

AUSTRALIA / JUDGMENT

SBRGroup Pty Ltd v Hosseini

[2026] NSWDC 350**COURT**

District Court

DECIDED

25 September 2026

BEFORE

Montgomery DCJ

CASE / FILE NUMBER

2024/00333502

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SBRGroup Pty Ltd v Hosseini [2026] NSWDC 350

Hearing dates:

3 November 2025, 26 March 2026, 4 September 2026

Date of orders:

25 September 2026

Decision date:

25 September 2026

Jurisdiction:

Civil

Before:

Montgomery DCJ

Decision:

(1) Judgment for the plaintiff against the defendants in the sum of \$153,389.17.

(2) The defendants are to pay interest on the judgment sum in the amount agreed by the parties, or failing agreement, determined by the Court.

(3) Each party to deliver a written submission of not more than one page as to the appropriate costs orders other than for costs of 26 March 2026 in relation to which submissions have been made and the ultimate order will be - plaintiff to pay the defendants' costs of 26 March 2026.

Catchwords:

BUILDING AND CONSTRUCTION – Validity of a Payment Claim under the Building and Construction Industry Security of Payment Act – Where a Deed of Amendment expressed termination of lump-sum contract and parties agreed to enter a cost-plus contract – Payment Claim reference to "Costs-plus" contract – Requirements for a valid Payment Claim – No Payment Schedule served

Legislation Cited:

Building and Construction Industry Security of Payment Act 1999: ss 3, 4, 8, 11, 13, 14, 15, 32.

Civil Procedure Act 2005: s 101.

Cases Cited:	BSA Advanced Property Solutions (Fire) Pty Ltd v Ventia Australia Pty Ltd [2022] NSWCA 82 Equitcorp Finance Ltd (in liq) v Bank of New Zealand (1993) 32 NSWLR 50 Jones v Dunkel (1959) 101 CLR 298; [1959] HCA 8 Manariti Plumbing Pty Ltd v Universal Property Group Pty Ltd [2025] NSWCA 135 Nepean Engineering Pty Ltd v Total Process Services Pty Ltd (in liq) (2005) 64 NSWLR 462; [2005] NSWCA 409
Category:	Principal judgment
Parties:	Plaintiff: SBRGroup Pty Ltd First Defendant: Farshid Hosseini Second Defendant: Afsaneh Panahandeh
Representation:	
Counsel:	Plaintiff: Mr J. Horowitz Defendants: Mr N. Li
Solicitor:	Plaintiff: Hanna Law Group Defendants: Ehsani Legal
File Number(s):	2024/00333502

JUDGMENT

By Amended Statement of Claim filed 2 April 2026 ("SOC") the plaintiff builder sues the defendant owners claiming to have issued a Payment Claim pursuant to section 13 of the Building and Construction Industry Security of Payment Act ("the Act"). The plaintiff seeks judgment against the defendants in the sum of the impugned Payment Claim, \$153,389.17.

As ultimately contested after morning adjournment on 4 September 2026, the case was significantly confined from the broader causes pleaded in the SOC and broader defences pleaded in the Further Amended Defence filed 10 April 2026 ("Defence"). It is important to determine the case on that narrower basis and to put out of mind the balance paragraphs of the SOC and the Defence

The plaintiff delivered to each defendant a Tax Invoice dated 5 July 2024, which it identifies as its Payment Claim. The defendants did not serve a Payment Schedule replying to the Payment Claim, pursuant to section 14 of the Act.

In closing submissions on 4 September 2026 the defendants characterised the plaintiff's claim as "binary" putting that the "source of the right to the Payment Claim" was a written lump-sum construction contract made between the parties on 2 December 2021 (the "Contract"); or alternatively on the basis of a "future contract being a cost-plus contract which in fact the parties never entered": T4/9/26 19.10-20. The defendants say that when the actual dealings between the parties are objectively viewed, "that was a conceptual basis upon which the defendants could have interpreted and the plaintiffs could have objectively [been] taken to have issued a Payment Claim.": T4/9/26 19.20. The defendants put that the Payment Claim had to relate to a construction

contract and if it related to "a thing that is not a construction contract" being the parties' agreement to agree a cost-plus contract, then the Payment Claim did not meet the requirements of the Act: T4/9/26 19.33-35; 20.25-32.

