Architect Recovers $250,000.00 from Owner
for Fees on Building Never Built

by James R. Keller

This article appeared in *St. Louis Construction News and Review*, p.18-19, May-June, 2012.

The Eighth Circuit Court of Appeals recently upheld a jury verdict from the federal district court in Kansas City in favor of an architectural firm and against the owner for unpaid fees of $250,000.00. The case is *Shaw Hofstra & Associates v. The Ladco Development, Inc.,* 2012 W.L. 762354 (C.A.8 Mo).

The lawsuit highlights the problems that frequently occur when parties to a project continue negotiating a contract as work progresses. As occurred in this case, each side typically leverages for an advantage but creates a trail of uncertainty as to how, when and if the architect will be paid.

Shaw Hofstra & Associates (SHA), an architectural firm, submitted a written "fee proposal" to Ladco Development, Inc. (Ladco) to provide architectural services for a 75,000 square foot multi-tenant office building in Kansas City, Kansas. The proposal was divided into three separate scopes of service, with three corresponding fee structures.

The first part pertained to obtaining the requisite government approvals to build the project. It covered the design from project inception to the point the project could be submitted to the City for approval of tax and other incentives. The architect proposed a flat fee of $35,000.00 for this scope of work.

The second part concerned architectural and engineering services for the design and construction of the building. This scope proposed "a percentage base fee of 6.0% of the Construction Cost assuming a projected cost of $92.00/sq. ft. for the building shell." Instead of providing hourly rates, the second part divided the services into five phases with a corresponding percentage payout toward the overall fee.

The third part stated upon "acceptance of this proposal SHA/SDC will prepare a standard AIA contract for the project." It included a statement of intent that provided SHA would work at "standard hourly rates and under the terms and conditions contained in this proposal until such time as a final agreement is put in place or until SHA is notified that its services are no longer needed." The parties signed the proposal and the owner signed the statement of intent.

Shortly thereafter, SHA began work on the site development plan, design of the three-story building and an initial space plan for a law firm to occupy 50,000 square feet of the building. The scope of the project continued to increase due to tremendous interest from perspective tenants who wanted to relocate to the project site. Thus, the project grew to an 80,000 square foot building, an additional 170,000 square foot building and an 800

stall parking garage. This increased SHA's fee for the entitlement process from $35,000.00 to $55,000.00.

SHA and Ladco then entered into a letter agreement which stated that it superseded all prior agreements. At trial, SHA testified its intention was that the letter agreement would only replace the first part of the original fee proposal, but not the second part.

Ladco then brought in another architectural firm, Bell Knott & Associates (BKA), to add resources. At this point, the project had become an eight-story building containing 240,372 square feet, including 103,890 square feet of parking for 343 vehicles, a five-story, 165,675 square foot building including a preschool and a separate 137,624 square foot parking garage for 348 vehicles.

Shortly thereafter, Ladco informed SHA that BKA was taking over as the lead architect on the project. SHA would be responsible for interiors, tenant space and street scape.

Thereafter, SHA sent Ladco a letter asserting SHA had completed 80% of the schematic design services for the project and calculated a fee was due of $320,000.00. This was not based on an hourly rate but on the percentage in phase two of the fee proposal. The owner responded that its counsel determined that only 40% of the work had been completed. They also disputed whether an e-mail on fee arrangements changed what was owed.

Ultimately, Ladco and BKA never signed an architectural services contract, financing was never put in place and the project was never built.

SHA was not paid and brought a breach of contract lawsuit against Ladco as well as a claim for unjust enrichment for the value of services performed. The heart of the dispute at trial related to whether the parties had a contract and if so what the contract was.

The Eighth Circuit concluded that their contractual arrangements were unclear and therefore it was up to a jury to decide what the parties had agreed to do. The court noted that a different jury may have decided the case differently but this is what happens when the parties have an ambiguous contract.

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