Designer / Architect Delay Claims: Insights from the Ontario Superior Court of Justice

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In the realm of construction, project delays are inevitable yet potentially costly occurrences. The ability to accurately identify and claim these delays is a crucial skill for any party involved in a construction project. A recent case from the Ontario Superior Court of Justice in Onespace Unlimited Inc. v. Plus Development Group Corp. sheds light on the evidentiary standards required to substantiate claims of project delays, particularly for claims related to design errors and omissions.

Overview

In this case, the owner/developer claimed a sum of about $760,000 for a 100-day extended duration delay allegedly caused by the architect due to various design errors and omissions. The alleged errors encompassed a wide range of issues including missing gas lines, incorrect details for a windowsill, inadequate personnel, and poor work review, among others.

However, the court found several shortcomings in the owner/developer's claim. Firstly, there was a lack of clarity in defining the alleged design errors and omissions. The owner/developer failed to identify the specific drawings containing these errors, which is a fundamental step in substantiating a claim of design-related delays. Without

pinpointing the exact source of the errors, it becomes a herculean task to prove the alleged delays.

Furthermore, the court noted a significant lack of evidence supporting the claim that the architect was responsible for these errors and omissions. The days of delay claimed were merely unsubstantiated estimates provided by an individual from the owner/developer's side, which were reviewed but not corroborated with concrete evidence demonstrating the impact on the overall project duration.

The court also highlighted an essential distinction between a delay event and an overall project delay. A delay in a particular activity does not necessarily translate to an extended project duration. For a claim of extended duration to hold water, a causal link between the alleged delays and the extended project duration is imperative. The owner/developer's failure to provide evidence corroborating the delay from the alleged errors and omissions was a significant blow to their claim.

Moreover, the court found that the owner/developer did not meet the evidentiary onus of demonstrating any breach of contract or the standard of care by the architect, which would support liability for the alleged project delays. This underlines the necessity of a well-documented and evidence-backed claim when alleging project delays.

This case serves as a stark reminder of the rigorous evidentiary standards required to successfully claim project delays. It emphasizes the importance of clear documentation, precise identification of errors, and the provision of cogent evidence to support claims of project delays in the complex landscape of construction disputes.

Takeaway

Evidencing delay caused or not caused by design errors and omissions generally requires a delay claim methodology, which

in most cases is a schedule analysis. In a schedule analysis aimed at identifying delays due to design errors and omissions, the process begins with a thorough review of the project's baseline schedule and the as-built schedule. The baseline schedule represents the initial plan, while the as-built schedule reflects what actually transpired on the ground.

The crux of the analysis lies in identifying the design errors and omissions through a careful examination of the design drawings and other related documentation. Once these errors are identified, they are mapped to the specific activities in the schedule they affected. This mapping is crucial as it establishes the link between the design discrepancies and the activities that were delayed as a result.

The next step involves quantifying the delay caused by each design error or omission. This is achieved by comparing the planned and actual completion dates of the affected activities. The difference in completion dates illustrates the extent of delay attributable to the design errors.

Furthermore, the analysis delves into how these delays impacted the overall project timeline. It is not just about identifying the days of delay, but also understanding how these delays affected the sequence of activities, especially those on the critical path which directly impact the project's completion date.

The data extracted from this analysis provides a clear illustration of the delay days caused by design errors and omissions. It evidences the direct and indirect impacts of these errors on the project schedule, thereby providing a solid foundation for any claims or discussions related to project delays.

In essence, the schedule analysis serves as a practical tool to not only identify and quantify the delays but also to

provide a clear, evidence-backed narrative of how design errors and omissions contributed to these delays.

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