Addressing the facts, the defendants put that construction costs incurred under the Contract having exceeded the lump-sum contractual cap: "there was an agreement to agree and a payment claim that was proposed to be issued under the agreement to agree which legally does not render the defendants liable to pay money": T4/9/26 19.35-40.

The defendants drew particular attention to the words "Cost-plus contract" which appear in the description of the works in the Payment Claim (Tax Invoice 5 July 2024) (T4/9/26 27.13-29) and argued that the Payment Claim was "clearly referable to what was anticipated to be a future cost-plus contract and not" the pre-existing Contract.

I understood the defendants' "alternative basis" (as stated by Counsel for the defendants T4/9/26 19.13) submission that the plaintiff was in reality putting a case of "other arrangement" meeting the definition of "construction contract" in section 4 of the Act; proposition to highlight identification of what the defendants referred to as the "source of the right to the payment claim" as something other than the Contract, in order to distinguish the Payment Claim from one properly issued under a construction contract pursuant to section 13(1) of the Act.

Counsel for the defendants provided the following hypothetical in answer to my querying the defendants' point, given that the plaintiff disavowed reliance on a second contract or other arrangement, as had been pleaded (prior to morning adjournment on 4 September 2026). He responded (T4/9/26 19.26-34) as follows:

"Suppose that there was an arrangement between two people, a builder and a contractor for services, and there was site A and site B, and work is done at site A but no work is done - no arrangement or no contract was entered into for site B. Just because there is a written contract that is a construction contract doesn't mean that the builder gets a right to a progress claim in respect of any work they might have done for that person. The progress claim still needs to relate to a construction contract, and if it relates to a thing that is not a construction contract, for example, an agreement to agree, then it doesn't meet the description of a progress claim under the Act."

The following underlying facts are not disputed:

On 2 December 2021 the parties entered into a lump-sum residential building contract for the price of \$816,981.04 including GST and cost of Home Building Compensation Fund Insurance cover on the basis of a tender dated 16 November 2021 and drawings prepared by the owner defendants. The contract was executed by both defendants and by Mr Niakan, a director of the plaintiff company ("the Contract").

The Contract provided that any instruction given by either defendant owner to the plaintiff bound both defendants: clause 2 (d) and (h).

Mr Niakan, for the plaintiff company and the first defendant, on 28 November 2023 executed a document entitled "Deed of Amendment No 1" (hereafter referred to as the "Deed") which named all parties, identified each defendant co-owner with their individual email address and provided that the parties agreed to terminate the Contract and enter into a cost-plus contract, effective the date of the Deed, the cost-plus contract "will be backdated to 17/1/2022, despite the contract being signed after the works commenced" and that the plaintiff's management fee for the cost-plus contract is "equal with all the invoices received till (sic) 28/11/2023 without no more (sic) invoices from [the first defendant's company in relation to another matter]".

The parties did not enter a cost-plus contract as contemplated in the Deed or at all.

On 20 January 2024 the plaintiff provided the defendants with a Costs Schedule identifying total cost of works in the amount of \$888,672.11 and a total outstanding amount of \$153,389.17. The Costs Schedule was acknowledged and signed by Mr Niakan for the plaintiff and by the first defendant (SOC [6] and [7]; Defence [6]).

On 5 July 2024 the plaintiff delivered and both the defendants received the Tax Invoice relied on in these proceedings by the plaintiff as its Payment Claim. The Tax Invoice bore the notation required by the Act identifying it as a Payment Claim pursuant to the Act. The description of works given in the Tax Invoice was as follows:

"Final Invoice pursuant to the build of 5 Raphael Drive, Hornsby Heights - Cost-plus contract - inclusive of Annexure A".

The Cost Schedule signed by the plaintiff and the first defendant on 20 January 2024 was the Annexure A delivered.

