

## **Are more disputes declared arising from the use of building contracts in South Africa during 2018?**

Ja – Nee!

It depends ... on the type of construction work and the standard form of contract used, the political-geographic environment and the economic climate, and ...

The working environment is often the trigger for a claim – but not exclusively so!

Various surveys in South Africa and in other jurisdictions reflect a similar pattern that the majority of claims relate to late, partial or non payment of certified amounts and that adjudication of claims for an extensions of time are slow, and often poorly evaluated

Typical reasons for claims include:

Poor project definition resulting in numerous changes after the contractor has been appointed to 'correct the scope' that in turn affect the price and the duration of the construction period;

The client has unrealistic expectations regarding the accuracy of construction, the standard and quality of finishes in relation to the price he is prepared to pay. Often this sours the relationship between the client and the professional team who generally will have explained such aspects of construction without persuading the client of such realities

Poor contract administration including complying with contract stipulations, holding regular meetings – compiling accurate minutes of meetings- and distributing minutes timeously, maintaining schedules of information required / issued; instructions issued; payments certified ...

Poor communication between the client and the contractor, and with the professional team – and within the professional team resulting in documentation errors and omissions in tender and construction information...

Poor knowledge of the rights and obligations in the standard form contract used – generally the conditions do not differ in intent between contracts but the vocabulary used is specific to that contract. Virtually all contracts include two or more clauses where a specific notice period and procedure must be adhered to or the opportunity to claim is lost ... generally claims for additional time and money

These five conditions, not necessarily in this order, apply throughout the world – they are generally known ... but not necessarily applied

Contractors and building consultants can not function without regular payment – and they in turn must pay other in the supply chain. Nowhere in world can contractors and consultants finance a project for a client (unless it specifically is a design - finance – build – operate project). Hence the international trend to outlaw “pay when paid” clauses – also applicable in South Africa

Are there more disputes in South Africa or when using a particular standard form contract? Not really – where as larger number of a particular standard form contract are used there may be more disputes, but if related to value of work or as ratio of the number contracts used – no!