Neutral Citation No. [2014] NIQB 113 | *Ref:* **WEA9369**

Judgment: approved by the Court for handing down | *Delivered:* **18/08/2014**
*(subject to editorial corrections)**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION

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BETWEEN:

KIERAN MACKEL
and MICHAEL DOHERTY
practicing as Mackel and Doherty, Architects

Plaintiffs;

-v-

DECLAN RAFFERTY
practicing as Declan Rafferty, Architects

Defendant.

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WEATHRUP J

[1] This is the plaintiffs' claim for €116,738.31 due in respect of architectural services provided by the plaintiffs for the defendant. Mr Johnston appeared on behalf of the plaintiffs and the defendant appeared as a litigant in person.

[2] The plaintiffs sue as architects based in Belfast. The defendant was also an architect and was based in Howth, County Dublin. During 2006 and 2007 the plaintiffs agreed to provide architectural services for the defendant in respect of a number of projects in the Republic of Ireland and the defendant agreed the rate of fees in respect of those services. Five projects have given rise to a dispute about fees, first of all the Portumna Housing Project, secondly the Medical Centre at Loughrea, thirdly the Mount Pleasant Housing Project at Loughrea, fourthly Loughrea Shopping Centre and fifthly the Omac Laboratories Project at Loughrea.

[3] The professional contacts with the defendant were by the first plaintiff on behalf of the partnership. The defendant in effect sub-contracted architectural work to the plaintiffs. He undertook to pay for those services, introduced a mark-up to cover his own profit and would charge the client accordingly. Some payments were

made by the defendant in respect of the architectural services provided. In essence the defendant disputes agreeing to some of the work for which claims have been made, claims that delays took place in providing some of the work and that some work was substandard.

[4] Kieran Mackel left the partnership with Michael Doherty in 2008. The present proceedings are in effect undertaken by the second plaintiff for the recovery of fees due to the partnership before the dissolution of that partnership. I refer to the partnership as the plaintiffs. There were later professional contacts between the first plaintiff and the defendant and a proposal for a partnership between them but the partnership arrangements could not be sustained. In the course of those contacts the first plaintiff was paid by the defendant the sum of €40,000 on 20 March 2008. The occasion for that payment has been the subject of some debate and to that debate I will return. The defendant ceased practice as an architect in April 2010.

[5] I propose to look briefly at each of the five projects. I should say first of all that, as far as the make-up of each of the claims is concerned, documents have been provided, figures have been set out and evidence has been given on behalf of the plaintiffs. I am satisfied on the figures. Therefore I will not be examining further any of the figures claimed. The issue that arises in respect of the five projects is whether or not, in the circumstances of each project, the defendant is liable for the fees that have been charged by the plaintiffs.

[6] First of all the Portumna Housing Project where the plaintiffs claim €1,950.17. This sum is made up of two items, being €1,135 and €866.00, with credit due of €50.83. As to the first item, on 18 October 2007 the plaintiffs issued an invoice for €1,158.80 for design drawings and the printing of drawings. The sum of €423.80 was paid in respect of printing only on the basis that no payments were due in respect of the design drawings. The balance therefore is €1,135. Students employed by the plaintiffs were engaged in the work. I have heard evidence about the students being engaged by the plaintiffs, the students being engaged by the defendant, the students leaving and taking up employment in Europe and thereafter being reengaged. I am satisfied that the students undertook the hours claimed and that they did so in their capacity as employees of the plaintiff. On 17 April 2008 the defendant sought recovery of the amount claimed from the client. It may be that he did not recover that sum but that is an issue between the defendant and the client. As between the defendant and the plaintiffs I am satisfied that the money claimed is due and owing to the plaintiffs.

[7] The second item is €866.00 which was invoiced on 11 April 2008 in respect of drawings. The defendant denies that the work was ordered from the plaintiffs and claims that he made payments to the students. He might well have made some payments to the students in respect of work undertaken on his behalf but I am satisfied that additional work was sought by the defendant from the plaintiffs and completed by the students on behalf of the plaintiffs. On 24 April 2008 the defendant sought recovery of this sum from the client. I am satisfied that the

amount claimed remains due and owing to the plaintiffs in respect of that work. Against those two items there are two credits due in the sum of €14.33 and €36.50. I am satisfied that the total of €1,950.17 is due to the plaintiffs.

