CASE COMMENT: MURPHY V. BRENTWOOD DISTRICT COUNCIL (1991)

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ABSTRACT:

The case of *Murphy V. Brentwood District Council* has been one of the most complex cases in the field of the law of torts. The plaintiff purchased a home that turned out to be defective. Since they could not afford the repairs, they were forced to sell the home at a price significantly less than what they had paid to the previous owner of the unrepaired home. They filed a negligence lawsuit against the defendant (the local authority that authorized the construction of the homes). The court denied their request. The court expressly reversed the decision in *Anns v. Merton*[1], which held that a public inspector owed a duty of care to purchasers of a property to ensure that it was constructed correctly. It also rejected the complex structures theory, which held that a public inspector owed purchasers of a property a duty of care to ensure that it was built correctly. It also rejected the theory of complex structures. Complex Structure theory tries to find an exception to the rule in torts that no one can sue for pure economic loss. This case note aims at highlighting the rationale behind the judgement and critically analyzing it.

Keywords: Complex Structures, purely economic loss, independent contractor, faulty construction etc.

[1] [1977] UKHL 4.

BACKGROUND:

Before the House of Lords' judgment in Anns v. London Borough of Merton, Thomas Murphy purchased a home from ABC Homes in Brentwood in 1970. In 1981, the house's walls started to show significant fissures. The concrete raft that the foundations had been constructed on was determined to be flawed after an investigation. This raft was created by a civil engineering company, and Brentwood Council, acting on the counsel of an independent consulting engineering firm, authorized it. Mr Murphy had insurance via Norwich Union and filed a lawsuit against the Council in 1983 at their request. His advisors were undoubtedly certain that they could rely on Anns at this stage, though they may have been a bit concerned about whether that choice made the Council accountable for the carelessness of independent contractors. According to Anns, a local government entity that exercises statutory control over building operations is tortiously liable to a building owner-occupant for the cost of remedying a dangerous building defect that arises from the authority's negligent failure to ensure that the building was constructed by the relevant standards mandated by the building by the laws or regulations. In Anns, Lord Wilberforce said, "It seems reasonable to me to let the house owner get paid for this kind of harm. If the classification is needed, I think the relevant damage is material and physical damage, and what can be recovered is the amount of money it costs to fix up the house so that it is no longer dangerous to the health or safety of the people living there, and possibly (depending on the circumstances) the money it costs to move people out of the house if they have to.

As a consequence, it is no longer permissible for the owner or occupant of the property to bring a tort action against a local authority for faults in that property caused by the authority's negligent inspection of the property, with the amount sought often being the cost of fixing the allegedly defective structure. At the same time, their Lordships ruled in ***Department of the Environment v. Thomas Bates and Son Ltd.***[2] that no such action could be brought against the property's constructor. By analogy, other parties including the developer, architect, and consultant engineer are likewise exempt from being held liable for such damages, unless the responsibility is based on a negligent misrepresentation by the Hedley Byrne principles.

[2] (1990) 50 BLR 61.

FACTS OF THE CASE:

A house's foundation was improperly built by the constructor. The defendant's local government did not acknowledge the issue when it approved the structure by its building requirements. When the structure became seriously unstable, the claimant was forced to sell the home at a substantial loss since she was unable to acquire the funds for repairs and had decided not to file a lawsuit at that time. The loss, which was the deflated value he received for the property, was classified as a pure economic loss, thus he attempted to recoup his loss from Brentwood District Council but was unsuccessful in doing so.

By its obligation under section 64 of the Public Health Act of 1936, the council sent the house-building designs to consulting engineers working as independent contractors. The council approved the designs based on the advice of the consulting engineers, who failed to account for calculation flaws in the foundation design. As a consequence, the home was constructed on a flawed foundation. The plaintiff was living there when the foundation began to break, which caused significant damage to the house's pipes and walls. The plaintiff sold the home for £35,000 less than its market value in undamaged condition instead of having the projected £45,000 worth of repairs made, and he filed a negligence claim for damages against the council. Without making any renovations, the buyer was living in the property. The judge determined that the council was negligent because it relied on negligent advice when passing the plans and that the defects in the house constituted an immediate threat to the plaintiff's safety and health while the plaintiff was residing there. As a result, the judge awarded the plaintiff £38,777 for the loss of the value of the house and the expenses he incurred as a result of the defects.

RATIONALE BEHIND THE JUDGEMENT:

The Murphy argument is supported by four primary lines of thought.

It was first reaffirmed by their Lordships that a flaw in the property would be classified as an economic loss rather than a bodily injury.

Second, it was unrecoverable since it was an entirely economic loss.

Thirdly, the local authority was thus under no obligation to prevent economic loss as a consequence of the negligent inspection, and it was unclear if the authority was also obligated to prevent property damage or personal harm to property other than the faulty structure.

Fourthly, the case reopens the tricky issue of how to distinguish between them as property damage is possibly recoverable but economic loss is not.

