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This article will focus on the extent to which s 34 of the <i>Building and Construction Industry Security of Payment Act 1999</i> (the Act) affects the primacy of parties’ bargains. I said in <i>Minister for Commerce v Contrax Plumbing</i> [2004] NSWSC 823 at [40] that the Act generally strikes a balance between freedom of contract on the one hand and protection of the statutory right to a progress payment on the other. However, the operation of the amended s 34 has “swung the balance somewhat away from freedom of contract, and somewhat towards strengthening the rights given by the Act”. It is with this understanding of the section that I consider the validity of certain provisions in building and construction contracts. This article will set out the reasoning behind my “broad” interpretation of s 34, and consider the application of s 34 to contractual clauses which may be said to conflict with the section.	246
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