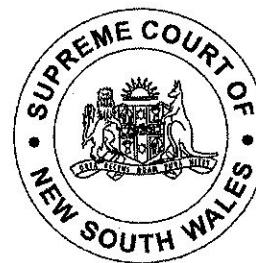


*This and the following 7 pages are the Appellant's written submission
for publication pursuant to paragraph 27 of Practice Note NO SC CA 1*

Signed:

Florante Abad
Solicitor for the Appellant



Filed: 15 September 2025 2:29 PM



D0002843KO

Written Submissions

COURT DETAILS

Court	Supreme Court of New South Wales, Court of Appeal
List	Court of Appeal
Registry	Supreme Court Sydney
Case number	2025/00011620

TITLE OF PROCEEDINGS

First Appellant	Tanwar Institute of Professional Studies Pty Ltd ATF Tanwar Family Trust
First Respondent	Gordian RunOff Pty Ltd

FILING DETAILS

Filed for	Tanwar Institute of Professional Studies Pty Ltd ATF Tanwar Family Trust, Appellant 1
Legal representative	Florante Abad
Legal representative reference	
Telephone	0298937794
Your reference	FLA-Tanwar:2025

ATTACHMENT DETAILS

In accordance with Part 3 of the UCPR, this coversheet confirms that both the Lodge Document, along with any other documents listed below, were filed by the Court.

Written Submissions (2025-09-08 Appellants Submissions.pdf)

[attach.]

Court of Appeal of New South Wales

No. 25/11620

TANWAR INSTITUTE OF PROFESSIONAL STUDIES PTY LTD ATF TANWAR
FAMILY TRUST v GORDIAN RUNOFF LTD (ACN 052 179 647)

APPELLANT'S SUBMISSIONS

Background

1. The Appellant, Tanwar Institute of Professional Studies Pty Ltd atf Tanwar Family Trust (Tanwar), is the owner of a petrol station in Canterbury Road Lewisham (the Property).
2. A sufficiently comprehensive background of these proceedings is contained in Plaintiff's written submissions below, see [7] - [21], Red 68 - 70.
3. In short, on 17 October 2015 Tanwar renewed a business insurance policy which eventually had Gordian Runoff Ltd (Gordian) as the ultimate insurer (the Policy).
4. Around November 2015, following a notice issued by the Environmental Protection Agency, Tanwar was required to upgrade components of the Property so as to comply with environmental regulations (the Compliance Works).
5. Part of the Compliance Works required the replacement of the pipes located underground beneath the cement floor slab that connect the fuel storage tanks to the fuel pumps (the Pipes).
6. At an unknown point during the Compliance Works, the Pipes were damaged, with said damage being discovered after April 2016, after the completion of the Compliance Works.
7. Upon discovery, Tanwar undertook further works to rectify the damage to the Pipes (the Rectification Works).
8. On 18 July 2016, following the damage to the Pipes, Tanwar lodged the relevant insurance claim.
9. On 13 June 2017, Gordian rejected Tanwar's insurance claim, citing the bases of refusal as:
 - a. That the Pipes did not fall within the definition of building as per the Policy (the Building Clause).

- b. Tanwar breached the general conditions clause by not notifying Gordian about the Compliance Works.
- c. Fraud on behalf of Tanwar, a claim not pursued in the proceedings below.

Ground 1

- 1. Tanwar does not press appeal ground 1, as it is sufficiently covered by more specific grounds below.

Ground 2 and 2A

- 10. As part of their defence in the proceedings below, Gordian relied on an act of Tanwar as a basis to enliven and invoke section 54 of the *Insurance Contracts Act 1984* (Cth), see at [26(b)] of the defence, Red 28, Blue 736, line M. The relevant ‘act’ being the failure of the Plaintiff to notify the Defendant as to the undertaking of the Compliance Works, Gordian’s position being that had they been notified of the Compliance works, cover would not have been available for the Property.
- 11. From Tanwar’s position it is unclear as to what His Honour and or Gordian considered the precise ‘act’ to be, whether it be the lack of notice of the Compliance work, or the actual undertaking of the Compliance work.
- 12. Tanwar submits that notice, or the lack thereof, on its own cannot be the triggering act under section 54 of the *Insurance Contracts Act 1984* (Cth), as the mere announcement of an act that never comes into fruition does not increase the risk of destruction, loss or damage to the Property and therefore does not breach the general condition of the Policy.
- 13. In so far as the Compliance work itself constituted the act, the requirement and obligation to do the Compliance work was not disputed, His Honour accepted this as being the case, see [76]-[77] of the Judgment, Red 52. It follows from His Honour’s finding at that the Compliance works were necessary to preserve property and or could not be reasonably avoided.
- 14. Accordingly, His Honour ought to have found that pursuant to section 54(5) of the *Insurance Contracts Act 1984* (Cth), Gordian were not in a position to refuse to pay the claim by reason only of the act of undertaking the Compliance works.