1. PROPERTY DAMAGE OR ECONOMIC LOSS:

Dutton v. Bogner Regis Urban District Council [3]and Anne's House of Lords both said it was okay. In both cases, the fact that it's a general rule that money damages can't be fixed unless they're based on a claim of carelessness led to the claim being supported as material damages. Products have been commercial, not tort, for a long time, so even if the flaw is caused by bad manufacturing, claiming like this breaks secrecy and is only available to the seller. No one in the chain can get it, not even the person who made it. Even if the object is a building, this is still true.[4] A house that might fall in the future is not different from a product with too many flaws that will fail quickly.

2. WAS THE LOSS NOT RECOVERABLE:

This is part of Murphy that has caused the most debate. Few people would disagree with the idea that the loss was financial. The main question was whether or not the money loss could be made up for. The thinking starts with the idea that the loss caused by buying a bad product can't be recouped from the company that made it. This is a policy finding that is at the heart of the difference between tort and contract. Whether it is explained by saying that the parties aren't close enough to each other or that the buyer or those who get their title from the buyer didn't depend on the maker doesn't matter in the end. Both of these supposed reasons might be true in general, but they might not be true in this case. The real reason is that such losses have been considered the responsibility of contract law for a long time, and changing this theory would often lead to a lot of lawsuits and mess up a well-established pattern of liability insurance.

In Murphy's case, things got complicated since the house was structurally flawed, and that meant there was a risk that the plaintiffs or their belongings may be damaged. Must the tort claim wait until the tort harm has happened, and even then, would such a claim exclude the underlying essence of the complaint, namely the expense of setting the house upright? The yes responses from the House were given to both queries. Lord Bridge elaborates by saying, "If a

[3] [1972] 2 WLR 299

[4] Richard O'Dair, Murphy v Brentwood District Council: A House with Firm Foundations? 54 (MLR), 565-570, 1991.

dangerous flaw in a chattel is discovered before it causes any personal injury or damage to property because the risk is already recognized and the chattel cannot safely be used until the defect is remedied, the fault becomes just a deficiency in quality. If the risk is understood, then the product cannot be utilized safely, and the loss is reduced to a purely economic one.

JUDGEMENT:

The court dismissed the appeal and said that the Council could not fulfil its duty under section 64 of the Act of 1936 to approve or disapprove a building plan by giving the job of enforcing the plan to an independent contractor. The court held the Council responsible for negligence based on that a professional engineer was careless when he told the client to ignore the foundation's bad design. The damage to the home was so bad that it posed an immediate threat to the plaintiff's health or safety while in the home, and the plaintiff got a count for reimbursement of the costs needed to fix the hazard. The plaintiff did not make any repairs, but he proved that the loss from the sale was caused by the imminent threat to health and safety, so the depreciation of the home was a fair amount of damage to give the plaintiff. Damages he had to pay because of the damage to the house, as this amount is less than what it would cost to fix the safety and health risks. The term "per curiam" is a Latin phrase commonly used in legal contexts to indicate that a decision has been made by the court as a whole, rather than by an individual judge or justice. If a plaintiff has obtained compensation for all the expenses incurred in carrying out essential remedial work, as well as any supplementary costs, it would not be feasible for them to obtain further compensation for any additional reduction in value. This is because such an additional loss cannot be considered as resulting from the local authority's breach of duty. The responsibility at hand pertains to ensuring adherence to the by-laws and regulations during the construction of a house, rather than safeguarding the owner-occupier against potential financial losses arising from the distrust or aversion that prospective buyers or building societies may harbour towards a refurbished property.

ANALYSIS OF THE JUDGEMENT:

The goal of this debate up to this point has been to demonstrate how inadequate the analysis presented by the House of Lords in D&F and Murphy is. What has been urged appears to be simple: courts should recognise claims of dangerous defective premises by classifying them as "material, physical injury," as Lord Wilberforce put it. One might also adopt the "pre-emptive claim" theory, which acknowledges that no actual damage has happened but that an action

should be authorised in anticipation of such damage. No reasonable basis, either based on theory or policy, exists for such claims to be prohibited, yet our judges may be dogmatic about taking the "pure economic damage" path. This option stands out among the other three choices since it presents the least doctrinal resistance. The other two require making changes to long-standing concepts of negligence, especially the distinction between tort and contract and the necessity of monetary damages.

CONCLUSION:

The basic argument of this piece is that the House of Lords is incorrect if it thinks the disagreement and confusion have been resolved because of Murphy. There are only two possible courses of action that the law might take. The first would be to eliminate compensation for property damage and pure economic losses in tort cases (but not for economic losses resulting from bodily injuries). This is quite improbable. Another option is to shift towards a system in which the closeness of the parties and the nature of the damage will be used to determine whether or not a duty of care exists. Although the House of Lords' recent focus on proximity lacks conceptual consistency, it might be used to prevent widespread responsibility for economic loss and, by extension, allow for compensation when it is due.

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