

This and the following 5 pages are the Appellant's amended notice of appeal for publication pursuant to paragraph 27 of Practice Note NO SC CA 1

Signed:

Florante Abad

Solicitor for the Appellant

Form 105 (version 7)

UCPR 51.16, 51.18, 51.20

FILED

11 JUL 2025



AMENDED NOTICE OF APPEAL

COURT DETAILS

Court Supreme Court of New South Wales, Court of Appeal
Registry Sydney
Case number 25/11620

TITLE OF PROCEEDINGS

Applicant TANWAR INSTITUTE OF PROFESSIONAL STUDIES
PTY LTD ATF TANWAR FAMILY TRUST

Respondent GORDIAN RUNOFF LTD (ACN 052 179 647)

PROCEEDINGS IN THE COURT BELOW

Title below Tanwar Institute of Professional Studies Pty Ltd Atf
Tanwar Family Trust V Gordian Runoff Ltd (ACN 052 179
647)
Court below District Court of New South Wales
Case number below 2022/00202445
Date[s] of hearing 27 August 2024, 11 October 2024 and 15 November 2024
Material date 13 December 2024
Decision of Weber SC DCJ

FILING DETAILS

Filed for TANWAR INSTITUTE OF PROFESSIONAL STUDIES
PTY LTD ATF TANWAR FAMILY TRUST Applicant
Filed in relation to whole decision below
Legal representative Florante Abad, Abad and Villanueva Solicitors Pty Ltd
Howard Simons Remington & Co
Legal representative reference FLA-Tanwar 2025 PCN: 6043 NSW Ref: 97751-K
Contact name and telephone Florante Abad, 0434 389 876
Howard Simons Tel: 02 9267 6133
Contact email solicitors@villanueva.com.au info@remington.com.au

HEARING DETAILS

This notice of appeal is listed for directions at [time, date and place to be inserted by the registry unless otherwise known].

TYPE OF APPEAL

[Select type of appeal from the list available on the UCPR website at <http://www.ucprforms.nsw.gov.au/> by clicking on the link to Publications, or at any NSW court registry.]

L1316450649.1

DETAILS OF APPEAL

- 1 This appeal is brought under section 127(1) of the District Court Act 1973 (NSW).
- 2 This notice of appeal is not filed pursuant to leave to appeal.
- 3 The appellant has filed and served a notice of intention to appeal, which was served on the prospective respondent on [date].
- 4 The appellant appeals from the whole of the decision below.

APPEAL GROUNDS

- 1 The primary judge erred in his application of the principles articulated in *Mount Bruce Mining Pty Ltd v Wright Prospecting Pty Ltd* [2015] HCA 37; (2015) 256 CLR 104 and *Wilkie v Gordian Runoff Limited* [2005] HCA 17; (2005) 221 CLR 522 to the facts of this case.
- 2 The primary judge erred in his interpretation and application of section 54 Insurance Contracts Act 1984 (Cth) to the facts of this case with respect to misidentifying the relevant act in question that enlivens subsection (2), being the lack of notice provided, as opposed to the upgrade works undertaken.
- 3 In the alternative to ground 2, the primary judge erred in his interpretation and application of section 54 Insurance Contracts Act 1984 (Cth) to the facts of this case with respect to incorrectly applying consideration of the 'act' that enlivens subsection (2) to the upgrade works undertaken, as opposed to the lack of notice provided.
- 3 The primary judge erred in his interpretation and application of the relevant insurance policy with respect to determining that the Appellant was required to establish damage that amounted to malicious in nature, where no such element was required.
- 4 The primary judge erred in his interpretation of the wording within the terms of the relevant insurance policy as it pertained to the definition of 'building' by excluding the relevant pipes and pumps from the definition of building.
- 5 In the alternative to ground 4, the primary judge erred in his interpretation of the exclusion terms of the relevant insurance policy as it pertained to the definition of 'building' with respect to the principles articulated in *Lake v Simmons* [1927] AC 487 at 507. This error arose as a result of the primary judge finding that the exclusion terms provided further reason to exclude the relevant pipes and pumps



from the definition of building rather than finding that any consideration of the exclusion term requires prior acceptance of the item in the general recitals.

6 The primary judge erred in his interpretation of the exclusion clause of the relevant insurance policy as it pertained to the term 'contract value' by determining it refers to a reasonable market value as if there was a contract in place rather than determining what contract, if any, was in place and its value therein.

7 By virtue of ground 6, the primary judge erred in his assessment of the value of the contract work being in excess of \$100,000.

8 The primary judge erred with respect to the determination concerning the business interruption claim by failing to give proper consideration and weight to the evidence of the Plaintiff with respect to the loss of rent component of their claim.

ORDERS SOUGHT

- 1 Time for filing an appeal be extended.
- 2 Appeal allowed.
- 3 Judgment of the court below be set aside.
- 4 The respondents pay the appellant's costs of the appeal and of the proceedings below.
- 5 Order that judgment for Appellant against Respondent for \$425,305 or such other sum the Court determines on rehearing.
- 6 In the alternative, order the proceedings be remitted to the Court below for rehearing as to quantum of Respondent's liability to the Appellant.

UCPR 51.22 CERTIFICATE

I certify under UCPR 51.22(2) that the amount in issue in this appeal exceeds the specified amount under [state the relevant statutory provision].

#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 certify under clause 4 of Schedule 2 to the *Legal Profession Uniform Law Application Act 2014* that there are reasonable grounds for believing on the basis of provable facts and a



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reasonably arguable view of the law that the claim for damages in these proceedings has reasonable prospects of success.

I have advised the appellant[s] that court fees will be payable during these proceedings. These fees may include a hearing allocation fee.

Signature

Capacity

Date of signature



[eg solicitor on record, contact solicitor]

11/07/2025

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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.

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FURTHER DETAILS ABOUT APPELLANT

Appellant

Name Tanwar Institute of Professional Studies Pty Ltd ATF
Tanwar Family Trust
Address 4 Charlotte Grove, Bella Vista NSW 2153

Legal representative for appellant

Name Florant Abad Howard Simons
Practising certificate number 58722-6043 NSW
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DETAILS ABOUT RESPONDENT

Respondent

Name GORDIAN RUNOFF LTD (ACN 052 179 647)
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2000

