



# Bingham's Corner

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**"WEST V IAN FINLAY & ASSOCIATES – IS THE ARCHITECT LIABLE?"**

## WRAP THEM UP IN COTTON WOOL

*When things went awry with the West's riverside home, and the builder was already insolvent, they sued the architect. Why? He should have taken better care of them*

**YOU COMMERCIAL BUSINESS PEOPLE CAN'T BEHAVE TOWARDS CONSUMERS AS THOUGH THEY TOO ARE INTELLIGENT HARD-NOSED BUSINESS PEOPLE**

I suppose £1.7m is what's to be expected if you buy a semi-detached backing onto the Thames in Putney. You can watch the boat race from the bottom of your garden. Well done Mr & Mrs West. The only disaster that occurred was when they decided to engage an architect and builder and, well, build.

The price for the building work was £292,000 – the fee for the architect was not a lot at 8% of the build price. Six weeks after the work was sort-of completed the Wests found extensive damp in the lower ground floor. Waterproofing had only sort-of been done. Then they discovered that the plumbing and electrical works were only sort-of done and needed complete replacement and discovered that the new floor slabs in the ground floor were defective. They then discovered that their builder was insolvent. Then they sued their architect Ian Finlay Associates for their losses at sort-of £800,000.

The architect blamed the builder and his subbies, contending that all the problems were him and his subbies defective workmanship. But what happens now that the builder has gone bust? The Wests say that it was their architect's job to detect defects as and when the builder did his sort-of work and give the builder a thick ear and have the defects put right. Oh really? Is that what the contract between the architect and his customer says? Certainly it has bumph in that contract called a net-contribution clause. It says, "Our liability (says the architect) for loss and damage will be limited to the amount that is reasonable for us to pay in relation to the contractual responsibilities of other consultants, contractors and specialists appointed by you."

## Bingham's Corner Cont...

So it is the provision of normal architectural services as set out in the RIBA conditions. The fee included twice-weekly visits to site "in connection with administering the building contract". Oh, what does that mean, please? And bear in mind that the architect's customers are characterized, even anointed, by the divine title "consumers".

You commercial, business people can't behave towards consumers as though they too are intelligent hard-nosed business people. Do you by now already sense that these defects and cock-ups by the builder are going to land in the architect's lap? Well, they did.

The adventure into this building work had an iffy beginning. Four bids came in, two at about £560,000, the other two well above. So the architect pointed to a builder he knew. This builder fellow put in a bid of £370,000. Oh dear! The Wests and architect then deleted this and that, hence the £292,000. The architects told the Wests: "My own view is that in the 20-years or so I've worked with this builder, he has never been a "bandit" price-wise and he has, overall, delivered a price substantially cheaper than others and that his price should be accepted."

### AN ARCHITECT HAS A DUTY OF CARE CONSISTENT WITH THE ORDINARY STANDARD EXPECTED OF THEIR PROFESSION

Oh come on – this time this honest builder has dropped a huge boo-boo. It was plain daft to go ahead on this disastrously wrong price.

As to detecting duff work, the duty of the architect, on this project at least was somewhat more than having a look on his twice-weekly visit. An architect has a duty of care consistent with the ordinary standard expected of their profession. Being on alert includes visiting site when an important task is got under way. For example, on this job the architect ought to have a beady eye when the new floor slab was being cast. It's called taking care of your customer, and so too the architect's own backside.

This court case is a superb set of guidance notes for every architect. Design liability, liability to watch, take care to explain, and to mollycoddle. So let's take the initiative. Get every architect, every trainee architect, and every partner to come to the RIBA in Portland Place and go chapter and verse through this case to learn the lessons. Then and only then, will your professional negligence insurance outfit renew your yearly policy. And this is the reason; it's because what this architect did or did not do is, in truth ever so ordinary. And if the court, the RIBA, and the teachers of architects think it's below par, do something about it.

