



Judgment Summary

Supreme Court
Australian Capital Territory
Court of Appeal

Monday, 18 May 2026

Civil & Civic Corporation Pty Ltd v Nova Builders Pty Ltd (No 2) [2026] ACTCA 14

McCallum CJ, Taylor and Collier JJ

The Court of Appeal has by majority dismissed an appeal from a ruling requiring restitution for mistaken payment and payment for quantum meruit.

The first respondent, Nova Builders, had engaged the second respondent, Beno Excavations (also known as Benex) to undertake excavation and hydraulics work for a residential development in Greenway. Mr Moseley had been providing services as Benex's general manager. The appellant, Civil, was an independent company of which Mr Moseley was a director and shareholder. He ceased acting as Benex's general manager on 3 March 2020.

Unbeknownst to Benex, Mr Moseley had caused two invoices to issue to Nova directing that payment of \$550,000 for the Greenway project be made to Civil as part of a "joint venture" between Benex and three other companies that did not involve Civil. Following Mr Moseley's cessation as general manager of Benex, Civil carried out the remainder of the works at the Greenway site, and issued further invoices to Nova totalling \$462,003.93. Both Benex and Civil commenced proceedings seeking various amounts from Nova. Benex sought payment of the \$550,000 that Nova had paid to Civil, and Civil sought further payment for the work done by it following 3 March 2020.

The primary judge, Mossop J, determined that Nova had mistakenly paid Civil and were entitled to restitution of the \$550,000, which was set off against the \$462,003.93 it owed to Civil for the further works. His Honour found that no "joint venture" existed, and therefore Nova's consent in paying Civil the amount was vitiated. In a further judgment, his Honour held that Benex was entitled to payment on a quantum meruit for the works it had done prior to 3 March 2020, minus amounts related to Nova's counterclaim against Civil and Nova's costs in the proceedings.

Civil appealed from those judgments on a number of grounds. Primarily, the appeal grounds related to two alleged errors of law: first, that the primary judge had erred in finding that for a claim for restitution for mistaken payment, it was sufficient to prove the fact of payment and that a mistake had caused that payment; and second, that his Honour had erred in finding that Mr Moseley's ostensible authority did not preclude a finding of mistake

nor a claim of quantum meruit by Benex once Nova's detriment from the mistaken payment had been made good.

The Court of Appeal, by majority (McCallum CJ and Taylor J, Collier J dissenting), dismissed the appeal. The majority held that High Court authority established that once a vitiating factor such as a mistake was established and found to be causative of the payment, a plaintiff need not prove any additional "unjustness". In that context, the majority noted that there was no requirement to prove whether Nova had been put in a worse financial position by the payment; rather, Nova's economic position was irrelevant where the payment was found to be a mistake unless Civil wished to plead a positive defence such as the "good consideration" defence.

The majority also held that the finding of mistake and ostensible authority could stand together because the estoppel operated only against Benex and not for the benefit of Civil, who was not a party to the quantum meruit claim. It was accepted that the extent of the estoppel arising from the ostensible authority only extended to prevent the party making the representation from departing from that representation when the other party has acted on it to their detriment.

Justice Collier in dissent held that the appeal should be allowed on the basis that there was no mistake. Her Honour noted that the Corporations Act and common law entitled Nova to rely on the assumption that Mr Moseley had the authority to act as he did, and held that accordingly Nova's payment to Benex satisfied its obligations to Benex. To the extent that no mistake was found, her Honour would have allowed the appeal.

This summary has been prepared for general information only. It is not intended to be a substitute for the judgment of the Court or to be used in any later consideration of the Court's judgment.

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