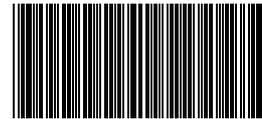




Filed: 3 February 2024 2:33 PM



D0001W7PFP

Commercial List Response

COURT DETAILS

Court	Supreme Court of NSW
Division	Equity
List	Commercial
Registry	Supreme Court Sydney
Case number	2022/00184814

TITLE OF PROCEEDINGS

First Plaintiff	Keiran Liprini
First Defendant	Thirdi William Street Pty Ltd ACN 619508824
Second Defendant	H & M CONSTRUCTIONS (NSW) NO. 2 PTY LTD
Number of Defendants	6

FILING DETAILS

Filed for	H & M CONSTRUCTIONS (NSW) NO. 2 PTY LTD, Defendant 2
Legal representative	Brett Vincent
Legal representative reference	
Telephone	02 9261 5900

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 (List Response for Filing.pdf)

[attach.]

Form 7A (version 5)
UCPR 14.3

COMMERCIAL LIST RESPONSE TO AMENDED COMMERCIAL LIST STATEMENT

COURT DETAILS

Court	Supreme Court of NSW
Division	Equity
List	Commercial
Registry	Sydney
Case number	2022/00184814

TITLE OF PROCEEDINGS

Plaintiff	Keiran Liprini
First Defendant	Thirdi William Street Pty Ltd ACN 619508824
Second Defendant	H&M Constructions (NSW) No 2. Pty Ltd
Number of Defendants	7

FILING DETAILS

Filed for	H&M Constructions (NSW) No 2. Pty Ltd, Second Defendant
Legal representative	Brett Vincent, Vincent CCL Pty Ltd t/as Vincent Young
Legal representative reference	BV/220238
Contact name and telephone	Simon Mok, 02 9261 5900
Contact email	<u>simon.mok@vincentyoung.com.au</u>

A. NATURE OF DISPUTE

- 1 The Second Defendant generally agrees with the nature of the dispute described in paragraphs A1 to A7 of the Amended Commercial List Statement (ACLS), save for the existence of any defects and the alleged liability.
- 2 The Second Defendant does not respond to paragraph A8 of the ACLS as this paragraph of the ACLS contains no allegations against the Second Defendant.
- 3 The Second Defendant does not agree with paragraph A9 of the ACLS to the extent it alleges that the Plaintiffs have a claim for breach of statutory warranties against the Second Defendant.
- 4 The Second Defendant does not respond to paragraphs A11 to 12B of the ACLS as these paragraphs of the ACLS do not contain any allegations against the Second Defendant.

B. COMMON ISSUES LIKELY TO ARISE

- 1 The Second Defendant generally agrees that Part B of the Amended List Statement sets out the common issues likely to arise insofar as they relate to the Second Defendant in the main Proceedings.
- 2 The Second Defendant further says that the following issues are also likely to arise:
 - a. Whether the Plaintiff has standing to bring claims in relation to the alleged common property defects;
 - b. Whether the Second Defendant owed the Statutory Warranties to the First Defendant and/or the Plaintiff and/or Group Members;
 - c. Whether, and if so, to what extent, the Second Defendant is liable to the Plaintiff and the Group Members in respect of the claims in the Proceedings;
 - d. Whether, and if so, to what extent the Plaintiff and the Group Members have suffered loss and the quantum of damages payable (if any) in respect of any such loss.

C. SECOND DEFENDANT'S RESPONSE TO PLAINTIFF'S CONTENTIONS

The Second Defendant responds to the Plaintiff's contentions set out in the Amended Technology and Construction List Statement (**List Statement**) as follows:

The Parties

- 1 The Second Defendant admits paragraph 1.

2 The Second Defendant does not know and, therefore, having regard to the requirements of paragraph 11 (b) of Practice Note Sc Eq 3, denies paragraph 2.

3 The Second Defendant does not respond to paragraph 3 as this paragraph contains no allegations against the Second Defendant.

4 The Second Defendant admits paragraph 4.

5 [Not used].

6 The Second Defendant does not know and, therefore, having regard to the requirements of paragraph 11 (b) of Practice Note Sc Eq 3, denies paragraph 6.

7 The Second Defendant does not know and, therefore, having regard to the requirements of paragraph 11 (b) of Practice Note Sc Eq 3, denies paragraph 7.

7A The Second Defendant does not know and, therefore, having regard to the requirements of paragraph 11 (b) of Practice Note Sc Eq 3, denies paragraph 7A.

