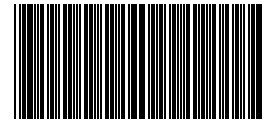




Filed: 19 September 2025 2:40 PM



D000288JR9

Written Submissions

COURT DETAILS

Court	Supreme Court of New South Wales, Court of Appeal
List	Court of Appeal
Registry	Supreme Court Sydney
Case number	2025/00273034

TITLE OF PROCEEDINGS

First Applicant	ALL CIVIL SOLUTIONS GROUP PTY LTD ABN 69610060458
First Respondent	WOONONA-BULLI R S L MEMORIAL CLUB LTD ABN 36001059374

FILING DETAILS

Filed for	WOONONA-BULLI R S L MEMORIAL CLUB LTD, Respondent 1
Legal representative	RAYMOND JOHN TRAVERS
Legal representative reference	
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Your reference	RT:250697

ATTACHMENT DETAILS

In accordance with Part 3 of the UCPR, this coversheet confirms that both the Lodge Document, along with any other documents listed below, were filed by the Court.

Written Submissions (2701_001.pdf)

[attach.]

All Civil Solutions Group P/L

- v -

Woonona Bulli RSL Memorial Club Ltd

**Court of Appeal
No. 2025/0027 3034**

**Club's Submission
(19.09.2025)**

**Leave and
concurrent hearing**

1.1 On 04.06.2025 the Applicant ("**All Civil**")

- (1) as the assignee, by operation of the Contractors Debts Act (the "**CDA**"), of amounts otherwise payable by the Respondent (the "**Club**") to Warrane Design Contract Fit-Out P/L ("**Warrane**"),
 - (2) sued the Club for \$1,200,670.24 (the "**Assigned Amount**"),
- and at the same time moved for summary judgment.

W/Folder Tabs 5-7

1.2 On 13.06.2025 the Club filed and served a List Response. It pleaded two defences;

- (1) one, pleaded in [16] to [25] and [27] thereof, was that the amount payable to All Civil under the assignments was \$341,538.22.

That plea was "not accepted" below and the correctness of that conclusion is not in issue in these proceedings, and

- (2) the second, pleaded in [26] and Part 2 of the List Response, was that because

- (a) the claim by All Civil was by operation of s.11(4) CDA, subject to any defence that would have been available to the Club if Warrane had sued for the Assigned Amount, and
 - (b) if so sued the Club would have had available to it defences to the value of at least \$3,426,571.22 (the “**s.11(4) Issue**”),
- the Club was not liable to All Civil for any amount under the assignments sued upon.

W/F Tab 8

- 1.3 In respect of the s.11(4) Issue the primary judge (Peden J) made a declaration that the Club was permitted to defend the All Civil claim as pleaded in [26] and Part 2 of the List Response.

Peden J
All Civil v Woonona
[2025] NSWSC 688
at [39]
W/F Tab 3

- 1.4 All Civil seeks leave to appeal from the above declaration made. Insofar as leave is required the Respondent consents to its grant.
- 1.5 The Court has directed that All Civil’s application for leave be heard with argument on the appeal. These submissions proceed accordingly.

The Contractors Debts Act

- 2.1 The s.11(4) Issue involved a consideration of the interaction of the CDA with the Building and Construction Industry (Security of Payment) Act (the “**SOPA**”).
- 2.2 The CDA
- (1) may be engaged whenever a contractor (in the CDA the “defaulting contractor”) retained to do work has sub-contracted the doing of some or all of that work but has not paid the sub-contractor (in the CDA the “unpaid person”) for the doing of some or all of the sub-contracted work,

- (2) to permit the unpaid person to obtain payment from money that **is or becomes payable** to the defaulting contractor from some other person (in the CDA the “principal”).

s.5(1) CDA
W/F Tab 9

2.3 The unpaid person (a “**Sub-contractor**”) may obtain such payment by

- (1) procuring from a Court in which it has obtained judgment against the defaulting contract (a “**Contractor**”) the issue of a “debt certificate” evidencing the amount of that judgment, and
- (2) serving on a principal a “notice of claim” attaching thereto a debt certificate.

s.6 CDA
W/F Tab 9

2.4 The consideration of the interaction of the CDA and the SOPA requires a detailed chronology of the relevant events.

2.5 It is convenient to note that All Civil served 3 notices of claim on the Club, the first of which was wholly paid. It was the second and third notices that were relevant in the proceeding below.

