



Civil and Administrative Tribunal New South Wales

Case Name: Antonis v Basbuilt Developments Pty Ltd

Medium Neutral Citation: [2025] NSWCATCD

Hearing Date(s): 17 March 2025

Date of Orders: 24 June 2025

Date of Decision: 24 June 2025

Jurisdiction: Consumer and Commercial Division

Before: M Tyson, Senior Member

Decision: (1) The respondent Basbuilt Developments Pty Ltd, in proceedings 2023/00388213, is ordered to pay \$500,000.00 to the applicant Terry Antonis immediately;

(2) The respondent Basbuilt Developments Pty Ltd is ordered to pay the applicant's costs as agreed or assessed, on the ordinary basis.

Catchwords: HOME BUILDING – damages – breach of contract

Legislation Cited: Civil and Administrative Tribunal Act 2013 (NSW)

Home Building Act 1989 (NSW)

Cases Cited: Bellgrove v Eldridge (1954) 90 CLR 613; [1954] HCA 36

De Marco v Macey [2025] NSWCATAP 131

Hadley v Baxendale (1854) 9 Exch 341; 156 ER 145

J Kitchen & Sons Pty Ltd v Stewart's Cash and Carry Stores (1942) 66 CLR 116

Wabbits Pty Limited v Godfrey [2009] NSWSC 1299

Woodward Pty Ltd v Kelleher [1989] NSWCA 82

Texts Cited: NCAT Procedural Direction 3 on Expert Evidence

Category: Principal judgment

Parties: Terry Antonis (applicant in proceedings 2023/00388213 and respondent in proceedings 2023/00368878 and 2024/00316500)

Basbuilt Developments Pty Ltd (respondent in proceedings 2023/00388213 and applicant in proceedings 2023/00368878 and 2024/00316500)

Representation: Solicitors:

Birch Partners (applicant in proceedings 2023/0038812 and respondent in proceedings 2023/00368878 and 2024/00316500)

File Number(s): 2023/00388213, 2023/00368878 and 2024/00316500

Publication Restriction: Nil

REASONS FOR DECISION

- 1 In proceedings 2023/00388213, by application filed 26 June 2023, the applicant seeks a monetary order in the sum of \$500,000.00. The applicant also seeks an order that his costs of the proceedings be paid by the respondent. The applicant (“**the Homeowner**”) was a proprietor of a residential property in the suburb of Caringbah South, New South Wales (“**the Property**”). The respondent is the company (“**the Builder**”) which performed the residential building work which is the subject of the application. The Homeowner seeks damages for, he alleges, breach of the contract made between himself and the Builder.
- 2 By applications filed in proceedings 2023/00368878 and 2024/00316500, the Builder had sought orders against the Homeowner.

THE HEARING AND THE EVIDENCE

- 3 On two separate occasions prior to 17 March 2025, the Homeowner’s application and the Builder’s application (or applications) extant at the relevant time, had been listed for final hearing, but each time the hearing did not proceed. By way of further procedural background, the Tribunal had previously made orders granting all parties in the three proceedings leave to be legally represented. The Builder had retained solicitors earlier in the course of the proceedings and had actively defended the proceedings until very recently before the 17 March 2025 hearing.
- 4 The hearing of the Homeowner’s application in proceedings 2023/00388213 was then listed for hearing before me on 17 March 2025, together with the Builder’s applications in proceedings 2023/00368878 and 2024/00316500.
- 5 Mr. Birch, of the firm Birch Partners, appeared for the Homeowner.
- 6 There was no appearance for the Builder.

