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PI Direct Newsletter

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Construction Issue

Contractors – watch out for other professionals' errors

A recent decision by the Court of Appeal in *CGA Brown Limited -v- Carr* provides a warning to contractors about relying on an architect's plans and drawings.

In brief, the Court of Appeal decided that the builders were liable for the full cost of repairing a defective roof because they should have realised that the drawings prepared by the architect were defective. They should have warned the clients about this before they continued with the construction of the roof.

In this particular case, the builders were instructed by their clients to add an extension to their property. The builders agreed to build the extension in accordance with drawings prepared by an architect. Work included an extension to add two dormer windows to the existing dormer window set into the slope of the roof, with flat roof section above them. The drawings said 'to align through the existing arrangement'. As it turned out the actual roof slopes were different to those shown on the drawings. This meant that if the flat roof was built in accordance with the architect's plans, there would be a problem.

By the time the builders had worked out that there was a problem, they had built the roof in accordance with the drawings. They then tried to sort out the problem by making a cold joint between the felt covering of the existing roof and the felt on the new roof. Unfortunately, this joint failed.

The builders then suggested another way to resolve the problem. The clients therefore accepted a quote to put a slightly pitched roof over the flat roof. However, although the builders delivered materials to the site, they failed to turn up. The roof began to leak and the clients eventually had to undertake emergency repair work. They sought the recovery of this from the builders.

The builders said that they should not be responsible for the architect's failure to prepare correct drawings. However, the Court of Appeal decided that the builders had also been negligent.

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They said that they should have spotted the problem with the plan. The Court decided that the clients were perfectly entitled to claim the full cost of re-felting the roof from the builders.

The builders went on to try and argue that they should not have to reimburse the whole of the cost for re-felting the roof. They said that this meant that the clients ended up with a better roof than they had actually contracted for. The Court of Appeal again disagreed. The Court said that as the clients had contracted with the builders to build a roof that was fit for purpose and did not leak, they were entitled to be compensated for the whole cost.

This decision provides a warning for builders that they are expected to use their professional expertise, not only in the workmanship carried out, but also by identifying potential difficulties with architect's drawings. We would add that in our

view it is only an obvious problem or error in the drawings that a builder will be expected to become aware of. The Court should take into account the builder's experience and the nature and the complexity of the building work to decide whether or not they should have seen any problems with the designs. Obviously each case depends on its own particular facts and circumstances.

However, the clear message to builders is to make sure they do not proceed with a building project, if they spot a potential problem with the design. They should warn of a potential problem in the drawings or specification. If they think a part of the design is dangerous they must warn and, if instructed to proceed, must press the point and seek a satisfactory determination by, for example, an independent expert. If they decide to remedy the defect by selecting a product or design solution they will be liable for its failure.

We hope that you find this edition of PI news of interest. We welcome feedback and should you require more information on the subjects raised in this newsletter please call our legal helpline on **020 7337 7522**. If you have any suggestions as to specific areas which might be the subject of future issues or wish to discuss your current PI provisions please contact **Emma Arnold** on **020 7337 7500** or e-mail emmaa@pidirect.co.uk

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