Home renovations with a limited budget? Watch out for the quotes and the bills!

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A homeowner who entrusts home renovations to an architect must clearly indicate if he wants a binding cost limit. Otherwise, the architect will only be liable for exceeding the cost estimate if the estimate was flawed or exceeded more than 10%.

Judgment of the Federal Supreme Court of 2 September 2021

Case Reference: 4A_531/2020

Facts

The case concerned the owner of an ancient villa in Geneva. He undertook to completely renovate his villa and entrusted an architect to supervise the renovations.

Initially, the total cost of the home renovation was estimated at CHF 880,000. The owner asked the architect to reduce the cost by CHF 30,000 as he did not want to exceed the amount of CHF 850,000. He made this request known several times and even made concrete proposals to lower the total cost. He also asked for a new quote with several of the items reduced. Although he never received this new quote, he regularly paid all the invoices submitted by the architect during the project. He also ordered additional work at a cost of about CHF 20,000.

When the final bill arrived six months later, the total cost was CHF 915,000. The owner requested that the architect be ordered to pay the difference between the total cost of the renovations and the maximum amount he did not want to exceed.

Issue

The issue was whether the architect breached his contractual duty since the cost of the home renovations had been higher than the owner wished and, if so, whether the architect had to reimburse the owner for the excess amount.

Decision

For the architect to be held liable either (1) the principal set a binding cost limit or (2) the quotes were inaccurate or exceeded the acceptable margin of uncertainty.

1) Did the principal set a binding cost limit?

Under the rules of the contract of agency (Art. 394 SCO), which are, as a rule, applicable to the contract agreed upon with an architect regarding construction works, the principal can set a limit on the construction costs to avoid the risk of having to assume additional costs. There are two possibilities: (1) a binding cost limit, which is tantamount to a formal instruction given by the principal to the architect (Art. 397 SCO); or (2) a merely non-binding guideline as to the wished maximum amount. Whether the principal had imposed a binding cost limit on the architect is a matter of interpretation (Art. 18 par. 1 SCO).

If the cost limit ordered by the principal is binding on the agent, violating this instruction constitutes a breach of contract (Art. 97 and 398 SCO). Specifically, if the architect notices or should notice that the cost limit cannot be met or if he doubts that it can be met, the architect must stop the construction works, investigate and inform the owner so that the latter can take appropriate measures to maintain the cost limit. If the architect fails to perform these duties promptly, he shall compensate the client for the damage incurred, which corresponds to the additional costs that the principal

specifically wanted to avoid with the binding cost limit.

In the case at hand, the judges ruled out the existence of a binding cost limit of CHF 850,000.

According to the Court, the owner should have indicated precisely which renovations he thought should be reduced and required the architects to submit a new quote. However, he let the renovations go ahead and paid all the contractors' and architects' payment orders and invoices with no objection until the work was completed. Given the owner's behavior, there could not have been a binding cost limit.

2) Were the quotes inaccurate and was there a margin of uncertainty?

A quote is an assessment of the presumed costs of the works to be performed by third-party contractors. As such, any quote contains an inherent element of uncertainty. The overruns may be caused by two factors: (1) an inaccurate estimate of the costs at the outset; (2) an error in the way the work of the architect is conducted (not applicable in the case at hand).

To avoid miscalculating the costs, the architect must draw up the quote carefully, give the client all the necessary information regarding costs, including the degree of uncertainty attached to the estimate, and monitor the development of costs during the work so that any overruns can be reported promptly. If the architect fails to meet these obligations, he is liable for this breach of confidence in the accuracy of the quote and must compensate the principal for the damage resulting therefrom and for having made arrangements accordingly.

However, a slight overrun does not yet constitute a breach of the architect's duties. The architect must in principle indicate the margin of uncertainty in his quote, but if the margin of uncertainty has not been stated, Courts generally acknowledge that a 10% margin of uncertainty is acceptable for new constructions.

In the case at hand, the architect did not indicate the margin of uncertainty in his quotes. The final price was about 2% higher than the initial estimate, after deduction of the additional work ordered by the owner. Under these circumstances, the client cannot argue disappointed confidence in the architect and the latter is not liable.

Key takeaway

When an owner hires an architect for home renovations and wants a cost limit to be respected, he must make it clear that there is a cost limit and that it is binding. It is advisable to clearly state the cost limit in writing in the contract. If this is not feasible, the client must either stop the work or make explicit proposals to the architect that are likely to lead to a reduction in costs. Otherwise, a cost overrun of up to 10% is generally considered acceptable.

Comments

Swiss and French law (Dutilleul/Delebecque, *Contrats civils et commerciaux*, Dalloz, 2019, p. 658), as well as German law (Oechsler, *Vertragliche Schuldverhältnisse*, Mohr Siebeck, 2013, p. 776), hold that an architect's contract may include elements of a contract of agency, subject to an obligation of means (e.g., the management of the work), and elements of a contract for work and services, subject to an obligation of result (e.g., the preparation of the plans). The legal rules governing a specific architectural contract therefore depend largely on the concrete content given to it by the parties.

This provides an opportunity to recall a fundamental principle of Swiss contractual liability law: the liability is limited by the extent of the obligation incurred by the debtor. However, unless this obligation is set out in the Code of Obligations, it must be sought in the contractual arrangements made by the parties. This was the reasoning behind the first test carried out by the Court in the case at hand (the binding cost limit test).

The first step of the analysis was therefore to determine the architect's duty: what did he commit to? In this assessment, the judges had been relatively unyielding and blamed the principal for not proving that the limit of CHF 850,000 was a binding cost limit. To prove the existence of a binding cost limit, the principal should have: studied the quotes more carefully; made clear and relevant cost reduction proposals; not paid all the invoices for the work carried out without complaint; and not ordered additional work. It can be observed that the architect is therefore relatively well protected against a binding cost limit if such binding cost limit had not been explicitly mentioned in the contract.

Nevertheless, it is still possible to rely on a principle of good faith, taken from the particular point of view of loss of confidence, when the overrun of the estimate exceeds what is acceptable (in principle 10%). This was the reasoning behind the second test performed by the Court (the margin of uncertainty test). Here, the test failed due to the small cost overrun.

It should be added that, even in the case of a significant cost overrun, the entire cost overrun does not necessarily have to be paid by the architect. On the one hand, the client must prove that he would have adopted a different behavior and thus saved some costs. On the other hand, the architect does not have to reimburse the value that the client would have likely accepted if the architect had informed him correctly.

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