

Architectural Collaboration (or Not)

AUTHOR: SANDBERG PHOENIX

No doubt architecture is a difficult field, with much often at risk when things go wrong. In law, if an attorney's work doesn't hold up, things only metaphorically collapse. I would no more presume to offer an architect technical advice in his or her field than I would offer it to a surgeon.

On the other hand, certain matters are obvious enough that an attorney can offer a suggestion or two. For example, a contract for architectural services will likely require an architect to deliver design plans that comply with the applicable building codes.

A Case in Point

This issue, among others, arose recently in Florida (Sch. Bd. of Broward Cnty. v. Pierce Goodwin Alexander & Linville, 2014 WL 1031461, Fla. App., Mar. 19, 2014). A school board entered into a 48-page contract with an architectural firm to perform design services in renovating a high school. The renovations included changes to existing buildings and construction of new buildings.

The school board retained the ongoing services of a peer reviewer to monitor and offer a second opinion of the design plans, which is typical for such projects. During the course of the project, the peer reviewer contended the architect's design for a third-floor balcony was not compliant with the applicable fire safety code. The architect suggested an alternative solution, which the peer reviewer also concluded would not comply. The contract stated the school board's chief building official had final authority to interpret all building codes, statutes, and regulations. This official later determined (as the peer reviewer had repeatedly predicted) that the architect's plans did not comply because the third-story balcony required a staircase to meet the fire code. This determination unsurprisingly raised the cost of the project and resulted in implementation of a "change order item" (a revision to the previously-planned construction).

Court Review

The question of who should bear the extra costs eventually went to litigation. The school board argued the

architect's initial plans were not code-compliant as required by the contract. The architect argued it satisfied its contractual obligations because the final plans used for construction were code-compliant.

The appellate court held the architect had to bear the risk for costs and expenses attributable to design plans that were not code-compliant. Furthermore, the court concluded the contract's plain language required the architect to deliver code-compliant plans, period—not merely to deliver final plans that were code-compliant.

Lessons Learned

What does this decision mean for architects? It shows that architects should work closely with parties who will need to approve their work. Often, building and zoning codes are subject to interpretation. The codes provide standards by which others can question whether the architect has performed properly as a project is being built. Architects should not ignore someone who is empowered to question performance. In architecture, each party has an interest in a project succeeding; as such, architects should use the process in a collaborative fashion. In contrast, litigation is adversarial: each party works against the other for its own benefit.

At some point in the process, the architect is generally subject to a final authority who can declare the meaning of a building code or statute. In this case, the building code official had final authority. In addition, the peer reviewer repeatedly warned the architect about the design. The architect should not have ignored these warnings. The architect also should have worked more closely with the building code official during the design process. Such collaboration could have avoided the costly change order item to satisfy the fire code, as well as the resulting litigation.

Being subject to a peer reviewer during a project likely slows the building process and bruises the ego. Involving a building code official can further slow the process. Nevertheless, taking a gamble regarding whether a design will meet a fire safety code can be costly, as this case shows. Bruised egos heal far more easily than pocketbook bruises and also don't have the same impact on one's professional reputation. Being more collaborative during the process and seeking input from the final authority are safer ways to go in a profession that emphasizes safety.

By Tyler Thompson

Thompson, T
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