



The Cost of Litigation

Burchell v Bullard, Court of Appeal 8 April 2005.

Burchell, a small builder entered into an agreement to build two large extensions to the home of Mr and Mrs Bullard in Bournemouth. The contract provided for four payment milestones. The first 2 payments were made but when Burchell, in August 2000 requested payment of approximately £13,500 for the third stage no payment was made by the Bullards. They were unhappy with the work and wrote setting out what they said had to be done before any further payment would be made. Disagreement ensued and by February of the following year, proceedings were commenced by Burchell claiming approximately £18,000 to which the Bullards issued a counterclaim exceeding £100,000 for alleged defective works.

The case finally went to Court in early February 2004. Burchell was awarded the full amount of his claim, but with the Judge also gave judgment for the Bullards on their counterclaim for approximately £14,000. Allowing for VAT and interest, the Judge ordered the Bullards to pay the difference between the two amounts of approximately £5,000.

Although the Bullards had had some measure of success on the counterclaim in respect of defective works, it was by no means as clear cut as the decision in favour of Burchell. In overall terms, the Bullards had been awarded no more than 15% of the monies they had counterclaimed.

On the issue of costs, the Judge was of the view that the correct approach was to order separate judgments on the claim and counterclaim. Accordingly, he decided that Burchell was able to recover his costs of the claim upon which he had been successful and the Bullards were able to recover the costs of the counterclaim on which they had been partly successful.

Following a detailed assessment by the Judge, upon an application by the parties, and despite being the successful claimant in recovering £5,000, the proceedings were likely to cost Burchell a sum approaching £140,000.

Unsurprisingly, Burchell's lawyers made an application to the court for leave to appeal the costs order on the basis that an injustice may have been done. Permission was granted and the matter came before the Court of Appeal.

Lord Justice Ward noted that it was open to the Judge to make separate awards upon the claim and counterclaim, although, the general rule was that "costs followed the event", Since the Bullards were the unsuccessful parties overall the starting point was that Burchell was entitled to reimbursement of the costs of the proceedings, both claim and counterclaim being taken together.



In assessing the correct proportion of costs that a party could recover, a number of factors then had to be taken into account. Firstly it was noted that Burchell had not exaggerated his claim, whereas the Bullards clearly had. Consideration was also to be given to the manner in which the parties had proceeded with the claims. For example, the Bullard's refusal to mediate needed to be taken into account.

The conclusion was that that Burchell's cost liability was reduced to a figure of the around £35,000.

This case amply illustrates the problems of recovering outstanding invoices from householders when they make a counterclaim for defective works and the costs of putting these right.

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