Neutral Citation Number: [2014] EWCA Civ 635

Case No: B3/2013/1347

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM MANCHESTER COUNTY COURT
His Honour Judge Platts
2YL19601

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Tuesday 13th May 2014

Before :

LORD JUSTICE RIMER

LORD JUSTICE TOMLINSON
and
LORD JUSTICE UNDERHILL

- -

Between :

David Thompson	**Respondent**
- and -	
The Renwick Group plc	**Appellant**

(Transcript of the Handed Down Judgment of
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Official Shorthand Writers to the Court)

Christopher Melton QC and Richard Norton (instructed by **Linder Myers**) for the **Respondent**
Robert Weir QC and Simon Plaut (instructed by **Bond Dickinson LLP**) for the **Appellant**

Hearing date : 2 April 2014
Judgment

Lord Justice Tomlinson :

Introduction

1. The Respondent, Mr David Thompson, is only sixty years old but sadly is and has for some years been seriously incapacitated by diffuse pleural thickening. Although it has not yet been formally determined, there is little doubt that this has been caused in whole or in part by exposure to asbestos dust. In addition to the acute respiratory disability from which he already suffers, the Respondent is at increased risk of mesothelioma and lung cancer. His predicament is all too familiar, but the sympathy which it commands is in no way lessened by that. Indeed, whilst this court is in no position to make definitive findings about the contemporary state of knowledge as to the risk of exposure to asbestos dust in the mid-1970s when Mr Thompson was engaged in "hand baling" of raw asbestos, and is not invited to make such findings, the conditions in which Mr Thompson was expected to work are really quite shocking and should be a cause for shame.

2. Not unnaturally Mr Thompson seeks damages arising out of his employment. However his misfortune is compounded by the fact that neither of his employers at the relevant time is worth powder and shot and neither, apparently, had in place responsive liability insurance. So Mr Thompson has started proceedings against the Appellant, The Renwick Group plc, a holding company which was at material times the parent company of both of his relevant employers.

3. The parties agreed that the question whether the parent holding company owed a direct duty of care to Mr Thompson should be determined as a preliminary issue. The issue was tried by His Honour Judge Platts on the basis of exiguous evidence in the course of a single day in the Manchester County Court. In an impressively clear extempore judgment delivered that same day, 24 April 2013, the judge decided in Mr Thompson's favour that the parent company had indeed assumed such a duty. It is against that conclusion that this appeal is brought by The Renwick Group plc.

The Facts

4. Mr Thompson began work at Arthur Wood and Co (Transport) Ltd in Salford in August 1969. It was a haulage company with a significant fleet of thirty or so lorries and a large warehouse on the site of an old gas works. All kinds of goods were stored in the warehouse including copper, zinc, asbestos and numerous types of chemicals and plastics.

5. Mr Thompson started work as a labourer. Arthur Wood handled significant amounts of asbestos. Raw asbestos, either loose or in hessian sacks, was transported in containers from Canada to Manchester docks. It was Mr Thompson's understanding that the dockers refused to handle the raw asbestos. The containers were brought to Arthur Wood's warehouse. On arrival the raw asbestos was manually unloaded by Mr Thompson and his colleagues. It was put onto pallets in a process known as hand baling, and kept in the warehouse until it was ready for delivery. Mr Thompson believes that he was involved in unloading, manoeuvring and palletising asbestos during every week of his employment as a labourer at Arthur Wood, sometimes for days on end.

6. In 1974, at the age of 21, Mr Thompson obtained a Class 1 HGV licence and moved on to undertake mostly driving work. However overtime was frequently available and between the ages of 21 and 25, thus from 1974-1978, Mr Thompson would on most weekends work in the warehouse manoeuvring asbestos in the manner already described.

7. At some stage in 1978, and as I shall hereafter relate, a business reorganisation meant that the Arthur Wood business relocated to Bury. Mr Thompson at that stage left the company and took up new employment as a driver with a company based locally to his home in Salford.