- 7 The hearing of the applications was briefly adjourned, in case the Builder or the Builder's representative was late. When the applications were later called again, there was still no appearance for the Builder. Mr. Birch made application to proceed to the hearing on an *ex parte* basis. The Tribunal granted the application and delivered oral reasons for the decision.
- 8 Application was then made by the Homeowner for dismissal of the two proceedings brought by the Builder, and for costs orders in those proceedings. The Tribunal made orders, pursuant to s. 55(1)(c) of the *Civil and Administrative Tribunal Act 2013 (NSW)*, dismissing the Builder's applications in proceedings 2023/00368878 and 2024/00316500 on the basis of the Builder's failure to appear in the proceedings. The Tribunal ordered also made costs orders in the two proceedings. Those orders were entered on 17 March 2025 and thus those proceedings are not otherwise dealt with in these reasons for decision.
- 9 The substantive hearing of the Homeowner's application then proceeded.
- 10 The Homeowner is a professional soccer player, based in Thailand. He appeared at the hearing via audio-visual link. Ms. Carreno, the wife of the Homeowner, also appeared at the hearing via the same audio-visual link. Prior to the hearing, Mr. Birch had made an application, which the Tribunal had granted, for the Homeowner and Ms. Carreno to appear at the hearing via audio-visual link.
- 11 The Homeowner provided to the Tribunal a chronology (which was marked MFI 1), written submissions (which were marked MFI 2) and a document headed 'summary of owner's claim' (which was marked MFI 3).
- 12 For the Homeowner's evidence, Mr. Birch tendered the affidavit of Kristina Carreno affirmed 15 September 2023. The affidavit exhibited a bundle of documents to it. The affidavit and the exhibited bundle became exhibit 1 at the hearing. Ms. Carreno is, as mentioned above, the wife of the Homeowner. Ms. Carreno was "very involved in liaising with the Builder". She was more available at the site of the works the subject of the application than the Homeowner was.

Ms. Carreno dealt with issues relating to the works the subject of the application as and when they arose.

- 13 The Homeowner tendered the witness statement of Terry Antonis, the Homeowner, signed by him and dated 9 October 2024. The witness statement became exhibit 2.
- 14 The Homeowner tendered a letter dated 11 November 2022 from his solicitors, Birch Partners, to Mr. Melick, building consultant. The letter became exhibit 3.
- 15 The Homeowner tendered a report dated 11 June 2023 from Mr. Melick. The report is titled 'expert witness report.' Mr. Melick attended at the Property where the building work the subject of these proceedings was performed, on 23 November 2022 and inspected the works performed by the respondent. He has annexed NCAT Procedural Direction 3 to his report (see annexure 1 to the report) and has stated in the report that he has read, and agrees to abide by the requirements of the Direction. Having regard to the professional resume annexed to the report and the statement there of Mr. Melick's licences, qualifications and twenty years of experience in the construction industry, it appears to the Tribunal that he has sufficient expertise to offer the opinions which he has made in his report. The report became exhibit 4.
- 16 A NSW Government search for the licence of the Builder was tendered by the Homeowner. The search became exhibit 5. It showed that the Builder's licence was cancelled on 16 January 2025.
- 17 A NSW Government search for the licence of Joshkun Cengiz Basara was tendered by the Homeowner. The search became exhibit 6. It showed that the licence was cancelled on 16 January 2025. Mr. Basara is the person, on behalf of the Builder, with whom the Homeowner and Ms. Carreno engaged in relation to the building works the subject of this application.
- 18 After that evidence was tendered, submissions by Mr. Birch were commenced.

19 In the course of submissions, the Tribunal raised a number of questions about the evidence of the applicant. During submissions, Mr. Birch made two applications to re-open his client's case. The Tribunal allowed both applications. One of the applications related to an issue that the contract between the Homeowner and the Builder, when dealing with prime cost and provisional sum items, did not specify those items in the contract but instead referred to a "QUOTE." However, the said document was not in evidence. Ms. Carreno was affirmed and gave oral evidence and through her, the document was adduced in evidence. It became exhibit 7. The other application involved a claim by the Homeowner for payment of an insurance premium as part of his damages claim. However, there was no document or other evidence showing the amount paid and what the insurance was for. Ms. Carreno gave further oral evidence and through her, three documents relevant to this matter were adduced into evidence. Together, the three documents became exhibit 8.