15. By not doing so, His Honour has fallen into error by not correctly applying the statutory test.

Ground 3

16. Tanwar does not press appeal ground 3 as His Honour's finding as to whether the damage to the Pipes was as a result of a malicious act or not, is not a required element as to whether or not the Policy covered the Pipes in the manner asserted by the insurance claim lodged by Tanwar and is not relevant to this appeal.

Ground 4

17. The Building Clause is found in the Policy under the heading General Definitions at Blue 231.
18. In the proceedings below it was accepted that the definition contained in the Building Clause did not explicitly include nor exclude the Pipes.
19. His Honour determined that as the list of inclusions to the category of Building were above ground, then the Pipes had to be excluded as they were below ground; see [61] of the Judgment, Red 46.
20. His Honour erred in that, but for a coincidence in a number of the components listed in the Building Clause, there is no foundation within the explicit wording of the Policy to conclude that coverage only applies to above ground components. A point further cemented by the fact that the Building Clause explicitly includes storage tanks as part of the building category, that being the very structure His Honour uses to articulate his finding, at [60] of the Judgment, Red 49, despite the fact that storage tanks are commonly, and importantly with respect to the Property in question, found underground.
21. Its Tanwar's position, as put in the proceedings below, the Pipes form a necessary union with the storage tanks on the Property, both are required for the proper running of the business's primary function, such that the nonexistence of one, renders the other redundant and the business would in turn not be able to operate as intended, see Plaintiff's written submissions at [37]-[38], Black 76.
22. His Honour sets out the applicable principles regarding the application and interpretation of in insurance contracts at [42] - [47] of the Judgment, Red 43-44. Namely at [43(b)] of the Judgment, encapsulating effectively the same principle

espoused by Gleeson CJ in *McCann v Switzerland Insurance Australia Ltd* (2000) 203 CLR 579; [2000] HCA 65 at [22]:

“A policy of insurance, even one required by statute, is a commercial contract and should be given a businesslike interpretation. Interpreting a commercial document requires attention to the language used by the parties, the commercial circumstances which the document addresses, and the objects which it is intended to secure.”

23. However, put bluntly, the business is a petrol station, the Policy is for business cover. On an objective assessment, where there is no explicit exclusions, nor basis to infer one from the Policy wording, for a business insurance policy over a petrol station, the fundamental infrastructure required for the business to operate ought to include the Pipes and would constitute what a reasonable business minded person in the position of the parties would have understood the terms of the Policy to mean with respect to what was covered.
24. The alternative would require the acceptance that a petrol station, in seeking to obtain insurance over their business of providing petrol, received business insurance that failed to cover one of the primary and vital components of the business, the pipes that deliver the petrol. A situation Tanwar submits is nothing short of nonsensical.
25. Accordingly, the Court can readily find that His Honour erred in applying the established test and in turn erred in his interpretation of the Policy.

Ground 5

26. In the proceedings below His Honour was required to determine:
 - a. whether the Pipes were captured by the Building Clause and, if so,
 - b. whether any of the exclusions under the Policy (see Blue 231, line H) applied.
27. In determining the first step, His Honour, factored in aspects of the exclusion terms as support for and as further reasons to find that the Pipes were not part of the building, see [62] of the Judgment, Red 50.
28. It is Tanwar’s position that this line of reasoning is erroneous as it contradicts the principles articulated in *Lake v Simmons* [1927] AC 487 at 507, in that for an exclusion to apply, that which is being excluded must form part of the primary category.
29. By conflating the two steps, His Honour has not correctly addressed the required test and for that reason has fallen into error.

