IT'S CALLED A CONTRACT

By Tom Grace

Introduction

A recent decision of the Full Court of the Supreme Court of South Australia demonstrates the horrendous consequences which may result from a dispute as to what works were included in a home renovation contract.

In or around June 2011, Mr McIntyre contacted SA Quality Roofing Services ("**QRS**") requesting a quote for the construction of a verandah and other works at his house.

Three separate quotes were supplied by QRS being for roof restoration work, replacement of gutters and downpipes, and to supply and install a new curved verandah. The verandah quote also referred to "optional extras," relating to work to enclose the verandah.

In July 2011 the QRS salesperson again attended at the property to further discuss the quotations. The parties agreed to go ahead, although there was a later disagreement about which documents were exchanged on that day.

A number of documents were produced including the Quote, the Construction Plan, Contract Details, plans and drawings submitted to the local council in August 2011, and a variation to the Contract agreed in September 2011. The variation, in part, increased the area of glass on the enclosure to "give a clear view over the lake". The Construction Plan, drawn by QRS in October 2011, envisaged enclosure to a full height, completely sealed and enclosed.

The August 2011 Application for Development Approval was lodged by QRS with the local council. The application included site floor plans and site elevation for the verandah but made no reference to the verandah being enclosed. It later emerged that QRS did not hold a licence that enabled it to construct an enclosed verandah.

In September 2011, the Council granted Development Plan Consent in relation to the construction of the verandah, stating the "verandah shall not be enclosed on any side with any solid material, roller door, or the like".

In November 2011 QRS built a verandah to the southern and western elevations of the house and the McIntyre's laid paving under the verandah. Ms McIntyre was not happy with the work performed by QRS and in late November, she wrote to QRS asking for "plans for works including 3D views as requested so I can get an idea on what we have purchased". Subsequently, Ms McIntyre wrote again saying "the verandah needs to be finished before any money is paid".

Ms McIntyre repeated her request for plans on other occasions before receiving, on 15 February 2012, a drawing showing a gap between the southern and western verandahs.

The parties were at odds about whether there should have been a "hip" connecting the two verandahs and what type of enclosure was included in the contract. The McIntyres considered the contract specified the construction of a single enclosed "return style verandah", whereas QRS maintained the specifications were for the construction of two curved verandahs on the southern and western sides of the property, which would include the "gap" between them. QRS contended the enclosed nature of the verandah was to be further developed and agreed after construction had commenced.

The McIntyres approached the Council to complain about the verandahs. The Council inspected and found the verandah as it had been erected, differed from the approved drawings, and a new application was required to seek retrospective approval.

QRS applied for that approval but the McIntyres refused to give their consent to the new application. Consequently, the Council declined to entertain the application. A stalemate emerged.

The parties go to Court

QRS wanted payment for the work it had completed and issued proceedings in Court. The McIntyres issued a defence and a counterclaim.

In 2013, the Council brought proceedings in the ERD Court due to the construction of the verandah being different to the council approval. In early 2014, the Court ordered for the demolition of the verandah. Before that occurred, the McIntyres made other alterations to their home that required the removal of at least part of the verandah. Each party then sought the legal costs of the other in relation to the ERD Court proceedings.

The District Court decision

The District Court proceedings[1] went to trial in November 2015. In June 2017, the Judge delivered her verdict, finding in favour of QRS. The Judge found that the parties had agreed for the construction of two separate verandahs, with an intention to further develop and vary the design by enclosing the walls of the verandah as the work proceeded.

The Judge found QRS was not licenced to construct an enclosed verandah. The absence of the licence precluded it from recovering the contract sum, but an alternative claim in quantum merit was granted. QRS was entitled to the sum of $37,360 but the cost of rectifying defects in the sum of $9,457 reduced that entitlement to $27,903, plus interest from the date of completion of the verandahs.

The Judge found the McIntyres should pay all of the costs of QRS in the ERD Court, including the costs it had been required to pay to the Council, on the basis that they had encouraged the Council to issue proceedings.

The appeal to the Full Court

The McIntyre's appealed to the Full Court[2]. The Full Court unanimously upheld the appeal. The Court reiterated the importance of the written Contract and the need, in determining any dispute, to interpret the documents that form the contract. It is the content of those documents, viewed objectively, that determines what the parties have agreed.

The Court said that the contract was clear in stating that the verandah was to be a single connected construction of the two verandahs and was to be fully enclosed.

The discussions of the parties at the time of forming the Contract and what they intended when they reached the agreement, are generally irrelevant, when the documents are clear.

While documents produced had showed a different type of construction, including the separated verandahs and the absence of the full enclosure, these documents did not form part of the Contract and were not relevant to the enquiry as to what the parties had agreed. Given the reversal of the decision of the District Court on the issue of the Contract, the contingent findings as to liability for the costs of the ERD Court proceedings were also reversed.

The matter was remitted to be heard by another Judge in the District Court with the following issues to be determined:

- resolution of the McIntyre's' cross-action and counterclaim;
- costs of the proceedings in the ERD Court;
- costs of the proceedings in the Magistrates and District Courts; and
- questions of pre and post-judgment interest.

Conclusion

The legal fees incurred by the parties in this dispute are not known but will almost certainly exceed by an order of magnitude the quantum of the original contract sum.

The intention of one or other of the parties is irrelevant to the meaning of the written contract. Subsequent conduct is irrelevant to the bargain that has been struck. Contractors who construct at variance to the approved plans and specifications run the risk of alienating both their clients and the relevant authorities.

This case is a stark reminder of the way in which disputes escalate in magnitude with the passage of time. Prompt attention to dispute resolution, including seeking appropriate expert advice, in the early stages of a dispute, is the most economic and sustainable way of construction contracting.

End Notes

[1] Quality Roofing Services P/L v McIntyre & Anor [2017] SADC 118

[2] McIntyre v Quality Roofing Services Pty Ltd [2019] SASCFC 29

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