

GRAY (CONSTRUCTIONS) PTY LTD V HOGAN [2000] NSWCA 26

Court of Appeal of NSW – 3 March 2000

FACTS

Gray was retained by Hogan to complete some building work at her home.

The architectural drawings provided by Hogan were incomplete and therefore Gray gave Hogan a budget estimate. However, the contract between the parties was not in writing and therefore was unenforceable under the then Building Services Corporation Act 1969.

Gray sued Hogan for moneys due and payable in the District Court.

The District Court ordered that the dispute be referred to a referee. The referee found that the contract was unenforceable but that Gray was entitled to recover on the basis of quantum meruit. After receiving an expert report from a quantity surveyor, the referee ordered that Hogan pay Gray \$43,116.25 plus interest and costs.

The proceeding returned to the District Court and the judge was prepared to accept the referee's findings of quantum meruit.

However, the judge decided that the quantum meruit amount was overstated as it included a profit margin and did not accurately reflect the value of work performed.

Since the quantum meruit amount was less than the amount already paid by Hogan the Court ordered judgment in favour of Hogan with interest and costs. Gray appealed.

ISSUES

Should the quantum meruit award include a profit margin on top of the reasonable costs incurred by the builder?

FINDING

In some cases, it was reasonable for the value of the quantum meruit to be the value of work performed.

However, when the claim is for goods and services received the usual basis of a quantum meruit claim will be a reasonable remuneration.

QUOTE

Mason P said:

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“There will be cases where such an approach is called for, but not in relation to the valuation of a claim made ‘on a quantum meruit’ for goods and services freely accepted under an arrangement such as the present one in which an intended underlying contract is rendered unenforceable by statute.

The ... correct approach is to determine a reasonable remuneration for the builder, including remuneration which includes a reasonable profit margin.”

IMPACT

A claim for quantum meruit may be for more than the value of a product received.

In a case where a person has expended time and effort in providing a product to a customer a reasonable profit margin will be allowed to fairly compensate the person who provided the product.

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