

CITATION: *Arnhem Earthmoving & Mechanical Pty Ltd v NRR Equipment Pty Ltd & Anor*
[2026] NTSC 70

PARTIES: ARNHEM EARTH MOVING &
MECHANICAL PTY LTD
(ACN 134 418 670)

v

NRR EQUIPMENT PTY LTD
(ACN 623 826 624)

and

PEAT, Simon Langdon

TITLE OF COURT: SUPREME COURT OF THE
NORTHERN TERRITORY

JURISDICTION: SUPREME COURT exercising Territory
jurisdiction

FILE NO: 2024-03216-SC

DELIVERED: 18 August 2026

HEARING DATE: 18 August 2026

JUDGMENT OF: Huntingford J

CATCHWORDS:

CONTRACTS – Breach of contract – Contract between plaintiff and first defendant for the completion of haulage works - Liability of second defendant under a deed of guarantee – Whether the second defendant is entitled to set off against liability under the deed of guarantee – Judgment ordered for the plaintiff.

Mizuho Bank Ltd v Ackroyd [2016] NSWSC 1148.

Corporations Act 2001 (Cth) S 440J; *Supreme Court Rules 1987* (NT)r
48.12(12)

REPRESENTATION:

Counsel:

Plaintiff:	W Thomas
First Defendant	No appearance
Second Defendant:	No Appearance

Solicitors:

Plaintiff:	Powell & Co Legal
First Defendant:	No appearance
Second Defendant:	No appearance

Judgment category classification:	B
Judgment ID Number:	Hun2604
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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

*Arnhem Earthmoving & Mechanical Pty Ltd v NRR Equipment Pty Ltd &
Anor* [2026] NTSC 70
No. 2024-03216-SC)

BETWEEN:

**ARNHEM EARTH MOVING &
MECHANICAL PTY LTD**
Plaintiff

AND:

NRR EQUIPMENT PTY LTD
First Defendant

AND:

SIMON LANGDON PEAT
Second Defendant

CORAM: HUNTINGFORD J

REASONS FOR JUDGMENT

- [1] This is an edited version of my decision delivered *ex tempore* on 18 August 2026.
- [2] The case concerns the plaintiff's claim for a debt it says is due as a result of work it did for the first defendant on the haul road for the Roper Bar Iron Ore Project. The first defendant is one of a group of companies which operated the mine, which is located near Roper Bar. The mine infrastructure includes a 170-kilometre private haul road connecting to the Bing Bong

loading facility on the Gulf of Carpentaria. Mr Simon Peat, the second defendant, is the sole director of the first defendant.

- [3] The plaintiff operates a civil earthworks, haulage and mechanical services business based in Humpty Doo. Mr Anthony Simpson is the sole director of the plaintiff.
- [4] In early 2024, the plaintiff and the first defendant made an agreement that the plaintiff would perform work on the haul road. The plaintiff claims that a debt of \$316,594.36 is owed to it by the first defendant for unpaid invoices for work done between March and June 2024.
- [5] The mine ceased operations in 2026. The first defendant entered voluntary administration on 26 May 2026. This proceeding is stayed against it.
- [6] The plaintiff claims the debt due by the first defendant from the second defendant in accordance with a director's guarantee.
- [7] The proceeding was set down for trial today. Prior to 10am the second defendant sent an email to the Court and to the plaintiff stating that he did not plan to attend. When the proceeding was called on, the second defendant was formally called and did not appear. I then proceeded with the trial.
- [8] The plaintiff called its sole witness, Mr Anthony Simpson. Mr Simpson confirmed the evidence in his affidavit made 15 December 2025, with one correction at [18] where he stated that the Kenworth prime mover truck referred to there was not at his business premises but was in fact removed by

the first defendant on or about 10 April 2025 as stated at [20] of the same affidavit. He also confirmed the evidence in his second affidavit made 22 April 2026. There was no cross-examination of Mr Simpson.

- [9] The plaintiff also tendered and relied upon paragraphs [15], [16], [17], [21] and [23] of the affidavit of the second defendant made 4 March 2026. Those paragraphs concern arrangements to engage the plaintiff to perform works on the haul road and the purchase of a Kenworth prime mover and drop deck loader by the first defendant or a related company from a company known as Redline Group Australia. Mr Scott MacLean was a director of Redline and based on the evidence from the second defendant's affidavit, was authorised to act on behalf of the first defendant when dealing with the plaintiff.

