

THE PERILS OF NOT GETTING IT DOWN ON PAPER...

This case confirms the importance of having an agreed and documented design brief at the outset of any project and ensuring that any changes to the brief are agreed by both parties.

The Technology and Construction Court (**TCC**) ruled that the architect "went on a frolic of his own producing a wonky industrial design rather than the sleek modern design the Claimants were expecting".

It is also a reminder of the importance of keeping detailed (and legible) records. Failure to do so opens the door to discrepancies, disputes and potential litigation.

What's it about?

The recent case of **Mr Philip Freeborn and Mrs Christine Goldie v Mr Daniel Robert De Almeida Marcal (trading as Dan Marcal Architects)** [2019] EWHC 454 (TCC) looked at the consequences of a consultant failing to document the client's design brief at the outset of a project and subsequently failing to obtain client approval to design changes.

The client appointed an architect to design some works to the client's home, including the conversion of a pool house into a function room and home cinema.

The architect was shown to have breached his duty of care to the client by:

- ▶ failing to make a written note of the client's requirements;
- ▶ failing to produce a design brief;
- ▶ failing to explain to the client why no written brief was being produced; and
- ▶ designing the works without obtaining the client's agreement to his designs.

In examining the evidence, the TCC drew particular attention to the "confused, confusing and chaotic" state of the architect's written records. The architect produced various notebooks in which he claimed to have made notes of the client's requirements and of the design changes discussed with the client but the notes were so disorganised and illegible that even the architect himself could not understand them.

The court ruled in the client's favour and ordered that the architect be responsible for the client's costs for demolishing the property as the finished construction was so far removed from the client's initial expectations that the works could not be rectified.

Why does it matter?

This case reinforces the need to procure that, before any design work is commenced in earnest, the design consultants have a clear picture of the client's brief and, if the design has to change for any reason, that the client should be involved in (or at least be aware of and approve) the evolution of the design.

The failure of the parties to maintain accurate written records of what was agreed led to a stressful and time-consuming dispute for both sides, upheaval for the client in having the works demolished and damage to the architect's reputation (and no doubt a significant increase in his PI insurance premium costs).

Now what?

For clients, it is vital to ensure that their consultants have understood their brief. The best way to do this is to circulate the client's requirements before the design phase of work commences and to have all parties confirm agreement to that brief.

If any amendments are made to the brief and/or the consultant comes up with a new design solution, it is imperative that the client is appraised and gives his express approval.

Throughout the project, all sides should keep accurate and detailed records of meetings and correspondence which can be relied upon in the event of a discrepancy or dispute and should reduce the risk of the parties resorting to litigation.

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