

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

CIVIL DIVISION

BUILDING AND PROPERTY LIST

VCAT REFERENCE NO. BP377/2018

CATCHWORDS

Domestic Building: contract between owner builder and architect for architectural services; issue with manufacture of steel beams; modification to manufactured steel required; whether architect liable to owner builder for allegedly supplying incorrect working drawings; whether breach of contract; whether architect is liable to pay owner builder for costs arising from steel manufacturer modifying steel.

APPLICANT	Rien Crooymans
RESPONDENT	Sergio Ivan Ramon De Jesus Uribe Lenis trading as Drawing South Homes
WHERE HELD	Melbourne
BEFORE	F. Marks, Member
HEARING TYPE	Small Claim Hearing
DATE OF HEARING	6 June 2018
DATE OF ORDER	6 June 2018
CITATION	Crooymans v Uribe (Building and Property) [2018] VCAT 932

ORDER

The application is dismissed.

F. Marks
Member

APPEARANCES:

For Applicant	Mr R Crooymans in person
For Respondent	Mr S Uribe in person

REASONS

The dispute

- 1 On 6 June 2018 I made orders dismissing the applicant's claim. After making my orders the applicant asked for written reasons which I now provide.
- 2 The applicant, Mr Crooymans, is an owner builder. The respondent, Mr Uribe, is an architect. In 2017 Mr Crooymans built a new home in Dromana. Mr Uribe produced working drawings for Mr Crooymans in pdf format. Mr Uribe sent his working drawings in CAD format to the engineers and steel manufacturer.
- 3 It transpires that during construction of his home, a problem arose with the installation of some of the steel beams. Consequently, the steel manufacturer modified the lower floor steel beams and charged Mr Crooymans \$2,908 for the additional work.
- 4 Mr Crooymans claims Mr Uribe is liable for the costs associated with the steel modification work. He says Mr Uribe produced incorrect working drawings in CAD format, which were relied on by the steel manufacturer and its draftsman. He says Mr Uribe admitted saying he made a mistake with some angles in his drawings produced in CAD format. Mr Crooymans claims damages of \$3,745.
- 5 Mr Uribe denies liability. He admits telling Mr Crooymans he made a mistake with an angle in the drawing in CAD format, but says his statement must be understood in the context of his discussions with Mr Crooymans at that time. He says the drawings sent to Mr Crooymans are accurate.

The issues

- 6 The issues for determination are:
 - (a) What were the terms of the contract?
 - (b) Did Mr Uribe breach the contract?
 - (c) If yes, is Mr Crooymans entitled to damages?

What were the terms of the contract?

- 7 The parties entered into a contract which comprised Mr Uribe's quotation no 130-15 dated 13 November 2015 (**Contract**). The terms of the Contract are not in dispute.
- 8 The scope of works comprised the supply of preliminary designs, town planning consulting and application, the preparation of working drawings and an application for a building permit.
- 9 The working drawings included floor plans, a site plan, elevations, and section views. The Contract required Mr Uribe to supply copies of the plans to Mr Crooymans. Mr Uribe performed his work under the Contract and

supplied working drawings to Mr Crooymans. Mr Crooymans paid Mr Uribe for his work.

Did Mr Uribe breach the contract?