Issues

- [10] Much of the detail of the arrangements between the plaintiff and the first defendant was not in dispute. I find that:

- a. The plaintiff and the first defendant entered into a contract whereby that the plaintiff would provide labour and equipment to perform repair works on the haul road;
- b. The contract was partly oral, partly in writing and partly to be implied.
- c. In so far as the contract was in writing it is evidenced by:

- i. Emails between Mr Simpson and Mr MacLean (agent for the first defendant) on 16 February, 14 and 15 March and 28 April 2024 including schedules of rates for labour and equipment;
 - ii. The purchase orders issued by the first defendant on 31 March 2024 and 28 April 2024;
 - iii. The terms and conditions contained in the Account Credit Application signed on 9 April 2024;
 - iv. Emails between Mr Simpson and the second defendant on behalf of the first defendant requesting works, for example the email of 28 April 2024 in relation to running a double shift for the water cart.
- d. In so far as the contract was oral it was agreed in conversations between Mr Simpson and the second defendant that the plaintiff would perform the works requested by the first defendant on an ongoing basis;
- e. In so far as the contract was implied, the implication arises from the fact that the plaintiff performed the works between 15 March 2024 and 21 June 2024 for which it submitted invoices and that the first defendant paid the plaintiff for works described in the invoices dated 15 April, 30 April and 13 May 2024 in the total sum of \$185,405.03.

- [11] The contract was a schedule of rates contract. The works were to be performed in accordance with a schedule of rates for plant equipment, labour and incidentals, such as fuel and accommodation. The first schedule of rates was sent to the first defendant on 16 February 2024 and a further schedule of rates, for supply of a grader, operator and service truck, was sent on 14 March 2024.
- [12] The plaintiff started to perform works on the haul road from 15 March 2024 and demobilised from the site on 21 June 2024.
- [13] On 31 March 2024 the first defendant issued a purchase order for the supply of a grader, operator and service truck for \$53,264.60.
- [14] On 9 April 2024 the second defendant, on behalf of the first defendant, signed a document called an account application form, that is a credit agreement, which included various terms and conditions which formed part of the agreement between the plaintiff and the first defendant. The terms of that agreement included that:
- i. Payment was to be made 14 days from the date of invoice unless otherwise agreed;
 - ii. The first defendant would indemnify the plaintiff for any legal costs incurred in respect of the application and personal guarantees;

- iii. The terms and conditions applied to all transactions for which the first defendant was supplied goods and services on credit;
- iv. Interest was payable on any amounts not paid by the due date at the rate of 10 percent;
- v. The first defendant would indemnify the plaintiff upon demand for all expenses incurred in relation to any breach of the terms and conditions, including legal expenses.

[15] On the same day, 9 April 2024, the second defendant entered into a director's guarantee titled Deed of Guarantee with the plaintiff which provided that:

- i. The second defendant guaranteed the payment to the plaintiff by the first defendant of all monies owing or to become owing to the plaintiff by the first defendant under the credit agreement;
- ii. In the event of default by the first defendant the second defendant would pay any amounts owing to the plaintiff forthwith;
- iii. The guarantee was a continuing guarantee which remained in force until all monies owing to the plaintiff had been paid;
- iv. The appointment of an administrator to the first defendant did not defer, postpone or weaken the obligations of the second defendant to the plaintiff.

[16] On 28 April 2024 the contract was varied when the plaintiff agreed to supply to the first defendant a semi water truck, operator and 6” pump at a set of rates which were approved by the first defendant. On the same day a second purchase order was issued for that work in the total sum of \$60,949,90.

[17] At various times between 15 March and 21 June 2024 the second defendant contacted the plaintiff and asked that works be performed on the haul road.

[18] The first three invoices submitted by the plaintiff for work on the haul road were paid, although only one was paid within the 14-day period stipulated in the plaintiff’s terms and conditions.

[19] The invoices remaining unpaid were:

Invoice Number	Date	Amount	Due date
9502	21.05.2024	\$59,216.38	04.06.2024
9512	29.05.2024	\$63,744.97	12.06.2024
9522	02.06.2024	\$71,497.53	16.06.2024
9525	09.06.2024	\$55,972.06	23.06.2024
9532	21.06.2024	\$66,163.42	05.07.2024
TOTAL:		\$316,594.36	

[20] Mr Simpson’s evidence that the amounts unpaid remain outstanding was unchallenged and I accept that each of those invoices in the amounts stated has been unpaid since the due date. I also note that at [13] of the further amended defence, it is admitted that the amounts remain unpaid, although the first and second defendant did not admit that the amounts were owing.

