

SUPREME COURT OF VERMONT

Naylor v. Cusson, 2007 VT 108

940 A.2d 717 (2007) · No. No. 06-134 · Decided September 18, 2007

SUMMARY

The Vermont Supreme Court affirmed a superior court judgment awarding a contractor the unpaid final installment, interest, penalties, and other relief under Vermont's Prompt Payment Act. The court upheld findings that the contractor performed the contracted work in a good and workmanlike manner and rejected the homeowners' defenses based on alleged defects and the Act's good-faith-dispute safe harbor. The court held that the trial court violated Vermont Rule of Civil Procedure 54(d)(2) by including attorney's fees in the main judgment, but found no prejudice and remanded the contractor's request for additional appellate and post-judgment attorney's fees.

CASE DETAILS

COURT	Supreme Court of Vermont
WRITING FOR THE COURT	Reiber, C.J.; Dooley, J.; Johnson, J.; Skoglund, J.; Burgess, J.
JURISDICTION	Vermont
DECIDED	September 18, 2007
DOCKET	No. 06-134
DISPOSITION	remanded
PROCEDURAL POSTURE	Homeowners appealed a superior court judgment awarding a contractor the unpaid final contract installment, consequential damages, interest, statutory penalties, and attorney's fees under Vermont's Prompt Payment Act.
STANDARD OF REVIEW	Factual findings are reviewed for clear error and are viewed in the light most favorable to the prevailing party below. Findings stand when supported by reasonable and credible evidence. Credibility determinations and the weight and sufficiency of conflicting evidence are for the trier of fact.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Tammy J. Cusson, Dorothy Ducharme v. James A. Naylor d/b/a Naylor Construction

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QUESTIONS PRESENTED

1. Whether the superior court clearly erred in finding that the contractor performed all contract obligations in a good and workmanlike manner.
2. Whether the homeowners could withhold the final payment under the Prompt Payment Act's safe-harbor provision for good-faith claims.
3. Whether the superior court's general workmanship finding was impermissibly conclusory because it did not separately address each alleged construction defect.
4. Whether the superior court violated Vermont Rule of Civil Procedure 54(d)(2) by including attorney's fees in the main damages judgment rather than entering a separate post-judgment fee judgment, and, if so, whether that violation required reversal.
5. Whether the contractor could seek additional attorney's fees for the appeal and post-judgment bankruptcy-related activity in the appellate court.

HOLDINGS

1. The superior court's finding that the contractor performed every element required by the contract in a good and workmanlike manner was supported by the evidence and was not clearly erroneous.
2. The homeowners could not rely on the Prompt Payment Act's safe-harbor provision because they withheld more than the value of any asserted good-faith claims and neither sought nor obtained a finding that they acted in good faith.
3. The superior court's general finding that the contractor performed in a good and workmanlike manner was sufficient under the circumstances and was not impermissibly conclusory.
4. The superior court violated Vermont Rule of Civil Procedure 54(d)(2) by including attorney's fees in the principal damages judgment instead of entering a separate judgment, but the violation did not warrant disturbing the judgment because the homeowners demonstrated no prejudice.
5. Requests for attorney's fees incurred on appeal or in post-judgment activity must be made in the trial court; the contractor's request for additional fees was therefore remanded to the superior court.

KEY QUOTATIONS

"We affirm the judgment of the superior court and remand for further proceedings with respect to attorney's fees." (719)

"The problem with this theory is that the statute allows a homeowner to withhold "the value of any good faith claims against . . . contractor." (722)

“We agree that the superior court violated Rule 54(d)(2), but because we find no prejudice from the violation, we decline to disturb the judgment on this basis.” (723)

FACTUAL BACKGROUND

James Naylor contracted with Tammy Cusson and Dorothy Ducharme to replace the foundation beneath their house. The written contract specified the work Naylor was to perform and assigned the homeowners responsibility for tasks including dismantling the deck, obtaining topsoil, finish grading, landscaping, and installing window wells. The homeowners paid the first two installments but withheld the final installment, asserting that Naylor had not completed all required work and that portions of the work were defective. After a bench trial, the superior court found that Naylor performed every contractual element in a good and workmanlike manner and that the homeowners' claimed defects either were outside the contract, unsupported by evidence, or attributable to responsibilities the homeowners had retained.

PROCEDURAL HISTORY

The parties entered into a written construction contract for replacement of the homeowners' foundation. After the homeowners withheld the final installment, the contractor filed suit and sought enforcement of a mechanics lien and related statutory remedies. Following a two-day bench trial, the superior court found that the contractor had substantially and workmanlike performed all contract obligations, that the homeowners breached by failing to pay, and awarded the contractor the final installment and Prompt Payment Act remedies. The Supreme Court of Vermont affirmed the judgment, found a procedural violation in the treatment of attorney's fees under Rule 54(d)(2), but remanded the contractor's request for additional appellate and post-judgment attorney's fees.

DISPOSITION

remanded

REMAND INSTRUCTIONS

The superior court must address the contractor's request for additional attorney's fees incurred on appeal and in connection with post-judgment efforts to discharge the judgment debt in bankruptcy. The underlying judgment is affirmed.

CASES CITED

- *Jarvis v. Gillespie*, 155 Vt. 633, 637, 587 A.2d 981, 984 (1991)
- *Harlow v. Miller*, 147 Vt. 480, 481-82, 520 A.2d 995, 997 (1986)
- *N. Aircraft., Inc. v. Reed*, 154 Vt. 36, 44-45, 572 A.2d 1382, 1388 (1990)
- *Medlar v. Aetna Ins. Co.*, 127 Vt. 337, 346, 248 A.2d 740, 747 (1968)
- *Fletcher Hill, Inc. v. Crosbie*, 2005 VT 1, ¶ 7, 178 Vt. 77, 872 A.2d 292
- *Griffith v. Nielsen*, 141 Vt. 423, 429, 449 A.2d 965, 968 (1982)
- *Wells v. Village of Orleans, Inc.*, 132 Vt. 216, 220, 315 A.2d 463, 466 (1973)
- *In re Heath*, 128 Vt. 519, 523, 266 A.2d 812, 815 (1970)

- Murphy v. Stowe Club Highlands, 171 Vt. 144, 162, 761 A.2d 688, 701 (2000)

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