

Dear Property Owner, Building Contractor,

18 May 2020

Networking Partner or

Person involved in the Property- & Construction Industries

RE: DISPUTES IN THE CONSTRUCTION INDUSTRY

Notwithstanding various attempts both legally and by other disciplines to prevent and/or manage construction differences, it remains a problem and it seems to soar.

The core question is why different views are leading to disputes, notwithstanding all the methods, expertise, software et cetera. available in the marketplace.

In this complex environment (from bricklaying to highly sophisticated IT systems), participants from various professions, each with its own goals, must work together in delivering a final product.

In general terms the architectural styles, designs and requirements rocket to another level of complexity due to the design ability provided by the software, which raises the level of expertise required from the main building contractor to another level. The average building contractor or the material providers has not grown with these new technologies which create in itself a void in the marketplace. All of these leads to confusion, differences and ultimately to disputes.

One of the major problems experience is that the general market realizes that it is close to impossible to exercise the arbitration process notwithstanding its ideals that are written into all the major contracts. The cost to exercise these clauses is simply out of reach of both the client as wells as the contractor.

If conflicts are not professionally managed, they quickly turn into disputes. Disputes are one of the main factors which prevent the successful completion of any construction project.

CONFLICT VS. DISPUTE

There is confusion among construction professionals about the differences between conflict and a dispute, and these terms have been used interchangeably in the construction industry.



FLORIS SLABBERT

B. Art. et. Sc (Planning) TRP (SA)



(079) 529 88 33



admin@thestudiopractice.com



www.thestudiopractice.com

SERVICES:

Town Planning
Architecture
Interior Design
Alternative Dispute Resolutions

REGISTERED WITH:

SACPLAN
SACAP
NHBC
PIA

However, conflict and dispute are two distinct notations.

- **Conflicts** exist wherever there is an incompatibility of interest amongst parties. If a conflict is managed properly it is our experience that it leads to a better end product and circumvent costly dispute processes
- **Disputes** are associated with distinct justifiable issues and require external assistance in resolving differences normally associated with large capital losses.

With the experience gained by **The Studio Practice** the origin for disputes can be categorized as follows:

<u>PARTIES/ ROLE PLAYERS</u>	<u>CAUSES LEADING TO DISPUTES</u>
A. Owner related	Variations initiated by the owner
	Change of project scope
	Delay in providing possession of the site to the contractor
	Unrealistic expectations by the principal-agent/architect/owner
	Payment delays – payment certificates and deposits
	Delay in decision making
	Poor communication processes that are not followed up with minutes and site instructions
	Unsophisticated treatment of contractors
	Owners constant request to employ direct contractors
B. Contractor related	Lack of knowledge to interpret the contract and to implement it.
	Delays in work progress
	Time extensions
	The financial failure of the contractor to manage deposits etc.
	Payment certificates late not correct or over-claimed resulting in late payment
	Technical inadequacy of the contractor
	Under-tendering
	Quality of works
	Poor administration
	Poor contract implementation
C. Design related	Design errors or omissions
	Inadequate/incomplete specifications resulting in time delays, additional claims,
	Quality of design and growing tendency to refer items as “design and supply” or for “Engineers design”

	Time delays in providing critical information
D. Contract related	Ambiguities or items not clear in tender/contract documents
	No contract or substandard agreements
	Different interpretations of the contract provisions
	Construction plans not attachments to contract
	Insufficient track record of plans and documents provided
	Commencement of works before signage of contracts
	Contractual changes agreed to verbally or unimplementable agreements
E. Human behavior related	Adversarial/controversial culture
	Peoples tendency not to deal with issues resulting into differences and ultimately into disputes
	Lack of effective communication processes followed up in writing (minutes)
	Lack of team spirit
	The tendency of communication using "WhatsUp" or similar means of electronic communication. This ultimately become legal instructions unintentionally so by the author
F. Project-related	Site conditions
	Unforeseen changes
	Availability of materials
	Quality of materials
	No sufficient allowance made by the QS or owner for possible additions as all know that it is a reality
G. External factors	Weather and the efficient documentation thereof
	Legal and economic factors
H. Management	Lack of constructive and appropriate supervision
	Trust relations between parties
	Lack of interactions between parties
	Poor project administration
	The objectivity of role players
	Obstructive behavior
	The tendency by contractors to "create" Variation order" resulting in project creep
I. Financial	Over-expenditure on the bill of quantities
	Inconsequent measurement & pay-outs

	Lack of consistency
	Bill of quantity amendments
	Variation orders & Site instructions management
	Cash payment to avoid SARS/VAT obligations

CONSEQUENCES OF DISPUTES IN THE CONSTRUCTION INDUSTRIES

The side effects of a dispute in the construction industry is far more than the man on the street will or can ever imagine. There are so much as stake not only for the project that is involved but also the following parties e.g.

- The project
- The project Owner & business partners
- The building contractor and its workforce
- The design teams
- The professional- & supervision teams
- Sub - contractors
- Suppliers
- Families & relatives, etc.

The Studio Practice over years discovers over years with experience, interactions with the above parties and research that the following are the most common and touchable side-effects or negative impacts project as well as human/personal/individual related e.g.

- Incomplete projects
 - New project team to be established
 - Project guarantees at risk
 - Resignation of role players involved
 - Loss of time & end-product
- Obstructive acts by:
 - Project owner
 - Building contractor & sub-contractors
 - Product- / material supplier
 - Financial provider
- Financial
 - Non-availability of funds
 - Non- payments or loss of income
 - Frozen funds
 - Cross funding of project
- Emotional
 - Disrespectful treatment of parties involved

- Personal stress of individuals
- Obstruction of payments obligations
- Family conflict
- Team conflict
- Loss of focus, etc.

A FRESH APPROACH

The Studio Practice developed over time contract support to ensure effective communication leading both parties to deal with differences timeously.

In case of “unresolvable” differences that ultimately will lead to disputes and costly arbitration, The Studio Practice intervenes in the process by dealing with contract differences professionally and advise the parties through a proven process facilitating a cost-effective outcome.

Pending on the complexity of the differences, if the methodology of The Studio Practice is used, it remains small differences which can be resolved within a matter of days.

The effective management of relationships within a project within a structured agreement is an undeniable truth. The answer to The Studio Practice experienced does not only lies in “the state of the art” software, project plans, Gant charts et cetera, but rather in relationships and open communication processes.

There is only one step better than resolving disagreement and that is to prevent it. The Studio Practice deals with these processes daily. The Studio Practice believe in being sensitive but strict, do not jump to conclusions, finishing the project as 1st prize, evaluating all facts.

With this mindful and fresh approach success is reached time after time. Let The Studio Practice assist you, your business, your neighbor, family member or any Professional involved in this industries to resolve disputes. The only way to help is to formulate and discover the issues the matters at hand and to give the 1st step. Give us a call, schedule a meeting and the rest will follow.

Kind Regards

Floris & Cecile Slabbert

The Studio Practice

admin@thestudiopractice.com

www.thestudentpractice.com