[8] The second claim is in respect of the Medical Centre where the amount claimed is €24,136. The plaintiffs' fee in respect of this work was €24,000, the defendant adding a margin of €7,000 and the fee to the client therefore being €31,000. On 23 February 2007 the plaintiffs claimed the sum due to them. On 12 March 2007 the defendant invoiced the client for the total amount, that is the plaintiffs' fee and the defendant's fee. On 16 July 2008 the defendant confirmed to the plaintiffs that the sum would be paid to the plaintiffs upon the defendant's receipt of the sum from the client. I am satisfied that the agreement between the plaintiffs and the defendant was not conditional on receipt of payment by the defendant. Any issue about payment by the client is a matter between the defendant and the client. As between the defendant and the plaintiffs the sum claimed remains due and owing. On 12 November 2008 the plaintiffs received confirmation from the client that the client had paid the defendant the amount of this claim on 8 May 2007.

[9] The defendant's evidence was that the payment of this fee would have been included in the €40,000 paid to the first plaintiff after he left the plaintiff partnership. I am satisfied that the payment of €40,000, which I am satisfied was paid to the first plaintiff, did not include a sum in respect of the fees due for the Medical Centre. Accordingly I find that the sum of €24,136 is due by the defendant to the plaintiffs.

[10] The third claim I will consider relates to the Omac Laboratories Project where the amount claimed is €10,542.90. The plaintiffs' fee in respect of this work was agreed at €10,500, the defendant's fee which was to be added when the bill was submitted to the client was €3,500 and hence the client's liability would have been €14,000. On 22 February 2007 the defendant invoiced the client for the total of €14,000. On 1 March 2007 the plaintiffs claimed their fee for this work. By letter dated 16 July 2007 the defendant stated that payment of the fee would be made to the plaintiffs when the client had paid the money. Again I am satisfied that prepayment by the client was not a term on which the work was undertaken by the plaintiffs. Any issue about recovery of the fee by the defendant from the client is a matter between the defendant and the client. Again it was suggested by the defendant, rather more tentatively on this occasion, that the fee claimed may have been included in the €40,000 paid to the first plaintiff. I am satisfied that the payment of €40,000 did not include any payment in respect of Omac Laboratories. I am therefore satisfied that the sum of €10,542.90 remains due and owing by the defendant to the plaintiffs.

[11] The fourth claim is in respect of the Mount Pleasant Housing Project in the sum of €1,527.50. On 2 July 2008 an invoice was issued to the defendant in that sum for services rendered by the plaintiffs. The defendant denies that instructions were issued in respect of the work. There were a number of e-mails exchanged in respect of this work. I am satisfied, having considered that evidence, that there was indeed

discussion and what amounted to agreement in respect of this additional work and that the sum claimed is due to the plaintiffs. I therefore find the sum of €1,527.50 is due and owing by the defendant.

[12] The fifth claim is in respect of the Loughrea Shopping Centre and the amount claimed is €78,530.11. The total is made up of three separate items. First of all the sum of €6188.54. An invoice issued by the plaintiffs on 29 November 2007 for the sum of €107,106.28 was amended to €98,043.34. It represented a claim for payment in respect of work on the project up to stage D. On 17 July 2007 the defendant paid €91,854.80. This item of claim is therefore in respect of the balance of the amount of the amended invoice and the payment made. I have really heard no satisfactory explanation for that balance not having been paid. I am satisfied therefore that the sum of €6,188.54 remains due and owing by the defendant in respect of the stage D work.

[13] The second part of this claim is the sum of €50,000. In respect of work to stage F, G there had been an agreed fee due to the plaintiffs of €100,000 to which the defendant would add €30,000 as his mark up to the client. An invoice was issued on 8 April 2008 for work to stage FG in the sum of €100,000. On 16 July 2008 the defendant paid €50,000. The defendant challenged the adequacy of the plaintiffs work and alleged delay in the completion of that work. The result, according to the defendant, was the requirement for the defendant to complete extra work in respect of the drawings. This extra work was undertaken on behalf of the defendant by the first plaintiff after he had left the partnership with the second plaintiff and by an Enda Cavanagh. Additional payments therefore had to be made by the defendant for the additional work.