8. On 27 September 1975 the business assets and liabilities of Arthur Wood and Co (Transport) Ltd were acquired by David Hall & Sons Ltd.

9. All of the shares in David Hall & Sons Ltd had since 1971 been owned by William Nuttall Transport Ltd.

10. In August 1973 The Renwick Group Limited acquired all of the shares in William Nuttall Transport Ltd.

11. As from September 1975 therefore both Arthur Wood & Co (Transport) Ltd and David Hall & Sons Ltd were fellow subsidiaries of The Renwick Group Limited.

12. Between 1975 and 1978 Mr Thompson was employed by David Hall & Sons Ltd.

13. The Renwick Group Limited was, as I have already indicated, a holding company and in 1982 its name was changed to The Renwick Group plc. It was at all material times based in Paignton, Devon.

14. At all material times another subsidiary of The Renwick Group Limited/plc was Renwick Haulage Co Ltd, a general haulage and warehousing business based in Exeter. As at 1973 Renwick Haulage Co Ltd had a fleet of 140 vehicles.

15. The objects for which The Renwick Group Limited/plc was incorporated are wide, and include the carrying on of the business of Haulage and Transport Contractors, although as at the acquisition of William Nuttall Limited most of The Renwick Group's activities were said to be in the leisure field and to include travel, car hire, Volkswagen motor caravan conversion, boatbuilding and a chain of garages.

16. In 1973 Mr Roger Petty, a director of The Renwick Group Limited, was appointed Chairman of William Nuttall Ltd. At the same time Mr Ray Dillon, Chief Executive of Renwick Haulage Ltd, was appointed Managing Director of William Nuttall Ltd.

17. At or about the same time both Mr Petty and Mr Dillon were appointed directors of David Hall & Sons Ltd.

18. On 1 April 1976 Mr G S Rushton was appointed a director of David Hall & Sons Ltd. Mr Rushton had an extremely modest shareholding in The Renwick Group Limited.

19. Mr Thompson recollected that at or about the same time as David Hall & Sons Ltd had taken over Arthur Wood "another deal" was done with William Nuttall, a company at Clifton Junction, not far away, and that thereafter the three businesses,

Arthur Wood, David Hall and Nuttall, then started to operate together. He must in fact have been recollecting the takeover of David Hall by Nuttall in 1971. It was also the evidence of Mr Thompson that, soon after David Hall & Sons Ltd had taken over Arthur Wood, he became aware that all of the businesses were "under the umbrella of a large company called The Renwick Group". His (now wholly unchallenged) evidence continued:-

> "15. The most obvious way this happened was that a senior manager from the Renwick Group's headquarters in Exeter was sent up to run the former Arthur Wood depot. He worked alongside Mr Wood for quite sometime and then he took over completely. I cannot recollect his name although I think it may have been double barrelled. [Subsequently Mr Thompson identified this person as Mr Rushton.]
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> 16. I remember at this time being very pleased because I was provided with a new heavy goods vehicle to drive which was fully painted up in the Renwick Freight livery, which was yellow with a green beaver painted on the side. I even remember the make and registration number of the vehicle. It was an ERF lorry with the registration number WHD132R and I remember going to collect it from Brighouse in Yorkshire.
>
> 17. We were very much part of the Renwick Group then. If for example I took a delivery down to the Proctor and Gamble Factory in London when I had unloaded I would phone the depot and be told if there was a load for me to collect and return to Manchester with as obviously that would be preferable to the wagon returning to Manchester empty. There almost always would be something for me to go and collect often from what had been the other William Nuttall depot which was at East India Dock in London, which also became part of the Renwick Group. I would also often refuel the lorry at East India Dock.
>
> 18. I remember another incident when I had taken the Renwick liveried lorry down to Southampton and some colleagues were also there and we got caught in an unexpected docker's strike. Renwick Group, from their head quarters in Exeter as I recollect, arranged very kindly for a taxi to take me and my colleagues back to our homes over the weekend so that we could return and collect our lorries when the strike had ended.
>
> 19. I also remember that all the documentation we used, for example pick up notes were all changed so that they had the Renwick name on them.
>
> 20. I also remember that Renwick lorries from other depots would use what used to be the Arthur Wood yard and as stated, on many occasions I would attend other Renwick sites,

> typically in the South of England, to collect loads and bring them back up North.
>
> . . .
>
> 22. I continued to work with asbestos, largely by virtue of doing overtime labouring work at the weekends as described above, throughout the period of time we were being absorbed into the Renwick Group."

