



Christopher Nehme
Solicitor for the First and Second Appellants
UCPR 51.16, 51.18, 51.20

This document was eFiled
on 07 Jul 2025 . Final
acceptance has been
given.

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



NOTICE OF APPEAL

COURT DETAILS

Court	Supreme Court of New South Wales, Court of Appeal
Registry	Sydney
Case number	2025/00261209

TITLE OF PROCEEDINGS

First appellant	Kaloriziko Pty Ltd ATF Ryde Combined Unit Trust ACN 604 620 831
Second appellant	Camile Chanine
First respondent	Calibre Construction Group Pty Ltd ACN 133 828 832
Number of respondents (if more than two)	3

PROCEEDINGS IN THE COURT BELOW

Title below	<i>Calibre Construction Group Pty Ltd v Kaloriziko Pty Ltd atf Ryde Combined Unit Trust; Kaloriziko Pty Ltd atf Ryde Combined Unit Trust v Calibre Construction Group Pty Ltd</i>
Court below	Supreme Court of New South Wales
Case number below	2022/195843
Dates of hearing	19 – 21 May 2025
Material date	19 June 2025
Decision of	Stevenson J

FILING DETAILS

Filed for	Kaloriziko Pty Ltd ATF Ryde Combined Unit Trust and Camile Chanine, First and Second Appellants
Filed in relation to	Whole decision below
Legal representative	Christopher Nehme, Fortis Law
Legal representative reference	26906
Contact name and telephone	Ann-Maree Sarkis, (02) 9233 2722
Contact email	asarkis@fortislaw.com.au

HEARING DETAILS

This notice of appeal is listed for directions at 30Jul2025 09:00 AM - Directions

TYPE OF APPEAL

Equity - Technology and Construction List

DETAILS OF APPEAL

- 1 This appeal is brought under section 101(1)(a) of the *Supreme Court Act 1970* (NSW).
- 2 This notice of appeal is not filed pursuant to leave to appeal.
- 3 The appellant has not filed a notice of intention to appeal.
- 4 The appellant appeals from the whole of the decision below.

APPEAL GROUNDS

Variations

- 1 The primary judge erred in finding at paragraphs [86], [88] and [111]-[112] that because the First Appellant had “approved” or paid the “variations” that it had therefore agreed to vary the WUC (“Work Under Contract”) and it was now not open to the First Appellant to challenge this approval by contending that the approval was on account only.
- 2 The primary judge should have found that clause 36 of the Contract required strict compliance with its terms to vary the WUC.
- 3 The primary judge should have found that the Appellant’s “approval of the variations” (or payment of the same) did not constitute the First Respondent’s compliance with the requirements of clauses 36.1 and 36.2 of the Contract so as to vary the WUC.
- 4 The primary judge erred by failing to give reasons as to whether the First Respondent and the First Appellant had varied the contract to exclude the costs of consultants’ fees such that V0044 “Consultants” claimed by the First Respondent in the Redfern Schedule operated to vary the WUC.
- 5 The primary judge should have found that the First Respondent and the First Appellant did not vary the contract to exclude the costs of consultants’ fees such that V0044 “Consultants” did not vary the WUC and was not a variation.

Delay

- 6 The primary judge erred by finding in paragraphs [153], [155] and [157] that the date for practical completion was 23 May 2020.
- 7 The primary judge should have found that the date for practical completion was 20 April 2020.

Coordinate liability

- 8 The primary judge erred in finding in paragraphs [64]-[67] of the Judgment that his Honour had to determine what benefit the First Respondent received by reason of its entry into the Deed of Agreement and Set Off including what was the value to the First Respondent of its surrender of its claims against the Second and Third Respondents or the surrender of its 37A claim against the Third Respondent.
- 9 The primary judge should have considered only whether there was a coordinate liability between the Mortgagors (the Third Respondent and three parties related to each of the Second Appellant and Second Respondent) and the First Appellant to the First Respondent and whether that coordinate liability was discharged (in part or in whole) by the transfer at undervalue by Apolo Apartments Pty Limited (a related party to the Second and Third Respondents) of the “Arncliffe Properties” (as that term is defined in paragraph [10] of the Judgment) to Aerial Holdings Pty Limited (a related party of the First Respondent).
- 10 The primary judge erred in finding at [82] that he was not persuaded that the effect of the Deed of Agreement and Sett Off was to cause a discharge of any coordinate liability as between the Mortgagors and the First Appellant as owing to the First Respondent.
- 11 The primary judge should have found that the effect of the Deed of Agreement and Set Off was that any “payment” by the “Mortgagors” to the First Respondent caused a discharge of the coordinate liability as between the First Appellant and the Mortgagors to the First Respondent so as to discharge the First Appellant’s liability to the First Respondent by the equivalent amount of that “payment”.

