

# Project management problems

[Business](#), [Management](#)



In replying the below inquiries you are to supply a brief analysis of the place at jurisprudence, backed with commendations of the relevant legal commissariats, case-law and commentary. Address the points tersely in such a mode as to demo that you have understood the rules that come into drama and modulate the state of affairs being described.

1. Undertaking Manager is approached by a client who would wish to contract Project Manager's services as a undertaking director.

Undertaking Manager would wish to restrict his exposure to amendss in position of the fact that he will necessitate to contract the services of assorted professionals to complete the occupation.

1. How can he make that?

As stated in the Civil Code 960, ' A contract is an understanding or an agreement between two or more individuals by which an duty is created, regulated, or dissolved.' This means that if the Project Manager is contracted by the Client, and in bend the Project Manager contracts 3rd parties, the Project Manager

straight

will reply, in favor of the Client for the amendss that are caused by those 3rd parties that the Project would hold engaged.

The primary method of understating exposure to amendss is to choose for an Indemnity insurance. This means that in instance of harm, the insurance would counterbalance the Undertaking Manager ( or the client in inquiry, straight ) . Furthermore, the insurance company on payment of the

damages, would be subrogated in the rights of its client/project director, thereby it can turn against the party who is found to be responsible for the amendments.

Alternatively, On the other hand, the Project Manager has two possible contractual understandings, each with different legal and practical deductions:

- A Contract with the client and a sub-contract with the 3rd party professional ( ' sub-contractors' ) . With a position to minimise the hazards, the latter contract should reproduce the same hazards and precautions which would have been included in the chief understanding, i. e. The understanding between the client and undertaking director.
- A contract with the client for supervising the undertaking, where the client has a distinguishable contract with the 3rd party professionals ( the sub-contractors ) .

To restrict exposure to amendments, option 2 is safer, but may not be acceptable from the client's point of position who himself would desire to restrict his exposure/risks. In this instance, each contract would be one where, ' the individual set abouting the work shall confer merely his labor or accomplishment, or that he shall besides provide the materials.' ( Civil Code 1663 ) . Furthermore, the Project Manager would in fact be dissolved from any incompetence by the other professionals because as stated in the Civil Code 1037, ' where a individual for any work or service whatsoever employs another individual who is unqualified, or whom he has non sensible

evidences to see competent, he shall be apt for any harm which such other individual may, through incompetency in the public presentation of such work or service, cause to others.’ In such instances, the client is considered to be a contractor, and hence is apt ‘ for the Acts of the Apostless of the individuals employed by him.’ ( Civil Code 1642 )

In the latter instance, if a client files for amendss against the Project Manager, said Project Manager may raise the supplication that he is non the 1 to reply for the amendss of the 3rd party sub-contractors ( since he would non hold contracted them ) and may besides name to the suit the said 3rd parties or in bend file for amendss against the sub-contractors, as stated under Article 1038 of the Civil Code ‘ Any individual who without the necessary accomplishment undertakes any work or serve shall be apt for any harm which, through his unskilfulness, he may do to others.’

In the former instance ( where the Project Manager contracts straight with the Client ) , if the client files for amendss against the Project Manager, the said Project Manager may non raise the supplication that he is non the 1 to reply for the amendss of the 3rd party sub-contractors ( since he would non hold contracted them ) . Furthermore, he may arguably NOT sell to the suit the said 3rd parties, but if found responsible ( for the Acts of the Apostless or skips of the said 3rd parties, which the client would hold to turn out anyhow ) so he MAY in bend file for amendss against the sub-contractors, as stated under Article 1038 of the Civil Code ‘ Any individual who without the necessary accomplishment undertakes any work or serve shall be apt for any harm which, through his unskilfulness, he may do to others.’

In any given instance, noteworthy in the context being discussed, the rule contemplated under Article 1138 of the Civil which states that ‘ Where the understanding provides that the party who fails to transport it out shall pay a certain amount by manner of amendss, it shall non be lawful to present to the other party a greater or lesser sum.’

1. Does it do a difference if the client is a natural individual undertaking the occupation for his/her personal demands or if the client is abargainer [ SM1 ]? Why?

In this instance, a differentiation between Natural [ SM2 ] and Legal individual [ SM3 ] has to be given. The natural individual is by and large a physical entity that is responsible in his ain name for any skip [ SM4 ] , unless he proves that he has contracted on behalf of others. On the other manus, a legal individual is one that is non-physical ( like for illustration a company ) . A natural individual and a legal individual have the ability to either contract in their name or on behalf of others. Both parties enjoy the ability to come in into contracts. When a Undertaking Manager is undertaking with a legal individual, he is undertaking non with persons but with the company itself, which enjoys a separate legalpersonalityfrom its members/shareholders.