7B The Second Defendant does not know and, therefore, having regard to the requirements of paragraph 11 (b) of Practice Note Sc Eq 3, denies paragraph 7B.

The Development

8 The Second Defendant admits paragraph 8.

9 The Second Defendant does not know and, therefore, having regard to the requirements of paragraph 11 (b) of Practice Note Sc Eq 3, denies paragraph 9.

10 The Second Defendant does not know and, therefore, having regard to the requirements of paragraph 11 (b) of Practice Note Sc Eq 3, denies paragraph 10.

Scope of work under the Construction Contract

11 The Second Defendant admits paragraph 11.

12 The Second Defendant admits paragraph 12.

13 The Second Defendant admits paragraph 13.

14 The Second Defendant admits paragraph 14.

15 The Second Defendant admits paragraph 15.

16 The Second Defendant admits paragraph 16.

17 The Second Defendant admits paragraph 17.

18 The Second Defendant admits paragraph 18.

19 The Second Defendant admits paragraph 19.

20 The Second Defendant admits paragraph 20.

- 21 The Second Defendant admits paragraph 21.
- 22 In response to paragraph 22, the Second Defendant relies on Clause 1 and Clause 34.6 of the GCC for their full terms and effect regarding the definition of Practical Completion.
- 23 The Second Defendant admits paragraph 23.
- 24 In response to paragraph 24, the Second Defendant relies on Clauses 50(d) and (f) of the GCC for their full terms and effect.
- 25 In response to paragraph 25, the Second Defendant relies on Clauses 57.1(a), (b), (c), (e) and (f) of the GCC for their full terms and effect.
- 26 In response to paragraph 26, the Second Defendant relies on Clauses 57.5(1) of the GCC for their full terms and effect.
- 27 In response to paragraph 27, the Second Defendant relies on Clauses (2) (a-c) of Annexure Part F for their full terms and effect.

Consultancy agreements

- 28 [Not used].
- 28A The Second Defendant does not respond to paragraph 28A as this paragraph contains no allegations against the Second Defendant.
- 28B The Second Defendant denies paragraph 28B.
- 29 The Second Defendant admits paragraph 29.
- 30 In response to paragraph 30 the Second Defendant says:
- a. the Second Defendant engaged SCC to perform only a discrete scope of design work in association with the Development and not the hydraulic design services as a whole; and
 - b. otherwise denies the paragraph.

Performance of the D&C Works

- 31 The Second Defendant:
- a. repeats and relies upon the matters referred to in paragraph 32 below;
 - b. admits that the Superintendent under the Construction Contract was Thirdi Property Pty Ltd until 8 October 2018; and
 - c. otherwise denies paragraph 31 of the List Statement.
- 31A The Second Defendant:
- a. repeats and relies upon the matters referred to in paragraph 32 below;

- b. admits that on or about 2 October 2019, Thirdi William Street Pty Ltd sent a letter to the Second Defendant dated 2 October 2019 stating “the Principal hereby appoints Reform Projects Pty Limited as the new Superintendent”; and
- c. otherwise denies paragraph 31A of the List Statement.

32 In response to paragraph 32, the Second Defendant says that:

- a. the Second Defendant carried out the D&C Work between December 2017 and 7 October 2018; and
- b. as of 8 October 2018, the D&C Work was carried out by H & M Constructions (NSW) Pty Ltd pursuant to a deed of novation.

Particulars

Deed of Novation entered into by the First Defendant, the Second Defendant and H & M Constructions (NSW) Pty Ltd effective from 8 October 2018.

33 The Second Defendant admits paragraph 33.

34 The Second Defendant admits paragraph 34.

35 The Second Defendant does not know and, therefore, having regard to the requirements of paragraph 11 (b) of Practice Note Sc Eq 3, denies paragraph 35.

Statutory Warranties

36 The Second Defendant admits paragraph 36.

37 The Second Defendant admits paragraph 37.

38 The Second Defendant admits paragraph 38.

Statutory Warranties provided by Thirdi

39 The Second Defendant does not respond to paragraph 39 as this paragraph contains no allegations against the Second Defendant.

40 The Second Defendant does not respond to paragraph 40 as this paragraph contains no allegations against the Second Defendant.

41 The Second Defendant does not respond to paragraph 41 as this paragraph contains no allegations against the Second Defendant.