[14] The plaintiffs' completion date for the work was extended to April 2008. I am satisfied that the first plaintiff was undertaking private work for the defendant before that extended date had expired. Kieran Mackel's role becomes confusing because, for a time he was acting as a partner with the second plaintiff, he was later acting in his personal capacity and for a period he was acting as a partner with the defendant. On 20 March 2008 he was paid the sum of €40,000. I am satisfied that that payment made by the defendant to Kieran Mackle related to work that he had undertaken on the Loughrea Shopping Centre after he left the partnership with the second plaintiff. As stated above I am satisfied that the payment did not relate to any works undertaken by the plaintiffs in respect of the Medical Centre or any works undertaken by the plaintiffs in respect of Omac Laboratories.

[15] The other complication in respect of this work to stage F, G is the dispute about the extent of the work that was required. The plaintiffs talked about production drawings, the defendant talked about construction drawings. This was a project where the developer was the builder and the contract was not going out to tender and the drawings were being prepared accordingly. It was a shell and core building and the developer and the tenant were to decide on the finish of the work.

[16] The extent of the work required is determined by the agreement between the parties. The contractual arrangement was that the plaintiffs would complete the work to RIBA work stages F, G. Stage F is production information for tender stages and construction stages. Stage G is tender documentation with sufficient detail for a tender or tenders to be obtained. Some work could not be completed by the plaintiffs to that stage because no decision had been taken on the details required. As to the adequacy of the drawings there was evidence received from two expert witnesses. The experts completed comprehensive reports and a schedule that contained the comments of each in relation to specified items. I do not propose to go through the whole of that evidence. As an illustration I take the first item, named item 8, where the complaints were that there was no adequate detail provided on the drawings for the rain water discharge points, there were no details of the roof access, there was a fall arrest system that was not specified and the details for roof construction and finishes were incomplete. The responding comments were that the number of discharge points for the rain water could not be identified when the drawings were being drafted due to on-going changes in the floor plans, the roof access was said to have been indicated on the drawing, the fall arrest system was a builder developer selection item and the locations were indicated by a dashed line, that it was only when the roof structure was changed to a portal frame that a valley and ridge detail were provided by the later architect.

[17] As one further illustration I take the last item, namely item 25. The complaints were that no details were provided for the electrical intake in the ESB sub-station. The responding comment was that the size and location of the sub-station had still to be identified and therefore the drawings were unable to include that detail at the time of the drafting.

[18] I am satisfied that the work was not completed to comply fully with stage F, G. Part of the reason was that some work had been completed when details had not been determined or were not available. That does not obviate the need for the plaintiffs to complete the work to the standard required by the agreement in order to be entitled to the agreed fees. In making the criticisms of the drawings it was indicated that the value of work actually undertaken by the plaintiffs was satisfied by the interim payment of €50,000 made on 16 July 2008. On the other hand it was indicated on behalf of the plaintiffs that if there was any deficiency in achieving the standard of work to comply with stage F, G it was at most but 5% of the overall value.

[19] In considering the schedule and the other evidence it is difficult to assess the overall extent to which the work was completed to stage F, G. I am satisfied that some work was not completed to that stage and that the plaintiffs' fee must be reduced accordingly. I am proposing to adopt a figure of 75% of the work having been completed when I take note of the criticisms and the responding comments. In respect of this second item of the Loughrea Shopping Centre claim I award the plaintiffs €25,000.

[20] The third part of the claim is the sum of €22,341.56. An invoice was issued on 1 July 2008 for €26,111.50 for additional works completed after the invoice referred to above was issued on 29 July 2007. A deduction of 12½% had been agreed and was later increased to a deduction of 25%. The defendant denied that instructions had been given to the plaintiffs in respect of this work. There are e-mails referring to the added works and I am satisfied that, informal as it was, as in so many respects in relation to all of these projects, there was an agreement in respect of the additional works. The plaintiffs are entitled to the amount claimed in respect of these works. I find for the plaintiffs in respect of the sum €22,341.56.

[21] Accordingly I am allowing the plaintiffs' claim to the full extent claimed less the sum of €25,000 deducted for the reasons given above. The plaintiffs have their costs.