Legal Studies of Duty of Care: Augeas Developments' Case Scenario

Augeas Developments' case scenario presents two problems for determination. The first is to understand whether or not the company could claim for negligence. Augeas must prove that it has a legitimate claim that is capable of redress under the tort of negligence. The second problem is whether or not it can successfully claim for both Chiron and Geryon. The company is faced with the task of proving that it can claim from both defendants under the tort given that the latter was in fact sub-contracted by the former, thus the lack of a direct link to Augeas.

The law

Issue one

Proof of the tort on negligence is dependent on the claimant proving four things. First, it must prove that a duty of care was owed to it by the defendant. Secondly, the duty must have been breached by the defendant and the consequence being damage or loss. Finally, there must be a connection between the actions or omissions of the defendant to the damage so incurred.

Duty of care

Duty of care has been defined as the legal responsibility that arises due to a set of circumstances and relationship. For instance, a teacher has a duty of care to their students due to their relationship while a contractor has a duty of care to the homeowner to ensure that their property is protected during construction. The claimant must prove that not only was a duty of care was owed, but also, that it was breached.

Lord Atkin established the neighbor test in Donoghue v Stevenson , stating that, to determine whether there is a duty of care owed, the test must be proven. That is, a neighbor is any individual that is so closely and directly affected by your actions that you ought to reasonably have them in contemplation as being so affected when you are directing you mind to the omissions r acts that are called in question. Thus, one must take all necessary steps to ensure that their acts or omissions that they can reasonably foresee would likely affect their neighbor. In this regard, the claimant must prove that the defendant had reasonable foresight of harm and that they were close or directly affected by the defendant's actions.

In Home Office v Dorset Yacht Co Ltd the claimant was found liable by the House of Lords for the actions of young offenders who had escaped and stole a yacht belonging to the defendant. The court held that it was foreseeable that the offenders they were in charge of would have caused harm if left unsupervised, which they did. Further in, Bourhill v Young the court in determining proximity held that the defendant did not owe the claimant a duty of care as there was not proximity between them. The claimant could not claim that the accident that had occurred fifty feet away and whose effects she did not see affected her as there was not sufficient proximity when the incident occurred.

Breach of Duty

Breach of duty is determined by assessing the facts from an objective standpoint. The courts have determined breach of duty on a case to case basis. In Vaughan v Menlove the court held that the defendant's best judgement was not enough to determine whether or not he had breached his duty, rather that he was to be judged by the standard of a reasonable man.

Further, objectivity has been applied depending on the level of skill and knowledge the defendant has. For instance, in Condon v Basi, the court held that a First League football player cannot be judged in the same breath as a fourth League player, thus where the former may be found to have breached the duty, the latter may not. Moreover, in a professional context, the courts have made it clear that it shall hold the defendant to the standard of a reasonable person within the said profession, as was held in Wilsher v Essex Area Health Authority .

Damage or loss

As a general rule, the damage incurred must have been as a result of the defendant's acts or omissions. However, it is not enough to prove that there has been loss, but to also to prove remoteness of damage. That is, the damage must be the kind that the defendant could have foreseen. In a claim where the damage was too remote the claimant is likely to be unable to prove that the defendant acted in a negligent manner. In the Wagon Mound no 1 the defendant's vessel leaked furnace oil in the wharf in Sydney Harbor which resulted in a fire through cotton debris that were embroiled it and ignited by sparks from a welding works nearby. The court determined that there must not be a direct consequence but a foreseeable one. It established that the test is whether the damage is of the kind that the defendant could have reasonably foreseen. If the damage is so present, the defendant is held liable to the full extent of the damage regardless of whether the extent of the damage was foreseeable.

Subsequently, in Hughes v Lord Advocate , the House of Lords in holding for the claimant, found that the damage, that is, the boys incurring burns, was foreseeable where the boys spilled paraffin in an unattended man hole, resulting in an unforeseeable explosion. The court held that it mattered not that the explosion was unforeseeable, that the boys' likelihood of suffering burns was foreseeable from the unattended lamp and the explosion did not prevent the type of damage being foreseeable.

