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Lawyer Larry Gainen
recalls some 'architectural'
horror stories from his
legal practice.

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IN

COURT

In no uncertain terms, Larry Gainen is the man to call when the roof caves in – particularly if we're not speaking in metaphor and you're the architect who designed the roof. Gainen is a founding partner of Ingram Yuzek Gainen Carroll & Bertolotti, LLP, a major New York law firm that offers, among its other services, specialized legal help to architects. Gainen's clients include Studio Daniel Libeskind, Alexander Gorlin, and James Corner Field Operations.

Not to be a downer, but architects seem particularly ripe for the suing of late, especially in the USA. I base my conjecture on the number of high-profile lawsuits brought against high-profile architects in recent years, and on the number of times an architect's name – as if on some blazing movie marquee – leads press headlines about building or development catastrophes, which often have very little to do with the architect in question. Not to mention the stalled projects and bogus promises – 'the check's in the mail' – that come with a down economy. Are we at the point where an architect, like a celebrity or the CEO of a Fortune 500 company, has to keep his lawyer on speed dial? It's a question I ask Gainen when we meet in his Park Avenue office in New York, just a few blocks north of Grand Central Station. I also ask him whether the current aggressive legal climate has changed the culture of architecture. The answer is yes.

What is your personal background in architecture?

I graduated from law school in 1974 and went to work for a large New York law firm, doing traditional commercial litigation – a lot of my work was for the New York Yankees. Near the end of my tenure there, I worked on a federal case for a naval architect who was involved in major litigation concerning design defects. Then in 1982 I was advised of an opportunity to join a small firm that specialized in representing architects and engineers, so I took a flyer and decided to join.

Do you notice more law firms specializing in architecture today?

There's been some increase. This is a very active area right now. There's a lot of litigation. Everyone's looking backwards to collect money on projects going sour. But a lot of law firms just do malpractice litigation when architects are sued. We also do contract negotiation and drafting, agreements and business deals. For example, I'm currently involved in three deals where principals are selling their firms to others. For some of the smaller firms we represent – with one or two principals who have no one to talk to about problems on a project – I also act as the 'firm psychologist'.

Are architects more likely to seek legal counsel now than before?

They're more sensitive to the need for legal counsel. Today, a lot of architecture schools have classes on law and architecture. There are more books on the subject, and architectural organizations have been better at promoting the need to be business-oriented and to have a relationship with a lawyer. I think architects now sense that it's just part of living, especially in our country. We have a very litigious society, where everybody's always worried about liability and

claims. New York, especially, is a litigious place, with an 'in your face' business atmosphere.

Has this aggressive environment changed the culture of architecture?

I think it has. Architects are more selective about what kinds of commissions they take. In a down economy they want to stay busy and employ their people, of course, but let's talk five years ago, when architects were definitely shying away from certain kinds of work and certain kinds of clients, because of the potential legal ramifications.

For example, condominium and cooperative work, where you're doing something for the developer and end up exposed to potential claims from 112 different unit owners. Some architects love that stuff, but others are less willing to take creative steps and expand the boundaries of their practice because they know they're going to be held to the same standard as the experts, even if they've never done this kind of a project before. Let's take a very unusual adaptive reuse project a bit outside an architect's expertise; some of my clients are less interested in taking on this type of project, only



because of the realities of the environment in which they practise.

So there's tension between legal realities and experimental aesthetics?

Look, it's not often I ask my clients not to accept a commission – they might as well do something else for a living then. You can dot all the i's and cross all the t's from a legal standpoint, but then not have any work. So I do think architects have to take calculated risks. My job is to make sure my clients aren't taking on liabilities they shouldn't be taking on and promising things they can't promise. I counsel them to make sure they're adequately insured, so if there is a problem they won't have to give up the family farm.

You taught a course on architecture and law at Pratt Institute. What kinds of things did you tell your students?

It was like an architecture crime show: I would give them examples of actual cases and take them through a trial. As far as I can tell, very few of them quit architecture after my horror stories.

Horror stories?

