



The relationship between Part I and Section 41(1) of the Consumer Protection Act 1987: Wilson v Beko PLC [2019] EWHC 3362 (QB)

By Freya Foster

In *Wilson v Beko* [2019] EWHC 3362 (QB), Knowles J. rejected arguments that section 41(1) of the Consumer Protection Act 1987 could be used to effectively circumvent the extinguishment provisions applicable to strict liability under Part I of that Act, holding that section 41(1) cannot be used where the claim relates to a defective product causing actionable damage and would otherwise fall within the scope of Part I.

Background

1. The claim in this case arises from a house fire on 9 August 2016 that began in a faulty fridge-freezer marketed and sold by the Defendant having been put into circulation for the purpose of the relevant extinguishment provisions in 2005 and tragically led to the death of Mr John Wilson. Several members of Mr Wilson's family also suffered serious injuries in the fire. The Claimants allege negligence as well as a breach of the duty under the Electrical Equipment (Safety) Regulations 1994 ('the 1994 Regulations') pursuant to section 41(1) of the Consumer Protection Act 1987 ('the 1987 Act').

The Issue Determined by the Court

2. The primary question to be resolved by Mr Justice Knowles as a preliminary issue was whether section 41(1) of the 1987 Act and/or the 1994 Regulations were applicable in this case, taking into account the Product Liability Directive (85/374/EEC) ('the Directive').
3. The Claimants were out of time to bring an action under Part I of the 1987 Act, which implements the Directive and provides for strict liability in respect of defective products. Section 11A of the Limitation Act 1980 provides that a claim under Part I of the 1987 Act cannot be brought more than 10 years after '*the relevant time*' as defined by section 4(2) of the 1987 Act – in this case 2005 when the product was supplied to Mr Wilson. They sought to argue that strict liability applied in any event by virtue of the Defendant's breach of the 1994 Regulations, which was actionable under section 41(1) of the 1987 Act.
4. The Defendant argued that this interpretation of the 1987 Act was incompatible with the Directive, which it said provided an exhaustive and fully harmonised system for civil liability in respect of defective products.

The High Court's Findings

5. Mr Justice Knowles agreed with the Defendant that the Directive had been consistently interpreted by the Court of Justice of the EU as providing for maximal harmonisation in respect of no-fault liability for defective products. It was not open to Member States to extend strict liability beyond the scope of the Directive, including by extending the limitation period.
6. It was found that the Claimant's action would have fallen within the scope of the strict liability regime in the Directive and Part I of the 1987 Act,

had it been brought in time. To permit such a claim to be brought based on section 41(1) after the expiry of the limitation period would therefore have been inconsistent with the Directive.

7. Accordingly, in line with the *Marleasing* principle, it was held that breaches of safety regulations made under Part II of the 1987 Act were not actionable under section 41(1) if and to the extent that the breach of duty in question would fall within Part I of the 1987 Act as relating to a defective product that had caused actionable damage (at paragraph 115 of Justice Knowles' decision).

Conclusion and Impact

8. It is not yet confirmed whether the High Court's decision in *Wilson v Beko* will be the subject of an appeal. However this decision potentially provides some clarity as to the operation of section 41(1) of the 1987 Act in the context of consumer claims for defective products, as well as reassurance to producers that it cannot be used to circumvent the extinguishment provisions set out in Part I of that Act.

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