

PROCEMNITY

RISK EDUCATION



## Tennis Anyone?

**In this claim story, an architect fails to investigate zoning restrictions, an owner presses his right to an appropriately dignified design and Neoclassicism reveals surprising hazards.**

## PARTIES

### **Plaintiff**

Bianca Burinda, Client/Owner

### **Third Party**

Norbert North, General Contractor

### **Defendant**

Maria Vitruvius, Architect

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## CONTEXT

Bianca Burinda was a very wealthy widow who purchased a mansion in the Niagara Region. The house stood on a corner lot with a circular driveway off Street A, and the side yard off Street B.

She wished to install a tennis court in her side yard, but in order to do so, she had to relocate the front entrance and circular driveway, which was now facing Street A, to face Street B. The design also required that a septic field be relocated.

In addition, she desired a portico to embellish the front entrance.

## PLEAS

**The Owner** claimed that her wishes had been totally frustrated by the performance of the Architect.

She had watched her paved driveway be dug up, her beautiful lawn destroyed to remove the septic field, her house re-planned, turning the ground floor around so that the front door faced Street B. This latter undertaking required a total interior makeover, including the main stair, and involved six months' disruption at great expense – all in order to realize her dream of having her own tennis court – only to be told, after all this, that the architect had made a mistake. She could not have a tennis court. The zoning did not allow it.

To add insult to injury, the portico had proven to be a fiasco. The Owner had imagined a very dignified entrance. In keeping with her style sense, she had asked for a classical portico in the Doric style, the epitome of tastefully simple architectural understatement. What she got instead was vulgar, entirely unclassical, and garish.

On top of all this, a third error had occurred during the work. Due to the Architect's dimensional errors, part of the relocated septic field had to be ripped out and moved back.

**The Architect's Defence** was that she had taken her design proposal to the building official, who had commented on various matters. She had revised her plans accordingly, and the contractor had obtained the Building Permit. There had never been any mention of a problem with the tennis court.

It had transpired that there existed a four-foot height restriction on fences at the street line. So, there was actually no problem with the tennis court; it was just that, on two sides, the fence could not exceed chest height.

As for the portico, the Architect had chosen the closest thing to Doric columns he could find in the Chicago metal supplier's catalog. They were certainly a disappointment, but she believed that the portico's sad appearance had more to do with poor workmanship than with unclassical character.

The dimensional error had been the fault of the septic field contractor, who had failed to produce shop drawings that would have alerted the Architect to the fact that the field's large size would cause it to project into adjoining property.

The Owner had rejected the idea of reversing the driveway and septic field locations because she wanted an impressive approach to her grand new neo-classic portico, even though this change would have enabled a modified tennis court to be built where the new driveway and portico were to be located.

Nothing of the original concept could be saved.

In the end, the septic field had been relocated one more time, the bulbous columns replaced with more classical forms, the tennis court grassed over, and the new circular driveway installed. Consequently, a great deal of animosity had developed between Architect and Owner during the

unfolding of these catastrophes.

## **FURTHER COMPLICATIONS**

The cost of this remedial work was documented. There were additional legal actions since the Contractor had placed a lien for the remedial work, and this had been settled prior to Pro-Demnity's involvement. This had the disadvantage of undercutting any arguments that may have been produced relative to the amount claimed.

If Pro-Demnity had argued that the work had resulted in a betterment, or that the Contractor had overcharged, the judge at our trial would have had to say, in effect, that the previous lien judge or master had erred. This was an unlikely eventuality.

## **THE SETTLEMENT**

There were three factors to consider.

First, In the Architect's view, the building official should have told her about the fence height restriction, but Zoning was a different department, and anyway, there was nothing to stop the playing of tennis, only that volleys would have to be kept low.

Second, shop drawings are not usually produced for septic fields. Contractors are specialists and march to the drum of the Ministry of the Environment and the local health department. The only thing required of the Architect is to locate the perimeter boundaries. In this sole task the Architect had inexplicably erred.

Third, the portico columns were defensible on the grounds that their selection was really a matter of taste. The Owner had not put specifically in writing that she required classically proportioned columns with proper fluting and entasis. However, it was difficult for an Architect, for obvious

reasons, to argue that the Client was wrong.

There was little enthusiasm on the part of Pro-Demnity\* for allowing this matter to proceed to trial, although the Architect felt that he was being badly treated by the legal system. The Owner reduced her claim, which had included punitive and other special damages. The Architect's professional liability insurance supported her legal defense and damages.

## **CLAIM CONTROL ANALYSIS**

How often does one see tennis court fences on the street line? Corner lots have special criteria in many jurisdictions, considering sightlines for traffic, setback regulations, definitions of front and side yard, and so on.

The Architect could perhaps have checked matters out more carefully. Septic fields have caused more than one claim recently. They are tricky. Mostly, the problem is related to elevations and surface drainage. This case involved a simple misreading of a survey. The lot corners should have been clearly staked by a surveyor, making the error obvious.

## **POSTSCRIPT**

The portico fiasco and the whole case was farce not tragedy – except that the money paid was not funny.

## LESSON TO BE LEARNED

If your brief includes extensive landscaping work, be familiar with local zoning regulations and have a surveyor stake the property lines.

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*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.*

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