



Quote the number below for all enquiries
Case number 2024/00011283

Shruti Iyengar
c/- Michael John Birch
mjbirch@birchpartners.com.au

ORDER

Case title	Shruti Iyengar v CASAGRANDE HOMES PTY LTD trading as CASAGRANDE HOMES PTY LTD
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On 21 October 2024 the following orders (and/or directions) were made:

- 1 The respondent CASAGRANDE HOMES PTY LTD, 21 WHITE CEDAR Avenue CLAREMONT MEADOWS NSW 2747, is to pay the applicant Shruti Iyengar, 25 TALLULAH Parade GRANTHAM FARM NSW 2765, the sum of \$255,040.75, immediately.

Details of the money order:

1. Compensation for failure to complete the contract works \$207,403.75
2. Loss of rent \$47,637.00

Note: Failure to pay the money owed, can result in this certified money order, being registered by the person owed the money, in the Local or District Court to enforce the debt. This may result in additional costs and interest being added to the amount payable.

- 2 The respondent must deliver to the applicant within 28 days all certificates certifying compliance of any part of the construction at the applicant's property which the respondent has in its possession, including but not limited to:
 - (a) Concrete slab;
 - (b) Timber framing;
 - (c) Glazing;
 - (d) Termite protection;
 - (e) Plumbing;
 - (f) Electrical; and
 - (g) Engineering.
- 3 The respondent is to pay the applicant's costs of and incidental to the proceedings, as agreed or as assessed.

Reasons for decision:

The applicant, Ms Iyengar, entered into a contract with the respondent, Casagrande Homes Pty Ltd on 21 March 2022 for the construction of a two storey residence on land owned by the applicant at Riverstone. The contract price was \$396,750 inclusive of GST.

The work commenced in October 2022 and was required by clause 6 of the contract to be completed within 32 calendar weeks from commencement.

Issues arose between the parties and on 26 September 2023 Fair Trading NSW issued a work order requiring the respondent to complete the building work required under the contract by 18 December 2023. Fair Trading issued a notice of non-compliance on 21 December 2023.

The applicant commenced these proceedings on 10 January 2024 seeking \$396,750 and “direction to proceed with the termination of the contract”. The application stated that “The intention to terminate the contract has been communicated in writing to the contractor ... on 29 December 2023.” I note that no document of that nature was included in the evidence put before the Tribunal.

On 23 January 2024 the respondent forwarded a letter to the applicant purporting to terminate the contract “due to breach of conditions of the contract ... including, 1. Not providing access to work on the site that has caused a significant impact on the work flow, 2. Accessing the site without any prior permission from the builder, 3. Communicating with the sub-contractors directly on site, and 4. Not responding to our calls or emails to resolve the dispute that has raised in an amicable manner.”

The applicant elected to treat that communication as a repudiation of the contract and, by letter dated 23 January 2024 from Birch Partners, solicitors, the applicant accepted the repudiation.

On 22 May 2014 the applicant entered into a contract with RJ Infra Pty Ltd for the “Completion of an unfinished double storey brick veneer house”. The contract price was \$400,001, the work was to be completed within 16 weeks of commencement.

The proceedings were listed for directions on 21 February 2024 and 5 June 2024. The Tribunal’s file indicates that the respondent was represented on 21 February but not apparently on 5 June.

On 2 October 2024 the Tribunal forwarded to the parties notice that the proceedings were listed for hearing today, 21 October 2024.

The applicant appeared, represented by her solicitor, Mr Birch. There was no appearance from the respondent.

Notice of the first directions hearing was sent to the respondent’s registered office. Subsequent notices, including the notice of hearing, were forwarded to the respondent at an email address which I note had been utilised by the respondent in the course of the building work on the applicant’s property.

I infer that the change of mode of communication with the respondent was at the request of the respondent.

Mr Birch provided evidence that the documents filed by the applicant in preparation for the hearing were sent to the respondent.

I was satisfied that the respondent is aware of the proceedings and that notice of the hearing was duly served upon the respondent. The hearing proceeded in the absence of the respondent as authorised by rule 35 of the Civil and Administrative Tribunal Rules 2014.

The applicant had filed bundles of documents to be relied on as evidence on 17 April and 11 July 2024. The respondent filed no evidence.

The applicant filed on 14 October 2024, in accordance with directions of the Tribunal, a paginated bundle of documents for the hearing. That bundle included the documents filed on 17 April and 11 July.

The documents filed on 17 April included points of claim as directed by the Tribunal. The documents filed on 11 July included a proposed amended (or further amended) points of claim upon which the applicant sought to rely. The amendments in the proposed document related to the fact that the applicant had entered into the contract with RJ Infra Pty Ltd and also added a claim for loss of rent.

The proposed amended points of claim had been served upon the respondent and I was satisfied that no injustice to the respondent could arise from the applicant having leave to rely upon the amended points of claim.

Accordingly I granted the applicant leave to rely upon the amended points of claim and the hearing proceeded by reference to that document.

The applicant's evidence included two statements from the applicant with exhibits SI-1 and SI-2 as well as expert reports from Messrs Andrew Tan, a structural engineer, and Gordon Xue, a building consultant and quantity surveyor.