FACTUAL BACKGROUND

20 In deciding the facts of this case, the Tribunal had applied the principle that the Homeowner, who is the party seeking orders in his favour, bears the onus of proof on his application and must prove his case on the balance of probabilities.

21 Based on the principle to which the Tribunal has just referred, and the evidence referred to above, the factual background can be stated briefly as follows:

22 In 2020 – 2023, the Builder was in the business of performing "residential building work" for the purposes of the *Home Building Act 1989* ("**the Act**"). The Homeowner was the registered proprietor of an estate located at Caringbah South, New South Wales ("**the Property**"). This estate was sub-divided on the application of the Homeowner. The Homeowner and the Builder then made a contract dated 29 November 2020 ("**the Contract**") for the Builder to construct two duplex residences, one on each parcel of the sub-divided Property.

23 The Contract was written. It was in the standard form recommended by NSW Fair Trading for home building work valued at over \$20,000.00. The price referred to in the Contract was \$955,000.00.

- 24 The Contract consisted of clauses 1 – 43, “special conditions” (see p. 12 of the Contract) and the documents identified in the Contract as also forming part of the Contract. The contract price was subject to certain adjustments in accordance with certain provisions in the Contract, for example, for variations or for adjustments arising from prime cost items and provisional sum items. Clause 18 in the Contract dealt with variations. Clause 20 in the Contract dealt with prime cost and provisional sum items. Clause 27 in the Contract dealt with terminating the Contract in circumstances where there is a substantial breach of the Contract. Clause 32 permitted the Homeowner to claim liquidated damages against the Builder in certain circumstances.
- 25 Under the Contract, the Builder was obliged to achieve “practical completion” on 23 July 2022, subject to the provisions in the Contract permitting an extension to that date under certain circumstances.
- 26 On 23 July 2021 the Builder commenced work under the Contract at the Property.
- 27 There was one variation agreed between the Builder and the Homeowner, which was for the provision of skylights in the amount of \$22,2116.00 (including GST).
- 28 The Builder issued the Homeowner with various payment claims after the work had started under the Contract.
- 29 The Homeowner paid the Builder a total of \$929,366.00. The Homeowner paid \$71,000.00 on 12 December 2020, \$72,500.00 on 7 September 2021, \$191,000.00 on 8 October 2021, \$191,000.00 on 23 December 2021, \$191,000.00 on 9 May 2022, \$191,000.00 on 28 July 2022 and \$22,116.00 on 18 May 2022, which was for a variation under the Contract relating to the provision of skylights.
- 30 On 1 September 2022, the Builder left the Property and did no further work under the Contract from that date.

- 31 The work the Builder was obliged to complete under the Contract was incomplete at the time the Builder left the Property. Only about 60% of the building work which the Builder was obliged to provide under the Contract was completed. There were also some defects in the work performed by the Builder under the Contract.
- 32 On 6 September 2022, the Homeowner made a complaint about the Builder's work to NSW Fair Trading. NSW Fair Trading issued the Builder with a rectification order. The Builder then commenced proceedings in the Tribunal against Ms. Carreno, the wife of the applicant. Those proceedings were later dismissed and the Builder was ordered to pay Ms. Carreno's costs.
- 33 During the performance of the Contract, the evidence suggests that the Builder had charged the Homeowner for the Builder obtaining home warranty insurance for the building works the subject of the Contract (see for example tax invoice no. 371 at p. 200 in the Court Book) and the Homeowner had paid the Builder for obtaining home warranty insurance (Ms. Carreno affidavit at [20(h)]). The Homeowner discovered, after the Builder had left the Property, that no such insurance had been obtained (Ms. Carreno affidavit at [63]). The Homeowner then obtained and paid for home warranty insurance retrospectively to insure the Builder's work under the Contract. The Homeowner paid \$14,872.84 (that is the total of the home warranty insurance for the two duplexes being built by the Builder) on 7 December 2022 for home warranty insurance.
- 34 In 2023, the Homeowner also obtained and paid for public liability insurance for the period 1 March 2023 to 1 September 2023. This was to insure the incomplete buildings on the Property and protect them against loss, and against loss of building materials, or loss caused by fire and vandalism. The premium the Homeowner paid was \$15,250.00.
- 35 On 6 March 2023, the Homeowner's solicitor wrote to the Builder terminating the Contract. In the letter, the Homeowner relied upon clause 27 in the Contract and, or alternatively, the common law, as the basis for the termination. The letter claimed that the Builder was in substantial breach of the Contract, had

