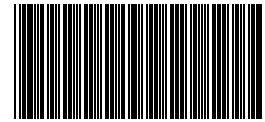




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Written Submissions

COURT DETAILS

Court	Supreme Court of New South Wales, Court of Appeal
List	Court of Appeal
Registry	Supreme Court Sydney
Case number	2025/00085250

TITLE OF PROCEEDINGS

First Appellant	BETTAR HOLDINGS PTY. LIMITED trading as Hunt Collaborative ACN 050061946
First Respondent	RWC BROOKVALE INVESTMENT PTY LTD ACN 670150437

FILING DETAILS

Filed for	BETTAR HOLDINGS PTY. LIMITED trading as Hunt Collaborative, Appellant 1
Legal representative	Thomas Heading
Legal representative reference	
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ATTACHMENT DETAILS

In accordance with Part 3 of the UCPR, this coversheet confirms that both the Lodge Document, along with any other documents listed below, were filed by the Court.

Written Submissions (Bettar v RWC - Appellant's Reply.pdf)

[attach.]

IN THE SUPREME COURT OF NEW SOUTH WALES, COURT OF APPEAL

No 85250 of 2025

BETTAR HOLDINGS PTY LTD t/as Hunt Collaborative
Appellant

RWC BROOKVALE INVESTMENTS PTY LTD at Brookvale Development Trust
Respondent

APPELLANT'S REPLY

A. Reply as to whether there was a “construction contract” (grounds 1 to 4)

The contract Hunt says existed is not void for incompleteness in terms

1. RWC claims (at [7]) that “[t]he fundamental difficulty with the appellant’s submissions is a failure to address the basic requirements of a contract namely that there be a consensus on terms as properly observed by the learned trial judge at paragraph 64 of the Reasons”. Not so.
2. It is of course correct to say that, for a contract to exist, there must be a consensus (agreement) between the parties. But there need not be consensus on all the terms that the parties expect will ultimately bind them *inter se*. That necessarily follows from acceptance that there is a fourth class of cases additional to the three mentioned in *Masters v Cameron* (1964) 91 CLR 353 in which a contract exists – an immediately binding contract made in contemplation of a further contract being entered containing additional terms.
3. The primary judge erroneously proceeded otherwise. In the paragraph of the primary judge’s reasons on which RWC relies to expose the supposed “fundamental difficulty” that it says infects the Appellant’s case (J [64]), the primary judge refers to part of a sentence in a textbook that notes that “*the existence of agreement (consensus on terms)*” is essential to the existence of a contract and then observes that “[a] complete set of agreed terms was never arrived at”. That observation is correct but it does not mean that no contract was concluded.
4. The correct approach was put well, with respect, by Lloyd LJ in *Pagnan SpA v Feed Products Ltd* [1987] 2 Lloyd’s Rep 601 (EWCA) at 619:

the parties may intend to be bound forthwith even though there are further terms still to be agreed or some further formality to be fulfilled ... If the parties fail to reach agreement on such further terms, the existing contract is not invalidated unless the failure to reach agreement on such further terms renders the contract as a whole unworkable or void of uncertainty ... But there is no legal obstacle which stands in the way of the parties agreeing to be bound now while deferring important matters to be agreed later.
5. The reference in this passage to “unworkable” or “uncertain” contracts is a reference to the fact that there is no contract if the parties have not agreed upon terms “without which the contract

*cannot be enforced then the statement is true: the law cannot enforce an incomplete contract*¹: see *Pagnan* at 619.

6. One such term that is ordinarily regarded as “*essential*”¹ in this regard is agreement as to price. There was an express agreement as to that matter in the present case – the daily rates for management staff referred to Hunt’s “*Indicative Budget Estimate*”² plus a 5.5% “*profit and head office overhead fee on all costs for the project (including prelims obviously)*” plus a possible bonus.³

7. But even if that were not so, that would not be fatal to Hunt’s contention that a contract came into existence between the parties: cf RS at [10]. As Eder J explained in *MRI Trading v Erdenet Mining Corp* [2012] 2 Lloyd’s Rep 456 (QBD) at [23]:

where the court is satisfied that the parties intended that their bargain should be enforceable, it will strive to give effect to that intention by construing the words which they have used in a way which does not leave the matter to be agreed in the future incapable of being determined in the absence of future agreement. In order to achieve that result the court may feel able to imply a term in the original bargain that the price or rent, or other matter to be agreed, should be a “fair” price, or a “market” price, or a “reasonable” price; or by qualifying whatever matter it is that has to be agreed by some equivalent epithet.

