

Liability for Serious Building Defects as applied in the United Arab Emirates

Our consultants in the United Arab Emirates must be aware, it is a fact of life for contractors and consultants irrespective of breach of contract or negligence, that liability for serious building defects is 10 years following handover.

The highest court in Dubai has recently confirmed the liability of contractor and consultant in the absence of any evidence of breach of contract or negligence by either party as follows.

A dispute arose out of construction of a factory, warehouse and ancillary buildings in the Jebel Ali Free Zone. The Building suffered the usual symptoms associated with differential movement of the foundations, which was attributed, by court appointed expert, to an increase in the soil moisture content and to the roots of trees planted adjacent to some parts of the structures. The damage appears to have occurred soon after handover of the building and well within 10 years.

The lower courts dismissed the building owner's claim for the full cost of repairs, citing the court appointed expert's conclusion that the building owner had failed to establish any connection between damage and the contractual obligations of the contractor and consultant.

The court applied a strict interpretation of Art 880 of the Civil Transactions Code (the source of decennial liability under local law) and reversed the judgement of the lower court emphasising the liability for the damage was not connected to breach of contract or negligence. The court emphasised the effect of Art 880 in the following terms "... - the obligation of the contractor and the consultant by providing a warranty against these defects (in accordance with Art 880) is an obligation to achieve a result and not to exert care. It is sufficient for the owner to prove that ...there are defects or cracks in the buildings and the facility threatening their safety and stability within a period of 10 years form handover for the liability of the contractor and the consultant arise even if the defects or the cracks are a result of a defect in the land. The owner is not required to prove the mistake by the contractor or the consultant because the existence of the defect in the building is by itself the mistake. The contractor or the consultant can't escape responsibility for the warranty by proving an intervening cause that could not be prevented..."

This decision, therefore, will make it even more difficult in the future for contractors and consultants to avoid the effect of Art 880 simply by reference to other provisions of the Civil Transaction Code. The most significant emphasis being that the existence of cracks was sufficient to trigger liability without analysis of their severity or structural significance.

In this jurisdiction the risk is managed by a combination of measures including third party designed audits and insurances. A present no contractual departure is possible. Instead the risk is carried by contractors and consultants without much, if any, attempt at mitigation or management. It should be noted that many professional indemnity policies, for example, provide consultants with indemnity in respect of loss or damage arising from a negligent act or negligent error and therefore may not respond to decennial liability claims. Because of the intensity and complexity of contraction at present it surely is a matter of time before decennial liability has a catastrophic effect on one or more business within the construction liability in the United Arab Emirates.

Please do not hesitate to contact Jeannette Eid on 9009 5800 for further information about building contracts in the United Arab Emirates.

Although all care and skill has been used in the preparation of this article, it is intended only to provide a general summary of the legislative changes and should not be relied upon as a substitute for professional advice.