



28 July 2010

PRESS SUMMARY

Morrison Sports Ltd and others (Respondents) v Scottish Power UK plc (Appellant) [2010] UKSC 37

On appeal from 2009 CSIH 92

JUSTICES: Lord Rodger, Lord Walker, Lady Hale, Lord Collins, Lord Clarke

BACKGROUND TO THE APPEAL

At the heart of this appeal is whether a breach of certain provisions of the Electricity Supply Regulations 1988 can give rise to a private right of action.

In March 1998 Mr Brian Pritchers owned two buildings, at 23 and 25 Moss Street, Paisley. The tenants of the ground floor shop at number 23 were Morrison Sports Ltd. On 6 March 1998 the building at number 23 was destroyed by fire. Two other buildings were also damaged. Investigations identified the seat of the fire as an electricity meter cupboard in number 23.

Those affected by the fire, who are now the respondents, raised three separate actions for damages against Scottish Power UK plc. All three actions are framed in the same way. The respondents aver that it was the presence of a shim fitted by employees of Scottish Power that was the cause of the fire. Scottish Power deny that the shim was fitted by their employees.

One of the bases on which the respondents seek to hold Scottish Power liable is that the fire was caused by Scottish Power's breach of their statutory duty under regulations 17, 24 and 25 - relating to a supplier's works - of the 1988 Regulations. The 1988 Regulations were made by the Secretary of State by virtue of his powers under section 16 of the Energy Act 1983. Part I of the 1983 Act, including section 16, was repealed by the Electricity Act 1989, but the power to make regulations was maintained in section 29 of the new Act. Scottish Power now accept that the 1988 Regulations have effect as if they were made under section 29 of the 1989 Act.

The difference between section 16 of the 1983 Act and section 29 of the 1989 Act – and, hence, the point in dispute in the Court of Session – lies in the concluding words of section 29(3). Section 29(3) of the 1989 Act, but not section 16(3) and (4) of the 1983 Act, provides that nothing in subsection (3) “shall affect any liability of any such person to pay compensation in respect of any damage or injury which may have been caused by the contravention.” The Extra Division thought that, by enacting section 29(3), Parliament had indeed made specific provision for a private right of action for damages for loss caused by breaches of the regulations. They therefore considered that in section 29(3) Parliament had introduced an important private right of action for damages “by reservation”. Scottish Power appealed to the Supreme Court.

JUDGMENT

The Supreme Court unanimously allows the appeal. It holds that contraventions of regulations 17, 24 and 25 of the 1988 Regulations do not give rise to a private right of action. The judgment of the Court is delivered by Lord Rodger.

REASONS FOR THE JUDGMENT

- There is no basis whatever for thinking that the drafter of section 29(3) of the 1989 Act intended to introduce a civil right of action but - somehow - botched that comparatively straightforward task and came up with the words in the subsection which are so singularly ill-suited to the supposed purpose. Far from itself providing that a person who contravenes a provision should be liable to pay compensation, the subsection merely confirms that the liability to the criminal penalty is not to affect “any liability” of the offender to pay compensation. By “any liability” Parliament means the offender’s liability, “if any”, to pay compensation, for which regulations made under section 29 may provide [paras 16 and 27]. The language used in the subsection reflects language used in earlier regulations. On the other hand there is nothing to show why the tailpiece was omitted from section 16(4) of the 1983 Act [paras 18-22].
- There are indications in the overall legislative scheme that a breach of the relevant provisions of the 1988 Regulations would not give rise to a private law statutory right of action.

First, there are provisions in the 1989 Act and the 1988 Regulations that point strongly to the conclusion that the regulations are to be enforced by the Secretary of State and those appointed to act on his behalf, rather than by individuals raising private actions [paras 30-32].

In addition, there are provisions in the 1988 Regulations which envisage situations where a consumer may be in breach of a requirement of the 1988 Regulations and where that breach may give rise to a risk of danger to others. If the respondents’ argument were correct, the 1988 Regulations would confer a right of action against individual consumers of electricity for any failure to comply with a requirement under these provisions. It seems unlikely that Parliament intended the legislation to operate in that way [para 35].

If it really were the case that a supplier could be held liable in damages for a contravention of any regulations made under section 29 of the 1989 Act, then the protection afforded by section 21(b) of the Act (under which a supplier of electricity under section 16(1) of the Act may require any person who requires a supply of electricity to accept any terms restricting any liability of the supplier for economic loss resulting from negligence which it is reasonable in all the circumstances for that person to be required to accept) would be ineffective in the situation where the supplier’s negligence constituted a contravention of the regulations [para 36].

- That no private right of action is available is reinforced by the fact that it is difficult to identify any limited class of the public for whose protection the 1988 Regulations were enacted and on whom Parliament intended to confer a private right of action for breach of the provisions of the Regulations. One of the necessary preconditions of the existence of a private law cause of action is that the statutory duty was imposed for the protection of a limited class of the public [paras 38-40].

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.gov.uk/decided-cases/index.html