



Form 106 (version 3)
UCPR 51.40

R.H Kenna (L.S.)
Principal Registrar &
Chief Executive Officer

NOTICE OF CONTENTION

COURT DETAILS

Court	Supreme Court of New South Wales, Court of Appeal
Registry	Sydney
Case number	2025/00202613

TITLE OF PROCEEDINGS

Appellant	85 Princess Pty Ltd
Respondent	Ian Alexander Fleming

PROCEEDINGS IN THE COURT BELOW

Title below	85 Princess Pty Ltd v Fleming
Court below	Supreme Court of New South Wales
Case number below	2022/00243968
Dates of hearing	10 – 12 February 2025
Material date	30 April 2025
Decision of	Justice Brereton

FILING DETAILS

Filed for	Ian Fleming – Respondent
Legal representative	Alisa Taylor – MV Law
Legal representative reference	2501726
Contact name and telephone	Paige Hall – 02 6279 4319
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DETAILS OF CONTENTION

The respondent contends that the decision of the court below should be affirmed on grounds other than those relied on by the court below, but does not seek a discharge or variation of any part of the orders of the court below.

GROUND

- 1 The primary judge erred at [72] by finding that the Building was, or would become, structurally unsound or unable to withstand loadings likely to arise from its expected use and therefore erred in finding a breach of clause 70.2(d).
- 2 The primary judge erred at [73] by finding that the concrete slab did not comply with AS3600 and therefore erred in finding a breach of clause 70.2(e).

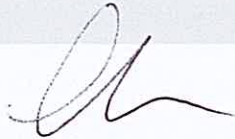
- 3 The primary judge erred in finding that the appellant had suffered loss in the circumstances that:
- a. the appellant had purchased the warehouse as a financial investment;
 - b. the warehouse was purchased with an existing sub-lease to Reece Australia Pty Ltd (**Reece**), which by clause 10 required Reece to maintain and repair the premises, excluding structural repairs;
 - c. the cracking in the concrete slab was not a structural defect and did not adversely affect the industrial utility of the premises as a warehouse;
 - d. any maintenance of the concrete slab necessary to prevent further cracking or deterioration was the responsibility of Reece under the sub-lease;
 - e. neither Reece nor its under-tenant were entitled to claim or had made any claim against the appellant that might engage the indemnity in clause 70.3.
- 4 The primary judge ought to have drawn adverse inferences by reason of the unexplained failure of the appellant to call Deepak Shankar, the relevant director of the appellant and/or any witnesses from Reece or its under-tenant.

SIGNATURE

Signature of legal representative

Capacity

Date of signature



Solicitor for the Respondent

2 September 2025