Architect - Responsibility for Supervision of Building Works

Australian Education Union (Formerly Sait Inc) v Grieve, unreported, Supreme Court of South Australia, Williams J, 4 June 1998.

The Supreme Court of South Australia in the decision of *Australian Education Union (Formerly Sait Inc) v Grieve* has emphasised the distinction between the role of an architect as the administrator of the building contract and as the supervisor of the building works. The latter role may not be the normal function of the architect in the absence of agreement to the contrary.

The Facts

The plaintiff building owner, Australian Education Union, ("the Client") brought an action for damages against the defendant architect, Mr Grieve, ("the Architect") for breach of contract by reason of alleged failure to supervise the complete removal of sprayed asbestos from the roof of the Client's building.

In 1984 the Client contracted orally with the Architect to prepare a specification for the complete removal of asbestos from the roof of its building, to vet the tenderers for the building works and to supervise the works. At the time of the contract, the Client was aware that the Architect had no previous experience with asbestos removal.

The Client contracted with a specialist asbestos removal contractor, Consolidated Contractors ("the Contractor"), to undertake the building works. The Contractor appointed its own "contract supervisor". The contract did not require the appointment of an independent third party superintendent.

The Contractor removed the asbestos by scraping down the contaminated surfaces and by spraying PVA paint to contain any residue and to treat any cavities which were difficult to access. The alternative and more costly method to remove the asbestos was to replace the roof. The Client opted for the former containment method as it was cheaper.

The Architect engaged a specialist asbestos monitor, EIL, ("the Monitor") to advise the Client and the Contractor as to the extent of the asbestos which should be scraped down and removed and that which could be treated in situ.

In 1994 the Client discovered asbestos residue in its roof. The Client engaged a contractor to undertake remedial works which this time involved the complete removal of the roof cladding. The Client claimed damages against the Architect for the cost of the remedial works less the amount which would have been payable to the Contractor had it completed its works under the terms of the original contract.

Building Supervisor or Contract Administrator?

The Client asserted that the Architect was responsible to supervise the Contractor's works on a daily basis. The Architect argued that his role was to administer the contract which involved him in "*brokering a deal*" between the Client, the Contractor and the Monitor as to the extent of the asbestos to be removed, rather than to supervise the works.

The Court rejected the Client's claim on the basis that ultimately the amount of work undertaken was a matter of negotiation between the Client and the Contractor, and that the Architect's reliance on the Monitor to advise the parties was in accordance with proper practice at that time.

His Honour Justice Williams considered that the normal function of an architect:

> "*is to administer building contracts but an architect (per se) is not a builder. Putting aside the architect's function as a designer and as arbitrator, the architect's work is normally to put in place a building contract with a reporting system as to the performance of the building work. The architect typically has a part to play in the administration of such a reporting system. (... What is "normally" regarded as the ambit of an architect's responsibility is not to deny ... the possibility that some unusual special or unorthodox arrangement may be negotiated in a particular case.)*"

On the facts of this decision, the Court considered that the Client had not relied on the expertise of the Architect to determine the extent of the asbestos to be removed and that the Architect did not assume the role to supervise the daily progress of the works. In this regard, the Court referred to the statement by Brooking on Building Contracts ((1995) 3rd ed at 211):

> "*Building contracts, other than those concerned with minor works, usually provide for their administration by the architect who designed the building. It used to be said that in the course of administering the building agreement, the architect*

supervised construction, but in recent years architects have tended to blanche at this description of their role, and have been at pains to describe their function as that of making periodic inspections on the basis that supervision is the concern of the builder."

Remuneration

The Court considered that, as the Architect had charged $3,825 for all of its work, (being 153 hours at $25 per hour) to prepare the specification, to call tenderers and to administer the contract including the certification of progress certificates, he "*did not guarantee the result in return for the modest fee charged*".

Conclusion

The decision emphasises the importance of clients to negotiate with the architect at the time of the contract as to the precise nature of its supervisory duties. Unless the duties are clearly understood then the architect supervisory function may be strictly limited to the administration of the contract rather that to supervise the building works.

The main factor which influenced the Court was that the client was found to have made its own decision as to the extent of the works to be undertaken based on the expertise of the Monitor and not the Architect. The Court was further influenced by the fact that the Architect did not have the expertise to supervise the works and that it had charged a modest fee for its services.

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Editorial Note:

It is essential to look to the terms of the architect's contract. For example, the RAIA Client Architect Agreement provides that the architectural services "*do not include supervision of the Works*".

Another issue worth considering is that, with respect, the Court's view in this instance of the consequences of the modest fee may not be determinative. In *Brickhill v Cooke* (1984) 6 BCLRS 47, the NSW Supreme Court, Court of Appeal found against an engineer's contention that a modest fee delimited his liability.

- J.T.