

**Renbar Constructions Pty Ltd v Sader; Sader v Renbar Constructions Pty Ltd [2022]
NSWSC 172**

FACTS

The case of *Renbar Constructions Pty Ltd v Sader; Sader v Renbar Constructions Pty Ltd [2022] NSWSC 172* involved a dispute over payments under a Costs Plus Contract, for the development of a residential dwelling. The defendant, Dr Mark Sader, contracted with the plaintiff, Renbar Constructions Pty Ltd for the demolition and subsequent construction of a dwelling on a property owned by Dr Sader in July 2014.

The contract carried a number of terms laying out procedures for the payment of progress claims including the following term:

13.2 *“In order to be entitled to a progress payment, the builder must give the owner a written progress payment claim at the times specified in Schedule 4.”*

The plaintiff failed to provide progress payment claims complying with the contract, however a number of payments were made, and no dispute was raised until after practical completion.

When a dispute as to the amount of the claim was raised after completion, both parties continued to refer to payments to be made in respect of noncompliant payment claims as well as further payment claims.

When the matter came to court, the defendant’s representation submitted that the builder should not be entitled to any payment where they had failed to make a claim pursuant to the contract.

ISSUE

Whether the contractor was entitled to be paid notwithstanding a failure to provide progress claims which were compliant with the contract?

FINDING

The court found for the plaintiff, finding that the builder was entitled to payments under the contract on a cost plus basis, less various amounts and loss by the defendants, with Stevenson J stating:

125 *“[N]othing in the contract precludes the builder’s entitlement to be paid other than by monthly progress payments. Nor does the operation of cl 13 discharge the owner’s obligation under cl 2.2 to pay the price of the works carried out.”*

158 *“Dr Sader, and Mrs Sader, were actively involved the evolving decisions that were made concerning construction of their home. They must have understood that those decisions increased the cost of the works.”*

IMPACT

This decision shows the uncertainty which may arise when parties fail to follow procedures laid out in a contract and risks inherent in this to both Principal and Builder alike.

The matter also highlights the potential for progress payment claims, which do not meet the requirements laid out under the contract, to be accepted by the parties by implication in indicating an intention to make payment in respect of those claims.