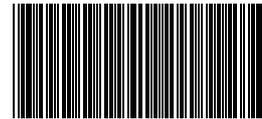




Filed: 4 March 2024 4:32 PM



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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	Aiken Design and Consulting Pty Ltd,Defendant 3 David Mathew Aiken,Defendant 6
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Legal representative	Thomas Stuart
Legal representative reference	
Telephone	
Your reference	AIK 1

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 (AIKEN (LIPRINI) LIST RESPONSES20240304_16240940.pdf)

[attach.]

Form 1 (version 4)
Practice Note SC Eq 3

COMMERCIAL LIST RESPONSE

COURT DETAILS

Court	Supreme Court of New South Wales
Division	Equity
List	Commercial
Registry	Sydney
Case number	2022 / 00184814

TITLE OF PROCEEDINGS

Plaintiff	Keiran Liprini
First Defendant	Thirdi William Street Pty Ltd
Number of defendants (if more than two)	7

FILING DETAILS

Filed for	David Mathew Aiken and Aiken Design and Consulting Pty Ltd , Sixth and Seventh Defendants
Filed in relation to	Plaintiff's Amended Commercial List Statement
Legal representative	Thomas Stuart, Barrister
Legal representative reference	AIK 1
Contact name and telephone	Thomas Stuart 0418 416 222
Contact email	Thomasstuart@bigpond.com

A. NATURE OF DISPUTE

- 1 The Sixth and Seventh Defendants agree with the nature of the dispute set out in Section A. of the Amended Commercial List Statement filed by the Plaintiff on 31 October 2023.

B. ISSUES LIKELY TO ARISE

- 1 The Sixth and Seventh Defendants agree with the issues as described in the Amended Commercial List Statement as they refer to and concern the Sixth and Seventh Defendants.

C. RESPONSES TO PLAINTIFF'S CONTENTIONS

The Parties

- 1 The Sixth and Seventh Defendants admit paragraphs 1 – 7B.

The Development

- 2 The Sixth and Seventh Defendants admit paragraphs 8 - 10.

Scope of Work under the Construction Contract

- 3 The Sixth and Seventh Defendants do not know and cannot admit paragraphs 11 – 27 and they plead no cause of action against either or both of them.

Consultancy Agreements

- 4 The Sixth and Seventh Defendants admit paragraph 28A and refer to the terms of the agreement pleaded for their full force and effect.
- 5 The Sixth and Seventh Defendants deny paragraph 28B.
- 6 The Sixth and Seventh Defendants do not know and cannot admit paragraphs 29 and 30.

Performance of the D&C Works

- 7 The Sixth and Seventh Defendants do not know and cannot admit paragraphs 30 – 35.

Statutory Warranties

- 8 The Sixth and Seventh Defendants admit paragraphs 36 and 37a. in respect to the D&C work in the agreement referred to in paragraph 28A.
- 9 The Sixth and Seventh Defendants do not admit paragraph 37 b. and 38 as neither of them was a party to the Construction Contract pleaded.

Statutory Warranties provide by Thirdi, and by H&M and Breach of Statutory Warranties

- 10 The Sixth and Sevent Defendants do not know and cannot admit paragraphs 39 – 43, 44 b. – j., and 45 as they do not plead a cause of action against either or both of them.
- 11 In respect to paragraph 44 a., the Sixth and Seventh Defendants deny liability for any continued power outages at the property.

Duty of care under the DBP Act

- 12 The Sixth and Seventh Defendants admit paragraphs 46, 47, 47A, 47B, 47C, 47D, 47E, and 47F.
- 13 The Sixth and Seventh Defendants deny paragraphs 47G, 47H, 47I, and 47J.

Duty of care owed by Kimy Air and Duty of care owed by SCC

- 14 The Sixth and Seventh Defendants do not plead in answer to paragraphs 56 - 63 as no cause of action is pleaded against either or both of them.

Duty of care owed by Aiken Design and Consulting Pty Ltd

- 15 The Sixth and Seventh Defendants admit paragraphs 63A - 63F, 63I and 63J.
16 The Sixth and Seventh Defendants deny paragraphs 63G, 63H and 63K.

Duty of care owed by Mr. Aiken

- 17 The Sixth and Seventh Defendants admit paragraph 63L, 63N, 63O, 63Q, 63R, 63S, 63T, 63U - 63X and 63AA
18 The Sixth and Seventh Defendants deny paragraph 63M, 63P, 63Y and 63Z and 63BB.

Loss and damages

- 19 The Sixth and Seventh Defendants deny paragraphs 64h. and 64i and each subparagraph.

Further responses to plaintiff's contentions

- 20 The Sixth and Seventh Defendants say that;
- (a) The Sixth Defendant was engaged by the First Defendant to provide only tender and pricing design documents in respect to electrical designs in or about June 2017 ("the tender drawings");
 - (b) The Sixth Defendant engaged Policom Pty Ltd as a suitably qualified level 3 electrical design practitioner to carry out the electrical designs for the tender drawings on its behalf;
 - (c) Policom Pty Ltd carried out any and all calculations in respect to required voltages and electrical loads for the tender drawings ("the calculations");

(c) The Sixth Defendant provided the tender drawings to the First Defendant;

(d) The tender drawings were not to be used for construction, and to the best knowledge of the Sixth and Seventh Defendants, were not so used or relied on by the First and/or Second Defendant in construction of the project;

(e) The Seventh Defendant, for the Sixth Defendant, provided the subject Ausgrid application in which the calculations were used, at the request of, and on behalf of, the First Defendant

(f) The First and/or Second Defendant at a later date engaged Policom Pty Ltd directly to produce for the project any and all documents for construction of the project, ("the construction documents"), which may have included altered, updated and differing electrical design requirements, but in respect to which, the Sixth Defendant had no involvement in drafting or in calculations or for electrical loads;

(g) The "as built" electrical designs and use of load calculations were provided by Policom Pty Ltd in its own right, and any designs or calculations included in the designs were included on the construction drawings by Policom Pty Ltd; and

(h) Neither of the Sixth and/or Seventh Defendants provided the tender drawings to any party, or to any other designers or subcontractors, in respect to the construction of the project.

D. QUESTIONS APPROPRIATE FOR REFERRAL TO A REFEREE

- 21 The Sixth and Seventh Defendants agree with the Plaintiff that all issues as to liability and scope of any and all remedial work is appropriate for reference.

E MEDIATION

- 22 There has been no mediation. The Sixth and Seventh Defendants are willing to undertake mediation in due course.

SIGNATURE

Signature of legal representative

A handwritten signature in black ink, appearing to be 'A. Lee' or similar, written in a cursive style.

Capacity

Counsel for Sixth and Seventh Defendants

Date of signature

4 March 2024