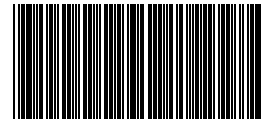




Filed: 27 September 2019 3:54 PM



D00016RUPM

### Commercial List Response

#### COURT DETAILS

Court	Supreme Court of NSW
Division	Equity
List	Commercial
Registry	Supreme Court Sydney
Case number	2019/00232749

#### TITLE OF PROCEEDINGS

First Plaintiff	Terry Williamson
First Defendant	SYDNEY OLYMPIC PARK AUTHORITY trading as Sydney Olympic Park Authority ABN 68010941405

#### FILING DETAILS

Filed for	SYDNEY OLYMPIC PARK AUTHORITY trading as Sydney Olympic Park Authority, Defendant 1
Legal representative	Sean Emmett O'Connor
Legal representative reference	
Telephone	02 8273 9826
Your reference	SOC 9000156 RAF

#### 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.

Commercial List Response (Commercial List Response.pdf)

[attach.]

## COMMERCIAL LIST RESPONSE

### COURT DETAILS

Court	Supreme Court of New South Wales
Division	Equity
List	Commercial
Registry	Sydney
Case number	2019/232749

### TITLE OF PROCEEDINGS

First Plaintiff	<b>Terry Walter Williamson</b>
Second Plaintiff	<b>Helen Therese Williamson</b>
Defendant	<b>Sydney Olympic Park Authority (ABN 68 010 941 405)</b>

### FILING DETAILS

Filed for	<b>Sydney Olympic Park Authority, Defendant</b>
Legal representative	Sean O'Connor, Wotton + Kearney
Legal representative reference	SOC 9000156 RAF
Contact name and telephone	Robert Finnigan, 02 8273 9850
Contact email	Robert.finnigan@wottonkearney.com.au

### A. NATURE OF DISPUTE

- 1 Sydney Olympic Park Authority (**SOPA**) was established on 1 July 2001 as a statutory body of the New South Wales Government under the *Sydney Olympic Park Authority Act 2001* (NSW).
- 2 At all material times prior to the registration of Strata Plan 97315, SOPA was the registered proprietor of land that was previously known as Site 68 Bennelong Parkway, Sydney, being Lots 73 and 75 and DP 1134933 (the **Original Site**).
- 3 On or around 20 March 2014, SOPA entered into a project delivery agreement with Australia Avenue Developments Pty Limited (**AAD**) and Ecove Group Pty Limited (**Ecove**) (as guarantor for AAD). Pursuant to that agreement, AAD was required to develop the Original Site, including by designing and constructing a mixed residential and commercial building known as the "Opal Tower" (**Opal Tower**).

- 4 On or around 29 October 2015, AAD entered into a “design and construct” contract with Icon Co (NSW) Pty Ltd (**Icon**), pursuant to which AAD engaged Icon to carry out the Works (as defined in that contract).
- 5 SOPA is not the holder of a contractor licence and did not itself undertake any residential building work for the purpose of the *Home Building Act* in relation to the project.
- 6 The plaintiffs are owners of an apartment in Opal Tower. They allege that the Opal Works are affected by defects that have caused them and other Group Members loss for which SOPA is liable.
- 7 SOPA responds to those allegations as set out below and by way of a separate cross-claim.

## **B. ISSUES LIKELY TO ARISE**

- 1 Whether, and if so to what extent, SOPA is liable to the plaintiffs and the Group Members in respect of the claims the subject of these proceedings.
- 2 Whether, and if so to what extent, Icon, AAD or Ecove is liable to SOPA in respect of the claims the subject of these proceedings.
- 3 Whether, and if so to what extent, the plaintiffs and the Group Members have suffered loss and the quantum of damages payable (if any) in respect of any such loss, including for alleged diminution in value.

## **C. DEFENDANT'S RESPONSE TO PLAINTIFFS' CONTENTIONS**

**Note:** In this List Response the words '**Denied - Practice Note**' are used in answer to those contentions in the List Statement that the defendant does not know to be true, and which, having regard to the requirement in paragraph 11(b) of Practice Note SC Eq 3 that the defendant's contentions should admit or deny the allegations the Plaintiffs make, the defendant therefore denies.

### **A. Parties and other entities**

- 1 Admitted.
- 2 Admitted.
- 3 Admitted.
- 4 Admitted.
- 5 Admitted.