Neither defendant served a Payment Schedule (pursuant to section 14 of the Act) disputing the Tax Invoice/Payment Claim.

The defendants conducted the hearing on the basis that the Deed terminated the Contract: T4/9/26; 2.31; 9.40; 25.10; 26.45; 27.21; and defendants' tender of paragraphs [22] and [23] of Mr Niakan's affidavit.

The following facts deposed to in the affidavit of the plaintiff's director Mr Niakan and made 3 July 2025 ([21]-[23], [26] and [29]) were tendered by the defendants in their case:

prior to the making of the Deed, the plaintiff was close to the end of the works contracted in the Contract, the cost of which had exceeded the contracted lump sum and the first defendant had always agreed with Mr Niakan that he would cover all costs (at [21] and [22]).

The first defendant attended the plaintiff's office on 28 November 2023 for the purpose of signing the Deed (at [22]).

The Deed is consistent with the plaintiff's want for the parties to enter into a cost-plus agreement and the first defendant did execute the Deed on the basis that the Contract was terminated and the parties were allowed to enter into a cost-plus contract (at [22] and [23]).

A cost-plus contract was not in fact formalised.

The Costs Schedule, signed by the first defendant and Mr Niakan on 20 January 2024 correctly stated that the plaintiff had incurred costs of \$888,672.11, been already paid \$653,584.84 and that the amount of \$81,698.10 “was going to be paid from the bank for practical completion and provision of the occupation certificate”, being the final progress payment identified in the schedule of progress payments in the Contract (Schedule 2 - Payment 6) leaving the amount of \$153,389.79 outstanding (at [26], [29]).

Application of Principles

BSA Advanced Property Solutions (Fire) Pty Ltd v Ventia Australia Pty Ltd [2022] NSWCA 82 construed the statutory intention of the Act regarding the requirement for identification of the construction contract under which the Payment Claim issued. In BSA it was common ground that the works had been supplied under a construction contract; the only question was whether there was one such contract or many (at [33]). Indeed, in BSA a Payment Schedule had been served in response to a Payment Claim and the parties had completed Adjudication under the Act. The Court observed that the definition of “Construction Contract” expanded the ordinary meaning of “contract” to include “other arrangement” (at [32]), the legislative scheme being best served by restricting the scope of intervention by courts and directing attention to the carrying out of the work for award, rather than the legal characteristics of the source of the obligation to carry out the work and the source of the recipient of a Payment Claim to make a payment.

The Court observed that whilst the existence of a construction contract between the claimant and the respondent is an essential element of the legislative scheme, the statutorily stated requirements of a valid Payment Claim (sections 3, 4, 8 and 13 of the Act) do not include the identification of the source of the obligation to carry out the work or the source of the entitlement to the payment ([32] – [37]). Ultimately, whilst an adjudicator is required to determine whether the claim in the Payment Claim, challenged by the Payment Schedule is made good under the terms of the construction contract, the statutory regime “...suggests that no specific constraint is imposed on the validity of a payment claim by reference to the terms of any particular construction contract or arrangement in the nature of a contract.” (At [39] and [52]).

In the present case the defendants say that the Court will not be satisfied of the existence of circumstances for liability and judgment pursuant to section 15 of the Act in favour of the plaintiff because the Tax Invoice was not a valid Payment Claim in the circumstances that it was not issued under a Construction Contract within the meaning of section 13(1) of the Act.

Section 13(1) of the Act provides, in effect, that the plaintiff here was entitled to serve a payment claim on the defendants if they were persons who, under the construction contract, “are or may be liable” to make the payment. Section 13(1C) provides that where a construction contract has been terminated, a claim may be served on and from the date of termination. Section 13(2)(a) demands that the payment claim must identify the construction work to which it relates. The requirements of payment claims of section 13(2)(b) and (c) are not in issue.

