Architects: The price of not providing a brief

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Introduction

Freeborn & Another v Marcal [2019] EWHC 454 (TCC) highlights for all architects and construction professionals, the importance of accurate and clear record keeping when creating designs or working on construction projects, alterations and redevelopments.

Facts

The claimants engaged the defendant to design and project manage various improvements to their home. Among other things, this involved the conversion of a pool house into a function room to include a home cinema room, with the appearance of a floating glass box that had "a sleek modern look". The claimants were unhappy with this aspect of the project and brought a claim against the defendant for breach of contract.

The key issue between the parties was whether the defendant had redesigned the home cinema room without telling the claimants. The defendant had not produced a written brief for the home cinema room or recorded any changes to it (breaching Principle 2 'Competence' of the RIBA Code of Professional Conduct). The defendant had also failed to keep accurate records of his meetings and discussions with the claimants (a further breach of Principle 2). The few records that did exist were described by the court as a 'tumble drier of misinformation' that were 'confused, confusing and chaotic', which provided him with little defense to the claimant's assertions that he did not discuss or seek their approval to the redesign.

Decision

Under both Jersey and English law, a duty to act with 'reasonable care and skill' may be implied into a professional appointment with an architect or other construction professional.

Although the court confirmed in Freeborn that "the standard of reasonable care and skill is not a standard of perfection", the defendant was held to the standards of a reasonable and prudent architect in similar circumstances and the lack of a written brief was found to be "a serious breach of duty" which went to the root of the parties' difficulties.

The court's approach to the measure of damage was also significant, particularly as the rules on damages under Jersey law have a tendency to closely follow English law. This judgment confirms: "whilst... the ordinary measure of damage when an architect has acted negligently is the cost of rectification... this particular ugly duckling can[not] be turned into a swan. What was provided was so different to from what the Claimants reasonably expected that... demolishing this cinema is the reasonable course".

The claimants were awarded damages in the region of £500,000, primarily to cover the costs wasted on the home cinema room and a modest sum for stress and inconvenience.
Comment This judgment provides a valuable lesson for all architects (and potentially other construction professionals): not only will a failure to record your client's brief and any agreed changes to that brief, clearly and in writing be regarded as a "serious breach of duty", it may expose you to liability if the client's original instructions are not achieved.

Whilst demolition of the home cinema room could be seen as an extreme measure, the claimants were clear in their contemporaneous reaction to what should have been built and gave clear evidence to this effect at trial.

This award also shows that certainly the English courts will look closely at the evidence and take a pragmatic approach. Jersey courts are also likely to have regard to this approach.

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