

## Fitness for Purpose – Knowledge Critical

One of the most important principles of law governing buyers and sellers is that an item sold must be fit for the purpose for which it has been supplied. It is unusual for a 'fit for purpose' argument to arise in a building dispute, but cases do crop up from time to time.

In a recent instance, a contractor had engaged a subcontractor to supply a pipe to be used in a tunnel. When it was laid, the pipe was bedded in with foam concrete. Due to the highly alkaline nature of the concrete, the pipe burst four years after it was laid. This caused extensive damage and loss to Thames Water, which owned the tunnel.

The contractor who laid the pipe settled with Thames Water and sought to recover his losses from the subcontractor who supplied the pipe, on the ground that it was not fit for purpose since it was not resistant to the attack. It was argued that the Sale of Goods Act 1979 created the obligation on the supplier to supply a pipe that was reasonably fit for the purpose.

The problem with the contractor's argument was that the pipe supplied by the subcontractor was specified to be fit for the purpose of carrying water. It could not be shown that any representation had been made that the pipe was fit for use in foam concrete nor, indeed, that the subcontractor knew that it was to be so used. Nor was there any reason why the subcontractor should have known the likely effect of the alkaline environment on the pipe.

Had the contractor specified that the pipe must work in a particular environment, the argument might have succeeded. However, since the pipe was fit for the purpose specified, the claim failed.

"This case illustrates the critical importance of making sure your contracts are carefully worded and include any necessary conditions," says Kamlesh Chandarana. Contact us for assistance with your contractual negotiations.