suspended the carrying out of building works in a manner not authorised under the Contract and had repudiated the Contract.

- 36 On 9 May 2023, the Homeowner entered into a written contract with Muir Projects Pty Ltd in the amount of \$688,958.83 including GST. This contract was for Muir Projects Pty Ltd to complete the work the subject of the Contract that had been left incomplete by the Builder. In addition, the evidence showed that the Homeowner arranged for or paid for some items which fell within the scope of the Contract, but which were not included in the contract between the Homeowner and Muir Projects Pty Ltd.
- 37 As mentioned above, on 26 June 2023, the Homeowner filed these proceedings seeking a monetary order against the Builder.

SUBMISSIONS

- 38 Mr. Birch made submissions that the evidence showed that the Builder had failed to carry out and complete the works the subject of the Contract, in substantial breach of clause 2 in the Contract. He made submissions that the Builder had failed to achieve practical completion under the Contract no more than 52 weeks after the building period under the Contract had commenced: clause 12 item 6 in the Contract. Mr. Birch drew attention to Mr. Melick's expert report showing the significant extent of the incomplete work performed by the Builder. Mr. Birch submitted that the Homeowner was entitled to terminate the Contract when he did, by the letter dated 6 March 2023. The entitlement arose both under the Contract and at common law, it was submitted.
- 39 Mr. Birch submitted that it was not an appropriate case to make a work order here because the work the subject of the Contract had already been completed by Muir Projects Pty Ltd and the Homeowner. He submitted that the Homeowner was entitled to \$1,260,898.77 in damages. He carefully, and precisely, explained each of the components in that damages claim.
- 40 Mr. Birch accepted that the Tribunal had a jurisdictional limit under the Act to make orders up to \$500,000.00 and that the Tribunal, even if it did find that the

Builder owed the Homeowner more than that amount, had to limit any money order to \$500,000.00.

41 Mr. Birch submitted that a costs order in the Homeowner's favour ought to be made by the Tribunal.

CONSIDERATION

42 Jurisdiction:

43 The Tribunal is satisfied that it has jurisdiction to determine the claim before it under s. 48K of the Act.

44 The Tribunal is satisfied that the Homeowner is an "owner": see (a) in the definition of "owner" in Schedule 1 of the Act. He is making a claim for the payment of a specified sum of money that arises from a supply of building goods and services whether under a contract or not (see 48K(1) and 48A(1)(a) of the Act and definition of "*building claim*"), supplied for or in connection with the carrying out of "*residential building work*". That is because the work involved in this case involves the construction of two "*dwelling[s]*": the Act, Schedule 1, clause 1, clause 2(1)(a), being a building designed constructed or adapted for use as a residence.

45 Part of the claim is within the jurisdictional limit of the Tribunal (the Act s. 48K(1)). The Tribunal only has jurisdiction to make a money order in an amount that does not exceed \$500,000: s. 48K(1) of the Act.

46 The application was filed on 26 June 2023 and so has been brought within time (ss. 48K(7) and 18E(1) of the Act).

47 Substantial breach and repudiation of the contract:

48 When a promisee under a contract claims the other party is in breach of the Contract, the onus of proving the relevant term of the contract, a breach of that term, a consequential right to terminate and a valid exercise of that right, lies

on the promisee: *J Kitchen & Sons Pty Ltd v Stewart's Cash and Carry Stores* (1942) 66 CLR 116 at 126.

