

## Friendly Advice for Free

### Burgess -v- Lejonvarn [2016] EWHC 40 (TCC)



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This recent case heard in the TCC, looked at the circumstances in which a professional might find themselves legally responsible where they provide professional advice, skills or knowledge for free.

#### The key facts

Ms Lejonvarn, an architect, offered two long standing friends, the Burgess's free project management services to assist with landscaping works to their garden at their £5M home.

Without entering a formal contract, the Defendant assisted her friends by providing project management services, with a view to providing design input when the project reached a more advanced stage. The claimants became concerned about escalating costs and the quality of the service being provided and the defendant's involvement was brought to an end. The claimants alleged much of the work performed was defective and sued the defendant in contract and tort for the additional costs incurred by them to complete the project, valued at approximately £265,000.

Alexander Nissen QC had to determine a number of key issues as follows:

1. Had a contract ever been concluded between the claimants and the defendant and if so, on what terms?;
2. Did the defendant owe the claimant a duty of care in tort and if so, what the nature and extent of that duty was?; and
3. Whether the claimants and the defendant had agreed a project budget of £130,000.00.

#### Decision

The court held no contract had been agreed between the parties as the essential requirements for the formation of a legally binding contract, namely, offer, acceptance, intention and consideration were not present.

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However, the court found the defendant did owe her friends a duty of care in tort as the advice offered went beyond ad hoc advice and there had been an intention to charge for more detailed design work in the later stages of the project. A special skill was being exercised by the defendant as a professional upon which the claimants relied and the claimants were protected against economic loss in relation to that advice and service.

It was also found, on the facts that a budget of £130,000.00 had been agreed, and the duty of care extended to the pure economic loss being claimed by the claimants, so they were entitled to claim for additional costs.

### **Practical implications**

The judge described this case as “*something of a cautionary tale*”. The benefits of a well drafted contract cannot be emphasised enough no matter what the size, deemed complexity of a project at the outset or whether services are being offered for free, as the contract protects the interests of both parties by clearly defining the agreement. This decision also underlines the importance of exercising care in order to distinguish between social and professional relationships where no formal contract has been entered into.

If a professional is simply offering some friendly advice where a contract would be inappropriate it is advisable to record that the advice is given without liability.

It is worthy of note that the court confirmed provision of brief ad hoc advice or services by a professional in an informal context would be unlikely to attract the same determination.

Following decision on these preliminary issues, the parties were left to attempt to reach a settlement themselves.



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