What happened

3.1 On 07.12.2023 the Club and Warrane entered into a cost plus contract for construction of a Memorial and the upgrade of a car park (the “**Contract/Works**”) at the premises of the Club (the “**Site**”).

Stevenson J
[2025] NSWSC 123
at [2]
W/F Tab 11

- 3.2 In December 2023 Warrane engaged All Civil as a fixed price sub-contractor to undertake the great bulk of the Works.

Peden J at [1]
W/F Tab 3

- 3.1 On 29.11.2024 Warrane served a payment claim under SOPA ("**P/C 13**"). On 06.12.2024 the Club responded by issuing a payment schedule for \$81,978.47 ("**P/S 13**"). The dispute as to balance payable under P/C 13 proceeded to adjudication under SOPA.

Stevenson J at [8]
W/F Tab 11

- 3.2 On 18.12.2024 All Civil served the Club with a notice of claim attaching a debt certificate for \$1,102,958.87 (the "**2nd Notice/Debt Certificate**").

Stevenson J at [7]
W/F Tab 11

- 3.3 Service of the 2nd Notice, for the amount stated in the 2nd Debt Certificate, operated as an assignment to All Civil of

"... the obligation of the principal [the Club] to pay [Warrane] the money owed under the contract ...",

i.e. of the money then, or thereafter becoming, payable by the Club to Warrane.

s.8(1) & (2) CDA
W/F Tab 9

- 3.4 On 20.12.2024 the Club paid the \$81,978.47 to All Civil.¹

Rees J
Woonona v Warrane
[2025] NSWSC 271
at [22]
W/F Tab 12

- 3.5 The effect of that payment was that the amount thereafter payable under the 2nd Notice was reduced to \$1,020,980.40 (\$1,102,958.87 - \$81,978.47).

¹ On 02.12.2024 All Civil had served the Club with a "Payment Withhold Request" for \$1,026,141.79.

- 3.6 On 22.01.2025 the adjudication determination in respect of P/C 13 was served on Warrane and the Club (the “**Adjudication Determination**”). It determined the **Adjudicated Amount** payable for that payment claim as \$2,094,018.14.

Rees J at [32]
W/F Tab 12

- 3.7 The effect of the service of the Adjudication Determination was that the Club was

“... required to pay [Warrane the] ... adjudicated amount on or before the relevant date ...”,

i.e. within 5 business days of service of the Adjudication Determination, i.e. before or on 27.01.2025.

s.23(2) SOPA
W/F Tab 10

- 3.8 Assigned obligations to pay money owed under the contract become payable to an assignee

“.. as they become payable under the contract ...”.

s.9(2) CDA
W/F Tab 9

- 3.9 Thus the balance due to All Civil under the 2nd Notice, \$1,020,980.40, was payable upon the arising of the obligation to pay the Adjudicated Amount, i.e. on 22.01.2025.

- 3.10 The unassigned amount payable to Warrane in respect of the Adjudication Determination was \$1,073,037.74 (\$2,094,018.14 - \$1,020,980.40).

- 3.11 The Club did not pay any part of the Adjudication Amount to Warrane or to All Civil.

- 3.12 On around 24.01.2025 or 31.01.2025 Warrane and the Club agreed on \$284,318.94 as the amount payable on P/C 14. That amount was thereby

assigned to All Civil and paid to it on 31.01.2025. There was no nett effect as to the amount owed to Warrane.

