

**BELMGROVE V. ELDRIDGE [1954] 90 CLR 613**

High Court of Australia – 20 August 1954

**FACTS**

Eldridge retained Bellgrove to build a brick house villa to specifications.

The price for the work was £3,500, but Eldridge only paid £3,100. Bellgrove sued for the balance, but Eldridge sued for substantial departures from the specification, which caused grave instability in the villa.

The judge rejected Bellgrove’s claim and accepted Eldridge’s claim. The judge awarded damages of £4,950 to Eldridge.

Bellgrove appealed on the question of damages. The judge had decided that the work was so defective that the villa would have to be pulled down and rebuilt.

**ISSUE**

Had the judge properly assessed the damages?

In particular should the judge have assessed damages by comparing the value of the villa if it had been properly built against the value as it currently stood?

**FINDING**

The proper method for assessing damages was to determine the loss suffered by the failure of Bellgrove to perform his obligation to build the villa, and then determine the cost of rectifying the work.

**QUOTE**

The Court (Dixon CJ, Webb & Taylor JJ) said:

*“In the present case, the respondent was entitled to have a building erected upon her land in accordance with the contract and the plans and specification which formed part of it, and her damage is the loss which she has sustained by the failure by the appellant to perform his obligation to her.*

*This loss cannot be measured by comparing the value it would have borne if erected in accordance with the contract; her loss can, prima facie, be measured only by ascertaining the amount required to rectify the defects complained of, and so give to her the equivalent of a building of her land which is substantially in accordance with the contract.”*

**IMPACT**

Damages for a breach of contract may include the cost of entirely replacing the works if that is the only way the injured party can have their expectation from contract fulfilled.

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