

OUTCOME DETAILS

**Supreme Court - Civil
at Supreme Court Sydney
on 22 March 2024**

**2022/00184814-001, 2022/00184814-008 / Summons: Keiran Liprini v Thirdi
William Street Pty Ltd, Cross Summons 001: Thirdi William Street Pty Ltd v H & M
CONSTRUCTIONS (NSW) NO. 2 PTY LTD**

This matter is listed for Directions (Commercial) on 5 April 2024 10:00 AM before the
Supreme Court - Civil at Supreme Court Sydney.

Estimated duration: 5 Minutes

This matter is listed for Directions (Commercial) on 10 May 2024 10:00 AM before the
Supreme Court - Civil at Supreme Court Sydney.

Estimated duration: 5 Minutes

HH makes orders in terms of the short minutes of order initialled and dated today's date re
Opt Out Notice

HH makes orders in terms of the short minutes of order initialled and dated today's date.

Short Minutes of Order (Opt Out Notice)

1 Pursuant to section 162(1) of the Civil Procedure Act 2005 (NSW), the date of 26 April 2024
is fixed as the date by which a Group Member may opt out of this proceeding (Opt Out Date).

2 Pursuant to sections 175 and 176 of the Civil Procedure Act 2005 (NSW), the form and
content of the opt-out notice attached as Schedule A is approved (Notice).

3 Pursuant to section 176(2) of the Civil Procedure Act 2005 (NSW), the Notice be given to
group members according to the following procedure:

a. On or before 28 March 2024, the plaintiff shall cause, through her solicitors, a copy of
the Notice to be sent to all group members who are party to the funding agreement with the
plaintiff (the Funding Parties) by email;

b. On or before 28 March 2024, the plaintiff shall cause, through her solicitors, a copy of the
Notice to be sent to all group members who are not Funding Parties by:

i. email, where an email address for the group member is available;

ii. where no email address is available, by pre-paid ordinary post to the address for service
of notices as recorded and maintained by the Building Manager or Facilities Manger as
appointed by the Committee pursuant to the Building Management Statement registered with
the NSW Land Registry Service as approved form 12 for folio DP1234137 on 23 June 2020;

iii. or otherwise, by pre-paid ordinary post or hand delivery to the relevant lot.

c. On or before 28 March 2024, the plaintiff shall cause, through her solicitors, a copy of the
Notice to be sent to the Building Manager or Facilities Manager by email and by pre-paid
ordinary post to the following address:

Net Strata
Attention: Samantha Arundel!
298 Railway Parade,
Carlton NSW 2218

4 The Registrar of the Supreme Court of New South Wales shall cause a copy of the Notice to be displayed on the Supreme Court website from 28 March 2024 until the final disposition of this proceeding.

5 Pursuant to sections 162(2) and 183 of the Civil Procedure Act 2005 (NSW), any group member wishing to opt out of the proceedings must, before the Opt Out Date, file a completed 'opt-out notice' in the form set out in Annexure A to Schedule A of these orders in the Registry of the Supreme Court of New South Wales and serve a copy on the solicitors for the plaintiff (being Bradbury Legal).

6 If, on or before the Opt Out Date, the solicitors for any party receives a notice purporting to be an opt out notice referable to this proceeding, the solicitors shall file that notice with the Registry of the Supreme Court of New South Wales, within 3 days after receipt, and the notice shall be treated as an opt out notice received by the Court at the time it was received by the solicitors.

7 The costs of, and incidental to, the procedure set out in order 3 above (including, without limitation, costs incurred in addressing enquiries by group members and members of the public in relation to the Notice) shall be paid in the first instance by the plaintiff but shall be costs in the cause.

8 The solicitors for the parties to the proceeding have leave to inspect the Court file and copy any opt out notices filed.

9 The matter is listed for further directions on 5 April 2024.

Short Minutes of Order

1 The time for the plaintiff to serve the Scott Schedule is extended to 9 May 2024.

2 The matter is listed for further directions on 10 May 2024.

3 Second Defendant to file and serve List Response to cross-claims on or by 12 April 2024.

Notation: These short minutes has been prepared as supplementary to the draft opt out orders and draft opt out notice filed by the plaintiff.

Justice M Ball

Signed

Date

Schedule A

28 March 2024

IMPORTANT NOTICE

REPRESENTATIVE ACTION REGARDING CONSTRUCTION & BUILDING DEFECTS AT 31–41 WILLIAM STREET, ALEXANDRIA NSW 2015

Supreme Court of New South Wales

Keiran Liprini

v

Thirdi William Street Pty Ltd
H&M Constructions (NSW) No.2 Pty Ltd
Kimy Air Conditioning Pty Ltd
Scott Collis Consulting Pty Ltd
Aiken Design & Consulting Pty Ltd
David Mathew Aiken

(2022/00184814)

Why is this notice important?

On 24 June 2022, Keiran Liprini (the **Plaintiff**) commenced this representative proceeding (or "class action") in the Supreme Court of New South Wales against:

- Thirdi William Street Pty Ltd (the **First Defendant**);
- H&M Constructions (NSW) No.2 Pty Ltd (the **Second Defendant**);
- Policom Pty Ltd (the **Third Defendant**);
- Kimy Air Conditioning Pty Ltd (the **Fourth Defendant**); and
- Scott Collis Consulting Pty Ltd (the **Fifth Defendant**).