- 49 The Tribunal, having regard in particular to Ms. Carreno's affidavit, Mr. Melick's report and Mr. Antonis's affidavit, finds that the Builder failed to meet its obligations under the Contract provided for in cl. 2.1 of the Contract. Amongst other things, the evidence shows that the building works the Builder was obliged to provide were about 60% complete at the time the Builder left the Property: see p. 7 in Mr. Melick's report.
- 50 The Tribunal also finds that on 2 September 2022 (see Ms. Carreno's affidavit at [67] and [68]) the Builder suspended the carrying out of the building works the subject of the Contract other than under cl. 25 of the Contract.
- 51 The Tribunal finds that, by reason of the findings stated in the two preceding paragraphs of these reasons for decision, that the Builder was in substantial breach of the Contract for the purposes of cl. 27.1 in the Contract. Further or alternatively, the Tribunal is satisfied that the Builder had repudiated the Contract by 2 September 2022. The Tribunal does not reach such a conclusion lightly. However, the Tribunal is satisfied that the breaches of the Contract by the Builder referred to above mean that the Tribunal is satisfied that the conduct of the Builder was such as to convey to a reasonable person in the situation of the other party that it was renouncing the Contract as a whole or a fundamental obligation under it: *Laurinda Pty Ltd v Capalaba Park Shopping Centre Pty Ltd* (1989) 166 CLR 623 at 659.
- 52 The Tribunal is satisfied that the letter dated 6 March 2023 ended the Contract on that date, under both the Contract and at common law as the letter amounted to an acceptance of the Builder's repudiation.
- 53 Assessment of damages: In an action for breach of contract brought by a homeowner against a builder, the proper measure of damages is the cost, in excess of any amount of the contract price unpaid, of reasonable and necessary work to make the building conform to the contract, together with any

consequential losses served by the breach: *Wabbits Pty Limited v Godfrey* [2009] NSWSC 1299 at [101], citing *Bellgrove v Eldridge* (1954) 90 CLR 613; [1954] HCA 36 at 617-618. Thus, account must be made for any amount of the contract price that remains unpaid to the builder: see *Wabbits, supra*, at [109], citing *Woodward Pty Ltd v Kelleher* [1989] NSWCA 82.

- 54 Further, where work has been carried out and the actual cost is known, this provides sound evidence of the reasonable cost of the work to make the building conform to the contract and should ordinarily provide the basis for damages: *Wabbits, supra*, at [106] citing *Hyder Consulting (Australia) Pty Limited v Wilh Wilhelmsen Agency Pty Ltd* (2002) 18 BCL 122 at 140 [99] per Giles JA, with whom Sheller JA agreed.
- 55 The principles just cited have recently been cited and applied by the Appeal Panel of the Tribunal in *De Marco v Macey* [2025] NSWCATAP 131.
- 56 The Tribunal is satisfied that in this case, the amount of the money order owing to the Homeowner is the same amount whether the loss is calculated under common law or under the Contract.
- 57 The Tribunal's calculation of the damages due to the Homeowner on the evidence in this case is as follows:
- 58 The Tribunal finds that the reasonable and necessary cost of the work to make the building on the Property conform to the contract was \$722,010.49.
- 59 There are two amounts which give rise to said figure. First, there is \$648,958.82 which emerges from the contract value of the contract between the Homeowner and Muir Projects Pty Ltd to complete the building works the subject of the Contract, being \$688,958.82, minus \$40,000.00 for stormwater easement works because that item was an exclusion in the Contract (see schedule 3 to the Contract). Once the adjustment has been made for the stormwater easement works, the Tribunal is satisfied that the balance of the work performed by Muir Projects Pty Limited was within the scope of the Contract.

