



Building slumps worsen payment problems, JBCC cautions

In the clamour to find work during building industry slumps, contractors and other parties involved readily accept work without protecting themselves contractually – with most of the resulting disputes centred around payment, says 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 all 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.”

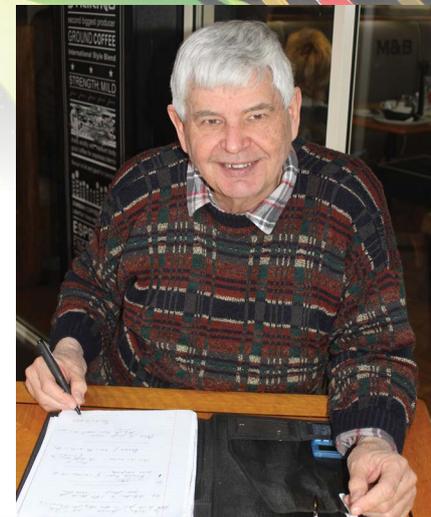
Putlitz says, in JBCC’s experience, other typical reasons for claims on building projects include:

- 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 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, not necessarily in this order, 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 when there is a serious shortage of work.” ■



Uwe Putlitz, CEO of the Joint Building Contracts Committee