

Good morning. Dennis Engelbrecht, Digging Deeper.

The first time I had a construction client in my consulting career, I think it was at the first meeting I had with the client, and he handed me a sheet of black paper. One 8.5 x11, and on the top it said, *Why Contractors Succeed*. I've talked about number one in a separate blog, but number two on his list was *Stay Out of Court*. That's what we want to talk about today, staying out of court.

A lot of you have been able to do that, and congratulations to each of you, and a lot of you have been able to stay away from maybe some major issues and some major conflicts, which can cause you time, money, and even have a cultural impact. So, first that's what we want to talk about, the cost of going to court.

First of all, if you're going to court, there likely has been a project that has not succeeded and there's probably already been a financial cost. But what's amazing is the cost of one of these conflicts that carries on for months and months and into the years. I have clients today that have legal bills well in excess of five million dollars over a problem that was not worth that much when it started, and in the end, probably met in the middle anyway. But we go through all of these years and all of this cost. It's a ridiculous cost that that can be avoided in almost all circumstances.

Probably even bigger than the financial costs though, is the energy cost. When you get into a big problem like this, it isn't just the energy of your underlings or your support people in your company, it's often the top one or two people in the company, first of all, because of the amount of money at stake. But oftentimes when we have a problem project, we ended up losing the project manager and losing the superintendent, and the executive that had to dive in and fix the problem, he's got all the knowledge or she's got all the knowledge. So, when we get down the road and we're having to fight this battle, they're the ones who end up with their energy and their time attributed to that battle. And if they're fighting that battle, they're not out there getting you new work, keeping your great customers, earning you more money. That's a huge loss to any organization.

Finally, all of that, the money, the energy, tends to cast a pall over the organization. It's like you lose the lightness in your step, in a sense. It's got that heavy cloud that tends to follow you around over a period of time. And all of those things together, the actual financial costs, the energy, and the pall over the organization, those are just brutal over the long-term of the company. That's probably why one of the sayings in construction is your success as a construction company is oftentimes more determined by the jobs you don't do than the jobs you do, because hopefully you didn't do some of the ones that might've ended up in this kind of situation.

So, today's lesson, though, is how to stay out of court, how to avoid this. All right? How to get to problem resolution before it ever gets that far. Four points I want to make today. Number one, resolve conflicts early. Too often we have a conflict, and we're fighting about it, and we're unwilling to compromise, we're unwilling to pay the price, we're unwilling to give early on. We have our side and we're really doing that. We're loggerheads, we're going head to head. That is stupid in many cases. Solve the problem early. Resolve the conflict. Take a small hit so you don't take a big hit.

Number two, get off of your side. What I mean by that is every one of these conflicts starts with you, or your company, or your team having a certain opinion about a situation, and somebody on the other side has a differing opinion. Thus, we have a conflict, right? Well, I unfortunately in my short career in construction, at many of these battles, in many of these wars, and I've sat through mediation and arbitration five or six times, and my number one lesson from all those mediations and arbitrations comes at the point where I finally hear that, "My people said what? My people did what?"

I'm finally finding out, you know, I'm not going to call it the true story because there's still two sides to the story, but I never really knew the other side of the story. And that was one of the reasons we were stuck on our side, right? And we kept this at loggerheads, not really solving the problem, but fighting over who's right. So, get off of your side. Get off of your side early. See the other person's point of view, and from that, you can perhaps find a win-win or a slight lose-lose,

which is really a win-win, because as we've described, the ultimate lose-lose is when you go to court, and you want to stay out of court. All right?

Lesson number three, invest early and hard with problems. When I say invest early and hard, the solution likely is not the cheapest solution, but somehow in construction, we keep trying the band-aid solution to fix these problems, and we try the cheap solution and the cheap solution just doesn't work. Now we're three months down the road or six months down the road, and now we're fighting over a much bigger problem. So, investor early, make sure your solution is bulletproof. It is going to cost more than you want it to, but it's going to cost you less in the long run. And it might be a solution that helps your reputation along the way or doesn't cost your reputation along the way. So, resolve conflicts early, get off of your side, understand the other, investor early with a full solution, no band-aids.

And finally, number four is don't assume anything. Ask the question. I think a lot of times with conflicts, you think, "Oh yeah, well, we gave them a great presentation. We've solved it. We showed him all of our side. We've solved the problem, we walk away, and we think we have a solution." Oh, but then it crops back up later again because we didn't really have a solution. Don't assume anything. Ask. Dig down. Do we have this problem solved? Do we have a resolution? Oh, what about we actually sign an agreement or put this in writing, right? Don't assume anything. All right? A lot of the most costly problems you'll have would be problems that if you actually just took that last step or next step to finalize everything and get it fully understandable in writing would not have crept back up and would not have cost you a lot in the future.

So again, be a winning contractor, stay out of court. Dennis Engelbrecht, Digging Deeper.