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Acres wins case against clerk of works

By K.C. Vijayan

THE Court of Appeal has held a clerk of works to be negligent and liable for the losses caused to an animal rights group.

Mr Tan Boon Kwee was the site supervisor and a director of A n A Contractors, which was hired to build a home for abandoned animals in Choa Chu Kang.

The appeals court, presided by Judge of Appeal Chao Hick Tin, in a judgment released last Thursday, overruled a lower court and held that the mess would have been avoided if Mr Tan had supervised the work properly.

The position of clerk of works, now known as resident technical officer or site supervisor, is provided for in the Building Control Regulations.

The saga began in September 2006, when Animal Concerns Research and Education Society (Acres) hired A n A to level a plot of land about the size of two football fields to build an animal shelter for \$650,000. It was to have housed 400 animals like star tortoises and primates, rescued from the illegal wildlife trade or found injured, before they would be released here or overseas.

The contractor filled the land with woodchips that rotted and contaminated the soil and discharged brackish water. The 1.5ha area of 62 animal enclosures had to be demolished and the backfill material removed.

Acres sued A n A in the High Court, which last year ordered the company to pay damages, but held that Mr Tan was not liable.

Acres, through lawyers from Straits Law Practice, appealed and argued that Mr Tan owed a common law duty of care to supervise the backfilling and ensure suitable material was used.

But the contractor's lawyers from Lee & Lee countered that the Building Control Act did not impose such a duty on Mr Tan.

Judge of Appeal Andrew Phang noted there was nothing during the debate before the Act was passed to show Parliament intended that there should be no civil redress against negligent site supervisors.

'In the field of public and workplace safety, there is no reason why the courts should not be astute to introduce minimum standards of skill and care via the tort of negligence,' he wrote.

Both A n A and Mr Tan will have to pay damages to be assessed by the court registrar.

Acres executive director and founder Louis Ng said he hoped the problems can be rectified, and looked forward to opening the main sanctuary area.