



eCaseNote

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PROJECT MISMANAGEMENT: CONSTRUCTION LAW AND PROFESSIONAL NEGLIGENCE

599291 Alberta Ltd. v. Luff
2005 ABQB 149, 44 C.L.R. (3d) 292

Our firm recently reviewed the above-noted case and thought a brief summary would be of interest to clients who either are engineers or project managers or deal with these professionals.

In the 2004 Alberta case of *599291 Alberta Ltd. v. Luff*, Mr. Luff retained the services of Mr. Sorenson, a professional engineer, to do the structural design, site engineering and construction management on a custom home. During the development of the project plans, the total cost of the project grew to more than twice the original estimate initially given by Sorenson. Sorenson did not inform Luff of the changes in cost before construction began, believing that the build was an “evolving project” that Luff wanted it built “at any cost”. Subsequently, Luff refused to pay certain suppliers of materials because of the disparity between the initial quote and the final cost. The suppliers sued Luff for non-payment of the monies owed. Luff, in turn, counterclaimed against Sorenson.

At trial, the Court addressed whether Sorenson had been negligent in failing to inform Luff of the increasing costs of the project. The Court found that Sorenson had prepared the initial cost estimate without gathering adequate factual information, and did so with the understanding that the estimate provided would be relied on by Luff. It also held that Luff had not been adequately advised of the increasing costs of the project. On this point, the Court emphasized the fact that Sorenson had been in possession of the project's final plans for a year prior to the commencement of construction, and that he had not, during that time, indicated to Luff that the original quote was no longer realistic.

The Court did not accept Sorenson's argument that the build had been an “evolving project”, the cost of which could not be estimated, and also rejected Sorenson's argument that Luff wanted the house built “at any cost”. It had been Sorenson's duty to cost the project by getting bids before the project started, and that it was negligent to begin construction before Sorenson, as the expert, communicated to Luff the true costs of the project. Sorenson was held liable for professional negligence and was ordered to pay half the outstanding amounts owing to the suppliers. However, Luff was also found negligent, contributing to his own losses by failing to obtain adequate legal advice, to follow up on warnings that signaled runaway costs, and to hold off on construction until an adequate cost estimate was completed.

This case stands for two principles. Firstly, a professional engineers or project manager owes a duty to clients to be as accurate as possible when advising them, and failing to perform in accordance with this duty may give rise to liability. Secondly, an owner still retains some overall responsibility for minimizing costs even when a construction manager has been engaged.

Should you wish to receive a full copy of this decision, or discuss its implications, feel free to contact our office at your convenience.

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For more information, or specific advice on matters of interest, please call our offices at (709) 579-2081