Trent Strategic Health Authority v Jain
[2009] UKHL 4 HL

Club Cruise Entertainment v Department of Transport
[2008] EWHC 2794 QBD

Summary

Trent Strategic Health Authority v *Jain*

The claimants in this case owned a nursing home in Nottingham that was registered with the defendant authority. The nursing home had to be registered for it to accept residents (who were elderly and infirm and often suffered from mental difficulties). Under the Registered Homes Act 1984, the defendant authority had the power to apply to the magistrates for an immediate order for the cancellation of the nursing home's registered status without giving the proprietor of the nursing home any notice.

On 29 September 1998, an employee of the defendants inspected the nursing home and was concerned by some defects in the nursing home that were caused by its undergoing renovation works. The employee was accompanied by the police, who were investigating a complaint arising out of a fall that one of the residents had suffered. The following day – after representations made by the employee to her superiors – the defendant authority made an application to revoke the claimants' nursing home's registration. In making the application, the defendant authority made the wholly misleading statement that there had been 12 deaths in the claimants' nursing home since February 1998 and seven of those deaths had been reported to the police. (In fact, 11 of those deaths were due to natural causes and the six of the seven deaths that had been reported to the police were reported because there was a statutory duty to do so where a resident had died without seeing a doctor in the 14 days before his or her death.) The magistrate to whom the application had been made granted an order revoking the nursing home's registered status and the nursing home was immediately closed down.

The claimants appealed against the making of the order, and on 9 February 1999, the order to revoke the nursing home's status was reversed. However, the claimants were unable to revive their business. The claimants sued the defendant authority, claiming that it had owed them a duty of care both in inspecting the nursing home and in presenting its case for closing the nursing home down to the magistrate. At first instance, Sir Douglas Brown held that the defendant authority had had no authority in a public law sense to apply for an order closing down the claimants' nursing home: the defendant authority had acted completely irrationally in seeking such an order. He went on to find that the defendant authority had at the very least owed the claimants a duty not to act in a 'slipshod' and 'reckless' manner in seeking an order to close their nursing home down. He found that that duty had been breached and accordingly awarded the claimants damages.

The Court of Appeal overturned the first instance decision, holding (by a 2:1 majority) that it would be undesirable to find that a duty of care was owed to the claimants in this case. (See the note elsewhere on this website on the Court of Appeal's decision, for further details.) To do so might encourage registration authorities to downplay the interests of residents of nursing homes – on whose behalf

they should be acting – and become unduly cautious about applying for an order to revoke a nursing home's registration. An analogy was drawn with the position of the social services which (see *D* v *East Berkshire Community Health NHS Trust* [2005] 2 AC 373) do not owe the parents of a suspected victim of child abuse a duty of care in investigating whether the child is being abused for exactly the same reason.

The House of Lords upheld the decision of the Court of Appeal to reject the claimants' action in negligence against the defendants, and it did so for the same reasons. The House of Lords also noted that had the Human Rights Act 1998 been in force at the time the claimants' nursing home was closed down (it only came into force in October 2000), it was strongly arguable the claimants would have been able to sue for compensation under the Act, on the ground that their rights 'to peaceful enjoyment of their possessions' (under Art. 1 of the First Protocol to the Convention) and their rights to a 'fair and public hearing' to determine their civil rights and obligations (under Art. 6(1) of the European Convention on Human Rights (ECHR)) had been violated. (See para [18], per Lord Scott; [43], per Baroness Hale; [54], per Lord Neuberger.) But as the Human Rights Act 1998 was not in force at the relevant time, the claimants' only remedy was to go to the European Court of Human Rights for a declaration that their rights under the ECHR had been violated, and an order to the UK government to compensate the claimants for the violation. And as the Human Rights Act 1998 is now in force, there is no need to distort the law of negligence in order to provide future claimants in the same position as the claimants in *Jain* with a remedy for the injustice they have suffered: see para [39], per Lord Scott.

Club Cruise Entertainment v *Department of Transport*

In this case, the claimants' cruise ship, the 'Van Gogh', was supposed to perform a series of three short cruises from Harwich to various Norwegian ports and back again in May 2006. The departure dates for the cruises from Harwich were 16, 22, and 28 May 2006. The first two cruises were blighted by the spread of the gastrointestinal virus called norovirus among the passengers and crew. On the morning of 28 May, the Van Gogh arrived back in Harwich, having completed the second cruise. An intensive process of cleaning and sanitation of the ship ordered by the claimants immediately got underway in an attempt to ensure that the third cruise, that was due to start imminently, would not be affected by a norovirus outbreak.

Despite this, Captain Rudge, an officer in the Maritime and Coastguard Agency ('MCA' – an agency of the Department of Transport, the defendant), issued the claimants with a notice, detaining the ship in port until further notice under the Merchant Shipping Act 1995. In fact, the 1995 Act gave Capt. Rudge no authority to detain the Van Gogh in port on health and safety grounds; but Regulation 28 of the Merchant Shipping and Fishing Vessels (Health and Safety at Work) Regulations 1997 did. The notice detaining the Van Gogh was lifted on 30 May, after Capt. Rudge had inspected the ship and was satisfied that it was safe for it to take passengers on board.

The claimants sued the defendant, claiming that Capt. Rudge had committed the tort of conversion in detaining the Van Gogh in port, and the defendant was vicariously liable for this act of conversion. Flaux J. held that while Capt. Rudge had no lawful justification for issuing the notice that he did (the fact that he could have had such justification if he had issued the notice under the 1997 Regulations was immaterial: [25]-[26]), he did not commit the tort of conversion in keeping the Van

Gogh in port as he did not physically take possession of the ship, and he did not purport to deal with the ship in a way that denied the claimants' title to the ship ([46]-[47], [51]).

Comments

(1) *The claim in negligence in the* Jain *case*. The issues of principle arising out of this claim have already been adequately dealt with in our note on the Court of Appeal's decision in this case, and students are referred to that note (under the title 'Jain v Trent Strategic Health Authority').

(2) *The fact that no claim in negligence was made in the* Club Cruise *case*. Why was this? Two reasons may be advanced.

First, counsel for the claimants knew it was a non-starter. The court would have dismissed it on the ground that finding that Capt. Rudge owed a duty of care to the claimants not to detain their ship in port when he had no lawful authority to do so would have created a potential conflict with his basic professional responsibility to act in the best interests of passengers who might be endangered by travelling on a norovirus-contaminated ship.

Secondly, counsel for the claimants might have realised that even if it were admitted that Capt. Rudge had been negligent in this case, there would be a problem establishing that Capt. Rudge's negligence caused the claimants any loss: had he taken care, he would have realised that the notice of detention should be issued under the 1997 Regulations, and the claimants' ship would have been detained for just as long as it actually was detained.

(3) *The claim in conversion in the* Club Cruise *case*. In *Hartley* v *Moxham* (1842) 3 QB 701, 114 ER 675, it was held that you do not commit the tort of trespass to goods if you lock the gates of your land with the result that the claimant cannot drive his car off your land; neither, it seems from this case, do you commit the tort of conversion. The result illustrates that technicalities are important in the law of tort – there are some acts that inconvenience owners of property in their enjoyment of that property that simply do not amount to torts, and for which there is therefore no need to establish a justification to escape liability in tort.

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