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Supreme Court Clarifies Causation and Damages in Japanese Knotweed Nuisance Claims

Davies v. Bridgend County Borough Council [2023] UKSC 28

In a unanimous decision delivered on 10th May 2024, the UK Supreme Court has provided authoritative guidance on the recoverability of damages for diminution in property value caused by the encroachment of Japanese knotweed from neighbouring land.

Facts

The appellant, Mr Michael Davies, owned a bungalow in Bridgend, Wales. In 2012, Japanese knotweed was discovered on the neighbouring council-owned property, leading to a diminution in the value of Mr Davies' property.

While the council had a duty to treat the knotweed from 2013 onwards, it failed to do so until 2018. Mr Davies brought a claim in private nuisance against the council, seeking damages for the diminution in value of his property caused by the continuing presence of the knotweed between 2013-2018.

Issues

The key legal issue was whether a defendant can be held liable for residual diminution in a property's value when the knotweed had already affected and devalued the property before the defendant's breach of duty occurred.

Judgment

The Supreme Court unanimously allowed the appeal by Bridgend County Borough Council.

Lord Leggatt delivering the leading judgment, held that for a claimant to recover damages in tort, the 'but for' test of causation must be satisfied - the harm suffered must have been caused by the defendant's breach of duty.

In this case, the diminution in value had already occurred before the council's breach in failing to treat the knotweed from 2013-2018. Therefore, the council's breach did not cause the loss claimed, and no damages were recoverable.

The court clarified that the mere presence of knotweed does not necessarily constitute an actionable nuisance. A material interference with the claimant's quiet enjoyment or amenity of the land must be established.

Rationale

The Supreme Court's decision reaffirms the fundamental principle that damages in tort require the 'but for' causation test to be met, preventing claims where the loss had already occurred before the defendant's breach.

Lord Leggatt emphasised that the court's role is to apply settled principles of tort law, not to develop the law to achieve a particular policy outcome. The decision aligns with the established principles of causation and damages in nuisance claims.

Implications

This landmark ruling provides much-needed clarity on the recoverability of diminution in value damages in knotweed cases, resolving conflicting lower court decisions.

It is likely to have significant implications for the legal and insurance sectors, potentially limiting liability and claims related to knotweed encroachment onto properties. Insurers and legal professionals will need to carefully assess causation and the timing of any alleged breach when handling such cases.

The decision reinforces the importance of establishing a material interference with the claimant's quiet enjoyment or amenity of the land, rather than relying solely on the presence of knotweed.

Conclusion

Overall, the Supreme Court's judgement provides a principled and authoritative approach to causation and damages in knotweed nuisance claims, bringing much-needed clarity to this area of law.

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