Neither party tendered evidence or argued a point that any of the work detailed in the Cost Schedule signed for the plaintiff and by the first defendant on 20 January 2024 is to be identified as work which was or was not performed after 28 November 2023, when by the Deed, the Contract was terminated. An agreed position informed to the Court on 26 March 2026 (T 17) is that the Costs Schedule details the date of the making of book entries of work performed, goods and services provided under the heading "Created Date" and nowhere does the Costs Schedule identify the date on which the work, goods or services were actually delivered. Only seven book entries for cost items postdate 28 November 2023. Those few bookkeeping entries were created between 29 November 2023 and 1 December 2023, that is within three days of the making of the Deed and termination of the Contract. Those seven items total only \$8,143.95.

The Tax Invoice made it obvious, and it is not a fact disputed, that the works the subject of the claim were performed, goods and services delivered at the defendants' residential property as detailed in the Costs Schedule, which in turn identified the final progress payment (number 6 in the amount of \$81,698.10) in accordance with the Contract, to be paid on the event of issue of the Construction Certificate.

What then is the significance of the reference to "Cost-plus contract" in the description of the works in the Tax Invoice, in the determination of whether the Tax Invoice is a valid Payment Claim?

Whilst it is common ground that the parties did not enter a cost-plus contract, in my opinion, the error of referring to a cost-plus contract in the Tax Invoice is not fatal to the validity of it as a Payment Claim. This result follows the principles stated in the BSA case *supra* that whilst the existence of a construction contract is an essential element of the legislative scheme, no specific constraint is imposed on the validity of a payment claim by reference to the terms of any particular construction contract or arrangement in the nature of a contract.

Applying what was explained in *Manariti Plumbing Pty Ltd v Universal Property Group Pty Ltd* [2025] NSWCA 135 at [40]-[45] (Free JA, McHugh and Ball JJA agreeing), the Tax Invoice does not fail to satisfy the requirements of a Payment Claim because, in accordance with the statutory intention, a payment claim need only identify in a comprehensible way for the respondent information which the respondent might require for formulation of a payment schedule. In the present case, if the defendants, or either of them, were unable to identify some of the work identified in the Tax Invoice as work the subject of the Contract; then the regime imposed by the Act required them to issue a Payment Schedule making that dispute. It was incumbent on the defendants, or either of them, to state that they did not propose to make payment in respect of that work because they could not identify the work or could not identify it as work under the Contract.

The statutory entitlement of the plaintiff to recovery of the amount claimed under section 14(4) and as a debt due to it, pursuant to section 15(2), does not affect the parties' substantive rights under the construction contract: section 32 of the Act.

Further, at the time of service of the Tax Invoice, the parties were aware that a cost-plus contract had not in fact been made. That is, by the Deed they did no more than enter a legally unenforceable agreement to agree. The words, referring to a non-existent contract, in my opinion, do not cause the Tax Invoice to fail, in a reasonable way, to identify the particular work with respect of which the claim was made. In *Nepean Engineering Pty Ltd v Total Process Services Pty Ltd (in liq)* (2005) 64 NSWLR 462; [2005] NSWCA 409 (Hodgson JA (with whom Ipp JA agreed) stated in a passage quoted with approval in *Manariti Plumbing* at [40] that a typographical or other error will not be a patent error invalidating a payment claim under section 13(2)(a) where, "by reason of [the defendants'] knowledge of the project, [they] would have been able to fill in or correct that error...". In my opinion, the words "Cost-plus" do not in the circumstances of the present case, which circumstances include the obvious connection between the Costs Schedule annexed to the Tax Invoice in description of the work and the reference to the residential premises of which the defendants were owners, as well as itemisation in the Cost Schedule meeting that of the progress payments schedule under the Contract; deny the full force of the Tax Invoice as a Payment Claim in accordance with the Act.

In *Manariti*, as here, the parties had made a fixed-price contract and the payment claim included what was described as "...an ostensibly curious shift from claiming on a fixed price basis to claiming on a cost-plus basis, including in respect of work that had already been the subject of paid invoices calculated on the former basis" (at [27]). Nothing in the payment claim sought to explain that change of approach. As was successfully argued by the builder in that case, and is argued by the plaintiff in the present case, that is not a point going to the validity of the payment claim itself.