Ground 6

30. If pursuant to appeal grounds 4 and or 5, Tanwar can establish that the Pipes fall within the Building category of the Policy, there is still the hurdle to overcome, being the exclusion terms for Buildings under the Policy, see Blue 231, line H.
31. Subclause 4 of the Work Clause (see Blue 231, line K) excludes buildings that are: *‘undergoing erection, construction, alteration or addition (including partial dismantlement of existing structures), **where the total contract value of all work to be carried out exceeds \$500,000 or 20% of the total Sum Insured on Buildings and Contents, whichever is the lesser.**’* [emphasis added].
32. It was not contested that the threshold imposed by the exclusion terms for the total value of work would be \$100,000 and Tanwar no longer contests that for the purposes of the above exclusion clause, the Pipes were undergoing construction.
33. However, there was no evidence before the Court below of a contract at the relevant time, written or otherwise, that set out the costs of the Compliance Work, as being in excess of \$100,000. Mr Tanwar’s evidence expressed that, as he did most of the work himself, the overall actual costs were below \$100,000, see [19] Blue 386.
34. Gordian relied on the report of Eugene Cloete, an expert quantity surveyor (the QS), to support the argument that a contract could have had a value in excess of \$100,000, see [98] Blue 800.
35. Tanwar’s position is that the QS’s figure, by its nature is a hypothetical, and whether or not it reflects a reasonable figure ought not have any bearing on the interpretation of the Policy. The relevant Policy wording is devoid of any language involving any notion of a reasonable or typical contract, instead the Policy is concerned with ‘the contract value’.
36. Tanwar reiterates that submitted above at [22] with respect to the relevant authorities concerning contract interpretation, and submits that it cannot be a business-like interpretation of the Policy to allow Gordian to retrospectively create a hypothetical contract value. The only position available is to assess ‘the value of the contract’ in place.
37. Accordingly, by adopting the evidence of the QS, His Honour erred with respect to the interpretation of the emphasised section of subclause 4 of the Work Clause, extracted above.

Ground 7

38. Part of Tanwar's case in the proceedings below was that the Property, contained a small shop wherein transactions were proceeded for the sale of petrol, which was leased to Tanwar Enterprises Pty Ltd ABN 29 089 764 134 (a separate yet related entity) throughout the relevant period the Compliance Works and Rectification Works were being undertaken, see Plaintiff's written submissions [81] - [87], Black 83 - 84.
39. A copy of the applicable lease starts at Blue 95.
40. Admittedly, the pleadings are somewhat disjointed, but by virtue of that pleaded at [10(d), [13(c)] and [21] of the FASOC, see Red 6 - 8, with respect to the \$150,000 loss of rent component of the Policy (see Blue 257 line V and Blue 755 line R), Tanwar was seeking compensation for the loss of rent arising out of the closure of the shop.
41. The evidence of Tanwar provided below is at [78], Blue 14, and extracted below:
- "As a result of the need to perform the Exploratory Works Part One and Two and the nature of those works, the petrol station was forced to be closed from approximately 12 July 2016, when the Exploratory Works Part One was commenced to 4 November 2026, when the final Integrity Test was passed, a period of 3 Months and 23 days. During that time, the Plaintiff was not in receipt of the rent."*
42. Gordian did not adduce any evidence to challenge the fact that:
- c. The Property was leased.
 - d. As a result of the Rectification Works, the rent from the lease had to be abated.
 - e. The quantum of that abated rent amounted to at least \$45,625.
43. Nor during cross examination was Mr Tanwar challenged on the lease or the non-receipt of rent.
44. Consequently, the evidence before His Honour was that the uncontested nature of the Rectification Works, being the removal of large portions of the cement pad, excavation of soil, possible exposure of petrol and the repairs to the Pipes formed the basis as to why Mr Tanwar closed the Property and as a result why rent was not received during this period.
45. Accordingly, the position stated by His Honour, see Judgment [95], Red 57, that Tanwar did not establish that the service station operated by Tanwar Enterprises was

closed during this period, constitutes on its face a finding so removed the evidence that additionally reasoning is necessary to understand the logical process.

46. As a basis for finding error with respect to the topic of reasonings provided or the lack thereof, Tanwar refers and relies on that stated by Ashley JA in *Franklin v Ubaldi Foods Pty Ltd* at [37], quoting Nettle JA in *Hunter v Transport Accident Commission* [2005] VSCA 1; 43 MVR 130 [28], extracted below:

“The judge may have thought that it was enough simply to set out the evidence and other material upon which her findings were based and then to state her conclusions. But for the reasons already explained that was not enough. The requirement to refer to the evidence upon which findings are based is a requirement to analyse the evidence and to explain why some parts of it do and others do not lead to the ultimate conclusion.”

47. Consequently, by not providing any further reasoning, the Court on Appeal ought to find that His Honour has fallen into error.



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Counsel for the Appellant
8 September 2025