The facts

- 10 Much of the evidence was undisputed. Mr Crooymans engaged Mr Uribe to provide architectural services as set out in the Contract. As owner builder, Mr Crooymans engaged other professionals and trades people to assist him in building his home. He engaged Chadwick Grimmond, consulting engineers (**engineers**), to draft engineering drawings. He engaged builders to assist him with the building works. He also engaged APR Structural Steel (**APR Steel**) to manufacture steel beams required for the construction of his home.
- 11 As required by the Contract, Mr Uribe drafted working drawings for Mr Crooymans dated 6 June 2016 which comprised pages WD 01 to WD 14 (**Working Drawings**). Page WD01 is made up of general notes. Page WD02 is the site plan. Pages WD03 to WD014 comprise the floor plans, elevations and sections. Mr Uribe gave Mr Crooymans his Working Drawings in pdf format.
- 12 At the request of Mr Crooymans, Mr Uribe sent his Working Drawings to the engineers and APR Steel in CAD format. ¹ CAD format is used by engineers to draft their drawings. APR Steel then sent those drawings to its draftsman, T & K Scatchard Pty Ltd (**Scatchard**). Scatchard then drafted its shop drawings, required to enable APR Steel to manufacture its structural steelwork.
- 13 On 14 February 2017 APR Steel emailed Scatchard's shop drawings to the engineers and to Mr Uribe, for review and approval. Mr Uribe quoted Mr Crooymans a fee to review Scatchard's shop drawings, but Mr Crooymans did not agree to pay his fee.
- 14 Consequently, Mr Uribe did not review nor approve Scatchard's shop drawings. The engineers signed off on the shop drawings.
- 15 On 21 March 2017 APR Steel erected the steel beams. On 29 March 2017, when measuring timber for the deck floor, Mr Crooymans discovered a discrepancy of about 100 mm in length between some of the steel beams. He also discovered that some of the angles between certain beams were 88.5 degrees and not 90 degrees as required. He notified Mr Uribe of this problem.
- 16 On 31 March 2017 Mr Crooymans met with Mr Uribe to discuss the problem with the steelwork. Their meeting followed telephone discussions and emails between the parties. Mr Crooymans made the following notes of the meeting in his diary "Met Sergio and showed him the problem. He advised

¹ Computer Aided Design.

me that it was his mistake and it occurred when he turned the deck boards around”.

- 17 Consequently, APR Steel modified the steel beams for the lower floor, after it received revised drawings from the engineers.

Mr Crooymans' evidence

- 18 Mr Crooymans said Mr Robson, director of APR Steel, told him the problem with the steel beams arose because Mr Uribe gave Mr Robson incorrect Working Drawings which he then sent to his draftsman. Mr Robson told him Scatchard relied on Mr Uribe's Working Drawings in drafting steel beams which did not run parallel.
- 19 Mr Crooymans produced 3 pages of screen shots of what he said were Mr Uribe's Working Drawings in CAD format. He said Mr Robson had annotated the pages and given them to him. The first page from Working Drawing WD04 showed an angle between steel beams of 89 degrees measured in CAD. The second page from Working Drawing WD03 also showed an angle between steel beams of 89 degrees measured in CAD. The third page showed an angle of 90 degrees. He said Mr Robson told him the third page was given to him after APR Steel had installed the original steel beams.
- 20 He said Mr Robson told him APR Steel, in manufacturing the steel beams, followed Mr Uribe's angle of 89 degrees. He said Mr Robson stated in the screen shot that at no time did APR Steel assume that any other angles should be used than those measured on the CAD files. This was because there were other angles on the drawings that he said were not 90 degrees.
- 21 Mr Crooymans admitted he did not agree to pay Mr Uribe to approve Scatchard's shop drawings. Mr Crooymans also admitted that Mr Uribe did not sign off nor approve, the shop drawings because he would not do so without being paid. Mr Crooymans also admitted that the engineers signed off on the drawings.

Mr Uribe's evidence

- 22 Mr Uribe said his Working Drawings in pdf format were accurate. He said they did not expressly state an angle dimension of 90 degrees because Australian Standard AS 1100.101-1992 did not require angles of 90 degrees to be dimensioned unless required for clarity.
- 23 He said after Mr Crooymans alerted him to the problem with the steel beams, he measured various angles on the CAD drawing which he later discussed with Mr Crooymans at their meeting on 31 March 2017.
- 24 He said he measured the angles as the drawings in CAD format did not show them. He conceded that when he measured the angles in the Working Drawings in CAD format, he came up with different angles. In one corner he measured angles of 88.53 degrees and 90 degrees. He also measured angles of 90.00 degrees and angles of more than 90 degrees.

