

CONWAY v MILEWOOD

THE HIGH COURT

1981/13,539P. 208

CONWAY

.v.

MILEWOOD CONSTRUCTION COMPANY LIMITED & ANOR.

Note of Judgment of Miss Justice Carroll dated the 24th day of July, 1984.

It is the whole contract which has to be considered, not only the formal document but also ancillary documents such as plans and specification, and in this case what is particularly relevant is the form of assurance produced at the signing of the contract.

An agreement prima facie joint may be construed to be several if the interests of either party appearing in the face of the instrument shall require that construction - see Chitty on Contract, 21st edition, page 164.

The issue is whether the land owner has joint liability with the builder in respect of building defects.

While the builder is intertwined with the owner in the title part of the contract, the owner is not intertwined with the builder in relation to building. Clauses 23, 24, 25 and 26 refer to the builder only. Clause 23 relates to building. Clause 24 relates to compliance with plans and specifications. Clause 25 relates to materials to be used and Clause 26

is the defects clause.

The payment of money is dealt with in Clauses 27 and 20. Clause 27 is an agreement to pay the deposits to the builder. Clause 20 provides that on payment of the balance of purchase money to the builder, the purchaser is entitled to an assurance in the form furnished therewith.

The form furnished provided for payment of £5,000.00 with a Receipt Clause. Therefore severance of the purchase money is provided for by these two documents.

The fact that the builder and the owner have a common architect does not necessarily give joint liability.

In my opinion the liability of the owner is not joint with the builder in respect of building defects.

Agreed.
Hilda Currell.