



## Navigating Damages and Specific Performance in Contractual Disputes: Lessons learnt from 85 Princess Pty Ltd v Fleming [2025] NSWSC 407

**85 Princess Pty Ltd v Fleming [2025] NSWSC 407**

### Introduction

85 Princess Pty Ltd v Fleming involved a contractual dispute concerning the condition of a concrete slab forming the foundation of two warehouses on an industrial property. The plaintiff, 85 Princess Pty Ltd, purchased the property from Fleming Investments (ACT) Pty Ltd, whose sole director and shareholder, Ian Fleming, provided personal warranties as to the standard and quality of the building work, including work to rectify defects identified. The land was sold subject to a long commercial sublease. 85 Princess was aware of cracking of the slab and repair attempts prior to the sale and further cracking arose after settlement. Despite repeated complaints and requests for further remediation, Mr Fleming did not undertake further repairs. Consequently, 85 Princess commenced proceedings in the Supreme Court, seeking approximately \$5.3 million in damages for the removal and replacement of the slab, or alternatively, specific performance of the warranties to compel proper rectification.

## Executive Summary

The Court faced three central issues: whether Mr Fleming breached the contractual warranties; the extent of damages (if any) owed to 85 Princess; and whether specific performance should be ordered to enforce the warranties.

The Court determined that Mr Fleming breached several warranties due to defective saw cuts in the slab, which failed to control cracking as intended. 85 Princess was awarded only nominal damages of \$100, as the \$5.3 million claim for full replacement was deemed unreasonable. The Court rejected specific performance, citing undefined repair terms, the adequacy of nominal damages, and logistical challenges posed by tenant occupancy. Instead, the Court endorsed ongoing monitoring and crack repairs as a pragmatic solution.

## Court's Findings and Commentaries

The Court found that Mr Fleming breached numerous warranties in the contract as a result of the inadequate saw cuts in the slab. While 85 Princess argued for full replacement of the slab, the Court emphasized proportionality, referencing *Stone v Chappel*. The slab, though non-compliant, remained functional with no evidence adduced on how the cracks impacted tenants or the property's value. It was noted that the cost for the removal and replacement of the slab exceeded the original purchase price of the property. Although the Court could not form a view on whether replacement of the slab would cause economic waste, the Court regarded full replacement as unreasonable.

The plaintiff's expert evidence advocating replacement was undermined by incorrect assumptions about

concrete strength, weakening their case. The Court favoured Mr Fleming's proposed rectification method which involved engaging engineers to repair existing cracks and monitor future issues. This was a more "rational and reasonable" rectification method and aligned with 85 Princess' commercial interests in avoiding tenant displacement.

Overall, 85 Princess failed to establish that it suffered loss in the claimed amount and as a result was not entitled to \$5.3 million in damages. In the absence of evidence on the cost to implement the preferred rectification method, the Court made an order for nominal damages in the sum of \$100 in its discretion.

Regarding specific performance of the warranty relating to the repair of defects, the Court considered the exception to the general rule that courts will not enforce specific performance of a building contract as set out in *Wolverhampton Corp v Emmons*, which restricts such orders to cases with clearly defined works, inadequacy of damages, and defendant possession. The Court found that the exception did not apply here.

## Takeaways

This decision clarifies that a breach of contractual warranty does not automatically entitle a party to substantial damages. Claimants must present strong evidence of actual loss, supported by expert and financial documentation (including valuations), to recover rectification costs. Damages will be limited to what is reasonable and proportionate, not the cost of perfect reinstatement, particularly where the defect does not impact the property's use or value. The Court also reiterated the exception to the general rule that courts will not enforce specific performance of a building contract.

# elInsights

For those entering construction contracts, this case highlights the importance of precise warranty drafting, clear remedial obligations, and thorough record-keeping and reporting of any defects and impact. Courts will closely scrutinize the necessity and proportionality of rectification claims and require robust evidence for any alleged loss in value.

## More Information

For further details on construction law insights and legal case notes, visit [Construction Legal Insights](#).