**B. Representative Proceedings**

6 The defendant does not respond to the contentions in this paragraph as they contain no allegations against it.

**C. Development of Opal Tower**

7 Admitted.

8 Admitted.

9 Admitted.

10 Admitted.

11 Admitted.

12 Admitted.

13 Denied – Practice Note.

14 Admitted.

**D. Lease of Unit 604**

15 Admitted.

**E. Statutory Warranties**

16 Admitted.

17 Admitted.

18 Admitted.

19 In answer to paragraph 19, the defendant:

a. admits paragraph 19(a), except insofar as the “Opal Work” (as that term is used in the List Statement) (**Opal Work**) constituted design work;

b. admits paragraph 19(b).

20 The defendant admits paragraph 20, except insofar as the Opal Work constituted design work.

**Notional Contracts**

21 Admitted.

22 Admitted.

23 Admitted.

24 Admitted.

25 Admitted.

**Legal Compliance Warranty – Building Code of Australia**

26 Admitted.

**SEPP Major Development**

27 Admitted.

28 Admitted.

29 Admitted.

30 Admitted.

31 Admitted.

**SEPP (SRD)**

32 Admitted.

33 Admitted.

34 Admitted.

35 Admitted.

**Conditions may be imposed by the Minister**

36 Admitted.

**Conditions imposed by the EPA Regulation**

37 In answer to paragraph 37, the defendant:

- a. says that the applicable Building Code of Australia is that Code as in force on the date the application for the relevant complying development certificate is made; and
- b. otherwise admits the paragraph.

**Development Consent for the Development**

38 Admitted.

39 Admitted.

40 Admitted.

41 Admitted.

42 Admitted.

43 Admitted.

44 Admitted.

45 In answer to paragraph 45, the defendant:

- a. repeats paragraph 37 above;
- b. says on that basis that the applicable National Construction Code of Australia is that Code as in force on the date the application for the relevant complying development certificate is made; and
- c. otherwise admits the paragraph.

46 In answer to paragraph 46, the defendant:

- a. repeats paragraph 37 above;
- b. says on that basis that the applicable National Construction Code of Australia is that Code as in force on the date the application for the relevant complying development certificate was made; and
- c. otherwise admits the paragraph, except insofar as the Opal Work constituted design work.

#### **NCC**

47 Denied – Practice Note.

48 Denied – Practice Note.

#### **AS3600:2009**

49 Denied – Practice Note.

#### **F. Plans and Specification Warranty – FC Drawings**

50 In answer to paragraph 50 the defendant:

- a. denies paragraph (a), on the basis that the D&C Contract is a contract to do residential building work entered into between the holder of a contractor licence and a developer in relation to the work, within the meaning of s7AA of the Home Building Act;
- b. denies paragraph (b) on the basis that the defendant has not been provided with a copy of Annexure Part R to the D&C Contract; and
- c. admits paragraph (c).

51 Denied – Practice Note.

52 Denied – the defendant repeats paragraph 50 a. above.

53 Denied – the defendant repeats paragraph 50 a. above.

54 Admitted.

55 In answer to paragraph 55, the defendant admits those requirements were stated in the notes referred to and otherwise denies the paragraph.

### **G. Defects in the Design and Construction of Opal Tower**

#### **Opal Tower – Structural Features**

56 Admitted.

57 Denied – Practice Note.

58 Denied – Practice Note.

59 In answer to paragraph 59 the defendant admits that occupants of Opal Tower were evacuated on 24 December 2018 and, having regard to the Practice Note requirement referred to in the note to this List Response, otherwise denies the paragraph.

60 In answer to paragraph 60 the defendant:

- a. admits paragraph (a);
- b. admits paragraph (b); and
- c. having regard to the Practice Note requirement referred to in the note to this List Response, denies paragraph (c).

61 Denied – Practice Note.

#### **Breach of SOPA Statutory Warranties**

62 The defendant repeats paragraphs 57 and 58 above and denies paragraph 62.

63 The defendant repeats paragraphs 57 and 58 above and denies paragraph 63.

64 The defendant repeats paragraph 57 above and denies paragraph 64.

65 The defendant repeats paragraph 58 above and denies paragraph 65.

66 The defendant repeats paragraphs 57 and 58 above and denies paragraph 66.

67 Denied.

#### **Loss and damage**

68 Denied – Practice Note.

69 Denied.

70 Noted.

**D. QUESTIONS APPROPRIATE FOR REFERRAL TO A REFEREE**

- 1 SOPA considers there are no questions appropriate for referral to a referee at this stage.
- 2 SOPA proposes to further consider what questions (if any) are appropriate for referral after the service of expert evidence.

**E. MEDIATION**

- 1 The parties have not attempted mediation. SOPA is willing to proceed to mediation at an appropriate time.

**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 contentions contained in this List Response have reasonable prospects of success.

I have advised the defendant that court fees may be payable during these proceedings. These fees may include a hearing allocation fee.

Signature of legal representative

Capacity

Date of signature

  
Solicitor Sean O'Connor

27 September 2019