20. Apart from Mr Rushton's modest shareholding in The Renwick Group Ltd, there was no evidence of the nature of any connection or relationship between Mr Rushton and either The Renwick Group Limited or Renwick Haulage Limited. There is no evidence that Mr Rushton was ever employed by or a director of either The Renwick Group Limited or Renwick Haulage Limited. There is no evidence as to by whom Mr Rushton was employed whilst he was working at the former Arthur Wood depot. It may be a legitimate inference that he had a contract of employment with David Hall Limited, although the fact that he was a director of that company does not mean that he must necessarily have been employed by it. Given the appointments of Mr Petty and Mr Dillon to which I have already referred, it may also be a fair inference that Mr Rushton was nominated to be a director of David Hall & Sons Ltd by The Renwick Group Ltd, although the fact that he is said to have come from the Exeter headquarters renders it perhaps more likely that he was on his appointment as director of David Hall & Sons Ltd an employee of Renwick Haulage Limited rather than of The Renwick Group Ltd.

21. As the judge noted, there is no actual evidence as to Mr Rushton's role within David Hall & Sons Ltd. There was evidence that he had posted a letter on the noticeboard at the depot at which Mr Thompson worked, signed by himself, dealing with the correct manner in which to lift a load so as to avoid the risk of injury. This at least shows that he took an interest in matters of health and safety. The judge described Mr Thompson's evidence as suggesting that Mr Rushton was in complete control of David Hall's business.

22. The judge concluded that, sparse though the evidence was, the defendant Group, through Mr Rushton, took control of the daily operation of the business of David Hall & Sons Ltd to a sufficient extent to give rise to a duty of care owed by the group holding company to Mr Thompson. The judge found that it was probably after 1 April 1976 when Mr Rushton became a director of David Hall & Sons Ltd that that control became apparent. He therefore found and held that the defendant had assumed a duty of care to Mr Thompson in respect of his exposure to asbestos dust in the course of his employment with David Hall & Sons Ltd after 1 April 1976.

23. I should add that there is no suggestion that the Appellant has failed to give such disclosure as it can in relation to this period of its history. No relevant documentation has survived. It is not suggested that it is appropriate to draw inferences adverse to the Appellant.

Discussion

24. I agree with Mr Robert Weir QC for the Appellant that the first issue to be addressed is whether a parent can be held to have assumed a duty of care to employees of its subsidiary in health and safety matters by virtue of that parent company having appointed an individual as director of its subsidiary company with responsibility for health and safety matters.

25. The answer to this question is plainly no. Mr Christopher Melton QC for the Respondent did not contend otherwise. In running the day to day operations of David Hall & Sons Ltd, as for this purpose I will assume he was, Mr Rushton was not acting on behalf of the parent group. He was acting pursuant to his fiduciary duty owed to David Hall & Sons Ltd and pursuant to no other duty. If authority is needed for these propositions it is supplied by *Smith v Fawcett* [1942] Ch 304 at page 306 per Lord Greene MR; *Scottish Co-operative Wholesale Society Ltd v Meyer* [1959] AC 324 at pages 366/7 per Lord Denning and the *Neath Rugby Ltd case*, [2009] EWCA Civ 291 where at paragraph 32 Stanley Burnton LJ said this:-

> "In my judgment, the fact that a director of a company has been nominated to that office by a shareholder does not, of itself, impose any duty on the director owed to his nominator. The director may owe duties to his nominator if he is an employee or officer of the nominator, or by reason of a formal or informal agreement with his nominator, but such duties do not arise out of his nomination, but out of a separate agreement or office. Such duties cannot however, detract from his duty to the company of which he is a director when he is acting as such . ."

