Press Summary

21 May 2025

URS Corporation Ltd (Appellant) v BDW Trading Ltd (Respondent)

[2025] UKSC 21

On appeal from [2023] EWCA Civ 772

Justices: Lord Lloyd-Jones, Lord Briggs, Lord Sales, Lord Hamblen, Lord Leggatt, Lord Burrows and Lord Richards

Background to the Appeal

On 14 June 2017, Grenfell Tower in London was engulfed in flames and 72 residents lost their lives. The main reason for the tragedy was the use of unsafe cladding on the outside of the building. Investigations led to the discovery that many high-rise residential buildings across the UK were subject to serious safety defects. The Government encouraged developers to carry out any necessary remedial work for safety defects discovered and this was reinforced by the imposition of legal liabilities on developers by the Building Safety Act 2022 ("**BSA**"). It is against that background that the dispute between developers and design engineers, that this appeal is concerned with, has arisen.

The respondent, BDW Trading Ltd, is a major property developer. Its brand names include Barratt Homes and David Wilson Homes. The appellant, URS Corporation Ltd, provides consultant engineering services. During its post-Grenfell investigations, in late 2019, BDW discovered design defects in two sets of multiple high-rise residential building developments ("**the Developments**") for which it had been the developer and for which the structural designs had been provided by URS.

From 2020 to 2021, BDW performed remedial works on the Developments, although by then it had no proprietary interest in the Developments, no claim had been made against it by the owners or occupiers of the Developments and any such claim would have been time-barred. In March 2020, BDW brought a claim against URS in the tort of negligence (a civil wrong) to recover the costs of the remedial works (ie the repair costs).

In October 2021, following a trial of preliminary issues, Fraser J held that: (i) the scope of URS's duty of care included the losses claimed (save for BDW's claim for reputational damage); (ii) the in-scope losses claimed were recoverable in principle; (iii) those losses were

not too remote; (iv) issues of legal causation and mitigation should be determined at trial; and (v) BDW's claim should not be struck out.

In June 2022, section 135 of the BSA ("**s.135 BSA**") came into force which retrospectively extended the limitation period for accrued claims under section 1 of the Defective Premises Act 1972 ("**s.1 DPA**") from 6 to 30 years. S.1 DPA imposes a duty on developers (like BDW) and consultant engineers (like URS) to build dwellings properly. BDW successfully applied to amend its claim so as to bring new claims against URS under s.1 DPA and under the Civil Liability (Contribution) Act 1978 ("**the Contribution Act**").

URS appealed both the preliminary issue and the amendment application decisions. In July 2023, the Court of Appeal unanimously dismissed URS's appeals. The Supreme Court granted URS permission to appeal on four grounds, which are set out below.

Judgment

Lord Hamblen and Lord Burrows give the leading joint judgment dismissing URS's appeal on Grounds 1 to 3 and agreeing with Lord Leggatt's judgment dismissing URS's appeal on Ground 4. All the other Justices (Lords Lloyd-Jones, Briggs, Sales and Richards) agree with Lord Hamblen and Lord Burrows. Lord Leggatt gives a separate concurring judgment on Grounds 1-3 and the lead judgment on Ground 4.

Reasons for the Judgment

Ground 1: In relation to BDW's claim in the tort of negligence against URS, has BDW suffered actionable and recoverable damage or is the damage outside the scope of the duty of care and/or too remote because it was voluntarily incurred (disregarding the possible impact of s.135 BSA)? If the answer to that question is that the damage is outside the scope of the duty of care or is too remote, did BDW in any event already have an accrued cause of action in the tort of negligence at the time it sold the Developments?

It was common ground that URS assumed responsibility to BDW under its contracts for professional services and breached the resulting duty of care by providing defective designs. In principle, therefore, BDW had a claim in the tort of negligence for its loss (i.e. the cost of the repairs). However, URS argued that BDW was not entitled to any compensation because BDW carried out the repairs voluntarily, in circumstances where: (i) it had no proprietary interest in the Developments; and/or (ii) it had no legal obligation to do so (because all claims against it were time-barred). URS argued that English law recognised a principle of voluntariness which rendered BDW's loss outside the scope of URS's duty and/or too remote **[27]-[33]**.

The Court rejects this argument **[67]**. The four cases on which URS relied do not establish a "voluntariness principle" according to which the repair costs were irrecoverable as a matter of law as being outside the scope of the duty of care or too remote **[37]-[54]**. It may be that a claimant's voluntariness is relevant to legal causation and mitigation as being concerned with a claimant's unreasonable conduct. But it is not in dispute that, in this case, the application of legal causation and mitigation is fact-specific and must go to trial **[55]-[61]**.

In any event, on the assumed facts, it is strongly arguable that BDW did not perform the repairs voluntarily, in particular because of the risks of personal injury or death to the homeowners if it did not do so **[62]-[66]**.

As a result, the second question of precisely when BDW's tortious cause of action accrued, and the correctness of the House of Lords decision in *Pirelli General Cable Works Ltd v Oscar Faber & Partners* [1983] 2 AC 1, does not arise. The Court did not hear full argument on the point and declines to decide whether to overturn *Pirelli* **[70]-[77]**.

Ground 2: Does s.135 BSA apply in the present circumstances and, if so, what is its effect?

S.135(1) BSA amends the Limitation Act 1980 to provide for a 30-year limitation period for causes of action accruing under s.1 DPA before 28 June 2022 **[89]-[91]**. S.135(3) BSA directs that this amendment is retrospective and is to be treated as always having been in force unless: (i) that would lead to a breach of a defendant's rights under the European Convention on Human Rights; or (ii) the claim was settled or determined before 28 June 2022 **[92]**.