Statutory Warranties provided by H&M

42 The Second Defendant repeats and relies upon the matters referred to in paragraph 32 above and denies paragraph 42 of the List Statement.

43 The Second Defendant repeats and relies upon the matters referred to in paragraph 32 above and denies paragraph 43 of the List Statement.

Breach of Statutory Warranties

44 The Second Defendant denies paragraph 44.

45 The Second Defendant repeats and relies upon the matters referred to in paragraph 32 above and denies paragraph 45 of the List Statement.

Duty of care under the DBP Act

46 The Second Defendant does not respond to paragraph 46 as this paragraph contains no allegations against the Second Defendant.

47 The Second Defendant does not respond to paragraph 47 as this paragraph contains no allegations against the Second Defendant.

47A The Second Defendant does not respond to paragraph 47A as this paragraph contains no allegations against the Second Defendant.

47B The Second Defendant does not respond to paragraph 47B as this paragraph contains no allegations against the Second Defendant.

47C The Second Defendant does not respond to paragraph 47C as this paragraph contains no allegations against the Second Defendant.

47D The Second Defendant does not respond to paragraph 47D as this paragraph contains no allegations against the Second Defendant.

47E The Second Defendant does not respond to paragraph 47E as this paragraph contains no allegations against the Second Defendant.

47F The Second Defendant does not respond to paragraph 47F as this paragraph contains no allegations against the Second Defendant.

47G The Second Defendant does not respond to paragraph 47G as this paragraph contains no allegations against the Second Defendant.

47H The Second Defendant does not respond to paragraph 47H as this paragraph contains no allegations against the Second Defendant.

47I The Second Defendant denies paragraph 47I.

47J The Second Defendant does not respond to paragraph 47J as this paragraph contains no allegations against the Second Defendant.

48 [Not used].

49 [Not used].

50 [Not used].

51 [Not used].

52 [Not used].

53 [Not used].

54 [Not used].

55 [Not used].

Duty of care owed by Kimy Air

56 The Second Defendant does not respond to paragraph 56 as this paragraph contains no allegations against the Second Defendant.

57 The Second Defendant does not respond to paragraph 57 as this paragraph contains no allegations against the Second Defendant.

57A The Second Defendant does not respond to paragraph 57A as this paragraph contains no allegations against the Second Defendant.

57B The Second Defendant does not respond to paragraph 57B as this paragraph contains no allegations against the Second Defendant.

57C The Second Defendant does not respond to paragraph 57C as this paragraph contains no allegations against the Second Defendant.

58 The Second Defendant does not respond to paragraph 58 as this paragraph contains no allegations against the Second Defendant.

58A The Second Defendant does not respond to paragraph 58A as this paragraph contains no allegations against the Second Defendant.

58B The Second Defendant does not respond to paragraph 58B as this paragraph contains no allegations against the Second Defendant.

58C The Second Defendant does not respond to paragraph 58C as this paragraph contains no allegations against the Second Defendant.

58D The Second Defendant does not respond to paragraph 58D as this paragraph contains no allegations against the Second Defendant.

59 The Second Defendant does not respond to paragraph 59 as this paragraph contains no allegations against the Second Defendant.

Duty of Care owned by SCC

60 The Second Defendant does not respond to paragraph 60 as this paragraph contains no allegations against the Second Defendant.

61 The Second Defendant does not respond to paragraph 61 as this paragraph contains no allegations against the Second Defendant.

- 61A The Second Defendant does not respond to paragraph 61A as this paragraph contains no allegations against the Second Defendant.
- 61B The Second Defendant does not respond to paragraph 61B as this paragraph contains no allegations against the Second Defendant.
- 61C The Second Defendant does not respond to paragraph 61C as this paragraph contains no allegations against the Second Defendant.
- 62 The Second Defendant does not respond to paragraph 62 as this paragraph contains no allegations against the Second Defendant.
- 62A The Second Defendant does not respond to paragraph 62A as this paragraph contains no allegations against the Second Defendant.
- 62B The Second Defendant does not respond to paragraph 62B as this paragraph contains no allegations against the Second Defendant.
- 62C The Second Defendant does not respond to paragraph 62C as this paragraph contains no allegations against the Second Defendant.
- 62D The Second Defendant does not respond to paragraph 62D as this paragraph contains no allegations against the Second Defendant.
- 63 The Second Defendant does not respond to paragraph 63 as this paragraph contains no allegations against the Second Defendant.

