Caltex Oil (Australia) Pty Ltd v The Dredge Willemstad (1976) 11 ALR 227

Chapter 4

Relevant facts

Australian Oil Refining Pty Ltd ('AOR') and Caltex Oil (Australia) Pty Ltd ('Caltex') were parties to a processing agreement according to which AOR refined crude oil that was delivered to its refinery on the southern shore of Botany Bay by Caltex, and then delivered the refined product back to Caltex's oil terminal on the northern shore of Botany Bay via a pipeline that ran under bay. The pipeline was owned by AOR. Under the terms of the agreement Caltex retained ownership of the oil in its various forms, and AOR was responsible for the risk of damage or loss to the oil as it passed through its pipeline.

On 26 October 1971, the Dredge Willemstad was being used to dredge a water channel in the bay when it damaged the pipeline. The operators of the dredge were aware of the pipeline. The damage was caused because (1) the track plotter chart provided by Decca Survey Australia Ltd ('Decca') inaccurately showed the area for dredging, and (2) the operators of the dredge failed to identify the error in the track plotter chart and also failed to check their position by conventional means.

AOR sued both the operators of the dredge and Decca to recover damages, including compensation for the damage caused to the pipeline and the products it contained. The Supreme Court of New South Wales decided that both the operators of the dredge and Decca were liable and awarded damages of $125,000 to AOR.

Caltex also sued the operators of the dredge and Decca in negligence to recover compensation for the costs it incurred in having to arrange an alternative means of transporting petroleum products until the pipeline was repaired. The Supreme Court of New South Wales rejected this claim on the basis that Caltex did not own the property damaged by the dredge and that the harm suffered by Caltex was pure economic loss. Caltex appealed this decision to the High Court.

Legal issue

Was Caltex's pure economic loss recoverable in an action for negligence? The loss was pure economic loss and not consequential economic loss (which would have been recoverable) because it was not a loss that flowed from the physical injury to Caltex's property or person. The courts had previously been reluctant to allow the recovery of pure economic loss for policy reasons, including the prospect of indeterminate liability.

Decision

Although they delivered separate reasons, the High Court (Gibbs, Stephen, Mason, Jacobs and Murphy JJ) unanimously decided on 9 December 1976 in relation to Caltex's appeal that the economic loss suffered by Caltex was recoverable.

The majority (Gibbs, Stephen, Mason and Jacobs JJ) held that the general rule that pure economic loss was not recoverable was subject to an exception in circumstances where the defendant could reasonably foresee that the particular plaintiff, as opposed to a general class of persons, would suffer loss as a result of their negligence.

Justice Stephen expressed the view that, in addition to reasonable foreseeability, there needed to be sufficient proximity between a plaintiff and defendant to give rise to a duty of care that enabled the plaintiff to recover pure economic loss. He said (at 261-2) that the features creating a relationship of sufficient relationship of proximity in this case were:

(1) Decca's knowledge that damage to the pipeline was inherently likely to cause consequent economic loss to those who relied directly upon its use;
(2) Decca's knowledge of Caltex as a user of the pipeline;
(3) the damage by Decca to the property of AOR in breach of the duty of care it owed to AOR;
(4) the nature of the detriment suffered by Caltex in losing use of the pipeline; and
(5) the nature of the damages claimed, namely that they were the direct consequence of the detriment suffered.

According to Justice Mason, however, there was no additional requirement of proximity. He said (at 274-275):

> A defendant will then be liable for economic damage due to his negligent conduct when he can reasonably foresee that a specific individual, as distinct from a general class of persons, will suffer financial loss as a consequence of his conduct. This approach eliminates or diminishes the prospect that there will come into existence liability to an indeterminate class of persons; it ensures that liability is confined to those individuals whose financial loss falls within the area of foreseeability…

Significance

This case was the first Australian case to recognise an exception to the general rule that recovery for pure economic loss is not permitted. The exception arises in circumstances where the defendant can reasonably foresee that a specific individual, as distinct from a general class of persons, will suffer financial loss as a consequence of their conduct.