



Clinton Eagle-v-Redlime Limited (4 April 2011)

The Message: There are strict time limits for bringing property claims.

The Case: A builder sought to avoid any liability for defective foundations on the basis any claim against it was out of time

In 2000, Mr Eagle employed Redlime to construct the concrete base and ground drainage for a kennel block at his property in Woodstock Road, Oxford. Other contractors then built the block.

In early 2006, Mr Eagle noted cracking in the rendering of the block and he then also noticed part of the drainage system was sinking. He did not initially connect any of these defects with the works undertaken by Redlime, or consider them to be serious, and simply carried out the repairs he thought appropriate.

In late summer 2006, Mr Eagle noted the rendering had cracked again and that the drainage was still sinking. He became concerned there was a subsidence problem and he asked Mr Harmsworth of Redlime to inspect and also notified his solicitors and insurers. After some delay, Mr Harmsworth inspected in September 2006 but he wrote on 12 October 2006 denying any liability.

Mr Eagle then instructed engineers to inspect and advise him and they prepared a report on 15 November 2006 in which they advised that Redlime had constructed the concrete base in 3 separate sections that had not been properly tied together and with foundations that were too shallow. They advised that underpinning was required. This was the first time Mr Eagle became aware of the actual cause of the subsidence.

On 15 December 2006, Mr Eagle's solicitor sent a letter of claim to Redlime but proceedings were not issued until 29 October 2009, some 9 years after Redlime had undertaken the work.

To prevent stale claims being pursued, the Limitation Act 1980 provides that any claim for breach of contract or negligence has to be brought within 6 years of the breach or the damage being suffered and Mr Eagle was out of time in both respects. However, where knowledge of damage and its cause is not evident to begin with, S.14A of the Act allows a claimant a further 3 years to bring a claim from the date it acquires the requisite knowledge to pursue the responsible party.

Mr Eagle claimed that the proceedings were commenced within the requisite 3 years as it was not until he received the engineer's report in November 2006 that he knew what the

exact cause of the problem was and who was responsible. Redlime, however, argued that Mr Eagle had sufficient knowledge to bring a claim prior to 29 October 2006 so his claim was statute-barred and should be dismissed.

The Court reviewed the previous caselaw as to what constitutes sufficient knowledge to bring a claim? It noted that the level of knowledge required was less than knowing for certain all the material facts. A reasonable belief that the defendant had caused the damage and a claim was worth investigating would suffice to start time running.

The Court held that Mr Eagle had knowledge of the damage prior to 29 October 2006 as he was aware there was a subsidence problem, albeit he did not know the precise extent or cause. He also knew the relevant works had been undertaken by Redlime and the fact he had instructed solicitors at that time and called Redlime in to inspect was evidence that he had a reasonable belief that the damage had resulted from some failure or omission on its part. He therefore had the requisite knowledge to start pursuing a claim prior to obtaining the engineer's report and, in fact, he had commissioned the report so as to pursue this claim.

Accordingly, by delaying too long, Mr Eagle had lost the opportunity to pursue what appears to have been a strong case against Redlime.