Also in point are three terse citations from the speech of Lord Lowry giving the advice of the Privy Council in *Kuwait Asia Bank v National Mutual Life Nominees Ltd* [1991] 1 AC 187. At page 217G Lord Lowry said this:-

> "Two general principles may first be stated.
>
> (1) A director does not by reason only of his position as director owe any duty to creditors or to trustees for creditors of the company.
>
> (2) A shareholder does not by reason only of his position as shareholder owe any duty to anybody."

At 221F:-

> "The liability of a shareholder would be unlimited if he were accountable to a creditor for the exercise of his power to appoint a director and for the conduct of the director so appointed. It is in the interests of the shareholder to see that directors are wise and that the actions of the company are not foolish; but this concern of the shareholder stems from self-interest and not from duty."

Finally at 223C:-

> "An employer who is also a shareholder who nominates a director owes no duty to the company unless the employer interferes with the affairs of the company. A duty does not arise because the employee may be dismissed from his employment by the employer or from his directorship by the shareholder or because the employer does not provide sufficient time or facilities to enable the director to carry out his duties. It will be in the interests of the employer to see that the director discharges his duty to the company but this again stems from self-interest and not from duty on the part of the employer."

26. It follows that the basis upon which the judge determined that the Appellant owed a duty of care to the Respondent is unsupportable, without the need even to consider the circumstance that there is no evidence of any relationship between Mr Rushton and the Appellant holding company beyond his inferred nomination by the Renwick Group Limited as a director of David Hall & Sons Ltd, and appointment by the Renwick Group Limited exercising its power as shareholder. In short, there is simply no basis upon which it can be concluded that in running the affairs of David Hall & Sons Ltd, if he did, Mr Rushton was acting on behalf of the Renwick Group Limited. He was, on this hypothesis, running it on behalf of David Hall & Sons Ltd itself and on no-one else's behalf.

27. Mr Melton, however, in sustained but succinct submissions of great skill and moderation, sought to uphold the judge's conclusion on a different basis. Mr Weir, for his part, accepted that the second and here decisive issue to be addressed is whether the totality of evidence as found by the trial judge is nevertheless sufficient to justify the imposition of a duty of care on the parent company to protect the subsidiary company's employees from the risk of injury arising out of exposure to asbestos at work.

28. A duty of care will in such circumstances be imposed only if the threefold test enunciated in *Caparo v Dickman* [1990] 2 AC 605 is satisfied, that being the test of foreseeability of damage and proximity where additionally it is fair, just and reasonable to impose a duty of a given scope upon the one party for the benefit of another.

29. A particularly relevant recent example of a case where that threefold test was satisfied so as to result in the imposition upon a parent company of a duty of care to protect the employees of a subsidiary company from the risk of injury arising out of exposure to asbestos at work is afforded by the decision of this court in *Chandler v Cape plc* [2012] 1 WLR 3111. The facts there however are far removed from those which are under consideration in this appeal.

30. The claimant Chandler was employed as a brick loader by Cape Building Products Ltd, a subsidiary of the defendant company Cape plc. Asbestos was also produced on the site where he was employed, in a factory with open sides, and dust from the factory migrated into the area where the claimant worked. Fifty years later the claimant contracted asbestosis and brought a claim against the defendant Cape plc, alleging that it owed a direct duty of care to the employees of its subsidiary company to advise on, or to ensure, a safe system of work for them. The defendant accepted that the subsidiary company, which had been dissolved, had failed in its duty of care

to the claimant. The trial judge found, on the evidence, that throughout the period when the claimant had been employed by its subsidiary the defendant had employed a group medical advisor, responsible for the health and welfare of all employees within the group of companies of which it was a parent, and a scientific officer, who was involved in seeking ways of suppressing asbestos dust; and that many aspects of the production process had been discussed and authorised by the defendant's board. Given that evidence, the judge held that the claimant had established a sufficient degree of proximity to the defendant company for it to be fair, just and reasonable to impose a duty of care on the defendant to protect the claimant from harm from the asbestos atmosphere.