- 25 He gave the following explanation as to why he told Mr Crooymans he made a mistake when he met him on 31 March 2017 to discuss the problem with the steel beams. He said the Working Drawings in CAD format, contained many lines, most of which were used by engineers but not architects.
- 26 Mr Uribe said the difference in a couple of the angles not measuring 90 degrees in CAD format, must have arisen from him using lines which appeared in the drawings in CAD format but which did not appear in his Working Drawings in pdf produced using the Rivet computer program.
- 27 Mr Uribe said he measured different angles in the CAD format by using different lines as a starting point to measure the angles in question. He said he measured one angle as 89 degrees and not 90 degrees. He said the lines became difficult to see when he changed the direction of the timbers of the decking, which were shown as lines in the CAD format. He said an angle of 89 degrees was not a usual angle and was not a dimension that he used.
- 28 He said that there were no errors in the original pdf Working Drawings in pdf format that he gave Mr Crooymans. He said if there were any errors in the Working Drawings produced in CAD format then it was up to APR Steel to raise the issue with him prior to the manufacture of the steel beams. He reiterated that he did not sign off on Scatchard's shop drawings as Mr Crooymans would not pay him to do so.
- 29 Mr Uribe relied on the general notes in the Working Drawings on page WD01 which stated:

“The builder/contractor shall check and verify all dimensions, set backs, levels and specifications and all other relevant documentation on site prior to the commencement of any work and report any discrepancy to this office.”

Findings

- 30 As I have stated much of the evidence was not disputed. The area of dispute was around how the Working Drawings appeared in CAD format as against pdf format and whether the dimensions of angles expressly appeared in the drawings.
- 31 Having heard the evidence of the parties I prefer the sworn evidence of Mr Uribe, about the appearance of the Working Drawings in CAD format, to that of Mr Crooymans. Neither party produced the Working Drawings that Mr Uribe sent Mr Robson in CAD format.
- 32 Mr Crooymans' evidence about Mr Robson's observations of the Working Drawings was hearsay. Neither Mr Robson of APR Steel, or Mr Scatchard, attended the hearing or gave sworn evidence which could be tested. In contrast, Mr Uribe gave sworn evidence about what he observed when opening the Working Drawings in CAD format.

- 33 Of fundamental importance in this dispute is the fact that APR Steel sought the approval of both the engineers and Mr Uribe of Scatchard's shop drawings, prior to manufacture of the steel beams.
- 34 Of relevance is the fact that Mr Crooymans knew that the Scatchard's shop drawings had to be checked and approved by the engineers and Mr Uribe. That is why Scatchard, and in turn APR Steel, sought approval of the Scatchard shop drawings prior to the manufacture of the steel beams.
- 35 Having heard the evidence of the parties, I am not satisfied that Mr Uribe breached any term of the Contract in not reviewing or approving Scatchard's shop drawings.
- 36 I find that Mr Uribe was not required by the Contract to approve the Scatchard shop drawings. I find that Mr Uribe did not review or approve the shop drawings. I find that Mr Crooymans was aware of this fact as he did not agree to pay Mr Uribe for this work. I find that the engineers approved Scatchard's shop drawings.
- 37 I find that Mr Uribe complied with the terms of the Contract in preparing accurate Working Drawings for Mr Crooymans in pdf form. I find that the angles in the original Working Drawings sent in pdf format to Mr Crooymans were accurate.
- 38 I find that Mr Uribe's comment in the March 2017 meeting that he made a mistake does not amount to an admission of liability in this case. I find that, on being made aware of the problem with the manufactured steel in March 2017, Mr Uribe measured different dimensions for a couple of the angles, which were meant to be 90 degrees, by using different lines on the drawings in CAD format which represented the timber decking.
- 39 If I am wrong and there was an error in any of the angles in Mr Uribe's Working Drawings in the CAD format, then I find that Mr Uribe was not under any obligation to approve the Scatchard's shop drawings because Mr Crooymans would not pay him to do so.
- 40 Finally, I find that the general notes of Mr Uribe's Working Drawings required the builder and any contractors to independently check and verify all dimensions. In this case, I find that the responsibility lay with Mr Crooymans as owner builder and his consulting engineers to check and approve Scatchard's shop drawings.
- 41 As I have found that Mr Uribe has not breached the Contract. I must dismiss the proceeding.
- 42 I will make orders to that effect.

F. Marks
Member