

Monday, 12 May 2025

Daily Construction A Daily Bulletin listing Decisions of Superior Courts of Australia

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Executive Summary (One Minute Read)

The Owners - Strata Plan No. 81376 v Dyldam Developments Pty Ltd (NSWSC) - Court answered separate questions as to whether claims under an insurance policy for breach of warranties implied by the *Home Building Act 1989* (NSW) were valid or within time

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Summaries With Link (Five Minute Read)

The Owners - Strata Plan No. 81376 v Dyldam Developments Pty Ltd [2025] NSWSC 438

Supreme Court of New South Wales

Stevenson J

Home building - owners corporation sued builder and developer who had since become subject to a deed of company arrangement and gone into liquidation, respectively - insurer under a Residential Building Insurance Policy joined as third defendant - Court ordered separate questions be answered as to whether a letter sent by the owners corporation's solicitor within time had been a valid claim under the policy, and whether two further letters sent had been within time - held: policy would only respond if the owners corporation suffered loss or damage by reason of, relevantly, a breach by the builder of the statutory warranties implied in the building contract by s18B of the *Home Building Act 1989* (NSW), which loss or damage it could not recover from the builder because of, relevantly, the builder's insolvency - both the loss and its irrecoverability would have to occur before the policy responded - first letter sent by the owners corporation's solicitor to the insurer had not been a valid claim under the policy - owners corporation not entitled to make a claim as at the date of that letter as the builder was not insolvent at that date - occupation certificate issued in breach of s109H(2) of the *Environmental Planning and Assessment Act 1979* (NSW) is not invalid - entitlement to make claim 'after the period of insurance' subject to the long stop limitation period in s103BC(1) of the *Home Building Act* - claims on policy in second and third letters were made out of time.

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