31. Arden LJ, giving the leading judgment in the Court of Appeal, pointed out, at paragraph 67, page 3127, that the way in which groups of companies operate is very varied. Sometimes, as she pointed out, a subsidiary is run purely as a division of the parent company, even though the separate legal personality of the subsidiary is retained and respected. Accordingly, it is not possible to say in all cases what is or is not a normal incident of the relationship between parent and subsidiary. The case was not decided on the basis that Cape plc had taken over the entirety of the subsidiary's operations, and it was stressed that whether a party has assumed responsibility is a question of law – see at paragraph 64, page 3127. Arden LJ posed the critical question as being "simply whether what the parent company did amounted to taking on a direct duty to the subsidiary's employees" – paragraph 70, page 3128. Arden LJ accepted that Cape was not responsible for the actual implementation of health and safety measures at Cape Products. She continued:-

> "74. I accept Mr Stuart-Smith's submission that Cape was not responsible for the actual implementation of health and safety measures at Cape Products. However, as Mr Weir points out, the problem in the present case was not due to non-compliance with recognised extraction procedures. It was due to dust in the atmosphere in the part of the Cowley Works in which Mr Chandler worked and which was not used for asbestos production. There is no evidence that what went wrong here was that Cape Products failed to maintain some dust extraction machines in the asbestos factory and in any event it is difficult to see how such machines could have avoided the escape of dust given the open sides of the factory. As the judge observed, the problem was systemic.
>
> 75. The configuration of the asbestos factory dated back to the time when Cape introduced its Pluto board manufacturing business into the Cowley Works. By installing its business there, it must have implicitly undertaken a duty of care to ensure that its business was carried on without risk to the employees in the other business of Cape Products carried on at the Cowley Works. In due course, it required Cape to purchase this business. Nonetheless, despite the sale, it maintained a certain level of control over the asbestos business carried on at Uxbridge. Products were for instance to be manufactured in accordance with its product specification. Product

development, with a group chief chemist, was carried out in the Central Laboratory at Barking. Cape moreover had superior knowledge about the asbestos business. It was in a substantial way of business and its resources far exceeded those of Cape Products. Dr Smither was doing research into the link between asbestos dust and asbestosis and related diseases. He was also (if this label makes any difference) the group medical adviser of Cape.

76. Added to those factors was the role played by Dr Smither. Whether or not he was formally appointed group medical adviser in the relevant period, it is clear that he was engaged on research, based on empirical research done at Cape and its asbestos-producing subsidiaries, about the relationship between asbestos production and asbestosis. . . .

77. Cape concedes that the system of work at Cape Products was defective. The judge inevitably found as a fact -and there is no appeal from this – that Cape was fully aware of the "systemic failure" which resulted from the escape of dust from a factory with no sides. Cape therefore knew that the Uxbridge asbestos business was carried on in a way which risked the health and safety of others at Uxbridge, most particularly the employees engaged in the brick making business.

78. Given Cape's state of knowledge about the Cowley Works, and its superior knowledge about the nature and management of asbestos risks, I have no doubt that in this case it is appropriate to find that Cape assumed a duty of care either to advise Cape Products on what steps it had to take in the light of knowledge then available to provide those employees with a safe system of work or to ensure that those steps were taken. The scope of the duty can be defined in either way. Whichever way it is formulated, the injury to Mr Chandler was the result. As the judge held, working on past performance and viewing the matter realistically, Cape could, and did on other matters, give Cape Products instructions as to how it was to operate with which, so far as we know, it duly complied.

