Legal Briefing

Michael Phillips Architects Limited v (1) Cornell Clark Riklin (2) Susan Oglesby Riklin

[2011] EWHC 27 (TCC)

Some architects often find themselves commencing work for their client, even though an appointment has not been agreed and/or signed. This situation occurs all too often, albeit arguably for good commercial reasons; however, this is a clear breach of Rule 11.1 of the Architects Code of Conduct ("ARB"). In this case, the Court considered what was the reasonable value of architectural services provided in the situation where no appointment was signed.

The Facts

The Defendants wished to renovate their residential property and engaged the Claimant for the full suite of architectural services as defined by the RIBA. They made it clear to the Claimant from the outset that they were cost conscious and anxious to complete the project by spring 2008. The Defendants requested a project manager for on site supervision of the contractor; however, the Claimant assured them that the management capability of his professional staff was such that there was no need to engage an independent project manager.

A contractor was engaged in April 2008, though no formal written contract was entered into. However, in July 2008, the contractor went into liquidation. By this time, the Defendants had overpaid the contractor in excess of £80,000 and the Claimant had not performed any cost control or certification duties. In order to complete the project, the Defendants were forced to engage alternative contractors at a cost considerably over the budget they initially anticipated.

Ultimately, a dispute arose in relation to the payment of the Claimant's fees. The Claimant sought payment of £147,387, that being its fees based on an hourly basis, amounting to 1/3 of the originally agreed construction costs. No attempt was ever made by the Claimant to agree a percentage lump sum fee, even though a letter was allegedly sent to the Defendants outlining that the architectural fees would initially be on a "time expended" basis and once the exact scope of works was known, the time charge fee would be converted to a lump sum fee.

When the invoice was not paid, the Claimant then instructed debt collectors who used threatening conduct to demand payment. The Claimant was informed of this harassment, though took no action, and ultimately the bullying conduct culminated in June 2009 when a corrosive liquid was poured over the Defendant's Maserati motor car causing damage amounting to £15,400.65.

The Claimant brought proceedings in the Technology & Construction Court seeking an architectural fee in the amount of £94,430.21, which was based on a percentage of the construction costs for architectural services and a time charge for interior design services.

The Issues

In the situation where no appointment has been signed:

(i) What was the reasonable value of the professional services provided by the Claimant and what was the proper approach to the assessment of a reasonable fee?

(ii) If the Claimant's fee is to be based on a percentage of the construction cost, what is the definition of "construction cost"?

The Decision

The Judge held that the Court was required to assess what was a reasonable fee for the services rendered by the Claimant as he had clearly failed to comply with his professional obligation under Rule 11.1 of the Architects Code of Conduct (ARB), which required him to record the appointment in writing.

In assessing what was a reasonable fee, the Judge held that the approach should be to look at the value of the services provided by the Claimant, which were in fact performed at each RIBA stage, and value it against "the reasonable percentage rate". He held that the reasonable percentage rate was 9%, that being 12%, minus a 25% fee reduction for non performance and part completion of the later stages. This reduction was because the Claimant failed:

> *"to properly administer the project by providing the contractual tools to manage risk and to monitor and control costs and the failures to ensure compliance with building regulations and listed building consent, reduced not only the value of the administration elements but also serve to reduce the value of the earlier design elements to the client by reason of the delay, the excessive costs and subsequent adjustment to design to achieve planning consent and listed building compliance and pursuit of appeals."*

The Judge did not agree with the Claimant's expert who had suggested that each stage be examined to determine what point had been reached and the proportions of the duties performed by the Claimant and then apportion the percentage, irrespective as to how competently the services were performed.

For the definition of "construction cost", the Judge referred to RIBA guidance which says that a fee percentage is to be applied to the final construction cost "executed under the architect's direction". Therefore, he held that the cost should exclude all works other than those which the Claimant was involved in. Here, this meant that the fee percentage could not be applied on money spent after the Claimant abandoned the project and the builder went bankrupt.

Comment

This case demonstrates just what might go wrong if a consultant's appointment is not established at the outset of the project and all terms are clearly defined.

Where the appointment of an Architect has not been put in place, the Judge held that in order to establish his fee, each RIBA stage must be considered individually to establish exactly what services have been performed, as a breach of the Architect's duty in respect of one stage may affect the value of the other stages and thus the total value of the services rendered.

Furthermore, though here it was relatively straightforward in this case to determine what works were "executed under the Architect's direction", on other projects, this may not be so simple. Accordingly, important terms which affect the value of the architectural services, as "construction cost", should be defined.

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