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CIVIL PROCEDURE

Resiling from admission of liability

[redacted] been acted on. The defence had never been amended because defences never were amended in such circumstances.

Before Lord Justice Ralph Gibson and Sir George Waller

[Judgment July 21]

Where defendants had sent the plaintiffs a letter in which they admitted liability, although there had been no formal amendment of the pleadings, the defendants should not be permitted to resile from that admission unless it was just to allow them to do so, having regard to the interests of both sides.

The Court of Appeal allowed an appeal by the plaintiffs, Elsie Gertrude Bird, Gail Christine Griffiths, Tracy Hill Hart, Jean Margaret Wheeler and Marianne Heather Winter, from a decision of Judge Lovegrove, QC, sitting at Eastbourne County Court, whereby he had on September 25, 1986 granted the defendants, Birds Eye Walls Ltd, leave to put liability in issue in the plaintiffs' action for damages for negligence.

Mr Christopher Carling for the plaintiffs; Mr Richard Methuen for the defendants.

LORD JUSTICE RALPH GIBSON said that in November 1984, when the plaintiffs' expert attended at the defendants' premises he was told that they no longer disputed liability. That had been confirmed by a letter of November 26.

That letter had put the issue of liability out of consideration because it had obviously been intended to be acted on and had

The case had been set down for trial on the issue of quantum only. On July 2, 1986, the defendants had informed the plaintiffs of their change of attitude. Liability was in issue.

The matter had come before the judge, who had concluded that the letter of admission was not as binding as if it had been a pleading, but gave rise, if at all, to an estoppel; therefore the leave of the court had not been required for the defendants to withdraw from it. He had decided that the reliance that had been placed on the letter had not produced such prejudice as prevented the defendants from resiling from the letter.

His Lordship would not decide the case on the issue of estoppel. The answer to the case lay in the requirement of leave. If the defendants had amended the defence so as to make a formal admission of liability they would have needed leave to amend. They had never made the original amendment because it was a waste of time. The letter of November 26, 1984 admitting liability was equivalent to an admission on the pleadings.

It was not necessary to formulate precisely what the test would be for granting leave to withdraw the admission. What Mr Methuen had said was close to what was the right test. That was that when a defendant had made an admission the court should relieve him of it, if it was just so to do having regard to the interests of both sides.

The judge had not considered granting leave because he had not considered it necessary. It was not only open to the Court of Appeal, but it was its duty, to exercise the discretion which should have been exercised by the court below.

The consequence of the admission was to stop the plaintiffs completing their investigations. There was plainly some risk of damage to the plaintiffs' cases if they had to start investiating after the delay which had occurred. Into the balance there had to be taken the disappointment of the plaintiffs, who for a time had supposed that the only issue was quantum.

Asked to give leave in those circumstances the court had to look at the explanation which the defendants offered. The only explanation tendered was that the decision by their insurers that they would not fight the case on economic grounds was made without the knowledge of the defendants' parent company, and that in July they discovered that that decision had been made and decided to depart from it. That did not justify the granting of leave. The appeal should be allowed.

Sir George Waller delivered a concurring judgment.

Solicitors: Pattinson & Brewer; Young Jones Hair & Co.

July 24, 1987