Rees J
at [32] & [33]
W/F Tab 12

3.13 The amount thereafter due to All Civil under the 2nd Notice became \$736,661.6 (\$1,020,980.40 - \$284,318.94).

3.14 On 30.01.2025 Warrane procured the issue of an Adjudication Certificate. The amount certified as owing was \$2,141,780.73 (the Adjudicated Amount plus \$47,762.59 for interest and adjudication expenses).

Rees J at [33]
W/F Tab 12
s.24 SOPA
W/F Tab 10

3.15 On 03.02.2025 Warrane, on the basis of the Adjudication Certificate, obtained a judgment against the Club for \$2,141,780.73.

S.25(1) & (2) SOPA
W/F Tab 10

Stevenson J at [11]
W/F Tab 11

3.16 The application for that judgment did not address the consequences for Warrane of the assignment effected by service of the 2nd Notice.

3.17 On 17.02.2025 All Civil served the Club with a notice of claim attaching a debt certificate for \$464,008.78 (the “**3rd Notice/Debt Certificate**”).

Rees J
Woonona v Warrane (No. 2)
[2025] NSWSC 365
at [17]
W/F Tab 13

3.18 Service of the 3rd Notice

- (1) reduced the amount thereafter payable to Warrane to \$656,791.55
(((\$2,141,780.73 - \$1,020,980.40) - \$464,008.78), and
- (2) increased the amount payable to All Civil to \$1,200,670.24 (\$736,661.46
+ \$464,008.78).

[3.6] to [3.8] above

3.19 On 20.02.2025 the Club applied to partially set aside the Adjudication Determination.

Stevenson J at [15]
W/F Tab 11

3.20 On 21.02.2025 the Club became aware that Warrane had obtained and served a Garnishee Order attaching \$2,141,870.41. On 25.02.2025 the Club applied for a stay of enforcement of the Judgment.

Stevenson J at [16]
W/F Tab 11

3.21 On 27.02.2025 enforcement of the Judgment was stayed to the extent of \$1,200,670.24. The balance of the judgment amount, \$941,110.49, was ordered to be, and was paid into Court, to abide the outcome of the Club's challenge to the Adjudication Determination.

Stevenson J at [17]
W/F Tab 11

3.22 On 27.03.2025 the Club's challenge to a part of the Adjudication Determination was dismissed.

Rees J at [70]
W/F Tab 12

3.23 On 16.04.2025 the Court determined, as between the Club, Warrane and All Civil, the entitlements to the money in Court.

Rees J (No. 2)
at [42] to [44]
W/F Tab 13

3.24 On 16.05.2025 the Court by consent ordered the money paid into Court be, as it was, paid out as follows

(1)	to Warrane	\$859,132.02
(2)	to the Club	<u>\$81,978.47</u>
		\$941,110.49

3.25 The Club has prepared, as an aide memoire, a “Table of Entitlements and Payments”, summarising the above.

W/F Tab 15

**The s.11(4)
Issue**

4.1 All Civil’s contention below was, and in this Court is, that

- (1) as the Club’s obligation was to pay it an amount that had been ascertained by an adjudication under SOPA,
- (2) the strictures of s.25 SOPA constrained what would otherwise be the operation of s.11(4) CDA,

i.e. all Civil’s claim in the proceedings below was “not subject to any defence” other than any permitted by s.25(4) SOPA.

All Civil Summary
at [2] & [3]

- 4.2 Her Honour did not accept that submission; she concluded the operation of s.11(4) was not so affected.

Peden J
at [27] & [28]
W/F Tab 3

- 4.3 Her Honour noted that

- (1) nothing in the SOPA expressed itself as operating in respect of an obligation assigned by operation of the CDA, and
- (2) nothing in the CDA gave ambulatory effect to any provision in the SOPA.

Peden J
at [30]-[33]
W/F Tab 3

- 4.4 In particular Her Honour did not accept that s.11(3) CDA;

“Proceedings for recovery of the [assigned] debt may be taken in any manner in which the defaulting contractor might have taken had there been no assignment”,

gave ambulatory effect to s.25(4) SOPA.

