

AMENDED CROSS-SUMMONS

COURT DETAILS

Court	Supreme Court of New South Wales
Division	Equity
List	Commercial List
Registry	Sydney
Case number	2019/00232749

TITLE OF PROCEEDINGS

First plaintiff	Terry Walter Williamson
Second plaintiff	Helen Therese Williamson
Defendant	Sydney Olympic Park Authority ABN 68 010 941 405
<u>Number of defendants</u>	<u>3</u>

TITLE OF FIRST CROSS-CLAIM

Cross-claimant to the first cross-claim	Sydney Olympic Park Authority ABN 68 010 941 405
First cross-defendant to the first cross-claim	Australian Avenue Developments Pty Ltd ACN 104 573 391
Number of cross-defendants	3 <u>4</u>

TITLE OF THIS AMENDED CROSS-CLAIM

Cross-claimant	Icon Co (NSW) Pty Ltd ACN 604 790 409
Cross-defendant	WSP Structures Pty Ltd ABN 78 006 769 339

FILING DETAILS

Filed for	Cross-claimant
Legal representative	Peter Wood, MinterEllison
Legal representative reference	1238049
Contact name and telephone	Michelle Knight, (02) 9921 4064
Contact email	Michelle.Knight@minterellison.com

RELIEF CLAIMED

1. ~~An order that the Consultancy Agreement (as that term is defined in the cross-claimant's (Icon) Commercial List Second Cross-Claim Statement) be specifically performed by the cross-defendant (WSP) by WSP providing to Icon:~~
 - ~~(a) a design certificate certifying the Rectification Design and Grouting works specifications (as those terms are defined in paragraph 69(c) and 69(b) respectively of Icon's Commercial List Second Cross-Claim Statement); and~~
 - ~~(b) the Rectification Work Certification, as pleaded in paragraphs 81 to 87 of Icon's Commercial List Second Cross-Claim Statement.~~

2. A declaration that WSP, by reason of clause 32 of the General Conditions (as that term is defined in paragraph 6(b) of Icon's Commercial List Amended Second Cross-Claim Statement) is liable to indemnify Icon:
 - (a) any liability that Icon is found to have to Sydney Olympic Park Authority (**SOPA**) in these proceedings;
 - (aa) any liability that Icon is found to have to AAD/ECOVE in these proceedings;
 - (ab) any liability that Icon is found to have to the plaintiffs and/or Group Members in these proceedings;
 - (b) Icon's Incurred Rectification Costs (as that expression is defined in paragraph 119(a) of Icon's Commercial List Amended Second Cross-Claim Statement);
 - (c) Icon's Future Rectification Costs (as that expression is defined in paragraph 119(b) of Icon's Commercial List Amended Second Cross-Claim Statement);
 - (d) Group Members' Loss of Rent Costs (as that expression is defined in paragraph 119(c) of Icon's Commercial List Amended Second Cross-Claim Statement);
 - (e) Group Members' Alternative Accommodation Costs (as that expression is defined in paragraph 119(d) of Icon's Commercial List Amended Second Cross-Claim Statement);
 - (f) Lessees' Alternative Accommodation Costs (as that expression is defined in paragraph 119(e) of Icon's Commercial List Amended Second Cross-Claim Statement);

- (g) Licence Occupation Fees (as that expression is defined in paragraph 119(f) of Icon's Commercial List Amended Second Cross-Claim Statement);
 - (h) Owners Corporation's Insurance Costs (as that expression is defined in paragraph 119(g) of Icon's Commercial List Amended Second Cross-Claim Statement); ~~and~~
 - (i) Icon's Loss of Opportunity / Loss of Contract Damages (as that expression is defined in paragraph 119(h) of Icon's Commercial List Amended Second Cross-Claim Statement);
 - (j) Bank Guarantee Sum (as that expression is defined in paragraph 119(hi) of Icon's Commercial List Amended Second Cross-Claim Statement); and
 - (k) Legal Costs (as that expression is defined in paragraph 119(hii) of Icon's Commercial List Amended Second Cross-Claim Statement).
3. Further, or alternatively, damages for breach of contract.
- 3A. Indemnity or contribution, pursuant to section 5(2) of the *Law Reform (Miscellaneous Provisions) Act 1946 (NSW)*.
4. A declaration that WSP engaged in misleading or deceptive conduct in contravention of section 18 of the *Australian Consumer Law* set out in Schedule 2 of the *Competition and Consumer Act 2010 (Cth)*.
5. An indemnity under section 237 and section 243 of the *Australian Consumer Law* to the effect that Icon be, and is entitled to be, indemnified by WSP for:
- (a) any liability that Icon is found to have to SOPA in these proceedings;
 - (aa) any liability that Icon is found to have to AAD/ECOVE in these proceedings;
 - (ab) any liability that Icon is found to have to the plaintiffs and/or Group Members in these proceedings;
 - (b) Icon's Incurred Rectification Costs;
 - (c) Icon's Future Rectification Costs;
 - (d) Group Members' Loss of Rent Costs;

- (e) Group Members' Alternative Accommodation Costs;
- (f) Lessees' Alternative Accommodation Costs
- (g) Licence Occupation Fees;
- (h) Owners Corporation's Insurance Costs; ~~and~~
- (i) Icon's Loss of Opportunity / Loss of Contract Damages;
- (j) Bank Guarantee Sum; and
- (k) Legal Costs.

6. Further, or alternatively, damages pursuant to s 236 of the *Australian Consumer Law*.

6A. Interest.

7. Costs, including an order that WSP is to indemnify Icon in respect of any order for costs that is made against Icon in the proceedings.

7A. Interest on costs.

8. Such further or other orders the Court sees fit.

SIGNATURE OF LEGAL REPRESENTATIVE

I certify under clause 4 of Schedule 2 to the *Legal Profession Uniform Law Application Act 2014* that there are reasonable grounds for believing on the basis of provable facts and a reasonably arguable view of the law that the claim for damages in this cross-summons has reasonable prospects of success.

I have advised the cross-claimant[s] that court fees may be payable during these proceedings. These fees may include a hearing allocation fee.

Signature



Capacity

As employed solicitor of legal representative

Date of signature

9 July 2021

NOTICE TO CROSS-DEFENDANT

If your solicitor, barrister or you do not attend the hearing, the court may give judgment or make orders against you. The court may also make orders for the payment of costs.

If you are a new party, or an existing party who has not already filed an originating process or appearance, 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 cross-summons very carefully. If you have any trouble understanding it or require assistance on how to respond to the cross-summons you should get legal advice as soon as possible.

You can get further information about what you need to do to respond to the cross-summons from:

- A legal practitioner.
- LawAccess NSW on 1300 888 529 or at www.lawaccess.nsw.gov.au.
- The court registry for limited procedural information.

Court forms are available on the UCPR website at www.ucprforms.justice.nsw.gov.au or at any NSW court registry.

REGISTRY ADDRESS

Street address

Supreme Court of NSW, Law Courts Building, Queens Square, 184 Phillip Street, Sydney, NSW 2000

Postal address

Supreme Court of NSW, GPO Box 3, Sydney NSW 2001

Telephone

1300 679 272

PARTY DETAILS**PARTIES TO THIS AMENDED CROSS-CLAIM****Cross-claimant**

Icon Co (NSW) Pty Ltd

Cross-defendant

WSP Structures Pty Ltd

ABN 78 006 769 339

DETAILS ABOUT CROSS-DEFENDANT[S] THAT ARE NEW PARTIES**Cross-defendant**

Name

WSP Structures Pty Ltd

Address

Level 27, 680 George
Street, Sydney, NSW,
2000