The defendants' argument applies a strict application of formality of contract when identifying "construction contract", which requirement is not imposed by the Act. The objective evidence, as I have found, does not infer that the defendants, or either of them, with their knowledge of the works and dealings between the parties, would have been unable to comprehend the claim such as to identify work, goods and services delivered at the residential property they owned and, without difficulty, formulate a Payment Schedule, disputing if they chose to do so, the plaintiff's entitlement to payment under the Contract and raise any dispute they chose to do in relation to the plaintiff's entitlement under the non-existent cost-plus contract. In *Nepean Engineering* supra, Hodgson JA included amongst the matters for available dispute to go to Adjudication following service of a Payment Schedule, whether the work was done "... within the contract or within any variation of it" (at [35]).

Whereas Counsel for the defendants concluded by stating that what happened was the parties entered a lump-sum contract, the costs incurred meant a loss for the plaintiff, the plaintiff called for a cost-plus arrangement but it was never entered and the Deed did terminate the earlier lump-sum contract; those facts, in this case and for the purposes of section 13, would not mean that the payment claim lacks the degree of "certainty" (being the word Counsel for the defendants used in argument: T4/9/26 27.5-10) as required by section 13.

The answer to the defendants' argument is that, what they might have done is file a Payment Schedule disputing parts of the cost of works claimed and even on the basis of works, goods and services claimed being not pursuant to a construction contract. But they failed to do so.

There will be judgment for the plaintiff in the sum of \$153,389.17.

The conclusion to which I have arrived means that the defendants' denial that the first defendant signed the Deed and the Cost Schedule also as agent for the second defendant falls away because the second defendant having received the Tax Invoice, which was a valid Payment Claim, was free to serve a Payment Schedule disputing the claim so far as I have referred above, but also disputing any admission or otherwise comprehension of the claim including on the basis of the first defendant's agency for her in relation to the Costs Schedule.

Agency

Further, were I required to determine the issue, I would find that the first defendant acted with implied authority of agency for his wife the second defendant. Evidence that both defendants signed the Contract as owners, that a term of the contract was that each defendant was bound by an instruction to the plaintiff given by the other, the Deed named both defendants as owners and included their independent email addresses and the background circumstance that the work, goods and services delivered and itemised in the Costs Schedule were delivered to a residential property owned by them, are matters positively favouring finding that the defendants conducted themselves in a way from which it is proper to infer that the authority of the first defendant to act as agent of the second defendant was conferred on him: *Equitcorp Finance Ltd (in liq) v Bank of New Zealand* (1993) 32 NSWLR 50. It is available to also observe that the second defendant's choice to abstain from issuing a Payment Schedule after receiving service of the Tax Invoice dated 5 July 2024 with the annexed Costs Schedule adds persuasion to finding that inference. The defendants took the risk of not calling evidence of their private dealings in relation to authority disputing that agency; which makes it easier to be satisfied of the inference: *Jones v Dunkel* (1959) 101 CLR 298; [1959] HCA 8.

Interest

Save for a claim for statutory interest at SOC [16] pursuant to section 11(2) of the Act, no other paragraphs of the SOC or Defence concerning interest were ultimately pressed. The interest rate claimed, is the equivalent of post-judgment interest pursuant to section 101 Civil Procedure Act. Neither party put the rate of 9% per annum stated in the Tax Invoice or even referred to that notation. For that reason, I put it aside. Interest should be calculated at the Civil Procedure Act rate.

Orders

1. Judgment for the plaintiff against the defendants in the sum of \$153,389.17.

2. The defendants are to pay interest on the judgment sum in the amount agreed by the parties, or failing agreement, determined by the Court.
3. Each party to deliver a written submission of not more than one page as to the appropriate costs orders other than for costs of 26 March 2026 in relation to which submissions have been made and the ultimate order will be - plaintiff to pay the defendants' costs of 26 March 2026.

Amendments

25 September 2026

-

typographical error in headnote.

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