It is agreed that s.135 BSA applies to a claim brought under s.1 DPA. The issue is whether the retrospectivity of s.135(3) BSA applies to other claims which are dependent on the time-bar applicable to claims under s.1 DPA. For example, the claims in this case in negligence and for contribution made by BDW against URS **[96]**.

The Court holds that s.135(3) BSA does apply to claims which are dependent on s.1 DPA. This conclusion is supported by the words, context and purpose of the statutory provision.

First, s.135(3) BSA refers to "an action by virtue of" s.1 DPA; it is not limited to actions "under" s.1 DPA. The title of s.135(1) BSA reflects this **[99]-[100]**. S.135(1) BSA provides the context for s.135(3) BSA and also refers to actions "by virtue of" the DPA. There is no reason to restrict s.135(3) BSA to actions under the DPA, considering the meaning of the words in context **[103]**.

Second, a central purpose and policy of the BSA was to ensure that those responsible for historic building safety defects can be held to account **[104]-[106]**. This purpose would be undermined if s.135(3) BSA were restricted to actions under s.1 DPA. While a homeowner would be able to bring a claim against a developer under the DPA, it would limit any 'onward' claims that the developer might make against the contractor directly responsible for the defect for contribution or in negligence. It is necessary for a developer to be able to bring onward claims against those ultimately responsible as a matter of justice and also to fund its own obligations to homeowners **[107]-[108]**. Otherwise, a split regime between actions under the DPA and onward claims is introduced. That would result in incoherence and may penalise responsible developers who are proactive in identifying and remedying building safety defects **[109]-[116]**.

This does not mean that s.135 BSA affects all proceedings in which the question of whether a DPA claim is enforceable is collateral or secondary **[118]**. The Court rejects URS's submission that this interpretation produces anomalies. S.135(3) BSA does not need to apply "for all purposes". It is sufficient that it applies in the present circumstances to actions in respect of damage or defects in relation to buildings that are dependent on s.1 DPA, even if they are not brought under s.1 DPA **[122]-[123]**.

In this case, if there is an issue at trial as to the reasonableness of BDW doing the repairs (as a matter of legal causation or mitigation) then that issue would be determined by reference to the facts as at the time of those actions. At that time, BDW would reasonably have understood that it had a liability to the homeowners but that that liability was unenforceable if BDW chose to rely on a limitation defence **[120]-[121]**. That fact is not affected by the retrospectivity of s.135(3) BSA.

Ground 3: Did URS owe a duty to BDW under s.1(1)(a) DPA and, if so, are BDW's alleged losses of a type which are recoverable for breach of that duty?

The duty under s.1(1)(a) DPA is owed to those who "order" a dwelling and the duty under s.1(1)(b) is owed to every person who "acquires an interest" in the dwelling **[132]**. The issue on this ground is whether URS owes a s.1(1)(a) DPA duty to BDW.

The Court rejects URS's position that the context of the DPA distinguishes between those who owe DPA duties and those to whom they are owed, such that a person who owes a duty under the DPA cannot simultaneously be owed a duty. There is no reason why a developer cannot both owe a duty and be a owed a duty, particularly where the developer is the first owner **[142]-[143]**. The purpose of the s.1 DPA duty was to protect the interests of those who: (i) acquire an interest in the dwelling; and (ii) have an interest in the dwelling other than by acquisition or purchase, most obviously the first owner. Construction law textbooks support this interpretation **[143]-[151]**.

The Court also rejects the anomalies that URS argues result from that interpretation **[152]-[158]**.

The conclusion is that as the relevant work was carried out by URS "to the order of" BDW, URS owed BDW a duty under s.1(1)(a) DPA **[159].** There is also no question of the repair costs being of a type that are irrecoverable for breach of that duty **[160]-[161]**.

Ground 4: Is BDW entitled to bring a claim against URS under section 1 of the Contribution Act when there has been no judgment or settlement between BDW and any third party and no third party has ever asserted any claim against BDW?

The Contribution Act gives a person ("**D1**") who is liable for damage suffered by another person ("**C**") a statutory right to recover contribution from anyone else (eg "**D2**") who is liable for the same damage. In this way the cost of compensating C can be allocated between D1 and D2 according to their relative responsibility for the damage that C has suffered **[209]**. Here BDW, having paid for the repairs, has claimed contribution from URS under the Contribution Act on the basis that BDW and URS are each liable to the homeowners for damage resulting from the defects. URS argued that BDW's claim is premature because the right to contribution does not arise unless and until the existence and amount of D1's (in this case BDW's) liability to C (the homeowners) has been established by a judgment against D1, an admission of liability by D1 or a settlement with C. In response, BDW argued that the right to contribution arises as soon as C suffers damage for which D1 and D2 are each liable, even if C has not claimed or recovered compensation from either D1 or D2 **[211]**.

The Court rejects both contentions. The correct interpretation is that the right to contribution arises when: (i) damage has been suffered by C for which D1 and D2 are each liable; and (ii) D1 has paid or been ordered or agreed to pay compensation for the damage to C. At that point, but not before, D1 is entitled to recover contribution from D2 **[212]**. Here BDW has paid compensation (in kind) for the damage suffered by the homeowners by carrying out the repairs. The fact that there has been no judgment against BDW or admission of liability or settlement between BDW and any of the homeowners, nor even any claim against BDW, does not prevent BDW from claiming contribution from URS. Accordingly, the Court decides Ground 4 against URS **[266]**.

References in square brackets are to paragraphs in the judgment.