held that Slow & Bideawhile owed no duty to Mr and Mrs Smith in relation either to the £10,000 or the 40 per cent discount. He also held that the loss of value of the discount was caused by the death of Mr Beswick and not by the negligence of Slow & Bideawhile. If he was wrong about that the judge held that damages did not fall within either limb of *Hadley v Baxendale* (1854) 9 Exch 341. In his view it was not reasonably foreseeable either that Mr Beswick would die or that completion would be prevented.

Mr and Mrs Smith appeal to the Court of Appeal on their own behalf and as executors.

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Middle Temple Annual Mooting Competition

- **Team A will be arguing FOR Mr and Mrs Smith**
- **Team B will be arguing AGAINST Mr and Mrs Smith**
- **Leading Counsel on each team to consider whether 'a duty is owed to Mr and Mrs Smith'**
- **Junior Counsel on each team to consider whether 'the damages fall within *Hadley v Baxendale*'.**