



## LEGAL BRIEFING

### *Fitzroy Robinson Ltd v Mentmore Towers Ltd & Ors*

[2009] EWHC 1552 (TCC) QBD Mr Justice Coulson

#### **The Facts**

The Claimants were architects seeking payments of unpaid fees in respect of a contract to develop a private members club and hotel. Contracts had almost been agreed between the parties and so design commenced. The contracts were then signed a few months later, around May 2006. However, before those contracts were signed the team leader had resigned from the architects. The firm of architects eventually informed the developer of the team leader's resignation in November 2006. The developer was not at all pleased, but nonetheless planning applications for the club and hotel were made. Eventually the project was suspended in an incomplete state, and the developer owed fees to the architect.

#### **The Issues**

The contract provided for instalments to the architect. Did those instalments need to be adjusted in order to take into account the services that weren't completed?

In addition, was the architect guilty of misrepresentation in failing to inform the developer of the team leader's resignation. If so, did the developer have a counterclaim for delay, disruption and duplication of work?

Finally had the architect been professionally negligent in relation to the planning application for the club because of the amount of time taken and issues relating to the coordination of the work of others?

#### **The Decision**

The architect's entitlement to fees depended upon the performance of their services. Instalments could therefore be adjusted if the services were altered (in other words additional services were carried out) or the services were not properly formed.

In relation to misrepresentation, the architects continuing representation of the team leader's involvement became false in March 2006. The architect was concerned that the developer would look elsewhere because of the importance of that team leader. As a result the architect's chief executive officer had made the misrepresentation knowingly and deliberately without an honest belief in its truth. It was therefore a fraudulent misrepresentation. It was material in that it induced the developer to enter into the contracts. The developer therefore had a counterclaim, however on the evidence the only potential loss resulted in the reduction to the fees that were otherwise due to the architect.

Finally, the architect had not been professionally negligent. The architect had to coordinate the work of others and had to reasonably see that those others did the work. However, in this instance the architect had not fallen below the standard that one might expect of a reasonably competent architect performing a similar role.

#### **Comment**

The really interesting aspect about this case relates to fraudulent misrepresentation. It is rare to see cases where a Judge finds that a party has fraudulently misrepresented the position to a party in order to induce that party to enter into contracts. Here, the importance of the team leader was such that the architect's chief executive officer was concerned the developer would not sign the contracts if they knew the team leader had resigned. The chief executive officer knowingly misrepresented the truth to the

---

developers and so the developers signed the contracts. The chief executive officer was therefore liable for fraudulent misrepresentation leading to a financial claim. In this case that claim wasn't as high as it could have been but it serves to remind everybody to ensure they do not mislead the other party when negotiating a contract. Remember also that silence can also amount to misrepresentation where circumstances change.

Nicholas Gould  
August 2009

---