8. When that approach to the question of contractual “*completeness*” is understood, RWC’s approach is revealed to not only be commercially unrealistic but wrong in law.

9. In this regard, the final sentence of paragraph 11 of RWC’s written submissions is particularly telling. In that sentence, RWC asserts that:

Performing ad hoc work at the request of Hannas does not constitute a concluded agreement between the appellant and the respondents [sic].

10. But why not? An objective observer would not ordinarily regard requests for the performance of work in a commercial context as amounting to a request to perform work for free. Rather, such requests would ordinarily be regarded as being made in the context of an express or implied offer to pay for the requested work at some specified price or, at least, at a reasonable, fair or market price of the kind referred to by Eder J in *MRI Trading*.

11. Contrary to RWC’s submissions (at [7], [8], [9]), it was not necessary for Hunt to plead or otherwise “*identify*” what the terms of the construction contract that Hunt says existed as would be necessary, for example, in a breach of contract case. The material fact (which was pleaded) was that there was a contract between Hunt and RWC. If RWC wished to dispute

¹ But note the difficulties with the use of the word “*essential*” in this area of discourse: see *Pagnan SpA v Feed Products* [1987] 2 Lloyd’s Rep 601 (EWCA) at 619(6).

² 1 Blue 61E as picked up by 1 Blue 101K.

³ 1 Blue 100Q-S.

what the terms of that contract were and thus what (if anything) Hunt was entitled to be paid, it could and should have done so by a timeously served payment schedule.

Hunt's agency case was sufficiently pleaded

12. RWC's pleading point concerning agency (RS at [19]-[22]) misfires for similar reasons. Hunt's amended statement of claim pleaded that there was an agreement between two juridical persons – RWC and Hunt – and identified, by particulars, the natural persons by whom that agreement was alleged to have been entered into between those juridical persons.⁴
13. It was unnecessary for Hunt to go further and specifically plead that the identified natural persons were agents or sub-agents of RWC. The material fact (insofar as is presently relevant) is that a contract was concluded between RWC and Hunt. How that was to be proven was a matter for evidence.
14. If this Court holds otherwise, a significant change in pleading practice in this State will be necessary. In almost every case where a juridical person is alleged to have done something, it will become necessary for pleaders to plead that a natural person had authority to do the thing on behalf of the juridical person, even when that is obvious that that is the effect of what is alleged (such as where, for example, a director of a multi-director company signs a document on behalf of his or her company). That proposed innovation in pleading practice is not one that is likely to advance the just, quick and cheap resolution of the real issues in dispute. Nor is it one that is consistent with the general injunction in r 14.7 of the *Uniform Civil Procedure Rules 2005* (NSW) to pleaders to draw pleadings that generally only contain “*a summary of the material facts*” and not other facts.

This Court should find that agency is established

15. On the question of agency more generally, RWC has proffered no substantive answer to Hunt's point in chief that the question of whether Hannas Contracting Services has authority to enter into contracts on behalf of RWC is a question that should be determined by weighing evidence in the way referred to in *Blatch v Archer* (1774) 1 Cowp 64; 98 ER 969. RWC instead seeks to answer that point by (at [22]) raising the misconceived pleading point that should be rejected for the reasons given above.
16. Contrary to RWC's submissions (at [22]), Hunt does not say that RWC “*should have*” adduced evidence as to any limits on, or absence of, authority on the part of Hannas Contracting Services to enter into contracts on behalf of RWC as part of its management functions: cf RS

⁴ See Amended Statement of Claim filed 29 May 2024 (**ASOC**) at [3]-[8] (Red 3L-4R).

at [22]. Rather, it says that RWC's decision (which it was entitled to make) not to lead such evidence is something that can and should be taken into account in the ordinary way.

17. On the evidence, it is clear that Hannas Contracting Services was an agent of RWC for at least some purposes. On RWC's own evidence – an affidavit sworn by Mr Hanna that constituted the whole of RWC's affidavit evidence below – Hannas Constructing Services was “*the development manager authorised by [RWC]*”.⁵ That evidence – coupled with the other matters to which attention was drawn in chief at [41] and the absence of any evidence from RWC regarding any relevant limitations on Hannas Constructing Services' authority as RWC's agent – provides a sufficient basis on which this Court can and should find that Hannas Constructing Services had authority to enter into contracts on behalf of RWC in connection with the Brookvale Project.

