



Press Summary

8 May 2024

Davies (Respondent) v Bridgend County Borough Council (Appellant)

[2024] UKSC 15

On appeal from [2023] EWCA Civ 80

Justices: Lord Reed, Lord Lloyd-Jones, Lord Burrows, Lord Stephens and Lady Simler

Background to the Appeal

This appeal concerns the tort of private nuisance (i.e. a civil wrong which involves undue interference with the enjoyment or use of another person's land). In this case the nuisance arises from the encroachment of 'Japanese knotweed'. At some date well before Mr Davies ("the claimant") purchased his land in Bridgend in 2004, Japanese knotweed spread from land owned by Bridgend County Borough Council ("the defendant") onto the land now owned by the claimant. In 2004, encroachment of Japanese knotweed onto neighbouring land was not an actionable private nuisance. An actionable private nuisance arose in 2013 when the defendant was, or ought to have been, aware of the risk of damage and loss of amenity to the claimant's land as a result of publicly available information about Japanese knotweed at the time, and it failed to implement a reasonable and effective treatment programme in relation to Japanese knotweed which it knew or ought to have known was growing on its land. It was not until 2018 that the defendant implemented a reasonable and effective treatment programme.

The claimant brought a claim for damages against the defendant in Swansea County Court. The district judge found that the defendant was in continuing breach between 2013 and 2018 but declined to award damages because he held that damages for diminution in value are irrecoverable. On a first appeal, the district judge's ruling was upheld. On a further appeal, the Court of Appeal upheld the finding of continuing breach but found that damages for

residual diminution of the value of the claimant's land (said to be £4,900) were recoverable. The defendant now appeals to the Supreme Court.

Judgment

The Supreme Court unanimously allows the appeal. The diminution in value of the claimant's land was not caused by the defendant's tortious conduct, and no damages should be awarded. Lord Stephens gives the lead judgment, with which the other Justices agree. Lord Burrows gives a concurring judgment.

Reasons for the Judgment

In the tort of private nuisance involving encroachment of Japanese knotweed from the defendant's land onto the claimant's land, the claimant is required to establish that the defendant's breach of duty did in fact cause the loss suffered [56]. In considering causation the purpose of the "but for" test is to eliminate irrelevant causative factors [56]. In the context of this case the "but for" test asks: would the diminution in value of which the claimant complains have occurred "but for" the breach of duty of the defendant between 2013 and 2018? If the diminution in value would have occurred in any event, then the defendant's breach of duty is eliminated as a cause of the diminution in value so that there would be no causal link between the defendant's breach of duty and the diminution in value [56].

The answer to the "but for" question in this case is to be seen in the context that there was no evidence and no finding by the district judge that the defendant's breach of duty between 2013 and 2018 had increased or materially contributed to the diminution in value of the claimant's land [70]. In that context the answer to the "but for" question is simply that the diminution in value had occurred long before any breach by the defendant of the relevant duty in private nuisance first occurred in 2013 [70]. Accordingly, the application of the "but for" test in this case eliminates the defendant's subsequent breach of duty as a causative factor [70]. The diminution in value would have occurred in any event so that there is no causal link between the defendant's breach of duty and the diminution in value claimed [70]. Accordingly, the appeal is allowed on this ground so that no damages are awarded.

The claimant raised a further issue before the Supreme Court that he should be entitled to recover damages in respect of diminution in value because the stigma causing the diminution decreases over time with the consequence that the amount of diminution in value also decreases over time. The claimant asserted that if the defendant had commenced treatment of the Japanese Knotweed in 2013 instead of in 2018 then the stigma and the resultant amount of diminution in value would have decreased by 2018. Accordingly, an award should be made for the difference between the amount of diminution in value in 2018 and the amount that it would have been in 2018 if treatment had commenced in 2013 [9]. He argued that in the absence of evidence from the defendant demonstrating what the lower figure should be awarded, he should recover the full amount of £4,900 in respect of the diminution in value [9]. This issue was not pleaded, there was no evidence to support it and in any event the onus remained on the claimant to establish the difference between the diminution sum had the

Japanese knotweed been treated in 2013 and the actual sum in 2018 [72]. Accordingly, this submission was rejected [73].

Lord Burrows agrees with the majority's reasoning and conclusion and adds some remarks regarding factual causation [75]-[87]. The question to be answered in this case is whether the relevant damage required to establish the tort of private nuisance was factually caused by the breach of duty where the same damage was present prior to the breach of duty [79]. Applying the "but for" test to the facts of this case, the breach of duty from 2013 did not factually cause the residual diminution in value of the land [85]. The claimant has not proved that the residual diminution in value would not have been suffered but for the breach of duty [85]. This was because the Japanese knotweed was already present on the claimant's land before 2013 so that the residual diminution in value had already been brought about by the natural, non-actionable, encroachment of the Japanese knotweed [85].

References in square brackets are to paragraphs in the judgment.

NOTE: This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: [Decided cases - The Supreme Court](#)