

## Project Managers' Liability

*Palermo Nominees Pty Ltd v Broad Construction Services Pty Ltd*, unreported, Supreme Court of Western Australia, Parker J, CIV 2439 of 1996, 17 April 1998.

In the case of *Palermo Nominees Pty Ltd v Broad Construction Services Pty Ltd*, a project manager was held liable when the internal acoustics of a nightclub, which it was engaged to design and construct, were defective. The project manager's contractual obligation was to *control, manage and co-ordinate all activities involved in the design, and construction and commissioning* of the proposed buildings.

The Court held that the defendant was required to exercise care and skill appropriate to a person with the experience and expertise of a competent project manager and builder. In the Court's opinion, the project manager's obligations under the Agreement extended to achieving a night club with internal acoustic qualities suitable and satisfactory for its intended purpose. The defendant's obligation included identifying the need for consultants and, with the proprietors' consent, their engagement. The defendant was held to have known or should have known that expert advice was necessary to ensure that internal acoustics of the building would be satisfactory. Its failure to recommend to the plaintiffs the appointment of an expert consultant to report on internal acoustics amounted to breach of the defendant's contractual duties.

Project managers are classified as *para-professionals*. There is no one clear and accepted definition of a project manager's role. Nevertheless, since the evolution of the project manager in the 1980's, project management has become a readily accepted all-inclusive form of project delivery, where proprietors are encouraged to utilise one organisation for all their design and building requirements.

Under a project management system of delivery, the architect and other consultants are often answerable to the project manager, who is responsible for their co-ordination. The project manager also has responsibility for recommending consultants and consultancy agreements to the proprietor. Hence, in *Palermo Nominees*, when the defendant, project manager brought a third party claim against the architect, the judge found that the architect was accountable to the project manager for all matters under the terms of its appointment. The architect had no further contractual obligation than to bring to the attention of the project manager the need for securing expert advice, and this obligation was discharged. It was a practical and commercial decision made by the project manager to not seek approval from the plaintiffs to direct the third party to secure expert acoustic advice. This decision, in hindsight, was unwise.

Accordingly, project managers would do well to err on the side of caution when it comes to deciding whether or not and to what extent expert evaluation is required. In addition, project managers should not take heed to the proposals and opinions of those who have no particular expertise or competence in the area which they are assessing.

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