

## Builder entitled to payment despite owner's termination after 141-week delays

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Can a builder still recover payments due under a building contract after being 141 weeks late in completing works?

### Key takeaways

- Despite the owner terminating a building contract for serious delay and breach by the builder in failing to provide supporting documents for progress claims, a recent Supreme Court decision found that the builder was entitled to recover full payment
- The builder delayed completing works for 141 weeks and ran \$1 million over-budget but was still able to recover the contract price
- Unless the contract otherwise provides, a builder who completes the works, where the unpaid cost of the works has been assessed, may claim the balance of the contract price notwithstanding the builder fails to provide supporting documents for progress claims as required by the contract
- It is important to have specialist advice early in building disputes where considerations are given to terminate

### Background

Dr Sader (owner) entered into a "cost-plus" contract with Renbar (builder) to construct a new residence in Connell Point. Renbar commenced work in mid-2014 and inconsistently made progress claims to Dr Sader. While the contract required progress claims to be accompanied by supporting documents, Renbar failed to provide such documentation for the first 12 claims. However, Dr Sader paid those claims without complaint.

Renbar completed the works in April 2018, 141 weeks after the date specified by the contract. By this time, total building costs, to be paid by Dr Sader, stood at \$3.2 million, well above the initial estimate of \$2.2 million.

In mid-2019, Renbar made the 'final' progress claim, representing the balance of the contract price (\$1.5 million). In 2020, the owner disputed his obligation to pay and terminated the contract on the basis of Renbar's serious delay in carrying out the works. After termination, Renbar made a further progress claim, being a repetition of the previous claim.

Was Renbar entitled to payment despite Dr Sader's termination of the contract?

### Decision

The Court found that Renbar, having completed the work but failing to make complying progress claims, was nonetheless entitled to the balance of the contract price. While the contract did not specifically deal with Renbar's rights in this situation, the agreement could not effectively operate without this term since the builder would not be paid for work it had done at its own expense. The term was "so obvious it goes without saying" and could be implied into the contract. Thus, Renbar had a right to payment when it completed the works in 2018 which survived termination in 2020.

However, Dr Sader was entitled to compensation for the loss of an opportunity to rent his existing property for the period of the delay.

### Conclusion

*Renbar* highlights a common dispute in building contracts. While in many cases building owners will feel aggrieved by apparent breaches of the builder, including delays or budget blow outs, termination is not a straightforward matter. Even if, on the face of it, the builder breaches the contract or causes loss to the owner, this doesn't necessarily mean the builder is not entitled to full payment under the contract.

If you would like any further information or would like to discuss your legal rights, please contact [Chris Kintis](#) or your usual ClarkeKann contact.