79. In these circumstances, there was, in my judgment, a direct duty of care owed by Cape to the employees of Cape Products. There was an omission to advise on precautionary measures even though it was doing research and that research had not established (nor could it establish) that the asbestosis and related diseases were not caused by asbestos dust. Moreover, while I have reached my conclusion in my own words and following my own route, it turns out that, in all essential respects, my reasoning follows the analysis of the judge in paragraphs 61 and 72 to 75 of his judgment."

32. At paragraph 80 Arden LJ summarised the position as follows:-

> "In summary, this case demonstrates that in appropriate circumstances the law may impose on a parent company responsibility for the health and safety of its subsidiary's employees. Those circumstances include a situation where, as in the present case, (1) the businesses of the parent and subsidiary are in a relevant respect the same; (2) the parent has, or ought to have, superior knowledge on some relevant aspect of health and safety in the particular industry; (3) the subsidiary's system of work is unsafe as the parent company knew, or ought to have known; and (4) the parent knew or ought to have foreseen that the subsidiary or its employees would rely on its using that superior knowledge for the employees' protection. For the purposes of (4) it is not necessary to show that the parent is in the practice of intervening in the health and safety policies of the subsidiary. The court will look at the relationship between the companies more widely. The court may find that element (4) is established where the evidence shows that the parent has a practice of intervening in the trading operations of the subsidiary, for example production and funding issues."

33. It is clear that Arden LJ intended this formulation to be descriptive of circumstances in which a duty might be imposed rather than exhaustive of the circumstances in which a duty may be imposed. I respectfully adopt the formulation of the editors of Clerk & Lindsell on Torts, 20th Edition, 3rd Supplement at paragraph 13-04:-

> "The factors set out in (1)-(4), however, do not exhaust the possibilities and the case merely illustrates the way in which the requirements of *Caparo v Dickman* may be satisfied between the parent company, and the employee of a subsidiary."

34. The judge's findings relevant to this way of putting the case are contained in three paragraphs, although I include the introductory paragraph as setting the scene:-

> "12. What happened in relation to his employment after David Hall Limited came under the umbrella, as he put it, of Renwicks in the way that I have indicated? Well as I have said, Mr Rushton came in to manage the business. There is no evidence as to who Mr Rushton was employed by whilst he was working at Woods depot. The claimant's evidence is as already set out in paragraph 15 of his witness statement. In his evidence to me he said this, 'I was told he had come up to look at the operation and put in better ways of working than we were used to.' Certainly it seems to me that Mr Rushton's role was to, first of all, work alongside Mr Wood and then gradually take over so, and in the words of the claimant, 'he became in complete control.'
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> 13. The second change was that the claimant was given a new vehicle, a tractor unit with the Renwick livery clearly on it. It

was an R registration so, as I understand it, it was a 1976 newly registered vehicle. It is not clear and there is no evidence as to who owned the vehicle, whether it was David Hall Limited or Renwick or on what basis it was bought. There is absolutely no evidence about that. However, it is an indication that Arthur Wood was now being run as part of The Renwick Group.

14. The documents that were used by the claimant, the delivery notes and collection notes, all became Renwick documents. There was increased collaboration, I accept, with other companies which were also operating under the Renwick umbrella, those to which I have made reference, Nuttalls and Renwicks in particular. I accept the evidence that lorries would thereafter collect from other company's yards, made deliveries for them in order to keep the vehicles as full as possible during their journeys.

15. I also accept that there was an incident where a taxi was arranged to take the claimant and other colleagues from Southampton back to Manchester after their work had been interrupted by a dock strike in Southampton. The evidence from the claimant is that that taxi was arranged by Renwicks in Exeter. He cannot give any more detail about that but I do accept that it is an indication of the way in which Renwicks were becoming or had become involved not only in the ownership of Arthur Wood Company but also in the day to day running and control, in particular in relation to the work of the claimant. Finally, as I have already indicated in passing, in 1978 the claimant tells me that the company, and I read from that Renwicks, consolidated the sites of Nuttalls, David Hall & Company and Arthur Woods to one site in Bury, a consolidation which led him to accept redundancy. On balance I accept again that that was done by or on behalf of the Renwick Group plc, the defendants."