The proceedings were later discontinued against the Third Defendant. On 31 October 2023 the Plaintiff amended her claim to include actions against:

- Aiken Design and Consulting Pty Ltd (the **Sixth Defendant**); and
- David Mathew Aiken (the **Seventh Defendant**).

The class action is brought by the Plaintiff on their own behalf and on behalf of other persons or entities who are each owners of lots in Deposited Plan 1234137.

The subject lots are residential terraces at 31–41 William Street, Alexandria NSW 2015. This includes lots with street access at the rear of that block with street addresses ranging from 41–75 William Lane, Alexandria NSW 2015.

The "other persons or entities" who fit the above description are defined in the proceedings as "**Group Members**".

The Supreme Court has ordered that this notice be published for the information of persons who might be Group Members on whose behalf this representative action is brought and who may be affected by it.

If you think you may be a group member you should read this notice carefully, as it may affect your rights. Any questions you have concerning the matters contained in this notice should not be directed to the Court. If there is anything in it that you do not understand, you may wish to seek legal advice.

What is a representative proceeding?

A representative proceeding is commonly known as a class action. It is an action that is brought by a plaintiff on their own behalf, and on behalf of group members against defendant(s), where the plaintiff and the group members have similar claims against the defendants.

Group members are bound by any judgement or settlement entered into in the representative proceeding unless they choose to not participate by “opting out” of the proceedings. This means that:

- (a) if the representative action is successful or settles, group members may be eligible for a share of any damages awarded by the court or settlement monies;
- (b) if the representative action is unsuccessful, group members are bound by that result; and
- (c) regardless of the outcome of the representative action, group members will not be able to pursue their claims against the defendants in separate legal proceedings unless they have opted out.

What is the “Gentry” Class Action?

In late 2017, the First and Second Defendant entered into a contract for the design and construction of 37 individual terraces with a shared underground carpark at 31–41 William Street, Alexandria NSW 2015, known as the “Gentry Development”.

The Plaintiff has brought representative proceedings (the **Gentry Class Action**) where it alleges that the Plaintiff and the Group Members have and will suffer loss as a consequence of building defects in the design and construction of the building. In particular, the Plaintiff alleges defects with respect of:

- the electrical system of the building;
- the hydraulic and stormwater systems of the building;
- the air conditioning (“HVAC”) systems of the building;
- the roofing and waterproofing aspects of the building; and
- other general aspects of the building.

A full list of defects alleged to have occurred is available on request to the Plaintiff’s solicitors as explained below.

The Plaintiff alleges that the First and Second Defendants breached statutory duties owed to subsequent owners of the lots as provided by Part 2C of the *Home Building Act 1989* (NSW).

Further and alternatively, the Plaintiff alleges that the Fourth, Fifth, Sixth and Seventh Defendants breached a duty of care owed to future owners of the lots to avoid economic loss arising from building defects, as provided by Part 4 of the *Design and Building Practitioners Act 2020* (NSW).

The Plaintiff's claim is made on their own behalf and on behalf of the Group Members. The allegations are detailed in the Amended Commercial List Statement filed 31 October 2023. The Defendants each deny liability in respect of the allegations and raise various defences in relation to their particular alleged liabilities.

The Amended Commercial List Statement and any defences are available on request to the Plaintiff's solicitors as explained below.

Are you a Group Member?

Group members include people or entities who:

- own one or more lots in Deposited Plan 1234137; who are also:
- listed in the table attached to this notice.

What is an 'opt-out'?

The plaintiff in a representative proceeding does not need to seek the consent of group members to commence a representative proceeding on their behalf. However, group members can cease to be a group member by "opting out" of the representative proceedings.

If you have been included as a group member in the Gentry Class Action but you do not want to continue to be a Group Member, you can opt out now.

What should Group Members do?

If you fit the definition of a Group Member in the representative proceeding, there are three options available to you. If you wish to remain a Group Member, you can choose Option 1 or Option 2.

Option 1: Register your individual claim

If you wish to remain a Group Member and would like to make a claim for loss or damage you have suffered as a result of building defects in your lot, you should contact Bradbury Legal and tell them what your loss and damage is. You can contact Bradbury Legal as follows:

Post: Attention: Ashleigh Vumbaca
Bradbury Legal
Upper Ground Floor
437 Kent Street,
Sydney NSW 2000
Email: ashleigh@bradburylegal.com.au

Group Members who register with the Plaintiff's solicitors (Bradbury Legal) will be bound by the outcome of the representative proceeding. If the representative proceeding is successful, you will be entitled to share in the benefit of any order, judgement or settlement in favour of the Plaintiff and the Group Members. You may have to satisfy certain conditions and establish elements of your claim that are

relevant specifically to you, before your entitlement arises. You can choose to retain Bradbury Legal, or other solicitors, to help you do this.