RWC's submissions on estoppel do not advance its case

18. RWC's written submissions on estoppel (RS at [23]-[28]) do not grapple in any detail with what Hunt said in chief in relation to conventional and promissory estoppel.
19. Instead, RWC's submissions largely repeat (albeit in slightly different language) the substance of assertions that it made on the contract question and seek to rely on findings of the primary judge that Hunt challenges. Those assertions are answered by what has already been said above.
20. RWC also asserts (at [28]) that “[t]he equitable remedy of estoppel would only be relevant here if the relevant terms of such contract are properly identified”. Putting aside the fact that one of the kinds of estoppel that Hunt asserts (conventional estoppel) is more accurately characterised as a common law estoppel and the fact that estoppels are not really “*remedies*”, RWC is wrong to say the upholding Hunt's estoppel case is contingent upon Hunt “*properly identif[ying]*” terms of a notional contract. The estoppel that Hunt alleges is one estopping RWC from denying the existence of a contract. For the reasons already explained, it is not a necessary element of Hunt's case that a contract or notional contract had particular terms. Any dispute about the terms of any contract or notional contract was something that RWC could have raised in a timeously served payment schedule.

RWC's submissions on the “*other arrangement*” question do not advance its case on the substance of that question; its pleading point on that question is misconceived

21. RWC's one paragraph of substantive submissions on the “*other arrangement*” question (ground 4) again repeats the substance of assertions it has made on the contract question and, again, seeks to rely on findings of the primary judge that Hunt challenges. Again, RWC's

⁵ Affidavit of Danny Hanna sworn 22 July 2024 at [1] (1 Blue 27G-I).

substantive case on this issue is answered by what is said above. RWC has advanced no answer to the submissions on law made in chief at [57]-[64].

22. RWC also, again, seeks to defeat ground 4 of the present appeal on a pleading point. That point is misconceived. Below, Hunt expressly pleaded “*there was a construction contract within the meaning of s4 of the SOP Act between [Hunt] and [RWC]*”.⁶ A “*construction contract within the meaning of s4 of the SOP Act*” is a “*contract or other arrangement*” or an identified kind. It follows that Hunt’s alternative contention that there was an “*other arrangement*” between Hunt and RWC falls within the pleaded case below and (if reached) ground 4 of the present appeal should be determined on its substance; not rejected on a pleading point as RWC would have it.

RWC’s submissions on the “s 13(2)(a) question” (grounds 5 and 6) are contrary to intermediate appellate court authority

23. RWC’s case on appeal on the “s 13(2)(a) question” (grounds 5 and 6) seems to be that Hunt’s payment claim does not identify the construction work (or related goods and services) to which the progress payment relates because it:
- (a) “*merely*” contains a “*reference to certain persons, their position, a period of time and a daily rate*” (RS at [32]);
 - (b) the amount claimed is calculated in a manner that RWC says is not consistent with the terms of the putative contract (see RS at [34]-[35]); and
 - (c) includes a claim for damages (RS at [1(f)], [36]).
24. Each of those contentions is inconsistent with intermediate appellate authority that RWC does not challenge as “*plainly wrong*”.
25. As to the first contention, in *WNA Construction v Canberra Building and Maintenance* [2025] ACTCA 17 at [129], the ACT Court of Appeal held that a payment claim that merely “*specified the hours worked and the hourly rate for the claim*” was “*sufficient to satisfy the minimal requirements of the Security of Payment Act*”. Contrary to RWC’s submissions (at [37]), the fact that the parties in *WNA* were parties to a contract “*setting out hourly rates for the work to be performed*” is not a relevant ground of distinction. There is such a contract in the present case.⁷ Even if there wasn’t, there is nothing in the ACT Court of Appeal’s reasoning in *WNA* that suggests that its views concerning what will satisfy the “*minimal requirements of the Security of Payment Act*” concerning identification of the construction work or related goods

⁶ ASOC at [21] (Red 6P-Q).

⁷ 1 Blue 61E as picked up by 1 Blue 101K.

or services in a payment claim only applies where something is said in some other document such as a written contract. Nor is there any reason of principle for this Court to read in such a condition. Paragraph 13(2)(a) is focused on whether “*the construction work (or related goods and services to which the progress payment relates)*” is “*identified*” in the payment claim. There is no reason to regard “*specifi[cation]*” of the “*hours worked and the hourly rate for the claim*” as sufficient but only on proof that those same hourly rates appear in a written contract.

