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## **FIRE DAMAGE: THE END OF STRICT LIABILITY?**

***Gore v Stannard (trading as Wyvern Tyres) [2012] EWCA Civ 1248***

**By Andrew Davies**

***This decision of the Court of Appeal, delivered on 4 October 2012, is very important to property owners and their insurers considering potential claims arising as a result of fire damage. It significantly restricts the circumstances in which liability will be imposed under the rule in Rylands v Fletcher.***

The facts were straightforward. Mr Stannard carried on business supplying, fitting and balancing car and van tyres on a trading estate in Hereford. Unsurprisingly, he kept a large stock of tyres on his premises. Tyres do not catch fire easily, but once ignited they are difficult to put out. An electrical fire broke out in the workshop and spread, via the tyre storage area, to Mr Gore's premises next door, which were totally destroyed.

Mr Gore brought a claim in negligence and in strict liability. His claim in negligence failed. His strict liability claim, based on *Rylands v Fletcher*, succeeded. Mr Stannard appealed and won. Although the decision to allow the appeal was unanimous, each member of the Court of Appeal gave a detailed judgment.

Ward LJ considered the classic 20<sup>th</sup> century *Rylands v Fletcher* authorities (*Rickards v Lothian*; *Read v Lyons*; *Cambridge Water v Eastern Counties Leather*; and *Transco v Stockport MBC*), from which he extracted the following approach to be applied in "non-fire" cases:

1. The defendant must be the owner or occupier of land.
2. He must bring or keep or collect an exceptionally dangerous or mischievous thing on his land.
3. He must have recognised or ought reasonably to have recognised, judged by the standards appropriate at the relevant place and time, that there is an exceptionally high risk of danger or mischief if that thing should escape, however unlikely an escape may have been thought to be.
4. His use of his land must, having regard to all the circumstances of time and place, be extraordinary and unusual.
5. The thing must escape from his property into or onto the property of another.
6. The escape must cause damage of a relevant kind to the rights and enjoyment of the claimant's land.
7. Damages for death or personal injury are not recoverable.
8. It is not necessary to establish the defendant's negligence but an Act of God or the act of a stranger will provide a defence.

Ward LJ then considered the real issue in the case, namely whether there was a different or special rule in cases involving damage caused by the spread of fire. That there was a different rule may have been thought likely as a result of the 1919 decision of the Court of Appeal in *Musgrove v Pandelis*, in which strict liability was imposed for a fire started as a result of an explosion in the carburettor of a garaged car. Ward LJ concluded, however, that there was no special rule, and that the principles set out above should also apply in fire cases, as well as in other more classic examples of escaping dangerous things.

As a result, cases of fire damage were likely to be very difficult to bring within the rule in *Rylands v Fletcher* because (1) in order for the rule to apply, it is the "thing" which had been brought onto the land which must escape, not the fire which was started or increased by the "thing"; (2) while fire may be a dangerous thing, the occasions when fire as such is brought onto the land may be limited to cases where the fire has been deliberately or negligently started by the occupier or one for whom he is responsible; and (3) in any event,

starting a fire on one's own land may well be an ordinary use of that land. *Musgrove v Pandelis* should, therefore, be relegated to a footnote in the history of *Rylands v Fletcher*.

The moral of the story for Ward LJ was “make sure you have insurance cover for losses occasioned by fire on your premises”.

Etherton LJ agreed that, in the light of *Transco v Stockport*, the facts of the case did not satisfy the basic requirement of *Rylands v Fletcher* liability that there must have been an escape of something which the defendant had brought onto his or her land. Even if there was a different requirement for fire cases, where what has escaped is fire generated from something that the defendant has brought onto his or her land (the approach taken in a number of fairly recent cases, such as HHJ Coulson QC's decision in *LMS International v Styrene Packaging and Insulation Ltd*), such a principle did not apply in the present case, because tyres are not easily set alight, and so do not pose any inherent danger of catching or causing fire. In any event, Mr Stannard's use of his property was not a non-natural use of his land for the purposes of the *Rylands v Fletcher* principle.

Lewison LJ agreed with Ward LJ, but would have gone even further in limiting the scope of strict liability in relation to fire. His 32 page judgment is a fascinating historical analysis of the development of tort law to suit changing social conditions, from well before the Great Fire of London in 1666, through the litigious age of the railway, to modern times. In summary, before the enactment of section 86 of the Fires Prevention (Metropolis) Act 1774, liability only ever applied to fires which were deliberately kindled (which obviously occurred all the time in the medieval world). McKenna J was right in the 1967 case of *Mason v Levy Autoparts of England Ltd* when he criticised the decision of Bankes LJ in *Musgrove*; Judge Thornton QC (in *Johnson v BJV Property Developments Ltd*) and Judge Coulson QC (in *LMS International v Styrene Packaging*) were wrong to criticise McKenna J's reasoning.

In a masterly piece of judicial trashing, Lewison LJ decided that *Musgrove v Pandelis* was wrong; unhistorical; inconsistent with the subsequent (1971) decision of the Court of Appeal in *Emanuel v GLC*; a “decision on special facts”; and inconsistent with Bankes LJ's own

subsequent decision in *Job Edwards v Birmingham Navigation Proprietors*. For good measure, *Musgrove* misinterpreted previous cases and wrongly distinguished them, and misstated (and extended) the principle in *Rylands v Fletcher*. The principle which Bankes LJ formulated was unnecessary to the decision, and wider than the facts of the case warranted. It was unsound authority, and should no longer be followed.

As regards fires which were not deliberately kindled, the law is as stated by the Privy Council in *Goldman v Hargrave*, namely that an occupier of land is not liable for the initial outbreak of fire, whether that is due to natural causes or human agency. He has a duty, however, to do what is reasonable to prevent the spread of the fire. If he is negligent in preventing the spread of the fire, the statutory defence under section 86 of the Act of 1774 will fail. If he is not negligent, the defence will succeed.

The end, then of *Musgrove v Pandelis*. The end, too, of judicial efforts, over many years, to modify *Rylands v Fletcher* in order to impose strict liability for damage caused by the spread of fire which started accidentally or, at least, non-negligently.

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