An Interesting Utilities Claim

Not many of us receive a £7M utilities bill as did a large factory in the UK after the meter was changed in order to accommodate an expansion which never took place. The meter had always been read using 7 digits. The meter should have been read using 8 digits. A few readings had been taken by agents. Those readings had been rejected by the supplier because they were not consistent with those taken over a long period by the customer.

The claim for £7M was met with an estoppel defence and counterclaim. The matter was resolved at mediation hosted by the Inner Temple at their new suite.

The case involved an analysis of the contract, and regulatory standard licensing conditions and expert opinion on the question of advanced metreage thresholds, electronic volume converters, best practice, pricing and accountancy and business development evidence as to how the business would have reacted to the higher charges had they been made aware of them at an early stage.

RICHARD BARRACLOUGH KC and MARK DAVIES acted for the customer.

The principles of relevance to the Defence and Counterclaim in estoppel will be familiar, but the summary of the principle and concept of detriment as given by Dixon J (in the High Court of Australia) in *Grundt* v *Great Boulder Proprietary Gold Mines Ltd* (1938) 59 C.L.R. 641 at 674-675, was referenced by Lord Leggatt JSC in *Guest* v *Guest* [2022] 3 W.L.R. 911 at 968 at is of assistance by way of summary:

*“…it is often said simply that the party asserting the estoppel must have been induced to act to his detriment. Although substantially such a statement is correct and leads to no misunderstanding, it does not bring out clearly the basal purpose of the doctrine. That purpose is to avoid or prevent a detriment to the party asserting the estoppel by compelling the opposite party to adhere to the assumption upon which the former acted or abstained from acting. This means that the real detriment or harm from which the law seeks to give protection is that which would flow from the change of position if the assumption were deserted that led to it. So long as the assumption is adhered to, the party who altered his situation upon the faith of it cannot complain. His complaint is that when afterwards the other party makes a different state of affairs the basis of an assertion of right against him then, if it is allowed, his own original change of position will operate as a detriment. His action or inaction must be such that, if the assumption upon which he proceeded were shown to be wrong and an inconsistent state of affairs were accepted as the foundation of the rights and duties of himself and the opposite party, the consequence would be to make his original act or failure to act a source of prejudice.”*

A similar set of facts such as those in this matter arose in the case of *EON Energy Ltd* v *The Brackley Antique Cellar Ltd* [2013] 8 WLUK 167, a case in the Derby County Court heard by Mr Recorder Tidbury.

Whilst this is not an authority for the propositions advanced in this type of case the Recorder undertook an impressive analysis of the principles and facts of that case.

In *Brackley* the claimant energy company supplied the defendant company with electricity at the latter’s business premises, which was used as an antiques market and café. The relevant meter in the premises was a 6-digit meter, but for a time a mixture of 5- and 6-digit readings were provided to the claimant, the higher of which were rejected in favour of the lower. The defendant company priced its charges to stall holders within the market accordingly, such that when the claimant energy company sought to recover an amount for the underbilling the defendant argued it was estopped from doing so as increased charges could not then be recovered.

Mr Recorder Tidbury found for the defendant, answering the question, ‘Is it unjust or unconscionable to allow the Claimant to resile?’ in the following manner at §107 and §109:

*“This is the substantial question in this case. Should the Defendant be allowed the “windfall” of the electricity consumed and not have to make payment for it. The parties are in a commercial relationship, it is not a domestic supply, and I have to weigh up the prejudice on both sides. In this case I have ultimately determined that the Claimant is responsible for the situation that has arisen, even responsible when, as has occurred, the Defendant may have supplied faulty readings. This cannot have been a simple meter to read. Had it been so the Claimant would hardly have failed to accept the readings produced by its own readers. It was clear to the Claimant that the Defendant on occasion did not know how to read it and had to have the method explained, and it is now abundantly clear that the Claimant itself did not understand or accept the meter readings from its own readers. I am satisfied that the Defendant at all times acted honestly and did its best (and in fact usually supplied accurate readings as well) and that the fault in this case lay with the system of checks in the Claimant’s offices. That system it was which led to the present situation.*

*…*

*When I weigh up all the evidence in this case I am clear that it would be unconscionable not to allow the Defendant to rely on the estoppel in this case. To an extent (its own inevitable portion of the bill) it will benefit. It has however lost the opportunity of passing even this portion on in higher licence fees and prices. The benefit otherwise falls to those stallholders who would have been charged and now will not be (and from whom recovery is now not possible). As against that the Claimant will suffer the loss of revenue from this account. The loss from the estoppel therefore falls on those responsible for allowing it to arise. That is neither unjust nor unconscionable, and to provide otherwise would do injustice to the Defendant.”*

In summary the essence of the counterclaim was based on the fact that the portions of the old meter and the new meter to be read were similar in design; the requirement by the regulatory Standard Conditions for and the installation of an advanced meter would have avoided the problem; the readings taken by the suppliers own meter reading agents suggested that the customer may not have been supplying accurate meter readings; the customer was not able to recover the increased costs from their own customers.

The claim had been started in the Business and Property (Technology and Construction) Court and the costs of the trial would have been substantial.

The mediation resulted in a satisfactory settlement at a fraction of the trial costs.