1. Undertaking Manager is an designer and, apart from moving as undertaking director, will be personally responsible for the construction/ change works. He would wish to restrict his exposure for defects as best he could.

1. How can he make this contractually?

First and foremost, one cannot take it for granted that the Project Manager is the designer, intending that if the Project Manager did not straight take portion in the programs and building of the undertaking, he/she shall not be found apt on the footing of the fact that he besides happens to be an designer by profession. Furthermore, one has the right to even diminish contractually the 15 twelvemonth clip p in instance of defects. Such timep is given in the Civil Code ( 1638 ) , 'If a edifice or other considerable rock work erected under a edifice contract shall, in the class of 15 old ages from the twenty-four hours on which the building of the same was completed, perish, entirely or in portion, or be in apparent danger of falling to destroy, owing to a defect in the building, or even owing to some defect in the land, the designer and the contractor shall be responsible therefor.'

1. Does it do a difference if the client is a natural individual moving in his/her personal capacity or a bargainer?

As antecedently mentioned, a natural individual is by and large a physical entity that is responsible in his ain name, unless he proves that he has contracted on behalf of others. On the other manus, a legal individual ( bargainer ) [ Di5 ] is one that is non-physical ( like for illustration a company ) . There is a given that whoever contracts does so in his ain name, unless he proves that he has contracted in the name of another individual. The debtor has the duties to do it clear that he is undertaking in the name of a company. The foregoing considerations apply whether the client is a natural individual ( single or bargainer ) or a legal individual ( company ) .

1. Undertaking Manager is engaged and in order for him to carry through his battle he issues petitions for citations to three providers of stuffs.

He stipulates a cap. They all reply with a quotation mark within the cap.

1. Has an understanding been formed?

No, an understanding has non been formed. Invitations to offer occurred when the Project Manager asked for a quotation mark. If this is non accepted, no contract has been formed. Said offer is capable to acceptance until and unless that offer is accepted, there is no contract.

1. If so, at what phase [ SM6 ]?[ Di7 ]

A contract is ' an understanding reached between two or more parties which is lawfully enforceable when executed in conformity with specific requirements.' Note that contracts should be specific to the undertaking in inquiry, every bit good as reflecting the understanding between the parties in inquiry. Contracts are adhering understandings, which is why it is of great importance that all parties understand the footings entailed by said contract, including rights and duties.

Every contract consists of the followers:

- Offer ;
- Credence ;

'Acceptance ' occurs when both parties arrive to an unqualified understanding of all the offered footings. However, a period of dialogue normally occurs. The purpose of the dialogues is to present new footings and conditions and counter offers to the original offer, so as to get to an understanding that satisfies all parties.

## Communication of credence

The credence of the contract offer occurs merely when the credence is communicated to the offerer. This includes methods like:

- By telephone
- Write

1. If non, why? And what is required to organize the contract?

No credence has been given by the Project Manager to any of the provided quotation marks. For a contract to be formed, an exchange of an offer from, in this instance the providers, and an credence from the Project Manager must happen. Note that both parties must hold the purpose to adhere themselves. Furthermore, both offer and credence must be *echt Acts of the Apostless of will that manifest the relevant consent* .

It is deserving nil that a contract is valid despite being non written, i. e. Credence by word of oral cavity or electronic mail is besides a contract, unless the jurisprudence expressly requires that the understanding should be in composing. These necessities of offer and credence are non mentioned in the Civil Code ( unlike Italian Civil Code ) . They are specifically mentioned in the Commercial Code and Electronic Commerce Act.

The civil codification ( under 966 ) merely spells what is required for the cogency of a contract:

( a ) Capacity of the parties to contract ;

( B ) The consent of the party who binds himself ;



( *degree Celsius* ) A certain thing which constitutes the subject-matter of the contract ;

( *vitamin D* ) A lawful consideration.

1. The most favorable quotation mark, from A, comes with a clause saying that “ An understanding must be made in authorship and all payments must be made in advance.” Project director writes to A accepting the quotation mark. Is this sufficient?

Yes, in this instance, there is sufficient cogent evidence that a contract has been formed. An offer has been given by A, which was so accepted ‘ in writing’ by the Project Manager, a phase of personal business which is so confirmed by the fact that works would later be undertaken, in pursuit of and in conformity with the same quotation mark.

1. Undertaking director pays the monetary value and A provides the stuffs, but these are found non to be in line with the specifications requested. What is the consequence of this? What are Project Manager’s options at jurisprudence?