26. RWC’s case on this issue is also not assisted by its observation (at [37]) that some of the invoices annexed to the payment claim considered in *WNA* were less “*sparse*” than others. The Court’s point in *WNA* was that even the most “*sparse*” of the invoices were good enough. The validity of the payment claim upheld in that case did not turn on the fact that some of the invoices annexed to that payment claim provided (as RWC puts it at [37]) “*significantly more detail than the payment claim in this proceeding*”.
27. As for the second contention summarised in paragraph 23 above (inconsistency with putative contract), it is well-established by authority in this Court that consistency with the terms of a construction contract is not a matter going to the validity of a payment claim. Rather, any asserted inconsistency is a matter to be raised by a timeously served payment schedule and determined by an adjudicator if a dispute remains. As this Court put it in *TFM Epping Land v Decon* [2020] NSWCA 93 at [23]:

On the face of the claim, the payments were sought under the contract. If they were not available under the contract, it might have been open to an adjudicator to reject those elements of the claimed amount. It was not open to the principals to resist judgment for the full amount of the payment claim on this basis.

28. As for the third contention summarised in paragraph 23 above (claim for damages), that appears to be a one paragraph indirect attempt to resurrect the (more fully developed and more nuanced) argument recently rejected by this Court in *Enermech Pty Ltd v Acciona Infrastructure Projects Australia Pty Ltd* (2024) 115 NSWLR 56. In *Enermech*, the principal successfully argued at first instance (relying on, inter alia, the same passages in *Southern Han v Lewence* (2016) 260 CLR 340 that RWC seeks to rely upon in this case) that a payment claim was invalid because it was a claim for a credit corresponding to an amount obtained by recourse to security and not a claim for construction work. That decision was overturned by this Court.
29. In so doing, this Court said the following (at [62]):

Whether an amount is in fact payable will depend on the proper construction of the contract, identification of the work which has been carried out and a determination as to whether that work has already been paid for. These are matters to be determined by an adjudicator in

the case of a dispute; they are not preconditions to the validity of a claim. If the entitlement is claimed to arise “under” a construction contract, as required by s 13(1) of the Act, the soundness of a claim denied in a payment schedule is for the adjudicator.

30. *Enermech* is fatal to RWC’s argument to the contrary in the absence of that decision being challenged as “*plainly wrong*” (which RWC has not done).

RWC’s submissions on service do not advance its case

31. RWC’s submissions on service (RS [40]-[47]) are largely a rehash of its submissions on agency. They are answered by what is said above. There appears to be no challenge to the proposition that, if Hannas Contracting Services was RWC’s agent for the purpose of receipt of payment claims as Hunt contends, then Hunt’s payment claim was served on 21 December 2023 and not met with a timeously served payment schedule. RWC also advances no answer to the proposition advanced in chief at [96] that, because a payment claim may be served on a respondent by its servant or agent with authority to receive it,⁸ a payment claim may be served on such a servant or agent’s ordinary place of business.

RWC’s submissions on costs make the same error as the primary judge did

32. RWC is correct to observe (at [49]) that the primary judge held that Hunt’s case below was “*doomed to fail*”. But that’s the problem – her Honour acted upon a wrong principle by treating Hunt’s case below as doomed to fail because, in her Honour’s opinion, each of Hunt’s principal contentions failed. That is not what “*doomed to fail*” means in the relevant sense.
33. RWC makes the same error in its submissions. It says that the primary judge’s findings that there was no construction contract and that the payment claim was not served when Hunt said it were “*open on the evidence*”. But the fact that a finding may be “*open on the evidence*” (whatever that may mean in relation to a findings that are subject to review on the correctness standard rather than the *House v The King* standard) does not mean that a submission that such a finding should not be made is “*doomed to fail*”. Conflating those two different things is the error of principle that the primary judge made and which warrants appellate intervention if this Court is not called upon to re-exercise the primary judge’s discretion with respect to costs in any event.

⁸ See *Trust Company v Ico Co* [2019] QSC 87 at [61] and the authorities cited therein.

34. On the re-exercise of discretion, the Court would not order indemnity costs from 25 July 2024 as sought by RWC in the alternative. This is an “*all or nothing*” case⁹ in which Hunt’s position is at least strongly arguable.
35. A \$33,000 offer to resolve a \$232,472 plus interest claim was not one that was unreasonable for Hunt not to accept in the circumstances of the particular case.

14 August 2025



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⁹ See, eg, *Regency Media v AAV Australia* [2009] NSWCA 368 at [29] regarding the appropriate approach to costs in an “*all or nothing*” case.