Here's one. My client's client – a developer – is getting a loan to build a project and needs the architect to report certain things to the bank so that the bank will advance construction monies. I've had a number of examples where the developer plays fast and loose with the bank to get more money and pressures the architect to say that more work has been done than has actually been done. That puts the architect in a terrible situation: the architect wants to keep the client, but by going along with such a request the architect could be aiding and abetting bank fraud. I always advise the architect not to do it, but there is great tension between doing what's correct and legal and doing what the client wants.

Or another example: the architect draws a plan that conforms to building code, but the developer wants to save money and take shortcuts by building in a way that doesn't comply with code. The developer's asking for things that are a real problem – and not only aesthetically. Obviously, the simple answer is: tell the owner to shove it. But the architect has a lot invested in the client relationship. Further, what should the architect do with respect to reporting? Even if the owner gets a different architect, is it the architect's public responsibility to report him?

Look, architects are always sued. And I think the biggest thing we get involved in is architects getting dragged into litigation because the contractors screwed up. The contractor messes up, and the argument is always that the architect should have found the mistake, should have inspected the job. But what are inspections? Are you making periodic observations to see whether there's general conformity with the design intent, or are you ensuring that every nail went in right? You can't do that as an architect. You're not there all the time, and, even if you were, you wouldn't know. But architects get sued all the time for construction defects. That was something I had to teach my students.

What are some of your current war stories?

I'm representing an architect who was working on zoning issues for some developers, and during this course of work, the developers asked – off the top of their heads – what they could build if they bought another building in the same area. My client did five minutes of research and gave an off-the-cuff answer, saying you could add a certain number of storeys to the building. Now as it turns out, other people, including the broker, told the developers they couldn't do that. But these developers went and bought the building for several millions of dollars, anyway. My client got deeper into the investigation and also said, 'You know, you can't add storeys.' Now the developers are suing my client, claiming about \$15 million in damages.

Why is this an interesting case? Well, at the time the developers found out they couldn't build what they wanted to, they could have sold the building at a profit – it had gone up in value. I mean, I wish I was defrauded like that! Maybe I couldn't have made \$10 million, but I could've made \$3 million. How have I been hurt? They could have sold the building, but instead these guys hired a new architect, knocked the whole damn building down, and built a new one. And, in the interim, they got caught up in the recession. So we're arguing that we had nothing to do with that developer's decision to

go forward; further, we had no control over one of the worst economic downturns in history.

Are we at a point where architects have to keep their lawyers on speed dial?

Some firms come to mind that are so business-oriented, that's all they think about. Maybe the lawyer is on speed dial for them. As for people who really love architecture, I don't think they have a speed-dial relationship with their lawyers. They consult their lawyer when they have a problem, although some do consult us beforehand. I would say a third of our clients are people pre-emptively trying to set up a relationship with us, as opposed to: I've just been sued. Get me out of here.

Would you like to see anything change in the relationship between architecture and law?

I would like to see licensing laws changed to make it easier for architects to freely associate with other design-related professionals and partner with them. I think it would broaden the practice and make things more profitable. For example, architects can't form partnerships with unlicensed professionals,

'Architects are held to the same standard as the experts, even if they're doing a new kind of project'

like interior designers – not in New York, anyway. And some of these laws don't really accomplish what they're intended to accomplish.

It also costs a lot to be in lawsuits, and lawsuits are very easy to file in America, even if they're not meritorious. This becomes a real burden to the architect and impacts the ability of firms to do good work. So I wish there was a way that spurious, stupid litigation could be more seriously frowned upon, and that there would be more sanctions against it.

From the legal standpoint, are architects more vulnerable today?

Architects are very vulnerable, especially in a down economy. I don't know how many examples I have of projects stopping. So, you've spent a lot of money, gone through a schematic design and haven't been paid. The project's dead. Now what? I had a meeting yesterday with a client who worked on a big hotel project. The project was in foreclosure. This client ran up services of \$400,000 in billable time and did not get paid for any of it. And we're talking about a small firm here. How do you survive? <