

Barclay Mowlem Construction v Tesrol Walsh Bay [2004] NSWSC 716 (13 August 2004) : McDougall J

Whether estoppel defence prohibited by s 34

At para [18]: "...Section 34 is a "contracting out provision" that avoids any provision of any agreement that purports to exclude, modify or restrict the operation of the Act..."

At para [20]: "In my judgment, the question is not one that is appropriate to be resolved on an application for summary judgment. It involves not only the proper construction of s 34, but also its application. Its application would depend upon the facts that are proved. I think that it is arguable that estoppel by representation would survive, even if, and "agreement" based on the conduct that is said to give rise to the estoppel would be struck down."

[To read the judgment, please click here](#)