

NORTHERN SITES

GENERAL INFORMATION

Background

Metropolitan Developments LTD (MDL) acquired a city site for a hotel development. It was a tight but well positioned site and MDL had no trouble in getting City Hotels plc interested in purchasing the completed development. Indeed, a back-to-back agreement was made that City Hotels take over the building on the day that the Contract Completion Certificate was issued.

The contract was let to Capability Builders Ltd on a JCT (with Contractors Design) contract. The contract sum was negotiated at £5.78 million excluding the fitting out, decorations and furnishings. MDL pre-sold to City Hotels plc for £17.5 million including the site, yielding around £5 million profit after deducting site costs, consultants fees and funding.

Dispute

A problem arose with the setting out of the building footprint. The boundary with the public footpath on the north side of the site conflicted with the survey drawing. When this was checked with the Local Authority, it became obvious that the survey drawing, which had been obtained by MDL from the previous site owner, was wrong. The north end of the building had to be redesigned, involving the loss of five bedrooms.

Capability Builders claimed for an extension in time and costs associated with the redesign but MDL refused on the grounds that the Contract Documents required the contractor to check all information provided by the Employer (MDL). Capability referred the matter to Adjudication and a decision was made in their favour of a ten week extension to the Contract Period, plus loss and expense (to be quantified). MDL have not complied with the decision.

Capability Builders Ltd state that Contract Completion was achieved ten weeks after the original Completion Date (ie within the extended period granted by the Adjudicator), but no Certificate was issued. They threatened MDL with breach of contract and this mediation is the result.

In their mediation summary MDL have disclosed that City Hotels plc have withdrawn from their back-to-back agreement on the grounds that the building is not as contracted (ie five bedrooms less). Everyone knows that, since the original agreement between MDL and City Hotels, the bottom has dropped out of the tourist trade and, as a result, hotel room rates are barely 60% of those forecast. MDL believe that is the real reason why CITY have withdrawn and are currently pursuing them to honour their agreement. However, their lawyers have advised that it will be very difficult to succeed against City Hotels and so they have adopted the same position with Capability Builders as City had with MDL (ie the completed building is

not as contracted). No Completion Certificate has been issued, say MDL, because the Contract Specification has not been fulfilled.

Claim

Capability Builders have held back proceeding against MDL in anticipation of this mediation. Their claim is made up as follows:

Balance of agreed Final Account	524,000
Loss and Expense for 10 weeks	130,000
Return of retained LAD's	<u>250,000</u>
<u>Total Claim</u>	<u>£904,000</u>

Plus interest and costs

Attending the Mediation

For Metropolitan Developments Ltd:
Chief Executive
Projects Development Director

For Capability Builders Ltd:
Contracts Director
Regional Partner of Everhuts Lawyers

Co-Mediators

NOTE:

During the mediation there will be five ethical challenges for the Co-Mediators. The Co-Mediators should take time out to discuss the options and then discuss their proposed course of action with the other role players. The role players may offer other alternatives. The mediation will then continue on the agreed course.

In the plenary the question will also be raised "In what circumstances may the ethical issue be acceptable?"