



## Précis Paper

### Evidence of value for quantum meruit claims - Roude v Helwani [2020] NSWCA 310

Abstract – The contentious issue of quantum meruit claims, and payment claims for commercial work without a formal contract have been before the superior courts on numerous occasions, most recently concerning *Roude v Helwani* [2020] NSWCA 310.

#### **Discussion Includes**

- Background on the case
- How the court deals with a quantum meruit claim
- Main issues on appeal
- The evidence
- The main lessons from this case
- Are tactical evidentiary issues common?
- Security of Payment Act

## Précis Paper

### Evidence of value for quantum meruit claims – *Roude v Helwani* [2020] NSWCA 310

1. In this edition of BenchTV, Lachlan Wilson, partner, and Andrew Justice, barrister, discuss quantum meruit claims and claims for commercial work that do not have a formal contract. This discussion focuses on the recent decision in *Roude v Helwani*.<sup>1</sup>

#### Background on the case

2. The respondent, Mr Helwani, is a licensed builder, plumber, and electrician and did a substantial amount of work over several years for the Roude homeowners. There was no quotation, no written contract, and no defined scope of work. Both parties had been friends for about thirty years.
3. After completing the work on or about 15 January 2015, the appellants asked for the bill. The respondent produced invoices for the work completed totalling \$123,571.50. The appellants had previously paid \$37,500 while the work was being completed, leaving the balance of \$86,071.50.
4. When the appellants were issued invoices, they did not question them, which became a prominent issue at trial.
5. The respondent sought the recovery of the \$86,071.50 balance in the Local Court. However, because there was no defined scope of work or a contract, this was done on a quantum meruit basis.
6. The case progressed through all three levels of the Local Court, on appeal to the Supreme Court, followed by an appeal to the Court of Appeal, which handed down a unanimous decision upholding the Local Court decision.

#### How the court deals with a quantum meruit claim

7. In response to the quantum meruit claim in the Local Court, Magistrate Atkinson was concerned that the evidence before the court was less than preferred. Both parties attempted to tender independent evidence regarding costing from an independent third-party builder, but the expert evidence was rejected.
8. This meant that the only evidence of value tendered was the respondent's evidence, which was extremely detailed in his affidavit.
9. This was sufficient to be assessed and enough to find in favour of the quantum meruit claim.

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<sup>1</sup> [2020] NSWCA 310 ('*Roude v Helwani*').

10. The magistrate rejected the appellant's submission that due to a lack of expert evidence, the magistrate was relieved from the obligation to evaluate the value of the quantum meruit claim. The magistrate also found that the appellant's claim was contradicted by the lack of expert evidence, permitting them, on the balance of probabilities, to find that the quantum meruit claim was reasonable.
11. As the appellant was unsatisfied with the outcome of the first instance decision, they appealed to the Supreme Court on a question of law. The matter was heard before Associate Justice Harrison, who dismissed the appeal.

#### Main issues on appeal

12. The matter was then appealed to the New South Wales Court of Appeal with two main issues:
  - a. With the finding for a claim of quantum meruit, did the magistrate err as there was no evidence produced regarding the fair and reasonable value of the work performed?
  - b. Did the magistrate err in failing to apply the correct standard of proof or by failing to require the necessary evidence to discharge the respondent's onus?
13. The other issues on appeal were the adequacy of reasoning and whether the key issues were issues of law or mixed facts and law.
14. The appellant essentially argued that to determine a quantum meruit claim, the party seeking the claim had to either establish a market rate for the work supplied or produce an objective standard by which the work could be assessed. The appellant submitted that no market rate or independent evidence of a rate was adduced.
15. In the original appeal, the appellant relied on the decision in *Horley v Sector 7G Architecture Pty Ltd (in liq)*.<sup>2</sup> The facts in *Horley* shared some similarity, yet, the invoices relied upon provided no work hours involved or any detailed work explanation. Furthermore, the invoices relied upon were created after the litigation commenced, which was years after the work was done.
16. The significant differences are that in *Roude v Helwani*,<sup>3</sup> the respondent produced contemporaneous invoices backed up with supporting documents, photographs, and additional plans and detailed evidence. This allowed Harrison J to conclude that the information previously relied upon by the magistrate was correct.
17. The appellant also relied upon *Pavey & Matthews Pty Ltd v Paul*,<sup>4</sup> submitting that a fair and reasonable remuneration was determined by proof calculated against a market rate of the fair price for the work, suggesting that the respondent did not meet that standard. However, the Court of Appeal considered the decision in *Pavey & Matthews Pty Ltd v Paul*,<sup>5</sup> and noted Dean J's use of the words "usually and ordinarily" regarding what would give an objective standard. However, this is not prescriptive, and the Court of Appeal disagreed with the interpretation of *Pavey*, as the authority the appellant relied upon did not support the proposition sought.