- [21] I am satisfied, considering the pleadings, and the evidence before me that the work was done by the plaintiff and therefore the amounts set out in the invoices submitted under the contract are owed to the plaintiff. There is no evidence that the amounts were challenged at any time until the proceedings were commenced. Counsel for the plaintiff pointed out that the evidence in the emails and text messages between Mr Simpson and the second defendant prior to the writ being issued were not to the effect that the amounts were in doubt but rather concerned promises to pay and the second defendant's arrangements for making payment.
- [22] The further amended defence, as counsel for the plaintiff submitted, did not dispute the amounts owing except on the basis that they were 'unverified'. In other words, the defence response was to not admit that the work was done.
- [23] The invoices sent, as annexed to Mr Simpson's affidavit, were relatively detailed. I am satisfied on the basis of Mr Simpson's evidence that the work was performed as set out in those invoices.
- [24] As to the application of the terms of the credit agreement, it was pleaded that the terms did not apply because the agreement was not accepted by the plaintiff. In my view the provision of the terms of the credit agreement to the first defendant was an offer by the plaintiff to extend credit, of 14 days, on the basis of the stated conditions. When it was signed by the second defendant on behalf of the first defendant therefore the contract was

complete. Even if the arrangements are viewed as an offer from the first defendant to the plaintiff, which I do not think is correct, the subsequent conduct of the parties shows that credit was extended on that basis and therefore those terms were accepted. There was no failure to agree as to the terms of the credit agreement.

[25] The further amended defence also states that the credit agreement does not purport to expressly bind the first defendant. I have considered the agreement and I find that on its face that was its clear intent and purpose. There is no basis for that contention.

[26] It was also pleaded that the credit agreement and the guarantee were signed after the work was commenced. That is partly true, however it is standard practice for documentation to lag behind commercial activities and that does not mean that the terms were not incorporated into the agreement. In any event in this case the invoices for the work performed prior to the signing of the credit agreement and guarantee appear to have been paid and the debt which the plaintiff now seeks to recover appears to have been incurred in relation to work done after 9 April 2024.

[27] The next question to determine is whether the second defendant entered into an agreement with the plaintiff to guarantee the debts of the first defendant. I find that he did. There does not appear to be any dispute about that on the pleadings.

[28] It was admitted that the second defendant signed both the credit application, which was the agreement between the plaintiff and the first defendant made on 9 April 2024, and the guarantee agreement at [5(b)(i)] of the further amended defence. It was also admitted at paragraph [18] that the guarantee agreement contains the terms pleaded by the plaintiff at [18] of the further amended statement of claim.

[29] I note that s 440J of the *Corporations Act 2001* (Cth) prevents creditors from enforcing director's guarantees during administration, however, that does not apply to proceedings which commenced before the administration in accordance with the decision of the Supreme Court of New South Wales in *Mizuho Bank Ltd v Ackroyd*,¹ as is the case here.

[30] As to whether the guarantee agreement met the conditions for a deed, I note that it was not witnessed. There was no issue as to formalities raised in the pleadings. However, in view of Mr Simpson's evidence, and from the terms of the agreement and the conduct of the parties, even if there is any doubt about that matter, the consideration for the signing of the contract of guarantee was the provision of credit to the first defendant.

[31] I therefore find that the plaintiff is entitled to rely upon the guarantee given by the second defendant in order to claim from him the monies owed to it by the first defendant pursuant to the contract.

¹ *Mizuho Bank Ltd v Ackroyd* [2016] NSWSC 1148.

[32] I turn now to the final issue. The second defendant relied upon a set-off in his defence. That is that the further amended defence states that the debt due by the first defendant to the plaintiff should be reduced on account of the set off, with the result that the amount claimable by the plaintiff from the second defendant under the guarantee should also be reduced.

[33] The basis of the set-off was said to be, in broad terms, that the plaintiff wrongly refused to release a Kenworth prime mover truck and some other goods, in particular a low loader, owned by the first defendant. The plaintiff was said to have either converted those goods to its own use, unlawfully refused to deliver the goods or trespassed upon the goods with the result that the first defendant has suffered loss. I am not convinced that there is any legal basis for any of those claims.

