



Form 105 (version 7)
UCPR 51.16, 51.18, 51.20

NOTICE OF APPEAL

COURT DETAILS

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

TITLE OF PROCEEDINGS

Appellant	Bettar Holdings Pty Limited (ACN 050 061 946)
Respondent	RWC Brookvale Investments Pty Ltd (ACN 670 150 437) as trustee for Brookvale Development Trust (ABN 42 359 186 969)

PROCEEDINGS IN THE COURT BELOW

Title below	<i>Bettar Holdings Pty Ltd trading as Hunt Collaborative v RWC Brookvale Investments Pty Ltd as trustee for Brookvale Development Trust [2025] NSWDC 11</i> <i>Bettar Holdings Pty Limited trading as Hunt Collaborative ACN 050061946 v RWC Brookvale Investments Pty Ltd as trustee for Brookvale Development Trust ABN 42359186969 ACN 670150437 no 2 (costs) [2025] NSWDC 91</i>
Court below	District Court of New South Wales
Case number below	2024/00071395
Date of hearing	6 November 2024
Material date	12 February 2025, 28 March 2025
Decisions of	Cole DCJ

FILING DETAILS

Filed for	Bettar Holdings Pty Limited trading as Hunt Collaborative (ACN 050 061 946), Appellant
Filed in relation to	Whole decision below
Legal representative	Thomas Heading, Pinsent Masons
Legal representative reference	705771.7000
Contact name and telephone	Chris McGrath, 0487 496 884
Contact email	Chris.McGrath@pinsentmasons.com

HEARING DETAILS

This notice of appeal is listed for directions at 04Jun2025 09:00 AM - Directions

TYPE OF APPEAL

Commercial – Building Construction
L\316450649.1

DETAILS OF APPEAL

- 1 This appeal is brought under section 127(1) of the *District Court Act 1973* (NSW).
- 2 This notice of appeal is not filed pursuant to leave to appeal.
- 3 The Appellant has filed and served a notice of intention to appeal, which was served on the prospective respondent on 4 March 2025.
- 4 The Appellant appeals from the whole of the decisions below.

APPEAL GROUNDS

The primary judge should have held that a “*construction contract*” was concluded between the parties

Contract

- 1 The primary judge erred in finding (at [64], [91]) that no contract relevantly came into existence between the Appellant (**Construction Manager**) and the Respondent (**Principal**). Her Honour should have held that, by about 27 October 2023, the Construction Manager and the Principal had concluded a contract of the kind sometimes referred to as falling within the fourth class of case additional to the three mentioned in *Masters v Cameron* (1954) 91 CLR 353 – an immediately binding contract made in contemplation of a further contract being entered into in substitution for the first contract containing, by consent, additional terms.

Conventional estoppel

- 2 In the alternative to ground 1, the primary judge:
 - (a) erred in failing to find that the Principal was estopped from denying that a contract had relevantly been entered into between them by reason of a conventional estoppel; and
 - (b) in the premises, erred in finding (at [72], [91]) that the Construction Manager’s conventional estoppel plea was not made out.

Promissory estoppel

- 3 In the alternative to grounds 1 and 2, the primary judge:
 - (a) erred in finding (at [71]) that the email of 27 October 2023 relied upon by the Construction Manager to found a promissory estoppel must be read as relevantly constituting a statement of “*aspiration rather than a promise*”;
 - (b) in the premises, erred in finding (at [72], [91]) that the Construction Manager’s conventional estoppel plea was not made out;

- (c) erred in failing to find that the Principal was estopped from resiling from a promise to the effect that it would enter into a contract with the Construction Manager in relation to the provision of construction management services generally on the terms proposed by the Construction Manager including the Construction Manager's proposed terms as to payment (or would not deny the existence of such a contract);
- (d) in the premises, erred in failing to find there was relevantly a "*contract or other arrangement*" between the Principal and the Construction Manager for the purposes of the *Building and Construction Industry Security of Payment Act 1999* (NSW) (**SOP Act**).

"Other arrangement"

- 4 In the alternative to grounds 1, 2, 3(a), 3(c) and 3(d), the primary judge erred in failing to find that the Principal and the Construction Manager concluded an "*other arrangement*" within the meaning of the SOP Act in relation to the provision of construction management services by the Construction Manager under which the Construction Manager undertook to perform construction management services for the Principal and the Principal undertook to pay for those services.

