

**Susan Jones relies on April 2017 Court of Appeal decision to defend a £49,000 costs application in its entirety.**

On 20<sup>th</sup> April 2017, in what is likely to be one of the first applications of the Court of Appeal decision in ***Peter Mills Dammerman v Lanyon Bowlder LLP (2017)*** Susan successfully appeared for a Defendant in a costs dispute following settlement of a small claim in favour of a Defendant's counterclaim for an offer made by the Claimant almost 3 years earlier.

The Claimant, a heating business, issued a claim for unpaid invoices when they installed radiators and a heating cylinder at the Defendant's property. The Defendant counterclaimed for rectification costs arising from the Claimant's failure to exercise reasonable care and skill.

Following instruction of 3 experts, the Defendant in 2017 accepted settlement of the counterclaim for its full pleaded value of approximately £3,500 as offered by the Claimant in 2014, as a result the Claimant applied under CPR27.14(2)(g) for costs of £49,000 on the basis that the Defendant's behaviour was unreasonable in:

- Perusing his counterclaim for over 4 years,
- Representing the counterclaim was worth in excess of £75,000,
- Failing to apply to re-allocate the matter to the multi-track and
- Instructing 3 experts (plumbing specialist, Chartered Building Surveyor and Chartered Engineer).

Despite the sum for which the counterclaim settled and the longevity of the litigation Susan drew the Court's attention to the Court of Appeal judgment of ***Mills Dammerman v Lanyon Bowlder LLP (2017)*** published just 3 working days earlier, which considered "*The acid test is whether the conduct merits a reasonable explanation*".

Susan submitted:

- Despite repeated instruction and questions to experts the Defendant until 4 weeks prior to the costs hearing had been unable to quantify his counterclaim,
- To have settled the counterclaim sooner would have risked undervaluation and abuse of process arguments,
- The Defendant's application to amend the counterclaim was opposed by the Claimant,
- Representations of value in excess of £75,000 were made during a small time frame and after instruction of the first expert,
- Following instruction of a second expert the Defendant was in an inevitable position, faced with vastly contrasting expert opinions which culminated in lack of expert cooperation following a joint meeting,
- When finally the third expert responded to questions quantifying the counterclaim settlement negotiations commenced.

For the reasons submitted by Susan and quoting the Court of Appeal judgment of *Dammerman* the Judge accepted the Defendant had not behaved unreasonably and refused the Claimant's application for £49,000 in costs.

**Susan Jones**

**3PB Barristers**

**25 April 2017**