

## Pavey & Matthews Pty Ltd v Paul (1985) 162 CLR 221

<https://lawcasesummaries.com/knowledge-base/pavey-matthews-pty-ltd-v-paul-1985-162-clr-221/>

### Facts

- Pavey & Matthews Pty Ltd (**Pavey & Matthews**) were renovating a cottage for Mrs Paul.
- The contract was oral, rather than written.
- Mrs Paul only paid Pavey & Matthews \$36,000. Pavey & Matthews claimed that \$62,945.50 "represents a reasonable sum for the work done and materials provided" and giving credit for a payment of \$36,000".
- The contract was considered unenforceable because it was not written, as otherwise required by section 45 of the *Builders Licensing Act 1971* (NSW) (**the Act**).

### Issue

- Even though the contract was unenforceable, could a claim of unjust enrichment and quantum meruit be made independent of the Act?

### Held

- A claim of quantum meruit could be made independent of the Act.
- The Act allowed building owners to withdraw from their oral commitments, not to legally enable them to pay nothing for work that they requested and approved.
- Mrs Paul had accepted the work performed by Pavey & Matthews and benefited from it.
- Pavey & Matthews would have received less restitution only if Mrs Paul had withdrawn her promise before the work had begun, but the builders had still performed the work.
- Quantum meruit can only be at the objective market rate, rather than any higher agreed price with Mrs Paul.

### Quotes

"However, when success in a quantum meruit depends, not only on the plaintiff proving that he did the work, but also on the defendant's acceptance of the work without paying the agreed remuneration, it is evident that the court is enforcing against the defendant an obligation that differs in character from the contractual obligation had it been enforceable."

(Mason CJ & Wilson J at paragraph [12])

"unjust enrichment in the law of this country... constitutes a unifying legal concept which explains why the law recognises, in a variety of distinct categories of case, an obligation on the part of a defendant to make a fair and just restitution for a benefit derived at the expense of a plaintiff and which assists in the

determination, by the ordinary processes of legal reasoning, of the question whether the law should, in justice, recognise such an obligation in a new or developing category of case..."

(Deane J at pages 256 & 257)

### **Full Text**

The full text is available here:

<http://www8.austlii.edu.au/cgi-bin/viewdoc/au/cases/cth/HCA/1987/5.html>

### **Further Resources**

For interesting additional reading on unjust enrichment, *Pavey & Matthews* and restitution, please read: Michael Bryan, 'Peter Birks and Unjust Enrichment in Australia' [2004] 28 *Melbourne University Law Review* 724

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