

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /0927

Date of Decision: 6 August 2018

Complaint

The customer believes that the company is responsible for the subsidence in the rear annexe of his property. He states that there is an old surface water drain running adjacent to the foundations of the annexe and he believes that the drain is damaged and leaking. The customer asserts that this drain belongs to the company and he believes that it is the cause of the subsidence at his property. The customer states that he has raised this issue with the company but it has refused to accept any liability to repair the drain or the subsidence. The customer's claim is for the company to provide an apology, repair the drain and provide him with £10,000.00 for the cost of structural repairs to his property.

Defence

The company disputes that it is responsible for the drain in question or for the subsidence at the customer's property. The company states that the causes of subsidence can be complex and requires expert investigation. However, it is confident that the company's assets are not the cause of the subsidence at the customer's property and it has produced evidence to support this. The company states that due to the complexity of the subsidence issue, it may not be appropriate for this to be reviewed by WATRS. In light of all the above, it does not accept any liability for the customer's claims for redress.

Findings

Based on the submissions provided, I am not satisfied that the company's refusal to accept liability for the drain in question and subsidence at the customer's property amounts to a failure to provide its services to the standard to be reasonably expected by the average person. I find the company has shown that its assets are not the cause of the subsidence at the customer's property.

Outcome

The company does not need to take any further action.

The customer must reply by 4 September 2018 to accept or reject this decision.

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ADJUDICATOR'S DECISION

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Date of Decision: 6 August 2018

Party Details

Customer: [].

Company: [].

Case Outline

The customer's complaint is that:

- Subsidence was found in the rear annexe of his property. The customer made an insurance claim and a survey was commissioned.
- The customer states the survey found that there was an old surface water drain running adjacent to the foundations of the annexe.
- The customer believes that this drain is damaged and leaking. Furthermore, the customer believes that it extends to the neighbouring property that has a connection to it. Therefore, the customer asserts that this is a common drain and should be the responsibility of the company.
- The customer believes that the drain is the cause of the subsidence at his property and that the company is therefore liable for this issue.
- The customer states that he raised this with the company but it has refused to accept any liability to repair the drain or subsidence.
- The customer's claim is for the company to provide an apology, repair the drain and provide him with £10,000.00 for the cost of structural repairs to his property.

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The company's response is that:

- It acknowledges the customer's allegation that the company is responsible for the subsidence at his property (which he believes was caused by a leaking drain on his property). The company does not accept this allegation.
- The company states that the causes of subsidence can be complex and requires expert investigation. However, it is confident that (after conducting various investigations) the company's assets are not the cause of the subsidence at the customer's property. The company states that this was conveyed to the customer's insurance provider back in 2016 and no further response from them has been received.
- The company further states that, following a full inspection, its drains are running effectively and no repair work is necessary.
- The company states that due to the complexity of the subsidence issue, it may not be appropriate for this matter to be reviewed by WATRS.
- The company states that, in light of all the above, it does not accept any liability for the customer's claims for redress.

How is a WATRS decision reached?

In reaching my decision, I have considered two key issues. These are:

1. Whether the company failed to provide its services to the customer to the standard to be reasonably expected by the average person.
2. Whether or not the customer has suffered any financial loss or other disadvantage as a result of a failing by the company.

In order for the customer's claim against the company to succeed, the evidence available to the adjudicator must show on a balance of probabilities that the company has failed to provide its services to the standard one would reasonably expect and that as a result of this failure the customer has suffered some loss or detriment. If no such failure or loss is shown, the company will not be liable.

I have carefully considered all of the evidence provided. If I have not referred to a particular document or matter specifically, this does not mean that I have not considered it in reaching my decision.

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How was this decision reached?

1. The crux of this dispute lies with the customer's belief that the company is responsible for the subsidence at his property and that it should compensate him for this. The customer believes that the subsidence was caused by a damaged and leaking drain belonging to the company. The customer submits that he has complained to the company regarding this issue but it does not accept any liability. The customer is now seeking an apology, for the company to repair the drain and provide him with £10,000.00 for the cost of structural repairs to his property.
2. I remind the parties that adjudication is an evidence-based process and in order for any remedy to be awarded, the evidence must show that the company has not provided its services to the standard that would reasonably be expected of it.
3. At this juncture, I find it prudent to highlight that I am not a structural engineer or a subsidence expert and it is beyond the scope of this scheme to investigate and determine the exact cause of subsidence at a property. Accordingly, whilst I note that the customer appears to be seeking that I conduct an expert investigation to determine the definitive cause of the subsidence at his property, I am unable to do this. I am only able to review the evidence provided by the parties and determine whether the company has provided its services to the standard to be reasonably expected by the average person. I will proceed accordingly.
4. Following a review of all the submissions provided, I have given due consideration to the particular circumstances of this case and the overall actions of the company in response to the customer's complaints. In particular, I note that, following its investigations (such as camera surveys), the company wrote to the customer and confirmed that a technical specialist had reviewed the third-party report that the customer commissioned and concluded that there was no defect within the customer's property boundary and that the rainwater gully runs into a private soakaway, which is not the company's asset. In order to aid the customer, I note that the company also offered to send an Area Performance Manager to explain this in further detail.
5. In addition to the above, I also note that a Subsidence Specialist (from Royal Sun Alliance Insurance Company) was commissioned to review all the correspondence, reports, investigations and CCTV images regarding this issue. I acknowledge that the Subsidence Specialist's report concluded that:

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“we can safely exclude the possibility that the subsidence damage is anything to do with leakage from the foul drains.”

and

“Reference to the British Geological Survey records show that Rose Avenue is underlain by Oxford Clay. This material is unfortunately prone to subsidence arising because it shrinks when it dries out. Subsidence damage commonly occurs during the drier summer months, especially where roots from nearby trees encroach beneath the foundations of a building, and extract large volumes of moisture from the ground. I note that the 2014 Streetview image for 2 Rose Avenue shows there to be two large trees growing within its rear garden, and given that the defects recorded within the surface water sewer appear minor in nature, I do wonder if the trees are the dominant cause of the problem.”

6. In the interests of completeness, I acknowledge that the customer has submitted a copy of the drainage investigation report from Eastern Drainage Services Ltd. However, upon review of this document, I do not find that it makes any determinations with regards to the exact cause of the subsidence at the customer’s property.
7. In light of the above, on a balance of probabilities, I am inclined to accept that the company has illustrated with substantive evidence that it is not responsible for the subsidence at the customer’s property (and that its assets do not require repair at this time). I note that this position was conveyed to the customer and has been maintained by the company. Accordingly, under the circumstances, I am not satisfied that the company’s refusal to repair the drain and pay the customer £10,000.00 for structural repair works amounts to a failure to provide its services to the standard to be reasonably expected by the average person.
8. Therefore, following careful review of all the submissions provided, I am not satisfied that the evidence shows any failures on the part of the company in relation to the subsidence issue as raised by the customer. Consequently, in the absence of any established failures on the part of the company, I am unable to uphold the customer’s claim for redress.

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Outcome

The company does not need to take any further action.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 4 September 2018 to accept or reject this decision.
- When you tell WATRS that you accept or reject the decision, the company will be notified of this. The case will then be closed.
- If you do not tell WATRS that you accept or reject the decision, this will be taken to be a rejection of the decision.



E. Higashi LLB (Hons), PGDip (LPC), MCI Arb.

Adjudicator

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