

CASE STUDY 1

Dreamscape judgment apportioning liability for art installation death claims

Mr Justice Foskett has now given his judgment (16th May 2011) in the High Court confirming the apportionment of liability resulting from the 'Dreamscape' tragedy in 2006.

Dreamscape V was the inflatable art installation created by the late Maurice Agis that covered almost half a football pitch. On 23 July 2006 Riverside Park, Chester-le-Street, County Durham the installation broke free of its anchorage and video footage showed it lifting into the air, moving about 85 metres, killing two people and injuring a number of others, some seriously. There had already been settlement between the estates of the victims and the injured parties, and the defendants, and the issue before the High Court was the apportionment of responsibility for these damages between Chester-le-Street District Council and arts event organiser Brouhaha International Limited (BIL) who were both involved in the organisation of the event. Mr Agis's son, Giles, was a director of BIL. This was a decision on how much each of their insurers had to pay towards the total compensation. Maurice Agis died with no money in his estate and he was uninsured.

Maurice Agis had already been convicted of Health & Safety at Work Act 1974 offences. BIL had also been convicted under section 2(1) of the Act, namely, that it had failed to ensure, so far as reasonably practicable, the health, safety and welfare of its employees whilst carrying out their work and duties in relation to the Dreamspace structure. The basis of BIL's plea was that it did not carry out its own risk assessment of the structure but relied on an inadequate assessment produced by Maurice Agis. BIL was fined £4,000. The Council pleaded guilty to a breach of section 3(1) on the basis that it had not, so far as reasonably practicable, ensured that members of the public were not exposed to risks to their health and safety whilst using recreational facilities provided by the Council. The basis of that plea of guilty was that the Council had failed adequately to scrutinise the "risk assessment" carried out by Maurice Agis. It was fined £20,000. Maurice Agis was convicted of failing, in contravention of section 3(2) of the Act, to conduct an undertaking in such a way as to ensure, so far as was reasonably practicable, that members of the public were not exposed to risks to their health and safety. The jury at Newcastle Crown Court was unable to agree in respect of two counts of manslaughter (based on an allegation of "gross negligence" on his part) arising from the deaths of Claire Furmedge and Elizabeth Collings and the prosecution subsequently offered no evidence in respect of those allegations. The £10,000 fine imposed upon him by the trial judge, Cox J, was reduced on appeal to £2,500 largely because of his impecuniosity, age and ill-health in Court of Appeal. He died two months later.

Mr Justice Foskett made it clear whilst Dreamspace had run without any injuries for a number of years, Mr Agis he had no engineering or technical qualifications and had not properly assessed the anchorage for Dreamspace V. There was evidence of a previous 'lifting' of an earlier Dreamspace in Germany in 1986 but that was put down to a "freak storm". Mr Justice Foskett said this: *"As the wisdom of hindsight demonstrates, what happened was almost certainly an accident waiting to happen. Without in any way diminishing the impact of what occurred for those who died and those who suffered serious injury, the consequences could have been even more disastrous than they were had there been more people inside the structure when disaster struck. It was not at the time near to its capacity of about 100 adults and 25 children."* And the Judge said this of the risk assessments that had been provided *"it is now common ground that this document was, to the extent that it purported to be a "risk assessment", a wholly inadequate risk assessment and one which ought not to have been regarded as sufficient by anyone placing reliance upon it. It is not disputed that it was*

prepared by Maurice Agis” then making it clear that the route “by which it was received by the Council was via Giles Agis” – so, in effect, via BIL.

When it came to the safety at Dreamspace V and the role of the Council, the primary organisational body was the Safety Advisor Group: this was not a Council organisational structure, but a partnership structure between the District Council and a number of other organisations, specifically Durham Constabulary, the Fire and Rescue Service, the Ambulance Service and Durham County Council. The role of that group was to provide advice and guidance to organisers of events that took place within Chester le Street, and the aim was to provide a standardised approach to the hosting of events that took place within Chester le Street . Mr Justice Foskett made the point that *“it would seem clear from this that a unique structure such as Dreamspace would have been outside the normal range of competence for a local authority’s Health and Safety team to assess for the purposes of structural safety and integrity. Given that Maurice Agis was the “manufacturer” of the structure then, unless he had commissioned structural engineers to provide advice about how to ensure that the structure was secure from movement caused by the impact of wind, what would have been provided as suitable anchorage would have been no more than the product of well-meaning guesswork “.*

The judge then looked at liability under Occupiers Liability Act 1957 – using the test that an occupier was someone who had “some degree of physical control” over the premises” and held that BIL were occupiers of the structure for the purposes of liability under the Act and that BIL was in breach of its duty of care to the claimants as members of the public who entered the Dreamspace V structure at Chester-le-Street, alongside the liability towards the claimants by the Council

Mr Justice Foskett then moved to Apportionment of Damages under Section (1) of the Civil Liability (Contribution) Act 1978 which provides that the amount of the contribution recoverable from any person *“shall be such as may be found by the court to be just and equitable having regard to the extent of that person’s responsibility for the damage in question”.* The court may order contribution amounting to a complete indemnity or exempt a person altogether from liability to make contribution” and found that the appropriate apportionment of responsibility is 45% to the Council and 55% to BIL