Causation

Upon establishing that the defendant owed a duty of care, breached the duty, which resulted in damage, the claimant must show that but for the defendant's action or inaction, the damage would not have occurred. There must be a close ink between the defendant's actions and the cause of the damage. In Barnett v Chelsea & Kensington Hospital , while, establishing the but for test, the court held that even though the doctor at the hospital did not examine the claimant, the death that resulted was as a result or arsenic poisoning, and any examination would not have prevented it.

Difficulty is however faced where there are multiple causes, which in this case, are concurrent, that is, happening at the same time. The courts have established that in such instances, the claimant need only prove the cause that materially contributed to the damage. In Bonnington

Castings Ltd v Wardlaw , the House of Lords held that the claimant only had to prove that the silica particles had made material contribution to the disease that befell him. He was under no obligation to demonstrate the balance of probabilities that the dust was the sole cause of his disease. This was reiterated in McGhee v National Coal Board . However, where there is more than one defendant, the claimant is faced with a difficulty in determining who to go after. In Fairchild v Glenhaven the claimants had been exposed to asbestos and contracted Mesothelioma. They had however worked for different employers over the duration of the development of the disease. The House of lord held that if the claimants could demonstrate that one employer had materially increased the risk of contracting mesothelioma, they were entitled to claim full compensation from the one employer.

Issue Two

The general rule as regards liability of main and sub-contractors is that, the main contractor shall not be held liable for the negligent acts of the sub-contractor. They bear independent levels of care to the owner unless vicarious liability applies, which would impose a responsibility on the main contractor, for the actions of the sub-contractor. To this end, there must be proof that the main contractor exercised a level of control over the actions of the sub-contractor. Another exception is where the main contractor has actual knowledge that the sub-contractor's work was done in a foreseeably dangerous way. In this regard, the court in Honeywill & Stein Ltd v Larkin Bros established the rule as to this exception and as later affirmed in Biffa Waste Services v Maschinenfabrik Ernst Hese GmbH , that, a person who allows a sub-contractor to undertake extra hazardous work on the premises of another is under a strict non-delegable duty to ensure that the work is done in a such a way that does not inflict damage.

Analysis

Augeas Developments was owed a duty of care by Chiron and Partners and subsequently Geryon Signs due to the agreement between the company and Chiron. Chiron and Geryon were under an obligation to ensure that what they were contracted to do was done to the liking of the claimant. The duty of care was breached due to the negligent actions of Geryon while erecting signs, which resulted in the damage of electrical cables and subsequently the IT equipment. The extent of the damage included the burnt down kitchen as a result of the paper napkins and Styrofoam containers. The damage was reasonably foreseeable in that Geryon, while erecting the signs, should have taken reasonable care that there were no materials that would have caused an accident such as that that occurred. Further the damage to the kitchen was also reasonably foreseeable, in that Styrofoam is highly inflammable. Thus, even without the short-circuiting and resultant fire, activities around the site that included the use of fire would have resulted in the Styrofoam catching fire and spreading it.

The difficulty Augeas faces is determining its main defendant. That is, Chiron's liability is limited by the fact that it was the main contractor and that the actions of Geryon while erecting the signs started the chain of causation, which in the end led to the fire in the kitchen. Geryon's liability on the other hand is limited by their novelty in the business and the hazardous nature or lack of which of the site.

Conclusion

Augeas Developments can successfully claim for negligence against Geryon Signs. This is because, it owed the former a duty of care while erecting the signs, breached that duty by causing a chain of events that resulted in damage to the IT equipment and kitchen belonging to the latter. Chiron’s liability is limited to the existence of napkins and Styrofoam containers and can therefore be found liable under contributory negligence, for the kitchen.