The primary judge should have held that the Construction Manager's purported payment claim complied with s 13(2)(a) of the SOP Act

- 5 The primary judge erred in finding (at [84], [93]) that following (or one or more of them) are conditions of validity of a valid payment claim for the purposes of the SOP Act:
 - (a) that the payment claim "*patent[ly]*" "*identify in a reasonable way the particular work in respect of which the claim is made*";
 - (b) that the payment claim provide the "*information an adjudicator would require to make a determination under s 22 of the [SOP] Act*";
 - (c) that the payment claim identify with precision the "*relevant construction contract*";
 - (d) that the information provided in the payment claim be "*sufficient to enable an adjudicator to determine the value of services supplied*".

The primary judge should have held that:

- (e) a payment claim complies with s 13(2)(a) of the SOP Act if it identifies one or more things that the claimant claims to be construction work (or related goods or services) and in respect of which it claims payment;
- (f) the document entitled "*Re: Brookvale Progress Claim 1A*" prepared by the Construction Manager (**Payment Claim**) complied with s 13(2)(a) of the SOP Act as so construed;

- (g) in the premises and in circumstances where there was no challenge below to the formal validity of the Payment Claim other than as to compliance with s 13(2)(a) of the SOP Act, the Payment Claim was a valid payment claim for the purposes of s 13 of the SOP Act.

6 In the alternative to ground 5(a), the primary judge should have held that:

- (a) Payment Claim patently identified in a reasonable way the particular work in respect of which the claim was made;
- (b) in the premises and in circumstances where there was no other challenge below to the formal validity of the Payment Claim other than as to compliance with s 13(2)(a) of the SOP Act, the Payment Claim was a valid payment claim for the purposes of s 13 of the SOP Act.

The primary judge should have held that the Payment Claim was served on the Principal

7 The primary judge erred in finding (at [94]) that the Principal was not served with the Payment Claim. In so finding, the primary judge erred (at [89]) in:

- (a) finding that there was “*no evidence*” that the Principal has ever been served with the Payment Claim at any “*place*” or by “*email*”;
- (b) finding that there was “*no evidence*” that any of the recipients of the Payment Claim were authorised to accept the service of documents on behalf of the Construction Manager;
- (c) finding or implying that it was necessary for the Construction Manager expressly to plead that the persons identified in the Construction Manager’s Amended Statement of Claim as being associated with the Defendant (that is, the Principal) were agents or employees of an agent of the Principal; and
- (d) making cognate findings.

The primary judge should have held that:

- (e) the Payment Claim was dispatched by email sent to James Webb and Danny Hanna at about 2:40pm on 21 December 2023;
- (f) the Payment Claim was received by Messrs Webb and Hannah at or about that time;
- (g) at the time that the Payment Claim was received by Messrs Webb and Hannah, those persons relevantly had authority to receive payment claims and other documents on behalf of the Principal;
- (h) in the premises, the Payment Claim was served on the Principal on or about 21 December 2023.

In the alternative, the primary judge should have held that:

- (i) the Payment Claim was sent by post to an ordinary place of the Principal's business on or about 22 December 2023; and
- (j) the Payment Claim was, by force of s 31(2) of the SOP Act, taken to have been effected on the Principal on or about 5 January 2024.

The primary judge should have held that the Principal was liable to pay the Claimed Amount plus interest

8 In the premises of grounds 1 (or, alternatively, 2 or 3 or 4) and 5 (or, alternatively, 6) and 7 the primary judge erred in concluding (at [94]) that the Principal had not become liable to pay the claimed amount in the Payment Claim ("**Claimed Amount**") pursuant to s 14(4) of the SOP Act. On those premises and in circumstances where the Principal had not provided a payment schedule to the Construction Manager within the 10 business days after the dates referred to in paragraph (h) or (j) of the previous ground, the primary judge should have:

- (a) held that the Principal became liable to pay the Claimed Amount on the date occurring 15 business days after the Payment Claim was made;
- (b) given judgment accordingly including as to interest.