There was no evidence before the Tribunal to suggest that any of the work done by Muir Projects Pty Ltd was unreasonably incurred or represented wanton expenditure. Secondly, the evidence also showed that the Homeowner had incurred an additional \$73,024.67 to complete work that fell within the scope of the Contract and which the Homeowner arranged or paid for himself: see [108] in Ms. Carreno's affidavit and the invoices at pp. 333 – 354 in the exhibit to her affidavit. There was no evidence before the Tribunal to suggest that any of the work done or arranged by the Homeowner was unreasonably incurred or represented wanton expenditure.

60 Having considered the terms of the contract between the Homeowner and Muir Projects Pty Limited, the Tribunal was not persuaded that the Homeowner had established his claim as a separate head of damages, to the warranty insurance placed in respect of the work performed by Muir Projects Pty Limited.

61 The Tribunal turns next to consider the amount of the unpaid Contract price.

62 One of the issues that involved a considerable time during the oral submissions by Mr. Birch, was whether there was a need for any adjustments to the price in the Contract arising out of cl. 20 in the Contract, which clause, as mentioned above, dealt with prime cost and provisional sum items. The meaning of prime cost items and provisional sum items were considered by the Appeal Panel in *De Marco v Macey* [2025] NSWCATAP 131.

63 The evidence with respect to prime cost and provisional sum items, such as it was, did not suggest there was any need for an adjustment in the Contract price for any of these items. Schedule 7 in the Contract, with respect to prime cost items, at first suggests there were no prime cost items. The schedule next, with respect to provisional sum items, provided "*Tile supply/Pc items/appliances As Per stated in the QUOTE Provisional sum in total \$50,000.*" The QUOTE was in evidence. It did identify some appliances, tiling and prime cost items but it did not identify the amounts to be allowed for any of the specific items. There was no evidence to suggest that the Builder, prior to 1 September 2022, had provided any prime cost or provisional sum items in such a manner that the

value of the items exceeded \$50,000.00. There was some evidence in Ms. Carreno's affidavit of costs which the Homeowner incurred himself for tiling ([108.(g)]). The Tribunal is satisfied that the evidence before it does not suggest any need to adjust the Contract price by reason of the operation of clause 20 in the Contract.

64 As to the balance of the Contract price owing, the Tribunal's calculation is as follows:

Contract price (\$955,000.00) plus variation for skylights (\$22,116.00) with no adjustment arising from clause 20 in the Contract = \$977,1166.00.

Total of amounts paid by Homeowner to Builder = \$929,366.00.

Balance of contract price, as adjusted for variation = \$47,750.00.

65 Subtracting \$47,750.00 from \$722,010.49 (the reasonable and necessary cost of the work to make the building on the Property conform to the contract) equates to \$675,000.00.

66 The Homeowner is also entitled to recover consequential losses caused by the Builder's breach of the Contract: see *Wabbits, supra*. The consequential loss should not be too remote: *Hadley v Baxendale* (1854) 9 Exch 341 at 354; 156 ER 145 at 151.

67 First, the Tribunal finds that the Homeowner has established consequential loss in the form of the \$15,250.00 paid for the insurance premium for the period 1 March 2023 to 1 September 2023 because that cost is, in the Tribunal's view, a reasonable cost caused by the Builder's breach of the Contract in leaving incomplete building works at the Property and suspending work under the Contract other than in accordance with the Contract, and is not a loss which the Tribunal considers to be too remote.

68 Secondly, the Tribunal finds that the Homeowner has established consequential loss in the form of the \$14,872.84 paid by him for home warranty insurance on 7 December 2022. The Builder charged the Homeowner for home warranty insurance in one of its progress payment claims but the evidence

showed that the Builder did not in fact obtain the said insurance and the Homeowner later himself had to obtain the said insurance. In commencing work under the Contract before warranty insurance was in force (see Schedule 6 to the Contract and the definition of “warranty insurance” in the Contract), the Builder was not carrying out and completing the building works in accordance with the Contract, and thus was in breach of cl. 2.1 in the Contract, and the Homeowner’s expense in having later to pay for the warranty insurance is, in the Tribunal’s view, a consequential loss arising from the breach, and is not a loss which the Tribunal considers to be too remote.