Duty of care owned by Aiken Design & Consulting Pty Ltd

- 63A The Second Defendant does not respond to paragraph 63A as this paragraph contains no allegations against the Second Defendant.
- 63B The Second Defendant does not respond to paragraph 63B as this paragraph contains no allegations against the Second Defendant.
- 63C The Second Defendant does not respond to paragraph 63C as this paragraph contains no allegations against the Second Defendant.
- 63D The Second Defendant does not respond to paragraph 63D as this paragraph contains no allegations against the Second Defendant.
- 63E The Second Defendant does not respond to paragraph 63E as this paragraph contains no allegations against the Second Defendant.
- 63F The Second Defendant does not respond to paragraph 63F as this paragraph contains no allegations against the Second Defendant.
- 63G The Second Defendant does not respond to paragraph 63G as this paragraph contains no allegations against the Second Defendant.

63H The Second Defendant does not respond to paragraph 63H as this paragraph contains no allegations against the Second Defendant.

63I The Second Defendant does not respond to paragraph 63I as this paragraph contains no allegations against the Second Defendant.

63J The Second Defendant does not respond to paragraph 63J as this paragraph contains no allegations against the Second Defendant.

63K The Second Defendant does not respond to paragraph 63K as this paragraph contains no allegations against the Second Defendant.

Duty of care owned by Mr Aiken

63L The Second Defendant does not respond to paragraph 63L as this paragraph contains no allegations against the Second Defendant.

63M The Second Defendant does not respond to paragraph 63M as this paragraph contains no allegations against the Second Defendant.

63N The Second Defendant does not respond to paragraph 63N as this paragraph contains no allegations against the Second Defendant.

63O The Second Defendant does not respond to paragraph 63O as this paragraph contains no allegations against the Second Defendant.

63P The Second Defendant does not respond to paragraph 63P as this paragraph contains no allegations against the Second Defendant.

63Q The Second Defendant does not respond to paragraph 63Q as this paragraph contains no allegations against the Second Defendant.

63R The Second Defendant does not respond to paragraph 63R as this paragraph contains no allegations against the Second Defendant.

63S The Second Defendant does not respond to paragraph 63S as this paragraph contains no allegations against the Second Defendant.

63T The Second Defendant does not respond to paragraph 63T as this paragraph contains no allegations against the Second Defendant.

63U The Second Defendant does not respond to paragraph 63U as this paragraph contains no allegations against the Second Defendant.

63V The Second Defendant does not respond to paragraph 63V as this paragraph contains no allegations against the Second Defendant.

63W The Second Defendant does not respond to paragraph 63W as this paragraph contains no allegations against the Second Defendant.

- 63X The Second Defendant does not respond to paragraph 63X as this paragraph contains no allegations against the Second Defendant.
- 63Y The Second Defendant does not respond to paragraph 63Y as this paragraph contains no allegations against the Second Defendant.
- 63Z The Second Defendant does not respond to paragraph 63Z as this paragraph contains no allegations against the Second Defendant.
- 63AA The Second Defendant does not respond to paragraph 63AA as this paragraph contains no allegations against the Second Defendant.
- 63BB The Second Defendant does not respond to paragraph 63BB as this paragraph contains no allegations against the Second Defendant.

Loss and damages

- 64 In response to paragraph 64 the Second Defendant:
- a. does not respond to paragraph 64(a) as this paragraph contains no allegations against the Second Defendant.
 - b. denies paragraph 64(a).
 - c. [not used].
 - d. [not used].
 - e. [not used].
 - f. does not respond to paragraph 64(f) as this paragraph contains no allegations against the Second Defendant.
 - g. does not respond to paragraph 64(g) as this paragraph contains no allegations against the Second Defendant.
 - h. does not respond to paragraph 64(h) as this paragraph contains no allegations against the Second Defendant.
 - i. does not respond to paragraph 64(i) as this paragraph contains no allegations against the Second Defendant.
- 65 The Second Defendant denies paragraph 65 to the extent that it relates to the Second Defendant.

D. QUESTIONS APPROPRIATE FOR REFERRAL

The Second Defendant agrees that the issues as to the existence and cause of the Alleged Defect, the reasonable and necessary scope of remedial works, and quantum would be suitable to be referred to a referee.

E. MEDIATION

1. The parties have not attempted mediation.
2. The Second Defendant is willing to participate in mediation at the 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 defence to the claim for damages in these proceedings has reasonable prospects of success.

Signature



Capacity

Solicitor on record

Date of signature

2 February 2024