



**The Owners Strata Plan 61424 & Anor v Reed Constructions Pty Limited [2009]
NSWSC 692
New South Wales Supreme Court 24 July 2009**

FACTS:

The plaintiffs were the owners of strata plan 61424 and the Building Insurers Guarantee Corporation (“Plaintiffs”), and the defendant was the builder, Reed Constructions Pty Ltd (“Defendant”).

The Plaintiffs brought a claim against the Defendant alleging that certain building work failed to conform to particular warranties under the *Home Building Act (1989)*. The matter dealt with by the Court in these proceedings is whether the first plaintiff was entitled to the benefit of the statutory warranties in circumstances where it was not the contracting party with the builder.

ISSUES:

Whether a party is entitled to the benefit of the statutory warranties under the *Home Building Act (1989)*, in circumstances where it was not the contracting party with the builder?

FINDING:

The Court found that a party may still enjoy the benefits of the statutory warranties under the *Home Building Act (1989)*, even in circumstances where they were not the contracting party with the builders.

QUOTE:

Einstein J [at 23]...

“...So much is apparent from the terms of section 18D itself, because that section makes clear that regardless of the identity of whomever it is that is entitled to the benefit of a statutory warranty, someone else who is not privy to the contract obtains the benefit of that warranty. Hence section 18D itself avoids the privity of contract rule.”

IMPACT:

The case illustrates the Court’s willingness to promote the protection of homeowners, and subsequent owners, in terms of the statutory warranties provided for by the *Home Building Act (1989)*.

This case has immediate impact on builders operating under the statutory regime of the *Home Building Act (1989)*, in that they should understand their obligations as subsisting for the statutory period, for the benefit of purchasers, occupiers and subsequent occupiers.