

LEVEL

TWENTY
SEVEN

C H A M B E R S



Quantum meruit claims following the High Court's
decision in
Mann v Paterson Constructions Pty Ltd

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>> *So - what does this all mean?*

- Well at the very least a party which decides to accept a repudiation should consider carefully whether it has any accrued rights in damages and not consider that as an occasion for a windfall.
- Also clear that in most situations the contract price will be a cap on claims arising out of a termination – unless the contract is vitiated by fraud etc.
- The Court was also clear in its continued resistance to quantum meruit claims where there is an enforceable contract (see also *Lumbers*, supra).

>> *So - what does this all mean? (2)*

- What about a scenario where, under an Australian Standard contract, the amount payable has not accrued due because all interim payments are “on account”?
- It may be there is still room for a quantum meruit claim in such circumstances.
- It also may be, depending on the circumstances, that such a claim might not be confined to the contractual measure. It would seem that for this to occur it would need to be “unconscionable” for the builder to be held to its contractual measure (as per 216). Ongoing uncertainty about when and if that will be accepted given that arises from 3 of 7 judges in *Mann*.

>> *So - what does this all mean? (3)*

- Also the entire Court decided that provisions which forbid claims for variations except where in writing, generally speaking, exclude the availability of restitutionary relief (ie no quantum meruit claims) – see 160 from Nettle, Gordon and Edelman JJ.
- The Court held that the only remedy is then anything available under statute.
- Will be interesting to see how far this reasoning is applied – what about provisions forbidding payment where no licence? Traditionally seen that there was still a restitutionary claim.

>> *So - what does this all mean? (4)*

- Will this reasoning also expand further? What about provisions which would render a contract illegal and prevent payment?
- Will that mean that no restitutionary claim is now available?
- In our view seems unlikely to extend that far but time will tell.