When a marketer is selling building stuff, he is ‘ bound to justify the thing sold against any latent defects which render it unfit for the usage for which it is intended, or which diminish its value to such an extent that the purchaser would non hold bought it or would hold tendered a smaller price..’ ( Civil Code Article 1424 )

When such required are non met, the undermentioned occurs:

- Client dissatisfaction

- Delays in undertaking completion

The marketer is 'answerable for latent defects, even though they were non known to him, unless he has stipulated that he shall non in any such instance be bound to any warranty.' As a consequence of this, the Project Manager has two options at jurisprudence ;

To return  
the stuff  
and have  
the  
monetary  
value

Actio      repaid to  
Redhibitor him.

ia          Compensati  
on for  
amendss  
may be  
besides  
implemente  
d.

Actio      To retain  
Aestimato the stuff  
ria          and have a  
portion of

the  
monetary  
value  
repaid to  
him which  
shall be  
determined  
by the  
tribunal.

Civil Code Article 1434, ' The purchaser, even though at that place be no understanding to that consequence, is bound to pay involvement on the monetary value up to the twenty-four hours of payment at the rate of five per cent *per annum* , randomly in the undermentioned instances:

( *a* ) if the thing sold and delivered outputs fruits or other net incomes ;

( *B* ) if, even though the thing yields no fruits or other net incomes, he has been called upon by agencies of a judicial hint to pay the monetary value ;

( *degree Celsiuss* ) if the bringing of the thing, being movable, has non taken topographic point through the mistake of the purchaser, and the marketer has called upon him, by agencies of a judicial hint, to take bringing of the thing:

Provided that in the instances mentioned in paragraphs ( *B* ) and ( *degree Celsiuss* ) , involvement shall run merely from the twenty-four hours of the service of the said judicial intimation.

1. Undertaking director has besides engaged the services of an lineman, B. The contract stated that B had to finish the plants within two months harmonizing to a agenda of plants agreed to. Following the first month it is clear that B has non completed 1/3 of the plants he was to finish within the period of one month. It is clear to project director that B will non finish the plants within two months and now it will be possible for Project Manager to maintain to the timelines imposed on him by client merely if he hires a larger administration to make the plants alternatively of B. But these alternate service suppliers will be more expensive.

1. What are the Project Manager's options?

The Project Manager has the right to register for amendss due to non-performance against the Electrician but would hold to wait that the term of the contract has expired, as follows:

- Termination of Contract due to non-performance, ' Civil Code 1640.( 1 ) it shall be lawful for the employer to fade out the contract, even though the work has been commenced. ( 3 ) If the employer has valid ground for the disintegration, he is to pay the contractor merely such amount which shall non transcend the disbursals and work of the contractor, after taking into consideration the utility of such disbursals and work to the employer every bit good as any amendss which he may hold suffered.'

In such instances, choosing for Termination of Contract could ensue in farther holds. One of the Project Manager's chief functions is to understate

amendss, and hence the option of expiration may non be feasible and commercially practical. Punishments would hold been set up contractually that the party in inquiry ( in this instance Electrician B ) , should pay a certain sum for every twenty-four hours of hold. Naturally the Undertaking director would be exposed to liability towards the client but at least he would hold safeguarded himself against the Electrician. .

1. Who will hold to bear the addition in costs if Project Manager engages these new service suppliers?

The addition in costs are to be incurred by the Electrician B. This includes the followers:

Article 1135 of the Civil Code, '...damages due to the creditor are, by and large, in regard of the loss which he has sustained, and the net income of which he has been deprived.

Article 1136 of the Civil Code, 'the debtor shall merely be apt for such amendss as were or could hold been foreseen at the clip of the agreement.'

1. Will it do a difference if Project Manager is moving as chief or agent?

When a Undertaking Manager is moving as chief, he has to reply for the actions holds. If he's moving as an agent for a 3rd party, he would be replying in the name of the party, provided that it is clear that the undertaking director is moving in the name of that 3rd party.

1. Undertaking Manager requires pigment. He is approached by a individual who states that he is the local agent of an internationally celebrated industry and the said " agent" offers a really advantageous

monetary value. Undertaking Manager orders the pigment, this is supplied and Project Manager pays for it. But before the pigment is used Project Manager sees a Notice in the newspaper stating that the international maker has nil to make with the “ agent” and that the “ agent” is a fraudster. Undertaking Manager does not desire to utilize the pigment as he will not be covered by the “ international guarantee” that was purportedly provided by the international maker. What are his options at jurisprudence?

In the instance of fraud, the Project Manager has the right to register for nothingness of the understanding in inquiry. As stated in Article 981 of the Civil Code, 'Fraud shall be a cause of nothingness of the understanding Fraud. When the ruses practised by one of the parties were such that without them the other party would not hold contracted.'

The debtor, which in this instance is the agent providing the pigment, is to pay ' the compensation in regard of the loss sustained by the creditor, and of the net income of which he was deprived, shall merely include such amendments as are the immediate and direct effect of the non-performance.' ( Civil Code Article 1137 ) . When the mandatary ( provider of pigment ) acts beyond the authorization given to him by the authorization, he may be found responsible for those actions in his own name.