

“VOICE” of an ARCHITECT EXPERT

By DAVID ERIK CHASE, Architect, AIA – 2023-1.

A Project Owner makes promises to an Architect and the Constructor. The Architect makes promises to the Owner and establishes the documented design intent, agreed to by the Owner, for the Constructor to perform the Work. The Constructor promises to the Owner to comply with the Architect's documented design intent in the Contract Documents, to carry out the Work.

All three Parties: Owner, Architect, and Constructor, initiate the Project with the expectation that the Architect's instruments of service will be of a sufficiently high standard to clearly and accurately illustrate all essential building components and systems, to enable the Constructor to satisfactorily complete the Work. The absolute performance of the Parties is controlled by the Contract Documents stipulating the design intent, construction quality, industry standards, applicable State Statutes and Agency of Jurisdiction minimum building codes, etc.

NEGLIGENCE FAILURE !

At any stage of the design and construction of a Project, negligence may threaten the original design intent, integrity of the Work, and/or the safety and welfare of its users and the public. After 20 years of opining on “130-plus” construction dispute matters, as an Architectural Expert Witness, Arbitrator and Mediator, representing 50/50 Plaintiff / Defendant professional case representations, although not a lawyer, my operational and deliberative understanding is that negligence is a conduct failure of the responsible Party, to exercise a duty of care which would be expected of an Architect or Constructor in like circumstances carrying out the Work.¹ It is the searching for performance negligence failures by any Party involved in a Project where errors, omissions, defects, and/or deficiencies are alleged, that drives the “litigation” bus.

CONTRACTS RULE !

Written or verbal, the essential documented contractual promises and/or behavioral promises of a verbal contract, is the duty of care foundation for all Parties to each other. Yes, there will be more likely than not, expanding documents such as copyright stipulations, multiple project use agreements, General and Supplementary Conditions, etc. But in my opinion, the key foundational and factual evidentiary measurement of duty are the primary Contracts...executed between the Owner and Architect and Owner and the Constructor. This is where to begin.

¹ Each State and Jurisdiction I practice in may have variations on the performance requirements of Architects and Constructors to protect against negligent acts, usually embodied in expanded duty.

From these promises, the performance obligations of all Parties, specified in the scope of Work, financial considerations, timeframes, etc. and my review and analysis, are from which my opinions “spring” to determine causations and negligence acts.

CAUSATION CONTEXT !

The end game. When disputed design, constructed errors, omissions, defects, and/or deficiencies are alleged, they more than likely will be complex. The causation responsibility is initially claimed by one Party to involve the design and/or construction of the other Party. My methodology to sort these issues out and finally determine the causation and negligent responsibility is to, (i) record and sift all available documentation to develop a chronological matrix. This tool is used to understand the story regarding the Project evolution and to identify relevant tags regarding specific issues and events. Then, (ii) analyze the permitted Contract Documents, Addenda, Change Orders, codes, applicable industry standards, against the Party Contracts. Finally, (iii) develop and publish opinions to testify in Deposition and eventually Trial, if this matter gets to Trial. Always in the context mix was the probability the duty of care was breached by either Architect or Constructor.

QUALITY TEST of DESIGN INTENT!

At the end of the day, when the Certificate of Occupancy is issued and within the first twelve months of Owner use, more likely than not some expectations of the design intent scoping guidelines and Construction Document absolutes, for finished construction quality or system performance requirements, will be questioned. Depending on the intra construction Work relationships during the Project, among the Owner, Architect, and Constructor, contested poor quality, safety issues, and/or workmanship problems may be processed collaboratively without ending up in formal disputes. However, defective and/or deficient quality issues which are not suited for their intended purpose, as defined in the Contract Documents, will obviously become legal Complaints. As any discovery process unfolds, it is my deliberative process to maintain as the single foundational factor for my opinions regarding all quality issues, to rely most heavily on each Party’s Contractual promises, to evaluate standards of care, duty, and causation context.

So....for a fair and reliable deliberative approach to a Project Complaint NEGLIGENCE FAILURE, my opinions will evolve from a reliance on the guiding principles of CONTRACTS RULE, CAUSATION CONTEXT, and a QUALITY TEST of DESIGN INTENT.

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