

## High Court Clamps Down on Quantum Meruit

### Introduction

In the building and construction industry, parties that enter into contracts are bound to fulfil the promises that form their agreement. The courts will intervene when a party has not fulfilled their side of a concluded agreement. If for example a principal hires a builder to perform works, and that principal then decides to refuse payment of the agreed price to the builder, the builder can commence legal proceedings for a claim to make the principal pay them. Up until as of recently, a builder in such a circumstance could choose between two alternative legal options to pursue payment: *breach of contract* or *quantum meruit*.

A builder that chose to pursue a breach of contract claim would be provided compensation on the basis that the other party had failed to fulfill the obligations they promised under the contract. If however a builder elected to pursue payment through the principle of *quantum meruit*, their entitlement would be on the basis that they have an entitlement to be paid an amount equivalent to the “fair and reasonable” value of the works they had performed. The choice between an action under contract, and *quantum meruit* becomes important when the court assesses damages to be awarded to the successful party. Damages available for breach of contract are limited to the price the parties initially agreed to under the contract. In the past, damages for *quantum meruit* could exceed the contract price, although as this article explains, this may no longer be the case.

In late 2019, the High Court’s decision in *Mann v Paterson Constructions Pty Ltd* [2019] HCA 32 (‘*Mann v Paterson*’) changed a contractor’s entitlement to quantum meruit by making it more difficult to claim a “fair and reasonable” price if the party seeking payment already had a right to payment under an agreed contract.

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## Mann v Paterson – Facts and Procedural Background

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- Peter and Angela Mann (**'Principals'**) entered into a construction contract with the claimant Paterson Constructions Pty Ltd (**'Builder'**) for the Builder to construct two townhouses at a fixed price (**'Contract'**).
- The Contract set out the details of the project and the whole project was divided into multiple stages. The Contract provided that the Builder was to be paid as the project progressed after each stage was substantially complete.
- The Builder and Principals had a disagreement about some variation works.
- Both the Builder and Principals alleged the other party *repudiated* (behaved in a manner suggesting they no longer wish to be bound by the contract, [read about repudiation here](#)) the Contract and the works stopped.
- The matter was taken to the Victorian Civil and Administrative Tribunal which found that the Builder was entitled to a claim for *quantum meruit*.
- The Principals appealed to higher Victorian state courts and gained no favorable outcome until they reached the High Court of Australia.

## Issues for Determination

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The High Court asked these questions to resolve the issue between the parties:

1. Assuming the Principals repudiated the contract, was the Builder entitled to a *quantum meruit* claim for payment of a “fair and reasonable” price of the work and materials performed?
2. If the Builder was entitled to a payment under *quantum meruit*, should this payment be limited to the price of the Contract?

## Determination

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The High Court said that the Builder was entitled to “fair and reasonable” payment for some of the works and materials they performed up until the works stopped. However, the High Court placed a limitation on the on the scope of works for which a “fair and reasonable” sum could be claimed.

The Builder had already substantially completed some stages of the project, and under the Contract this meant that the Builder had a *contractual right* to be paid for works relating to the complete stages. The High Court said that because the Builder already had a contractual right to payment for works relating to completed stages, a *quantum meruit* was not available for those works. However, *quantum meruit* would be available for works done on incomplete stages because a contractual right to payment did not exist for those works done on incomplete stages. The High Court then suggested that the Builder would have to seek payment for works done on completed stages through *breach of contract*.

Additionally, the Court held that when available, generally the *quantum meruit* award will not exceed the contract price parties have already agreed to. In summary, the High Court said that *quantum meruit* is not available where a contractual right to payment for building works has already arisen due to the agreement between the parties.

## Practical Guidance

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What should a principal, builder, or contractor take away from this case?

- Principals to a construction contract may potentially find benefit in including additional contractual rights to payment for the contractor or builder so as to limit the extent of an award on a quantum meruit basis in the event they elect to repudiate the contract.

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- Builders and contractors should take additional care in determining the price of any construction contract they enter. It is no longer the case that builders and contractors can rely on quantum meruit to recover significantly more than they initially agreed to under the construction contract.
- Finally, parties who elect to enter into litigation to resolve their building and construction disputes will need to account for the reduced appeal of pursuing a generally more complex claim for restitution (quantum meruit) as an alternative to pursuing a remedy through breach of contract.

The effect of *Mann v Paterson* is yet to be largely tested because it is such a new case. [Contact us](#) to obtain advice from experienced and up to date construction lawyers who understand the nuances of the High Court's decision and how it may apply to different factual circumstances.

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