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<sup>2</sup> [2011] NSWSC 827 (*'Horley'*).

<sup>3</sup> *Roude v Helwani* (n 1).

<sup>4</sup> (1987) 162 CLR 221; [1987] HCA 5.

<sup>5</sup> *Ibid*.

### The evidence

18. The Court of Appeal considered that the respondent could be considered an expert qualified to give evidence as to value, pursuant to the *Evidence Act 1995* (NSW) s 79. This evidence was not objected to at trial, leaving the court to establish that the charges were reasonable.
19. In considering the appellant's failure to object to the invoices, the Court of Appeal formed the view that as there was no dispute to the invoices when they were issued, it amounted to an admission that the magistrate could take into consideration.
20. Based on the evidence, the Court of Appeal upheld the original decision.

### The main lessons from this case

21. In quantum meruit disputes, expert evidence is the superior evidence. However, it is not always required to establish a quantum meruit claim or determine fair and reasonable remuneration.
22. This decision unlocks a way for parties to pursue a quantum meruit claim in the right circumstances, without the necessity of engaging an expert, but it will depend on the facts of the case.
23. This is very relevant for cost-free jurisdictions, such as the NSW Civil and Administrative Tribunal ('NCAT'), and the Small Claims Division, where the cost of obtaining expert evidence may not be recovered.
24. A lesson here is to ensure that records and notes are kept up to date for any business or client, and everything is documented. Contemporaneous evidence is the best evidence.

### Are tactical evidentiary issues common?

25. Quantum meruit claims are commonly tactical evidentiary issue claims, as the best evidence available needs to be obtained. If a quantum meruit claim is at hand, the best evidence is to get a quantitative survey and get an independent expert to assess the work.
26. However, this is out of reach for many litigants due to cost and time constraints, and it would need to establish whether the evidence at hand would be sufficient.
27. Builders always seem to propound that no objections were made to work provided, which is comparable to numerous building cases in which a builder does the work, issues an invoice, is promised payment, but is not paid. Then following an extended period, an objection is made to the invoice. Whether this amounts to an admission depends on the facts, but that is an example of an evidentiary issue that can directly impact the arguments put forward at trial.
28. In cases such as *Mann v Patterson Constructions Pty Ltd*,<sup>6</sup> or any case that a contract is statutorily barred, or there is no contract, quantum meruit can arise. Then the evidence needed must be obtained to either propound or to meet such a claim.

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<sup>6</sup> [2019] HCA 32; 93 ALJR 1164.

## Security of Payment Act

29. Following 1 March 2021, residential builders are allowed to resolve payment claim disputes against owner occupier homeowners under the *Building and Construction Industry Security of Payment Act 1999* (NSW) ('*Security of Payment Act*').
30. This means that if a claim is disputed by the homeowner regarding a builder's progress payment claim, the builder can submit an application for independent adjudication of the contested claim in the alternative to NCAT.
31. If the *Security of Payment Act* applied to the respondent in *Roude v Helwani*,<sup>7</sup> and they did not have a payment schedule for the work completed, they would not need to rely on quantum meruit, as they would have a statutory right to recover the claim.

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<sup>7</sup> *Roude v Helwani* (n 1).

## **BIOGRAPHY**

### Lachlan Wilson

Partner, Hicksons Lawyers, Newcastle

Mr Wilson has extensive experience with a wide range of matters, including complex commercial and insolvency litigation, insurance litigation, construction disputes, professional indemnity and negligence. He is an Accredited Specialist in Dispute Resolution. He is also a member of the Australian Restructuring Insolvency and Turnaround Association (ARITA).

### Andrew Justice

Barrister, Newcastle Chambers, Sydney

With chambers in both Sydney and Newcastle, Mr Justice is uniquely positioned to represent a broad range of clients in the areas in which he specialises, which includes corporations law, construction law and commercial law. Prior to being called to the Bar in 2002, he practised as a solicitor at Watson Mangioni for three years.

## **BIBLIOGRAPHY**

### Focus Case

*Roude v Helwani* [2020] NSWCA 310

### Judgment Link

<https://www.austlii.edu.au/cgi-bin/viewdoc/au/cases/nsw/NSWCA/2020/310.html>

### Cases

*Horley v Sector 7G Architecture Pty Ltd (in liq)* [2011] NSWSC 827

*Mann v Patterson Constructions Pty Ltd* [2019] HCA 32; 93 ALJR 1164

*Pavey & Matthews Pty Ltd v Paul* (1987) 162 CLR 221; [1987] HCA 5

### Legislation

*Building and Construction Industry Security of Payment Act* 1999 (NSW)

*Evidence Act* 1995 (NSW) s 79

*Home Building Act* 1989 (NSW)