What is the extent of a quantity surveyor's duty of care?

The recent case of Dhamija and another v Sunningdale Joineries Ltd and others will be of interest to quantity surveyors and other professionals. It defines the extent of the duty of care in relation to valuing construction works for the purposes of interim certificates.

Facts

The employers Dinesh and Tani Dhamija instructed Sunningdale Joineries Ltd as contractor to build a house for them. Lewandowski Willcox Ltd was appointed as architect to design and project manage the construction of their house. The employers appointed McBains Cooper Consulting Ltd to carry out the quantity surveying work required by the building contract.

The quantity surveyor's professional appointment was evidenced in correspondence between the employer's architect and the quantity surveyor, and by the quantity surveyor's subsequent conduct in carrying out interim valuations.

Issues

A dispute arose concerning allegations of over-valuation of, and defects in, the contractor's works. The employers commenced proceedings against their appointed contractor, architect and quantity surveyor.

As part of the proceedings, the employers claimed the quantity surveyor owed them a duty only to value work that had been properly executed by the contractor and was not obviously defective. Since the quantity surveyor's appointment contained no express terms to this effect, the employers argued that this duty would need to be implied.

Decision

The court confirmed that a quantity surveyor must act with reasonable skill and care when valuing the works properly executed by the contractor for the purposes of issuing interim certificates. This term would be implied into any quantity surveyor's appointment, if no such express term exists.

However, the court decided that there is no legal foundation for implying a positive obligation on the quantity surveyor only to value work that was not obviously defective. The architect has overall responsibility for the quality of the works and should notify the quantity surveyor of any defects that may affect the valuation of an interim certificate.

Commentary

Reported decisions on the scope of a quantity surveyor's duties are few and far between. This is an important decision for quantity surveyors. It would also be of value to professionals whose appointments include valuation activities, such as project managers.

As the law stands, a quantity surveyor's duty is usually limited to issues of quantity. This duty does not extend to issues of quality, which are usually the architect's responsibility on a typical construction project. However, if quantity surveyors or other professionals do notice works which are obviously defective it would still be a matter of good practice to raise such issues with the architect.

In addition, notwithstanding the court's guidance on the subject of implied terms, quantity surveyors do need to be mindful of the express terms of their underlying appointments. In George Fischer Holdings Ltd v Multi Design Consultants Ltd, Davis Langdon & Everest quantity surveyor Davis Langdon & Everest expressly agreed that they would make visits to the site to monitor the contractor's workmanship and progress, check on the use of materials, check on the works' conformity to the specifications and drawings and report to the client generally on the progress and quality of the contractor's works. Unsurprisingly, Davis Langdon & Everest was held to be responsible for such matters.

Therefore, it is vitally important for quantity surveyors to be wary of the terms of their appointments. The limitations on the scope of duty implied into quantity surveyor's appointments will clearly be overridden if the quantity surveyor has expressly accepted obligations relating to matters of quality and workmanship. "The devil is in the detail", as they say.

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