Mr Tan acknowledged and agreed to be bound by the Tribunal's Code of Conduct for expert witnesses.

Although Mr Xue did not refer to the Tribunal's Code of Conduct or its expert witness guideline, he did acknowledge and agree to be bound by the Uniform Civil Procedure Expert Witness Code of Conduct, which is equivalent.

The applicant made an affirmation and answered questions clarifying some aspects of her evidence.

Although Mr Tan and Mr Xue both attended the hearing, the Tribunal did not consider it necessary to have them give oral evidence.

The applicant seeks compensation for breach of contract by the respondent as well as an order that the respondent deliver to her "all certificates of compliance the [respondent] has in its possession, relating to the construction at the [applicant's] Property". The amended points of claim listed the relevant certificates as "including but not limited to": Concrete slab, Timber framing, Glazing, Termite protection, Plumbing, Electrical and Engineering.

I am satisfied on the evidence that the applicant validly terminated the contract on 23 January 2024. The contract provides for the service of a notice of breach and allows termination after 10 business days if the breach is not remedied. However there is nothing in the contract to indicate that the contractual right of termination is intended to be exclusive of common law rights of termination.

The respondent purported to terminate the contract on 23 January 2023 by reason of a number of matters recited in its letter of that date, which I have set out above. It is not necessary to determine whether those matters separately or together were sufficient justification for the respondent to terminate the contract. There was no evidence before the Tribunal to support any of the allegations and I do not find any of them established.

The purported termination of the contract by the respondent would itself constitute a repudiation of the contract unless it was shown to be justified. It has not been shown to be justified and it follows that the respondent did repudiate the contract on 23 January 2024. As noted above, the applicant accepted that repudiation.

The applicant is entitled to compensation for the respondent's breach of contract. The measure of compensation is the amount necessary to put the applicant in the position she would have been in if the contract had been complied with.

That amount is calculated by deducting, from the amount the applicant will need to spend to complete the works the respondent was required to perform, the portion of the contract price which the applicant has not paid the respondent.

The applicant calculated her claim to compensation as follows:

Contract sum \$396,750
Payments made to respondent \$198,375
Unpaid balance of contract sum \$198,375
Additional payments (made to the respondent or to third parties)
\$5,777.75
Cost to complete (ie contract price with RJ Infra)
\$400,001
Excess of cost to complete over unpaid contract sum
\$207,403.75
Loss of rent up to 12 July 2024 \$42,660
Total \$250,063.75

Although the applicant did not produce documentation to establish the amount she had paid the respondent, she gave evidence that that was the amount she had paid and, in the absence of contradiction from the respondent, I accept that evidence.

The contract sum and the amount payable to RJ Infra are established by the respective contracts. The applicant gave evidence that the plans and specifications identifying the scope of works under the contract with RJ Infra were the same plans and specifications as had been attached to the contract with the respondent.

The additional payments consisted of:

\$770 paid to the respondent for "sewer pegout report" and \$440 paid to Apex Surveying for "Detail survey".

The contract provided that "Peg out and identification survey" was included in the contract price. I accept that the applicant should not have been billed separately for these items.

\$583 and \$728.75 paid on 4 July 2023 and 7 November 2023 to Houspect Building Inspections for "Construction – Framework" and "Investigation report". The applicant did not provide any substantial detail in relation to these payments, save that they were charged in relation to "frame stage" and "brick stage". The contract provided that "Private certifier fees for CDC approval" were included in the contract price. In the absence of contradiction from the respondent, I accept that the applicant should not have been billed separately for these items.

\$1056 for Props installation and props hire and three payments of \$440 for Props hire covering the period from 15 February 2024 to 31 May 2024. Mr Birch pointed to a letter from Mr Tan dated 21 March 2024 certifying the structural suitability of the props and explained, by reference to Mr Tan's letter and a photograph included in the letter, that the front façade of the house had been left insufficiently supported by the respondent and the applicant had been required to arrange temporary propping to render it safe. On that basis I accept that the applicant was required to incur that cost by reason of the respondent's failure to complete the contract works.

For the above reasons I accept that the applicant is entitled to compensation for the respondent's failure to complete the contract works in the amount of \$207,403.75.

To recover compensation for loss of rent flowing from the delay in completion of the work, the applicant must establish that the loss of rent was a loss falling within the principles set out in *Hadley v Baxendale* (1854) 9 Ex 341; 156 ER 145 (at 151); that is, a loss:

“such as may fairly and reasonably be considered either arising naturally, that is, according to the usual course of things, from such breach of contract itself, or such as may reasonably be supposed to have been in the contemplation of both parties, at the time they made the contract, as the probable result of the breach of it.”

It cannot be said that loss of rent is a consequence that flows naturally, according to the usual course of things from delay in the completion of a residential property. The owner may intend to live in the property or even leave it empty. The applicant submitted that this case fell within the second limb of the rule, that is that the loss may reasonably be supposed to have been in the contemplation of the parties at the time they made the contract, as the probable result of the breach of it.

The applicant gave evidence that, at the time she negotiated the contract with the respondent, she informed Mr Rashmi Jhala, a director of the respondent, that she was building the house “as an investment property”.