Peden J
at [34]-[36]
W/F Tab 3

- 4.5 Her Honour’s reasoning for that conclusion was that

- (1) the provisions of SOPA
 - (a) were “peculiar” to the parties to the construction contract, and
 - (b) involved procedures for speedy recovery of payment inapplicable as between sub-contractor and the Club, because they are not “picked up” by an assignment under the CDA, and

- (2) construed as contended for by All Civil, the SOPA procedures would operate to leave a principal without a

“... means of recovering ... from the sub-contractor ...”

any overpayment of the amount finally determined as due under the construction contract.

Peden J
at [36] & [37]
W/F Tab 3

4.6 The notional premise for the operation of s.11(4) CDA is that

- (1) a contractor has not been paid by the principal, and
(2) is suing to obtain a judgment for the amount unpaid.

i.e. that the contractor does not have, but is seeking, a judgment.

4.7 That premise is to be contrasted with that for the engagement of s.25(4) SOPA. It operates in proceedings where

“An adjudication certificate ... [has been] filed as a judgment for a debt ...”.

s.25(1) SOPA

All Civil’s proceedings were not such proceedings. It sought, rather than had, a judgment.

4.8 All Civil’s right to bring proceedings arose upon money being, but for the assignment, payable under the Contract to Warrane i.e. a point in time prior to Warrane being enabled to obtain an adjudication certificate (or judgment).

[3.6] to [3.8] above

4.9 All Civil's submission is premised on the contrary, that there is an assignment of SOPA judgment.

All Civil Subs
at [11] & [12]
W/F Tab 2

4.10 All Civil was not itself ever competent to apply for an adjudication certificate or judgment thereon; it was not in respect of P/C 13 "a claimant".

s.4 SOPA
s.24(1) SOPA

4.11 All Civil's submissions about the operation of s.11(3) CDA is that

(1) the consequence identified by Her Honour at [4.5(2)] above is correct, but

(2) "doesn't matter", because a principal retains its rights to recover against a contractor any such overpayment.

i.e. that the position an assignee of an obligation is in respect of the satisfaction of that obligation improved over that of the contractor whose entitlement is assigned.

4.12 That is a construction of s. 11(3) CDA inconsistent with the text and purpose of s.11(4) CDA (which is context for s.11(3) CDA). That an assignment operates

"... subject to defences ...".

is an indication that the assignee was to be entitled to payment on no different basis than the contractor would have been if it was itself suing for a judgment.

4.13 It is a construction not required by the language of s.11(3) itself.

see [4.4] above

Conclusion

5.1 The interaction of the operation of the CDA and SOPA has not been previously considered by this Court. It is an issue capable of significance to the industry.

- 5.2 Leave should be granted, but for the reasons stated in section 4 above, the Appeal should be dismissed with costs.

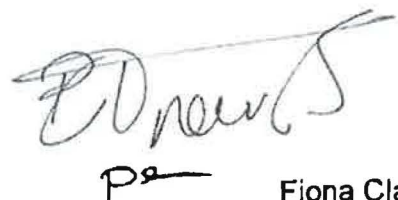
Further authorities

- 6.1 Mitchell -v- Purnell Motor
(1961) 78 WN(NSW) 26
at pp28-29
- 6.2 Lear -v- Tumut River Orchard Management
[2024] FCA 26
at [16] and [82]
- 6.3 Sam the Paving Man P/L -v- Berem Constructions P/L (in liq)
[2010] NSWSC 868
at [16] and [17]

Date: 19 September 2025

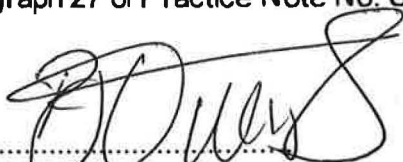


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I, Raymond John Travers, solicitor for the Respondent certify
that this document is suitable for publication pursuant to
paragraph 27 of Practice Note No. SC CA1



30 September 2025