The valuation evidence

- 12 The primary judge erred in finding at paragraph [72] that there was no evidence before him of the circumstances in which Apolo Apartments Pty Limited purchased the Arncliffe Properties in February 2020 and, therefore, that there was no evidence that the sale price of \$6.92 million represented the then market value of the Arncliffe Properties.
- 13 The primary judge should have found that that the combined sale price of \$6.92 million arising from three separate arm’s length transactions between the vendors and Apolo Apartments Pty Limited in February 2020 represented the best evidence of the then market value of the Arncliffe Properties in February 2020.
- 14 The primary judge failed to make a finding as to the value of the Arncliffe Properties as at February 2024, or alternatively, give reasons for why he could not form a conclusion as to the value of these properties.

- 15 The primary judge should have determined the value of the Arncliffe Properties as at February 2024 as \$7,906,613.00.

ORDERS SOUGHT

- 1 Appeal allowed.
- 2 Judgment of the court below be set aside.
- 3 A declaration that the amount otherwise owing by the First Appellant to the First Respondent is nil taking into account the debt owing by the First Appellant to the First Respondent of \$2,543,717.36 (made up of \$2,004,255.86 in principal plus interest of \$539,461.50) and the amount owing by the First Respondent to the First Appellant of \$746,405.04 (made up of \$576,291.64 in principal plus interest of \$170,113.40) and the discharge of the net debt of \$1,797,312.32 (\$2,543,717.36 minus \$746,405.04) by the transfer at undervalue by Apolo Apartments Pty Limited (a related party to the Second and Third Respondents) of the "Arncliffe Properties" (as that term is defined in paragraph [10] of the Judgment) to Aerial Holdings Pty Limited (a related party of the First Respondent) in discharge of the debt owed by the Second and Third Respondents to the First Respondent.
- 4 The First Respondent to pay the Appellant's costs of this Appeal and of the costs of the proceedings in the Court below.

UCPR 51.22 CERTIFICATE

The right of appeal is not limited by a monetary sum.

SIGNATURE OF LEGAL REPRESENTATIVE

This notice of appeal does not require a certificate under clause 4 of Schedule 2 to the [Legal Profession Uniform Law Application Act 2014](#).

I have advised the appellants that court fees will be payable during these proceedings.

These fees may include a hearing allocation fee.

Signature



Capacity

Solicitor on record

Date of signature

7 July 2025

NOTICE TO RESPONDENT

If your solicitor, barrister or you do not attend the hearing, the court may give judgment or make orders against you in your absence. The judgment may be for the orders sought in the notice of appeal and for the appellant's costs of bringing these proceedings.

Before you can appear before the court, you must file at the court an appearance in the approved form.

HOW TO RESPOND

Please read this notice of appeal very carefully. If you have any trouble understanding it or require assistance on how to respond to the notice of appeal you should get legal advice as soon as possible.

You can get further information about what you need to do to respond to the notice of appeal from:

- A legal practitioner.
- LawAccess NSW on 1300 888 529 or at www.lawaccess.nsw.gov.au.
- The court registry for limited procedural information.

Court forms are available on the UCPR website at www.ucprforms.nsw.gov.au or at any NSW court registry.

REGISTRY ADDRESS

Street address	Supreme Court of New South Wales, Court of Appeal Law Courts Building Queen's Square Level 5, 184 Phillip Street Sydney NSW 2000
Postal address	GPO Box 3 Sydney NSW 2001
Telephone	1300 679 272

PARTY DETAILS

A list of parties must be filed and served with this notice of appeal.

FURTHER DETAILS ABOUT APPELLANTS

[Do not include this section if you have previously given this information to the court in these appeal proceedings, eg in a summons for leave to appeal.]

First appellant

Name	Kaloriziko Pty Ltd ATF Ryde Combined Unit Trust ACN 604 620 831
Address	C/ Fortis Law Level 15, Suite 15.01 4-6 Bligh Street SYDNEY NSW 2000

Second appellant

Name	Camile Chanine
Address	C/ Fortis Law Level 15, Suite 15.01 4-6 Bligh Street SYDNEY NSW 2000

Legal representative for appellants

Name	Christopher Nehme
Practising certificate number	68000
Firm	Fortis Law
Contact solicitor	Ann-Maree Sarkis
Address	Suite 15.01, Level 15 4-6 Bligh Street Sydney NSW 2000
Telephone	(02) 9233 2722
Fax	(02) 9233 2755
Email	cnehme@fortislaw.com.au
Electronic service address	asarkis@fortislaw.com.au

DETAILS ABOUT RESPONDENTS**First respondent**

Name	Calibre Construction Group Pty Ltd ACN 133 828 832
Address	Suites 1-5 4 Charles Street CANTERBURY NSW 2193

Second respondent

Name	Eddie Tran
Address	118 Henley Marine Drive DRUMMOYNE NSW 2047

Third respondent

Name	Ninth Campsie Pty Ltd ACN 619 267 462
Address	Young Accountants 30C The Crescent HOMEBUSH NSW 2140