

# The Star Legals



## Contractual protection vital during building slumps, warns JBCC

LEGALS WRITER

IN the clamour to find work during building industry slumps, contractors and other parties involved now readily accept work without protecting themselves contractually – with most of the resulting disputes centred around payment, warns Uwe Putlitz, CEO of the Joint Building Contracts Committee (JBCC).

JBCC is a non-profit company that represents building owners and developers, professional consultants, and general and specialist contractors who provide input for the compilation of JBCC agreements (contracts) that portray the consensus view of the committee's constituent members.

Putlitz says surveys dealing with disputes all show a similar pattern. “Most claims relate to late, partial or non-payment of certified amounts. Contractors and building consultants cannot function without regular payment – and they in turn must pay others in the supply chain. Nowhere in world can contractors and consultants finance a project for a client - unless it's specifically a design-finance-build-operate project. Therefore, there is globally the trend to outlaw all ‘pay when paid’-clauses which also applies in South Africa - but that does not mean the end of payment disputes.”

Putlitz says, in JBCC's experience, other typical reasons for claims on building projects include:

Poor project definition resulting in numerous changes to “correct the scope” – but only after the contractor has been appointed. This almost inevitably will affect the price and the duration of the construction period – and cause stress;

Unrealistic expectations by the client about the accuracy and standard of construction, and the quality of finishes expected compared with the price he or she is prepared to pay. “This can seriously sour the relationship between the client and the professional team. And it's often the professional team who have neglected to convey realism to their client,” Putlitz observes;

Poor contract administration, including aspects such as complying with contract stipulations, holding regular meetings, compiling accurate minutes of meetings, and distributing minutes timeously. Such sloppy administration could also include not maintaining schedules of information required or issued, of instructions issued; and of certified payments;

Poor communication between the client and the contractor, and with the professional team. “This also happens within the professional team, resulting in documentation errors and omissions in tender and construction information.”; and

Poor knowledge of the rights and obligations in the standard



Uwe Putlitz, CEO of JBCC, says clamour for work during building slumps leads to the disregard of protection in contracts.

form contract used. “Generally, the conditions in intent do not differ between contracts - but the vocabulary used is specific to that contract. Virtually all contracts include two or more clauses where a specific notice period and procedure must be adhered to or the opportunity to claim is lost. Such claims tend to involve additional time and money.”

He adds: “These five conditions cause problems and disruptive disputes on building sites throughout the world. The potential for disputes in these circumstances are well-known – but continues to be either overlooked or ignored particularly when there is a serious shortage of work,” Putlitz adds.

He says JBCC has completed a revision of its Principal Building Agreement. The revision was undertaken because JBCC constituent members felt the time had come to issue a revised Standard Form of Building Contract which has as its main aim the avoidance of disputes in contractual matters in the industry.

Noteworthy among the changes for the 2018 edition are:

The adaptation of the text for easier reading with fewer cross-references;

- Revised layout of the contract data;
- Revision of certain definitions; and
- Rewording of clauses relating to insurances and payments.