Breaking The Chain Of Causation

Introduction

In the case of Borealis AB v Geogas Trading SA [2010] EWHC 2789 (Comm), the English High Court had to determine whether a failure to respond to an alarm on the part of the Plaintiff constituted a break in the chain of causation. In doing so, it laid out a framework of the principles behind breaking the chain of causation.

Here, the Defendant breached a contract for the supply of butane by providing contaminated goods. The contamination eventually caused the release of hydrofluoric acid, resulting in serious damage to the Plaintiff’s plant and other consequential losses. However, before the majority of the damage had occurred, a pH alarm had been set off, which the Plaintiff failed to respond to.

The Court held that this did not constitute a break in the chain of causation. It found that it was not unreasonable for the Plaintiff not to respond to the pH alarm immediately in the circumstances, since the severity of the contamination could not be reasonably expected. Second, the failure to respond did not supplant the “causative potency” of the Defendant’s breach of contract. Third, even if the Plaintiff had responded quickly to the alarm, it would not have avoided the damage and loss incurred.

This case demonstrates that determining whether there is a break in the chain of causation involves a practical inquiry into the factual circumstances. Further, the Plaintiff’s actions cannot merely be a contributory cause of loss; it must completely override the Defendant’s breach before it constitutes a break.

Brief Facts

1. The Defendant (“Geogas”) supplied butane to the Plaintiff (“Borealis”) as feedstock for its plant. In breach of this contract, the butane supplied was heavily contaminated with fluorides.

2. This contamination produced hydrofluoric acid, which eventually caused serious and extensive physical damage to the plant and equipment, together with consequential interruption to Borealis’ business.

3. About 2 hours after the discharge of the goods had commenced, a pH alarm was set off, indicating low pH levels. However, Borealis failed to respond to the alarm. By the time it responded to a subsequent gas alarm and took appropriate action, 56 hours had passed since the triggering of the pH alarm.
(4) Geogas submitted that by failing to respond to the pH alarm, Borealis had broken the chain of causation. It argued that had Borealis responded, it would have realised there was a problem, sent samples for laboratory testing, and discovered the linkage between the contamination and the goods, thus avoiding much of the damage.

Issue

The Court had to determine, *inter alia*, whether Borealis had indeed broken the chain of causation by failing to respond to the pH alarm.

Holding Of The High Court

After examining the facts of the case, the Court determined that there had not been any break in the chain of causation. The failure to respond to the pH alarm was not unreasonable, and Geogas’ breach of contract was still an effective cause of the losses. Further, even if Borealis had responded to the pH alarm, it would not have been able to avoid the damage.

General Law

The main contention in this case involved the issue of causation. Therefore, the Court set out a framework for the test for breaking the chain of causation:

(i) Although there is an evidential burden on the Defendant insofar as it contends there was a break in the chain of causation, the legal burden of proof rests throughout on the Plaintiff to prove causation.

(ii) To break the chain of causation, the conduct of the Plaintiff must constitute an event of such impact that it ‘obliterates’ the wrongdoing of the Defendant. The true cause of the loss must be the Plaintiff’s conduct.

a. If the Defendant’s breach and the Plaintiff’s conduct are concurrent causes, it is unlikely that there is a break in the chain.

b. If the Defendant’s breach remains one of the effective causes of the loss, the chain of causation will ordinarily remain unbroken.

(iii) Conduct which is not unreasonable is unlikely to break the chain of causation.

(iv) The Plaintiff’s state of knowledge at the time of and following the Defendant’s breach is a significant factor. The more the Plaintiff has actual knowledge of the breach of contract, and that there is a dangerous situation which has to be remedied, the greater the likelihood that the chain of causation is broken.
(v) Whether there has been a break in the chain of causation depends heavily on the facts, and involves a practical inquiry into the circumstances of the Defendant’s breach and the Plaintiff’s subsequent conduct.

Application

The Court found that Borealis’ conduct in failing to respond to the pH alarm fell well short of best practice. However, it could not be said to be unreasonable.

(i) Borealis did not and could not reasonably have been expected to know of Geogas’ breach of contract, and of the kind of acid introduced into the system by the contaminants and the severity of the threat it posed.

(ii) The pH alarm was not intended to deal with the hydrofluoric acids actually encountered. The weak acids typically encountered by the plant would not have caused any immediate damage, hence the lack of a prompt response was not unreasonable.

(iii) In some 40 years of operating experience, low pH had not been seen as a problem. The plant operators neither contemplated nor had reason to expect that the pH alarm had detected hydrofluoric acid, or that such severe consequences would arise.

In the event that Borealis’ conduct was in fact unreasonable, the Court went on to consider whether it would have broken the chain of causation, and found that it would not.

(i) The facts of the case were closer to those in which there was no break in causation, such as County Ltd v Girozentrale [1996] All ER 834, where the Plaintiff did not and could not be expected to know of the Defendant’s breach of contract.

(ii) On an analysis of the facts, Borealis’ conduct did not “obliterate” or destroy the “causative potency” of Geogas’ breach of contract. The provision of contaminated goods by Geogas remained at least an effective cause of Borealis’ loss, regardless of any failure(s) by Borealis.

Finally, even if Borealis had responded to the pH alarm, it would not have avoided the losses actually incurred. A considerable amount of time would have elapsed before Borealis managed to connect the low pH levels to the presence of contaminants in the goods. Decisions would then have to be made regarding appropriate action, including seeking the supervisors’ direction, requesting laboratory opinion, and then moving up the organizational chain to plant management. By then, the damage to the plant would have already been dealt.

Therefore, even though Borealis failed to respond to the pH alarm, it did not break the chain of causation started by Geogas’ provision of contaminated goods.

Concluding Words

The standard for breaking the chain of causation is not easily met. As shown in this case, it is not enough that the Plaintiff’s conduct is erroneous or fails to meet the best practice; it must at least be
unreasonable. Further, the connection between the Plaintiff’s conduct and the damage incurred must be so proximate that it displaces the Defendant’s breach as a cause of loss; it is not enough that they are concurrent causes.

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