



27 July 2016

PRESS SUMMARY

Hastings Borough Council (Appellant) v Manolete Partners Plc (Respondent) [2016] UKSC 50
On appeal from [2014] EWCA Civ 562

JUSTICES: Lady Hale (Deputy President), Lord Kerr, Lord Carnwath, Lord Toulson, Lord Hodge

BACKGROUND TO THE APPEAL

In June 2006 the Appellant, Hastings Borough Council (“the Council”), exercised its emergency powers to restrict public access to Hastings Pier on account of its being in a dangerous condition as a result of serious structural defects. The Respondent, Manolete Partners PLC (“Manolete”), pursued a claim for compensation against the Council for loss to business as a result of the Council’s emergency closure of the pier. Manolete brought the claim as an assignee of the business Stylus Sports Ltd (“Stylus”), which went into liquidation in late 2011. Stylus had leased two units from the freeholder of the pier, Ravenclaw Investments Incorporated (“Ravenclaw”), and had operated a bingo hall and amusement arcade.

Two years before the closure of the pier, Stylus had commissioned a structural engineering survey of the pier, which advised that urgent and future work, within a year, was required to the structure of the pier to prevent an unacceptable risk to the public. Ravenclaw, which was responsible as landlord for repair and renewal of the pier structure, did not take action to remedy the defects identified. Nor did the Council, and the pier remained open to the public. In April 2006, a section of tension cord fell from the pier. This led the Council to attempt, unsuccessfully, to compel Ravenclaw to take action, and to commission its own structural integrity report, which in June 2006 recommended immediate restrictions on access to the pier. The Council exercised its emergency powers under section 78 of the 1984 Act, and in September 2006 obtained a court order under section 77, prohibiting public access to the pier until the necessary remedial works had been carried out.

Section 106 of the Building Act 1984 (“the 1984 Act”), requires compensation to be paid for loss to a business resulting from emergency action, but only where the owner or occupier of the premises has not been in default. The Council alleged that Stylus had breached the Occupiers Liability Act 1957, which imposes a duty of care towards visitors, and the Health and Safety at Work Act 1974, which imposes a duty on an employer to ensure the safety of his employees and the safety of the workplace. The Council sought to rely on these alleged breaches to establish a “default”, thereby precluding Manolete from making a compensation claim under the 1984 Act. This defence was rejected by the Technology and Construction Court and the Court of Appeal, on the basis that the reference to “default” was limited default in respect of obligations imposed by the 1984 Act itself.

JUDGMENT

The Supreme Court unanimously dismisses Hastings Borough Council’s appeal. Lord Carnwath gives the judgment, with which the other Justices agree.

REASONS FOR THE JUDGMENT

Section 106 of the 1984 Act gives a right to compensation to a person who has sustained damage by reason of the exercise of the authority's powers under the Act "in relation to a matter as to which he has not himself been in default". This requires firstly, identification of the "matter" in relation to which authority has exercised its powers, and secondly, consideration of whether that is a matter "as to which" the claimant has been in default [25].

The relevant power is the power to take emergency action under section 78 of the 1984 Act, and the claim for compensation is limited to the period from the date of the Council's emergency closure of the pier until the court order in September 2006 [26]. The "matter" which led the Council to take such emergency action was identified in the letter sent by the Council to the tenants at the time, which was the state of the pier combined with fear of possible collapse from crowd-loading during the events planned for that month, in particular the risk of overloading in an emergency evacuation. The trigger was not the general state of the pier or the specific repairs identified in the report commissioned by Stylus. Whatever Stylus' position towards its clients and employees, it was not "in default" as to the matter which led to the Council's exercise of its section 78 powers, and on this basis, Manolete is entitled to succeed in its claim for compensation [27-8].

Although not strictly necessary to determine the present appeal, Lord Carnwath addresses the issue of whether "default" in section 106 is limited to default under the 1984 Act itself, as this may impact on future cases. Lord Carnwath finds that the legislative history and the authorities under the predecessor statutes support the conclusion that the default is not limited to the particular provisions of each statute, but extends to other forms of legal default. Concerns as to the wide scope of the factual inquiry do not arise if the inquiry is limited to the two-stage assessment set out above [30-5].

The Court of Appeal's conclusion that the Council had no defence in principle to the claim for compensation was correct, not because, as they so held, there was no default under the 1984 Act, but because it was not Stylus' default which led to the Council's emergency action [36]. Lord Carnwath emphasises that this does not limit the issues which can be taken into account by the arbitrator in assessing the level of compensation payable. The arbitrator may take account of Stylus' statutory and common law responsibilities to its clients and employees, the structural condition of the pier and the implications it would have had for the continuation of business quite apart from the effects of the emergency action [37].

References in square brackets are to paragraphs in the judgment

NOTE

This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: www.supremecourt.uk/decided-cases/index.html