

Unfinished business

As the local landscape in construction is affected by a global financial decline and the cancellation of many projects, **Antonios Dimitracopoulos**, partner at Bin Shabib & Associates (BSA), examines the constituent elements that first need to be present for contractors to embark on what is anticipated to be a large scale legal battlefield.

Whenever there is a downturn in general market conditions, there is a common perception that the number of disputes will increase as a consequence. This is based on the understanding that companies and individuals alike endeavour to source alternative sources of income during such times so as to compensate for their loss in profits.

This trend is undoubtedly prevalent within the local construction and real estate sectors, although it cannot be held responsible for the birth of a new category of disputes.

This is because in order for a bonafide dispute to materialise into formal proceedings, it must contain at its very core an acrimonious relationship between the parties where both consider that they are right and the other party is wrong; something which is not easily manufactured overnight. Without this fundamental ingredient, all that may exist is little more than a heated debate punctuated by the occasional insincere threat of a court action or referral to arbitration.

That being said, one has to accept that the current market conditions certainly provide a fertile ground for pre-existing disputes to come into fruition.

Termination – or indefinite suspension – of a project represents today's most prevalent topic. Termination will invariably be initiated by the developer either because it experiences financing difficulties or because it wish-



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es to replace the services of the existing contractor with another, who it envisages as being more productive/cost effective.

When this happens in more stable market conditions, the developer and contractor are usually able to resolve their differences one way or the other, albeit over time. This is usually achieved thanks to the underlying incentive that is present in a potential award of contract for a larger project.

However, this position of comparative luxury rarely extends itself to more turbulent market conditions. Not only are developers then unable to produce such appetising incentives to their contractors but also their overall negotiating position becomes vulnerable as they are simultaneously targeted by their investors. This is particularly so in circumstances where the purchasers

have paid amounts equivalent to or in excess of 30% of the total contract value when actual physical construction of the works has yet to commence or has commenced but is significantly behind schedule.

The developer's predicament is further exacerbated when it has proceeded to various sales without first securing possession of the land and registration of its own interest with the Dubai Land Department pursuant to Law Number 13 of 2008, otherwise known as the Law "Regulating the Interim Real Estate Register in the Emirate of Dubai."

The net effect of the above may be that the claims submitted by many contractors could be put on hold whilst the developer struggles to stave-off the group of aggravated investors seeking recovery of what they consider to be rightfully theirs. Whilst the strength of the legal position of such investors may vary significantly from case to case, the overall impact of their combined attempt to demand refunds can be overwhelming for the developer.

One has to consider the administrative and commercial nuisance of a developer having to deal with a plethora of individual disputes in this regard whilst at the same time being the unfortunate target of media attention affecting its reputation. It then becomes easy to understand why the developer may seek to suppress those potential litigants first.

However, this may be little

comfort or concern to the contractor, particularly if the prospects of being awarded a further contract appear very bleak.

It is this tension that developers may be subjected to that could set the grounds for a contentious landscape in construction. Whether the various claims submitted by contractors and engineers could ignite to fully fledged legal proceedings, is a matter of time: the longer contractors have to wait for their dues, the higher the chances of a formal dispute resolution process commencing.

In an environment where trends spread like wildfire, it is quite possible that a cluster of simultaneous legal battles launched against some developers may create a domino effect for many contractors. They may be prompted to throw down the gauntlet *en masse* and lodge their case, attaching developers assets and seeking security for their claims, in fear of others getting there first.

Having said this, there are unpredictable factors in determining what lies ahead and these are mainly the far reaching effects of potential government intervention and developers' ability to perform a balancing act in keeping contractors reasonably hopeful of receiving their money and purchasers convincingly deterred of recovering theirs.

If you would like to write for *Construction Week* in this column, please email rob.wagner@itp.com