35. Mr Melton relied principally upon five factors as bringing about sufficient proximity between the parent and the employees of the subsidiary:-

(1) The paperwork, about which the judge made findings at paragraph 14;

(2) The taxi, about which the judge made findings at paragraph 14;

(3) The livery of Mr Thompson's new lorry, about which the judge made findings at paragraph 13;

(4) The extent to which the businesses of the subsidiaries appear to have been merged, about which the judge made findings at paragraph 14, so that if for example there was a load which needed to be carried by David Hall & Sons Ltd and another load for Nuttalls, which it was convenient to be picked up by the same lorry as performed the first delivery, Mr Thompson might find himself carrying both a Hall load and a Nuttalls' load on his lorry on the same day;

(5) The extent to which this co-operation extended in 1978 when the hub of operations of all three companies moved to Bury, with all subsidiaries operating from one depot, about which the judge made findings at paragraph 15.

36. The mere recitation of these factors demonstrates how far removed from *Chandler v Cape* is this case. Taken individually the points do not withstand scrutiny. The only evidence as to the paperwork is paragraph 19 of Mr Thompson's Witness Statement which reads "I also remember that all the documentation we used, for example pick up notes, were all changed so that they had the Renwick name on them". That does not mean that such documentation had the name of the holding company on it, and nor does it mean that it had on it the name of only one company. It might well be the case that such documentation would in fact indicate the name of the contracting carrier which is most unlikely to have been the group holding company. The taxi was arranged from Exeter, which would be consistent with it having been done by Renwick Haulage Limited, rather than by the group holding company. The livery on the lorry was described by Mr Thompson as the "Renwick Freight" livery, which again may have been that of Renwick Haulage Limited rather than identifying the group holding company. It may indeed have said nothing more than Renwick, or Renwick Freight. Co-ordination of operations as between subsidiaries is just that, without it being demonstrated that the group holding company assumed control in such a manner as to demonstrate an assumption of duty to the employees of the subsidiaries. The consolidation of sites in 1978 comes too late to assist the Respondent, since it was that which triggered his terminating his employment with David Hall & Sons Limited.

37. There is no evidence that the Renwick Group Limited at any time carried on any business at all apart from that of holding shares in other companies, let alone that it carried on either a haulage business or, as would in fact be required were the Respondent's case to have a prospect of success, a business an integral part of which was the warehousing or handling of asbestos or indeed any potentially hazardous substance. Thus the first of Arden LJ's indicia is not satisfied. This is no mere formalism, for as the balance of Arden LJ's indicia indicate, what one is looking for here is a situation in which the parent company is better placed, because of its superior knowledge or expertise, to protect the employees of subsidiary companies against the risk of injury and moreover where, because of that feature, it is fair to infer that the subsidiary will rely upon the parent deploying its superior knowledge in order to protect its employees from risk of injury.

38. Mr Melton submitted, with some force I thought, that to appreciate in the mid-1970s that hand baling of raw asbestos was a hazardous activity required no significant expertise. That is very probably so, but there is no basis upon which it can be asserted that the Renwick Group Limited either did have or should have had any knowledge of that risk superior to that which the subsidiaries could be expected to have. The findings of the judge on the intermingling of the businesses, the interchangeable use of depots and the shared use of resources amount to no more than a finding that these companies were operating as a division of the group carrying on a single business. That does not mean that the legal personality of the subsidiaries separate from that of their ultimate parent was not retained and respected.

39. The findings which the judge was able to make on the basis of the very limited evidence available fall far short of what is required for the imposition of a duty of care on the Appellant.

40. I would allow this appeal.

Lord Justice Underhill :

41. I agree.

Lord Justice Rimer :

42. I also agree.