Liability of Architects for Design Defects in Construction Projects

Overview

The manner in which design defects are treated can give rise to challenges in construction projects. It is not always apparent whether the defect in question is a product of the architect’s poor design or the contractor’s workmanship. This article explores the differences between design defects and poor workmanship and the extent of the legal obligations imposed on architects.

Design Defects and Workmanship Defects

The boundary between a design and a workmanship defect can easily become blurred. Generally workmanship defects relate to decisions such as the type of fixing method used to execute a design provided by another. Specialist details may sometimes be left to specialist subcontractors who can make detailed ‘design’ decisions without referring to architect drawings for guidance. This would not amount to delegation of responsibility by the architect as this aspect of design responsibility did not rest with him in the first place. The design of temporary works is said to fall within the remit of the contractor, hence traditionally, the architect would not have been expected to intervene in the contractor’s choice of method in carrying out the works.

Key points to note from the distinction between design and workmanship defects:

- A contractor may often not be liable for design defects.
- Standard form contracts may contain different provisions governing one form of defect to the other.
- Litigants more often than not must go on to distinguish between the causative effect of design defects or workmanship defects. However the prospect of successful appeal may be limited due to the differing findings in facts and law.
- A cause of action may arise at different points in relation to defects, depending on whether there are design defects or workmanship defects.

Liability

The obligation on the designer is normally not an absolute obligation to provide a satisfactory result but instead an obligation in contract and, usually in tort, to use reasonable skill and care in the provision of the design. The designer shall not automatically be liable merely due to the existence of design defects, even where the errors result from the designer's own error: the error generally must
be negligent before liability is established. However, the facts may lead to the implication of a term that the designer’s design would be reasonably fit for the purpose.

The scope of a designer’s duty may be affected by the involvement of third parties:

- the designer may have a duty to co-ordinate or assimilate their design.
- there may be an issue concerning the extent to which a designer may delegate any part of its duties to be performed by a third party such that, should the delegated design contain defects, the architect is no longer liable unless it acted negligently in delegating the work in the first place. The law is quite uncertain in this area.
- duties of care in tort derive from product liability cases in which the possibility of intermediate inspection by the client or a person retained by him may deny liability.
- an architect may become liable in circumstances other than failure to use reasonable skill and care e.g. a failure to comply with the directions from the client or to inform the client where the designer intends to depart from those directions.

The issue as to whether a Contractor owes a client a duty in tort has been the subject of considerable debate but generally, the Contractor does not owe such duty in the absence of special assumption of responsibility.