



## NOTICE OF APPEAL

### COURT DETAILS

Court Supreme Court of New South Wales, Court of Appeal  
Registry Sydney  
Case number 2025 /00376821

### TITLE OF PROCEEDINGS

Appellant **Kwik Flo Pty Ltd**  
**ACN 131 073 204**  
First respondent **SE Ware Street Dev Pty Ltd**  
**ACN 601 608 539**  
Second respondent **Edward Smithies**

### PROCEEDINGS IN THE COURT BELOW

Title below SE Ware Street Dev Pty Ltd v Kwik Flo Pty Ltd [2025]  
NSWSC 1060  
Court below Supreme Court of New South Wales  
Case number below 2025/274059  
Date of hearing 18 August 2025; further submissions 22 and 27 August  
2025  
Material date 19 September 2025  
Decision of Peden J

### FILING DETAILS

Filed for **Kwik Flo Pty Ltd, appellant**  
Filed in relation to Whole decision below  
Legal representative David Jury, HWLE Lawyers  
Legal representative reference DJ:TC: 1280806  
Contact name and telephone Timothy Connelly (02) 9334 8570  
Contact email [djury@hwle.com.au](mailto:djury@hwle.com.au); [tconnelly@hwle.com.au](mailto:tconnelly@hwle.com.au)

### HEARING DETAILS

This notice of appeal is listed for directions at \_\_\_\_\_.

### TYPE OF APPEAL

Equity (Commercial List)

### DETAILS OF APPEAL

- 1 This appeal is brought under s 101(1) of the *Supreme Court Act 1970* (NSW).
- 2 The appellant appeals from the whole of the decision below.

### APPEAL GROUNDS

- 1 Her Honour the primary judge erred (at [30]) in finding that the "First Determination" was a determination for the purposes of the *Building and Construction Industry Security of Payment Act 1999* (NSW).
- 2 Her Honour the primary judge erred at [42] in finding that it would be an abuse of process for the Appellant to attempt to enforce the "Second Determination" as a judgment and, therefore (at [47]), in ordering that the Appellant be restrained from taking steps to register or enforce it.

### ORDERS SOUGHT

- 1 Appeal allowed.
- 2 The decision and orders below be set aside
- 3 The First respondent's summons filed on 17 July 2025 be dismissed.
- 4 The First respondent pay the appellant's costs of this appeal and the summons below.

### UCPR 51.22 CERTIFICATE

I certify under UCPR 51.22(2) that the amount in issue in this appeal exceeds the specified amount under section 101(2)(r) of the *Supreme Court Act 1970* (NSW).

### 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 appellant 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

29 September 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](http://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](http://www.ucprforms.nsw.gov.au) or at any NSW court registry.

## **REGISTRY ADDRESS**

|                |                                                                                                                                              |
|----------------|----------------------------------------------------------------------------------------------------------------------------------------------|
| Street address | Supreme Court of New South Wales, Court of Appeal<br>Law Courts Building<br>Queen's Square<br>Level 5, 184 Phillip Street<br>Sydney NSW 2000 |
| Postal address | GPO Box 3<br>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 APPELLANT

### Appellant

Name Kwik Flo Pty Ltd (ACN 131 073 204)  
 Address 95 Betts Road  
 Smithfield NSW 2220

### Legal representative for appellant

Name David Jury  
 Practising certificate number 25703  
 Firm HWL Ebsworth Lawyers  
 Contact solicitor Timothy Connelly  
 Address Level 14, Australia  
 Square  
 264-278 George Street  
 Sydney NSW 2000  
 Telephone (02) 9334 8678  
 Email [tconnelly@hwle.com.au](mailto:tconnelly@hwle.com.au)

## DETAILS ABOUT RESPONDENT[S]

### First respondent

Name SE Ware Street Dev Pty Ltd (ACN 601 608 539)  
 Address 37-41 Ware Street  
 Fairfield NSW 2165

### Second respondent

Name Edward Smithies  
 Address C/- MBE Hurstville  
 1 Barratt Street  
 Hurstville NSW 2220