Whilst building a house as an investment property is not necessarily inconsistent with leaving the house empty so as to earn capital gains, I accept that the obvious implication of the statement “I am building this house as an investment property” is that the applicant intended to rent the property to earn investment income (or cover a mortgage).

I accept that the loss of rent falls within the second limb of the rule in *Hadley v Baxendale* and that the applicant is entitled to compensation from the respondent for the delay in completion of her building project.

As noted above, the contract required the respondent to complete the work in 32 weeks from commencement.

The applicant submitted that that period expired in June 2023 and calculated her loss of rent from 27 June 2023. There was no evidence to suggest that the respondent had submitted any claims for extensions of time for completion.

The only evidence of the date of commencement of the work was the applicant’s evidence that work had commenced in October 2022. By my calculation, 32 weeks from the end of October 2022 was 13 June 2023.

Allowing two weeks to find a tenant would suggest it was reasonable to expect that the premises would have been tenanted from 27 June 2024.

The applicant entered into the contract with RJ Infra on 22 May 2024 and included in her evidence a notice of commencement of building work executed by the Principal Certifier recording the date of commencement as 4 June 2024. The period specified in the RJ Infra contract for the completion of the work is 16 weeks.

Accordingly, the applicant should have had possession of her property on 24 September 2024. Apparently, that has not occurred but there is no evidence before the Tribunal to explain that circumstance. Again, allowing two weeks to find a tenant, the applicant should have been able to earn rent from 8 October 2024.

I consider that the applicant is entitled to compensation for lost rent for the period 27 June 2023 to 8 October 2024. On my calculation that is 67 weeks.

The applicant produced three rental appraisals in respect of the property, being \$780-\$820, \$780-\$800 and \$770-\$795. The applicant suggested that the average of these figures is \$790 per week and sought compensation of that amount. I accept that \$790 per week is a reasonable estimate of the rent which the applicant might have obtained for the property. However, the applicant has not acknowledged that she would have to pay a proportion of that rent to an agent. In the absence of any evidence of the amount likely to be charged by an agent I will deduct 10% to allow for management fees and other costs. On my calculation 90% of \$790 is \$711 and the loss of that amount for 67 weeks equals \$47,637.

I will also order the respondent to pay that amount to the applicant.

I consider that the applicant is entitled to be provided with any certificates relating to the sufficiency or standard of completion of any of the work carried out by the respondent. The applicant is not seeking that the respondent obtain or create any certificates which it does not already hold. I will order the respondent to deliver to the applicant within 28 days all certificates certifying compliance of any part of the construction at the applicant's property which the respondent has in its possession, including but not limited to:

- (a) Concrete slab;
- (b) Timber framing;
- (c) Glazing;
- (d) Termite protection;
- (e) Plumbing;
- (f) Electrical; and
- (g) Engineering.

The applicant sought an order for costs. The amount claimed in the proceedings exceeded \$30,000 and accordingly rule 38 of the Civil and Administrative Tribunal Rules 2014 (NSW) applies and special circumstances are not necessary before I may make an order for costs.

The applicant has been successful in the proceedings and is entitled to an order for costs. I will order the respondent to pay the applicant's costs of and incidental to the proceedings as agreed or assessed.

A certified copy of the money order is enclosed.

If the other party has not paid the money owed, you can enforce it through the Local Court by applying to register the Certificate of Judgment or Order (UCPR Form 45).

The party who is owed the money or their legal representative can register the form online at www.onlineregistry.lawlink.nsw.gov.au. Alternatively, it can be lodged by post or in person at any Local Court registry.

You will have to pay fees to the Local Court to enforce this order. For more information about the enforcement process go to www.localcourt.justice.nsw.gov.au or contact the Local Court on 1300 679 272.

For legal assistance call Law Access on 1300 888 529.

D A C Robertson, Senior Member

Issued: 21 October 2024



For further information about your rights and obligations in relation to this order please read NCAT's Rights and Obligations Guideline available on the NCAT website at www.ncat.nsw.gov.au.



NSW Civil & Administrative Tribunal Act 2013
Certificate under Section 78

Case No.: 2024/00011283

Applicant's details:

First Applicant Shruti Iyengar
25 TALLULAH Parade
GRANTHAM FARM NSW 2765

Respondent's details:

First Respondent CASAGRANDE HOMES PTY LTD trading as
CASAGRANDE HOMES PTY LTD
21 WHITE CEDAR Avenue
CLAREMONT MEADOWS NSW 2747
ABN 99635761116
ACN 635761116

Nature of Application made to the Tribunal: Compensation/Payment of Money

I certify that, pursuant to the order made by the NSW Civil & Administrative Tribunal on 21 October 2024:

The respondent CASAGRANDE HOMES PTY LTD, 21 WHITE CEDAR Avenue CLAREMONT MEADOWS NSW 2747, is to pay the applicant Shruti Iyengar, 25 TALLULAH Parade GRANTHAM FARM NSW 2765, the sum of \$255,040.75, immediately.

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Dated at NCAT Penrith (CCD)
21 October 2024

Pauline Green
Registrar