69 The addition of \$675,000.00 to the consequential losses (\$15,250.00 and \$14,872.84) equates to \$705,122.84.

70 The Homeowner claimed liquidated damages for the period 21 July 2022 to 17 November 2023 in the sum of \$552,000.00. As raised by the Tribunal during submissions, the Tribunal did not accept that liquidated damages in that sum was established. Having regard to clause 32 in the Contract, the Tribunal finds that “*the end of the building period*” was 23 July 2022 and that the “*earlier of*” the dates provided for in cl. 32 is 6 March 2023 being the date the Contract “*is ended*”. The number of working days in that period, on the Tribunal’s calculation is 160. Multiplying that number of days by the rate of \$1,600.00 per day (see schedule 1 in the Contract item 11) equates to \$256,000.00.

71 Thus, the Tribunal finds that the Homeowner has established \$961,122.84 of his claim for damages.

72 However, as noted above, the Tribunal does not have jurisdiction to make a money order in excess of \$500,000.00 and so will limit its order to \$500,000.00.

73 Work order or compensation: The proceedings did include and involve an allegation of defective building work. The Tribunal has had regard to the preferred outcome provided for in s. 48MA of the Act. The Tribunal finds that in these proceedings, it is not appropriate to give effect to the preferred outcome and that a money order should be ordered in the circumstances of this case.

The reason the Tribunal comes to that conclusion is that the work the subject of the Contract has already been completed by the Homeowner and Muir Projects Pty Ltd.

COSTS

- 74 Rule 38 is the relevant costs rule in the circumstances of this proceeding. That is because both the proceeding was allocated to the Consumer and Commercial Decision of the Tribunal and the amount claimed by the applicants exceeds the amount of \$30,000.00 referred to in r. 38(2)(b) of the *Civil and Administrative Tribunal Rules 2014* (NSW).
- 75 In exercising my discretion under r. 38, the starting point is that the usual order for costs is that a successful party should be entitled to an order for costs in their favour: *Latoudis v Casey* (1990) 170 CLR 534 per Mason CJ at 554; *Oshlack v Richmond River Council* [1998] HCA 11; (1998) 193 CLR 72 at [67]. It is appropriate to make such an order in this case as the Homeowner was successful in obtaining under the *Home Building Act* a money order against the respondent in the maximum amount which the Tribunal could order, as sought by the Homeowner.
- 76 The Homeowner succeeded in establishing his claim for relief under the *Home Building Act* against the respondent. It is appropriate for such a party, who has incurred costs caused by the other party in the litigation, to be reimbursed for his costs. If the litigation had not been defended by the unsuccessful respondent, the successful applicant would not have had to bear the expense which he did. The Tribunal recognises that there is no absolute rule that the successful party in the litigation should be entitled to a costs order in its favour, but in this case, there has been no suggestion by the respondent in any submissions that there is any disentitling conduct on the part of the applicant, or any other reason, why he should not be awarded his costs.
- 77 The orders of the Tribunal accordingly are:

- (1) The respondent is ordered to pay the applicant \$500,000.00 immediately;
- (2) The respondent is ordered to pay the applicant's costs as agreed or assessed, on the ordinary basis.

I hereby certify that this is a true and accurate record of the reasons for decision of the New South Wales Civil and Administrative Tribunal.

Registrar



The image shows a handwritten signature in black ink, consisting of a large, stylized 'R' followed by a horizontal line and a vertical stroke. To the right of the signature is the official seal of the NSW Civil & Administrative Tribunal. The seal is circular with a double border. The outer border contains the text 'NSW CIVIL & ADMINISTRATIVE' at the top and 'TRIBUNAL' at the bottom, separated by two small stars. The inner circle features the coat of arms of New South Wales, which includes a shield supported by a kangaroo and an emu, with a sun rising over a landscape.