

SUPREME COURT OF VERMONT

Burton v. Jeremiah Beach Parker Restoration and Construction Management Corp. and Jeremiah Beach Parker

Burton v. Jeremiah Beach Parker Restoration & Construction Management Corp. and Jeremiah Beach Parker, 6 A.3d 38 (Vt. 2010) · No. No. 09-312 · Decided June 21, 2010

SUMMARY

The Vermont Supreme Court affirmed an award of attorney's fees and costs to a construction contractor under the Prompt Payment Act. The court held that the contractor was the substantially prevailing party despite the homeowner's small net judgment, and rejected challenges concerning fee reasonableness, timeliness, costs, and preservation of the statutory-expiration issue. The court also affirmed denial of the homeowner's request to extend the appeal period for the underlying judgment.

CASE DETAILS

COURT	Supreme Court of Vermont
WRITING FOR THE COURT	Dooley; Skoglund; Burgess; Johnson; Zonay, District Judge, specially assigned
JURISDICTION	Vermont
DECIDED	June 21, 2010
DOCKET	No. 09-312
DISPOSITION	affirmed
PROCEDURAL POSTURE	Homeowner appealed from a superior court order awarding the contractor attorney's fees and costs under Vermont's Prompt Payment Act and denying a motion to extend the appeal period for the underlying judgment.
STANDARD OF REVIEW	The determination of which party substantially prevailed under 9 V.S.A. § 4007(c) is reviewed for abuse of discretion. Preservation issues are reviewed under the requirement that an argument be raised below with specificity, clarity, and timeliness. The interpretation and application of the Vermont Rules of Civil Procedure are reviewed according to the rules' text and governing precedent.
PRECEDENTIAL VALUE	published precedential opinion

PARTIES

Al Burton v. Jeremiah Beach Parker Restoration and Construction Management Corp., Jeremiah Beach Parker

TOPICS

construction law contracts attorney fees statutory interpretation appellate procedure

PRACTICE AREAS

construction law contracts appellate procedure civil procedure attorney fees statutory interpretation

QUESTIONS PRESENTED

1. Whether Burton preserved his argument that the Prompt Payment Act's attorney-fee provision had expired before the contractor sought fees.
2. Whether attorney's fees could be awarded under the Prompt Payment Act to a contractor found to have breached the construction contract.
3. Whether the contractor was the substantially prevailing party despite Burton's \$566 net judgment.
4. Whether the trial court properly awarded fees for defending claims on which the contractor did not prevail and properly denied a hearing.
5. Whether the contractor's motion for attorney's fees and costs was timely under the Vermont Rules of Civil Procedure.
6. Whether the trial court properly denied Burton's motion to extend the appeal period for the underlying judgment.

HOLDINGS

1. Burton did not timely preserve his argument that 9 V.S.A. § 4007(c) had expired, so the Supreme Court declined to address its merits.
2. A statutory attorney-fee provision under the Prompt Payment Act is analytically distinct from a contractual fee provision and may support an award even when the contractor was found to have breached the construction contract.
3. Whether a party substantially prevailed under 9 V.S.A. § 4007(c) is committed to the trial court's discretion and does not depend automatically on which party obtained the net monetary judgment.
4. The trial court was not required to divide the litigation into discrete winning and losing claims and award fees only for the claims on which the contractor prevailed.
5. The contractor's attorney-fee motion was timely because judgment was entered when the separate written judgment order was issued, not when the court earlier issued findings and conclusions or docket entries.
6. The trial court properly denied Burton's motion to extend the appeal period because no order tolling the appeal period was requested or entered before the original appeal period expired.

KEY QUOTATIONS

“identifying which—if any—of the parties substantially prevailed under § 4007(c) “falls within the trial court’s discretion, and does not flow automatically from the calculation of the net victor.”” (¶ 8)

“The court was therefore well within its discretion in concluding that, all things considered, contractor was the substantially prevailing party in this lawsuit despite the fact that Burton was the “net victor” to the tune of \$566.” (¶ 10)

“Rule 58 “requires that the court approve and sign a written judgment” and that “[w]ithout such an order, the docket entry of the court’s decision does not constitute entry of judgment and does not commence the running of the appeal period.”” (¶ 14)

FACTUAL BACKGROUND

In February 2002, Burton contracted with Jeremiah Beach Parker Restoration and Construction Management Corporation for substantial renovations to his Benson, Vermont property. Disputes over changes to the renovation plans led to a breakdown in the relationship, and Burton withheld payment while alleging defective workmanship and overbilling. After trial, Burton prevailed on a ridge-beam defect and overbilling claims, but the contractor prevailed on its counterclaim and against most of Burton's claims, leaving Burton with a net judgment of \$566.

PROCEDURAL HISTORY

Burton sued over a residential renovation project, asserting contract, fraud, fiduciary-duty, consumer-fraud, and negligent-misrepresentation claims; the contractor counterclaimed for breach of contract. The superior court dismissed several claims before trial, awarded Burton \$8,627 on two claims, awarded the contractor \$4,901 plus interest on its counterclaim, and entered a net judgment of \$566 for Burton. The court later awarded the contractor \$81,043 in attorney's fees and \$8,124 in costs and denied Burton's request to extend the time to appeal the underlying judgment. The Supreme Court of Vermont affirmed.

DISPOSITION

affirmed

CASES CITED

- Progressive Ins. Co. v. Brown, 2008 VT 103, ¶ 6, 184 Vt. 388, 966 A.2d 666
- Fletcher Hill, Inc. v. Crosbie, 2005 VT 1, 178 Vt. 77, 872 A.2d 292
- A.K. & R. Whipple Plumbing & Heating v. Guy, 2004 UT 47, 94 P.3d 270
- Trytek v. Gale Indus., Inc., 3 So. 3d 1194, 1201 (Fla. 2009)
- Zavatchen v. RHF Holdings, Inc., 2006 PA Super 240, 907 A.2d 607
- Keystone Elevator Co. v. Johnson & Wales Univ., 850 A.2d 912, 918-19 (R.I. 2004)
- Matthews v. Candlewood Builders, Inc., 685 S.W.2d 649, 650 (Tex. 1985) (per curiam)
- Occidental/Neb. Fed. Sav. Bank v. Mehr, 791 P.2d 217, 221-22 (Utah Ct. App. 1990)

- Elec. Man, Inc. v. Charos, 2006 VT 16, ¶¶ 9, 12, 179 Vt. 351, 895 A.2d 193
- L'Esperance v. Benware, 2003 VT 43, ¶ 24, 175 Vt. 292, 830 A.2d 675
- Baker v. Town of Goshen, 169 Vt. 145, 150, 730 A.2d 592, 596 (1999)
- Reed v. Zurn, 2010 VT 14, ¶ 12, 992 A.2d 1061 (mem.)

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