FALSE START

In this claim story, work on a small office building, starts before a permit has been issued, but stops when a gross error is discovered in the drawings. The desired building is not possible, so a modified version is built. It has errors too. The owner sues the architect.

PARTIES

Plaintiff
Arthur Crummage, owner-developer

Third Party
Ed Ruff, construction manager (potential defendant)

Defendants
Nathan Quandrie, Architect

CONTEXT

Arthur Crummage was a successful accountant and small developer, of some substance in a small, north Ontario city. He had hired Quandrie to design a the Head Office of his future empire. The design, which was discussed at length, had windows all around, allowing flexibility in the internal layout, with every office having daylight.

Under the direction of a Construction Manager, construction had commenced prior to the issuance of a building permit. Site work had been done and excavation was completed with footings in place when the Building Inspector issued a Stop Work Order. Not only was there no permit, but the building could not be built as designed, as it had a glazed wall within one or two feet of the lot line. This wall was required to be a fire separation wall, built of non-combustible material and unglazed (unless expensive and elaborate fire shutter systems were devised). The building had subsequently been redesigned and was now built.

PLEAS

The Owner alleged that he would not have proceeded with the design had he known that he could not have windows in one of the long walls. But once this was made clear, the cost of relocating the building to the centre of the lot, along with the possible three months' delay going through the site planning process again, forced him to accept a windowless wall.

In addition, the building turned out to have unacceptably low ceilings – mostly at eight feet, whereas office buildings should have nine-foot ceilings or more. In addition, air-handling and duct work beneath the wood joists reduced the headroom in some areas still further. The value of his investment was reduced by these unsatisfactory conditions, and the fiasco with the wall had cost him time. The work had started without a permit because the Architect had told him that it could. Lastly, his business reputation had suffered.

It all added up to a million dollars.

The Architect denied having told the owner to start without a permit. He had also not realized that the property line was so close to the building, because the adjacent fast-food parking lot was also owned by his client. He claimed that the owner had chosen to proceed with the solid wall even though he could have relocated the building, albeit with some delay.

The owner, he added, was not inexperienced, and the floor-to-floor heights were clearly shown on the drawings. The duct work was part of the design–build contract and not his responsibility. Indeed, he had suggested a mechanical engineer be hired. Furthermore, the lack of windows affected very few offices, and accountants often worked in semi-open cubicles without windows to the outside.

THE SETTLEMENT

The matter proceeded through Discoveries and, upon an analysis of the evidence and testimony produced – notwithstanding the grossly inflated amount of the claim and the self-serving and insupportable appraisals produced by the Plaintiff to bolster the alleged loss – Pro-Demnity concluded that the Architect was not wholly credible. In the small town in which he lived, it was unlikely that he had not observed construction underway.

The Construction Manager was interviewed by Pro-Demnity counsel and he told a story somewhat at odds with the Architect’s version. Concerning the permit, he stated, it was the architect who advised him to start. However, he backed up the Architect on other issues.

Clearly, liability for the location error was the Architect’s. Some delay flowed from this error. Other issues were defensible.

CLAIM CONTROL ANALYSIS

All sorts of verbal promises were claimed, but the defense was prejudiced by the lack of an architect–client agreement. The informal manner that reflected the relaxed small-town environment blurred the roles of the parties, including the Construction Manager.

POSTSCRIPT

Pro-Demnity settled the matter for a small fraction of the amount claimed.

LESSONS TO BE LEARNED

Lesson 1: Beyond certain permissible start up activities, starting without a permit is imprudent and illegal.

Lesson 2: Not obtaining a survey showing the exact lot you are building on is unwise.

Lesson 3: Do not always take your clients' word. You have a duty to protect them against themselves. This client was a developer of some experience, so it is easy to see how one's guard could be let down.

VOCABULARY

De facto

A Latin phrase meaning “in fact.” In law, it refers to the reality of a situation, not necessarily recognized by any law. “The de facto Architect was his grandmother. Joe had no control over the design.”

Joint & Several Liability

Liability shared with other parties to a suit may fall upon any of the parties that has the assets to meet the claim, each being liable for the whole. This is the “deep pocket” factor. Defendants themselves may bear the responsibility to apportion liability and payment, meaning that if the claimant pursues one defendant and receives payment, that defendant must then pursue the other obligors for a contribution to their share of the liability.

Names and places have been changed to protect the innocent, and partially innocent, also the guilty. Situations are slightly modified and fictionalized from Pro-Demnity’s actual claims files and imbued with our real experience in protecting and defending Ontario architectural practices over three decades.

GENERAL DISCLAIMER

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