The primary judge erred in her Honour's discretion in relation to costs

9 In the alternative to ground 8, the primary judge acted on a wrong principle by finding ([2025] NSWDC 91 at [25]) that the Construction Manager's claim was "*doomed to fail*" in a sense relevant to the exercise of the Court's discretion to make a special costs order because her Honour considered that that claim failed on her Honour's view of the facts and law. The primary judge should have held that no special costs order was warranted in the circumstances of the particular case.

ORDERS SOUGHT

- 1 Appeal allowed.
- 2 Set aside the orders made by the District Court of New South Wales on 12 February 2025 and 28 March 2025 and in lieu thereof:
 - a. give judgment in favour of the Plaintiff and against the Defendant in the sum of \$232,472 plus interest at the date prescribed under s 101 of the *Civil Procedure Act 2005* (NSW) on and from 20 January 2024 (or, alternatively, on and from 30 January 2024 or, alternatively, on and from the day immediately after the date occurring 15 business days after the Court determines that the Payment Claim was made) until the date of judgment, such judgment to take effect from 12 February 2025;

- b. order the Defendant to pay the Plaintiff's costs, such order to take effect from 28 March 2025.

3 In the alternative to prayer 2, set out the costs order made by the District Court of New South Wales on 28 March 2025 and in lieu thereof make the following orders:

- a. order the Plaintiff to pay the Defendant's costs of the proceedings in the District Court other than the Defendant's costs of its application for an order that the Plaintiff pay its costs on an indemnity basis;
- b. order the Defendant to pay the Plaintiff's costs of the Defendant's application for an order that the Plaintiff pay the Defendant's costs on an indemnity basis.

4 Order the Respondent to pay the Appellant's costs in this Court.

UCPR 51.22 CERTIFICATE

I certify under UCPR 51.22(2) that the amount in issue in this appeal exceeds the specified amount under s 127(2)(c) of the *District Court Act 1973* (NSW).

SIGNATURE OF LEGAL REPRESENTATIVE

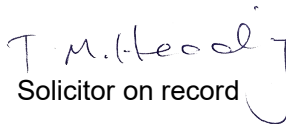
This notice of appeal does not require a certificate under clause 4 of Schedule 2 to the [Legal Profession Uniform Law Application Act 2014](#).

I have advised the appellant that court fees will be payable during these proceedings. These fees may include a hearing allocation fee.

Signature

Capacity

Date of signature


Solicitor on record

12 May 2025

NOTICE TO RESPONDENT

If your solicitor, barrister or you do not attend the hearing, the court may give judgment or make orders against you in your absence. The judgment may be for the orders sought in the notice of appeal and for the appellant's costs of bringing these proceedings.

Before you can appear before the court, you must file at the court an appearance in the approved form.

HOW TO RESPOND

Please read this notice of appeal very carefully. If you have any trouble understanding it or require assistance on how to respond to the notice of appeal you should get legal advice as soon as possible.

You can get further information about what you need to do to respond to the notice of appeal from:

- A legal practitioner.
- LawAccess NSW on 1300 888 529 or at www.lawaccess.nsw.gov.au.
- The court registry for limited procedural information.

Court forms are available on the UCPR website at www.ucprforms.nsw.gov.au or at any NSW court registry.

REGISTRY ADDRESS

Street address	Supreme Court of New South Wales, Court of Appeal Law Courts Building Queen's Square Level 5, 184 Phillip Street Sydney NSW 2000
Postal address	GPO Box 3 Sydney NSW 2001
Telephone	1300 679 272

PARTY DETAILS

A list of parties must be filed and served with this notice of appeal.

FURTHER DETAILS ABOUT APPELLANT

Appellant

Name	Bettar Holdings Pty Limited trading as Hunt Collaborative (ACN 050 061 96)		
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	55	Harrington	Street
	The Rocks	NSW	2000

Legal representative for appellant

Name	Thomas Heading		
Practising certificate number	P0036837		
Firm	Pinsent Masons		
Contact solicitor	Chris McGrath		
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	1	Macquarie	Place
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DETAILS ABOUT RESPONDENT

Respondent

Name	RWC Brookvale Investments Pty Ltd (ACN 670 150 437) as trustee for Brookvale Development Trust (ABN 42 359 186 969)		
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	Brisbane	QLD	4000