[34] The first problem with the set-off is that there is no clear relationship between the work done on the Kenworth truck and the first defendant. The truck appears to have been owned by the company Redline when it was first delivered to the plaintiff's workshop for repairs around May 2024, although it was at a later time, probably in June 2024 transferred to the first defendant or a related company. When the repairs on the truck were completed the payment appears to have been made by NRR Haulage Pty Ltd, a related but different entity to the first defendant. The requirement for mutuality is not established on the evidence presented in its case.

[35] Secondly, the further amended defence was unclear as to the elements of the various torts referred to and did not plead them clearly. In addition, and in any event, the second defendant having failed to appear and having called no evidence, there is no evidence to support the claims.

[36] For completeness, it was Mr Simpson's unchallenged evidence that there was a separate agreement between the plaintiff and the first defendant as to the repair of the Kenworth prime mover which was made between Mr Simpson for the plaintiff and Mr MacLean, who owned the asset at the time they were collected and transferred to the plaintiff's workshop in late April and May 2024. It appears that invoices were issued by the plaintiff to NRR Haulage Pty Ltd in June 2024 and paid by that company, except for \$827.75, on or about 2 July 2024. It was also Mr Simpson's evidence that the prime mover was unroadworthy and not safe to drive because it had faulty steering. Mr Simpson said that he had driven the vehicle himself and found that to be the case. He said that he told Mr MacLean about the steering problem on 14 June 2024.

[37] Mr Simpson also gave evidence that on about 3 July 2024 he told a representative of the first defendant, Mr Carter, about the further work necessary to fix the steering of the prime mover and gave a quote for that work. He also told Mr Carter that the amount outstanding needed to be paid in full. He said that he reminded Mr Carter in that conversation about the amount owing for the roadworks but did not say that the plaintiff would not release the truck until that amount was paid in full.

- [38] In an email of 15 August 2024 Mr Simpson asked Mr Carter whether he wanted the prime mover and drop deck loader prepared for collection once the account had been paid. He did not get a response to that email. Nor did he receive a request to collect the truck.
- [39] It appears that the truck was collected on 10 April 2025 when the first defendant made arrangements to do so. The associated transport costs were paid by one of the companies which operated the mine. It is not clear from the email attached to Mr Simpson's affidavit which entity that was.
- [40] As to the low loader, Mr Simpson's unchallenged evidence was that that piece of equipment was taken at the request of Mr MacLean, the first defendant's agent, to the Sunday Creek Quarry. It is not entirely clear when that occurred.
- [41] The loader was also originally owned by Mr MacLean's business, Redline, and later purchased by the first defendant or another company associated with the mine. It is not entirely clear who owned the loader at the time it was delivered to the quarry but it was likely Redline although the agreement for purchase may have already been in place. In any event, the evidence, based on email correspondence, is that Mr MacLean was acting with the knowledge and authority of the first defendant, and that he directed the plaintiff to park the drop deck loader at the quarry.
- [42] For those reasons I find that there is no basis for the set off as claimed in the further amended defence.

[43] I find therefore that:

- a. the first defendant owes the plaintiff \$316,594.36 for services provided under the contract between the plaintiff and the first defendant.
- b. That amount remains unpaid.
- c. The second defendant is liable to indemnify the plaintiff for the unpaid liability of the first defendant pursuant to the guarantee.

[44] The plaintiff also claims interest in accordance with the credit agreement.

That agreement contains a clause which provides that interest is payable at the rate of 10 percent per annum on unpaid invoices. That is a provision which allows for simple rather than compound interest. In my view there is no reason not to award interest at the rate set out in the agreement between the parties. I do not consider that the rate is so high as to be a penalty in the circumstances where credit was provided by a private business to another private business.

[45] The plaintiff has calculated the amount due as at today's date as \$67,135.35.

[46] After I had delivered judgment as set out above the plaintiff made an application for costs on an indemnity basis for the period from 7 April 2025 up to and including 18 August 2026. The basis for that application was that on 7 April 2026 there was a settlement conference at which the plaintiff offered to compromise for payment of \$310,000 inclusive of costs and

interest. That offer was rejected. The plaintiff having achieved judgment for significantly more than the amount offered it is appropriate to make an order for indemnity costs subsequent to the date of the offer.

Orders

[47] Judgment for the plaintiff against the second defendant in the sum of \$316,594.39 and interest of \$67,135.35, being a total of \$383,729.74.

[48] The second defendant is to pay the plaintiff's costs of the proceeding on a standard basis until 7 April 2025 and on an indemnity basis thereafter, to be taxed in default of agreement.
