

Mann v Paterson Constructions Pty Limited [2019] HCA 32

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Facts

- Peter and Angela Mann ("the **Manns**") contracted Paterson Constructions Pty Ltd ("**Paterson**") to build two townhouses in Blackburn, Melbourne, Victoria.
- The work was contracted under a domestic building contract pursuant to the *Domestic Building Contracts Act 1995* (Vic) ("**the Act**").
- Before the completion of the second townhouse, the Manns claimed Paterson refused to return to site until the bill for the additional work was paid, and that the work was defective.
- The Manns argued that this amounted to a repudiation of their contract, and purported to accept Paterson's repudiation.
- Paterson responded that the Manns did not have a lawful right to terminate and that, as a result, their actions amounted to a repudiation which the builder accepted. Clearly, the contract had been terminated in some manner.
- The Manns had orally directed 42 variations. The contractor had received \$945,787 as progress payments. The contract price of \$916,779 did not account for the cost of the variations.

Issues

- Was the contractor entitled to sue on a *quantum meruit* even after terminating for repudiation?
- If so, did the contract price operate as a ceiling on the amount claimable under a quantum meruit basis even though then contract was terminated?

Held

- The High Court held that modern quantum meruit claims have been incorrectly founded under "*the rescission fallacy*". The "*rescission fallacy*" should no longer be implemented. A contract, when repudiated, is not *rescinded ab initio* but rescinded prospectively.
- A builder is entitled to recover as a debt amounts to which a right to payment has accrued under the terms of the contract before the contract was terminated for repudiation.
- Quantum meruit is only available in respect of work done by a builder, for which it had no accrued rights to payment under the contract at the time of termination;
- The meaning of quantum meruit is "*as much as he deserved*". A claim for quantum meruit should not exceed the contract price or "*contract ceiling*". Quantum meruit was not envisioned to circumvent contractual price ceilings at the expense of the defaulting party.
- Section 38 of the Act did not envisage a claim in restitution for work performed under a domestic building contract.

Quotes

"Unjust enrichment may be conceived of as a '*unifying legal concept*' which serves a '*taxonomical function*' that assists in understanding why the law recognises an obligation to make restitution in particular circumstances. But it is in no sense an all-embracing theory of restitutionary rights and remedies pursuant to which existing decisions are to be accepted or rejected by reference to the extent of their compliance with its proportions."

Full Text

The full text is available here: <http://eresources.hcourt.gov.au/showCase/2019/HCA/32>

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