



Case in Brief:

*Technocratic payment regime
not the priority under CCA*

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In *Dem Home Ltd v New Gate Ltd*¹ the High Court considered whether a payment claim had been validly served under the Construction Contracts Act 2002 (the **CCA**). The decision is an ever-important reminder that the CCA is designed to maintain cashflow in the construction industry.

Background

Dem Home Limited engaged New Gate Limited to build terrace houses in Point England,

¹ *Dem Home Ltd v New Gate Ltd* [2023] NZHC 2709.

Parliament's intent



The High Court reaffirmed the purpose of payment schedules.



Auckland. Before construction was complete, Dem Home alleged breach of contract by New Gate and so sought to cancel the contract. New Gate issued a payment claim for \$242,500.50 which Dem Home ignored.

The ignored payment claim prompted New Gate to serve a statutory demand on Dem Home.² In response, Dem Home applied to the High Court to set aside the statutory demand. New Gate opposed the application.

Issues for the High Court

Dem Home identified three

reasons why the payment claim was not valid under the CCA:

- a. The payment claim failed to comply with the formal requirements.
- b. New Gate was not entitled to issue the payment claim at that point.
- c. It was issued after Dem Home cancelled the construction contract.

Decision of the High Court

A starting point for the High Court was the purpose of the CCA. Referring to *Demasol v South Pacific Industrial Limited*,³ the High

Court summarised the approach to be taken.⁴ Any analysis of the CCA must reject a "technocratic" or "formalistic" interpretation as this would undercut *Parliament's intent that cashflow in the construction industry be maintained*.

Did the payment claim fail to comply with the formal requirements?

Sections 20(2)(3) and (4) of the CCA contain the requirements for a payment claim to be valid. Some of these include that the payment claim be in writing and

² A statutory demand is a formal document served on a company claiming debt is owed. A company failing to comply with the statutory demand can face insolvency under Part 16 of the Companies Act 1993.

³ *Demasol v South Pacific Industrial Limited* [2022] NZCA 480.

⁴ *Dem Home Ltd*, above n 1, at [25].

that the claim states that it is made under the CCA.

The Court found that the claim in fact was made in writing. The claim was not verbal and contained a range of information tying the claim to the payment sought. Dem Home had also argued that the necessary information was in small font, but a comparison of the font sizes found this to be untrue.

Was New Gate unable at that time to issue a payment claim?

New Gate and Dem Home had agreed in their contract that New Gate was entitled to issue

payment claims when certain work was complete. Dem Home argued that this had not occurred.

The Court again looked to *Demasol*. In its view, the decision decisively rejected the approach Dem Home had taken to halt the payment claim. The payment claim should have been challenged by Dem Home in the form of a payment schedule. Dem Home's failure to issue the payment schedule within time meant that it could not then use the contended matter in an attempt to set aside the statutory demand.

Would the payment claim be invalid if it was issued after Dem Home cancelled the contract?

New Gate raised two arguments in response to this matter. The first was that the contract had not in fact been cancelled. The second was that even if the contract had been cancelled, the payment schedule regime in the CCA still applied. Although the Court did not address whether the contract had been cancelled, it again found that any dispute had to be served by way of a response to the payment claim.

The Court dismissed Dem Home's application to set aside the statutory demand.

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