

LEVEL

TWENTY
SEVEN

CHAMBERS



Quantum meruit claims following the High Court's
decision in
Mann v Paterson Constructions Pty Ltd

Michael Trim

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>> *Mann v Paterson* - background

- The Appellants (in the High Court) were the owners of land.
- The Respondent was the builder.
- The parties entered into a contract to build two townhouses in Blackburn, Victoria for a fixed price of \$971,000.



>> *Mann v Paterson* – background (2)

- The contract was for the payment of money in stages – fairly standard domestic building contract.
- The contract required written notice of variations.
- During contract the owners requested some 42 oral variations but they did not add more than 2% of the price.
- A dispute arose about variations towards the end of the project.

>> *Mann v Paterson* – background (3)

- Section 38 of the *Domestic Building Contracts Act* 1995 (Vic) provided a process for variations and relevantly:
 - Required variations to be in writing to be effective; and,
 - Provided a limited right of recovery for any otherwise ineffective variations.
- The townhouses reached the stage where one certificate of occupancy was issued but not the other.

>> *Mann v Paterson* – background (4)

- Payments of over \$900,000 were made during the works.
- The Respondent builder commenced a proceeding seeking damages of \$446,770 including claims for variations for \$231,515 or \$518,597 for the balance of monies for work and labour done up to termination.
- During the proceedings the latter was increased to \$944,898 in reliance on expert evidence as to the value of the work.
- The hearing at first instance went for 20 sitting days with 11 lay witnesses and 11 expert witnesses.

>> *Mann v Paterson* – background (5)

- At first instance VCAT awarded \$660,526.41 expressly on a quantum meruit basis.
- VCAT assessed the value of the works at \$1,722,611 and deducted amounts for defects (\$116k) and amounts paid.
- The Court of Appeal dismissed the appeal – partly on the basis that a restitutionary claim for quantum meruit was, in part, an alternative to an action for damages.
- The appeal to the High Court was successful and the matter was remitted.