If the representative proceedings are unsuccessful, or is not as successfully as you might have wished, you will not be able to sue on the same claims in any other proceeding.

If you wish to remain a Group Member, even if you do not wish to retain Bradbury Legal to act for you, you may wish to contact Bradbury Legal to “register” as a Group Member to ensure that future notices about the representative proceeding can be sent to you, or your legal representative, directly.

Option 2: Do Nothing

If you do nothing, you will remain a Group Member and remain bound by any order, judgement or settlement in the representative proceeding. The Plaintiff will continue to bring the proceeding on your behalf up to the point where the court determines the questions that are common to the claims of the Plaintiff and the Group Members.

If the representative proceeding is successful, you will be entitled to share in the benefit of any order, judgement or settlement in favour of the Plaintiff and the Group Members the same as if you had registered with Bradbury Legal. You may have to satisfy certain conditions and establish elements of your claim that are relevant specifically to you, before your entitlement arises. You can choose to retain Bradbury Legal, or other solicitors, to help you do this.

However, unless you identify yourself as a Group Member and provide details of the specific and individual loss you have suffered, your specific and individual loss (as distinct from any shared loss born by the Group Members collectively) may not be recoverable.

It is likely that the Court will order notice be given to Group Members of any judgement in favour of the Plaintiff and Group Members, or of any proposed settlement.

If the representative proceeding is unsuccessful, or is not as successful as you might have wished, you will not be able to sue on the claim in any other proceeding.

Option 3: Opt-Out

If you do not wish to be a Group Member, you should opt out of the proceeding by completing the Court’s “*Opt Out Notice*” attached at the end of this document and filing it with the Court.

If you opt out, then you will cease to be a Group Member and will not be affected by any orders made in the representative proceeding.

If you wish to bring your own claim against the any of the Defendants, or for any claim of building defects at the Gentry Development, **you should seek your own legal advice about your claim and the applicable time limit before filing an opt-out notice with the Court.**

If you opt out of these representative proceedings, any limitation period with respect to bringing a claim in your own capacity against the Defendants or for building defects at 31–41 William Street, Alexandria NSW 2015 will no longer be paused. If you do not bring your own claim within a certain timeframe thereafter, there may be an adverse impact on your ability to bring a claim in your own capacity against the Defendants or for building defects at 31–41 William Street, Alexandria NSW 2015. **You should seek your own legal advice about your claim and the applicable time limit before opting out.**

If you wish to opt out you must send your “*Opt Out Notice*” to the Supreme Court so that it arrives **BEFORE 4:00pm on 26 April 2024**. The notice will not be effective if it arrives after that time. The address for the Supreme Court is located at the end of this notice.

Will you be liable for legal costs?

Group Members will not become liable for any legal costs simply by remaining or registering as Group Members. Group members in a representative action are not legally liable for the legal costs associated with bringing the proceedings.

If the preparation or finalisation of your personal claim requires legal work to be done in relation to issues that are specific to your own claim, you can engage Bradbury Legal or other solicitors to do that work for you. You would be liable for these costs unless and until the Court makes orders for another party to contribute to these costs.

If the Plaintiff is successful in the proceedings and there is a judgement or settlement that results in damages or compensation becoming payable to the Group Members, then:

- (a) The Plaintiff may seek, and the Court may make, orders that a proportion of the Plaintiff’s legal costs in commencing and maintaining the Court proceedings on behalf of the Group Members is recovered from the judgement or settlement amount awarded to the Group Members; and
- (b) The Plaintiff may seek, and the Court may make, orders that the Plaintiff and the Group Members’ costs are recoverable from Defendants in the proceedings.

Where can you obtain copies of relevant documents?

Copies of relevant documents, including copies of the Amended Summons, Amended Commercial List Statement, and Commercial List Responses filed by each Defendant, may be obtained by:

- contacting Bradbury Legal and requesting a copy to be posted or emailed to your nominated address;
- inspecting them by visiting the Registry of the Supreme Court in Sydney at:
Level 5, Law Courts Building, Queen’s Square
184 Phillip Street
Sydney NSW 2000
- inspecting them on the Supreme Court’s website:

<https://supremecourt.nsw.gov.au/cases/class-actions/current-class-actions.html>

You can contact Bradbury Legal as follows:

Phone: (02) 9030 7400

Post: Attention: Ashleigh Vumbaca
Bradbury Legal
Upper Ground Floor
437 Kent Street,
Sydney NSW 2000

Email: ashleigh@bradburylegal.com.au

OPT OUT NOTICE

COURT DETAILS

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

TITLE OF PROCEEDINGS

Plaintiff	Keiran Liprini
First Defendant	Thirdi William Street Pty Ltd (ACN 169 508 824)
Second Defendant	H&M Constructions (NSW) No.2 Pty Ltd (ACN 615 763 258)
Fourth Defendant	Kimy Air Conditioning Pty Ltd (ACN 113 531 598)
Fifth Defendant	Scott Collis Consulting Pty Ltd (ACN 606 869 667)
Sixth Defendant	Aiken Design and Consulting Pty Ltd (ACN 617 548 044)
Seventh Defendant	David Mathew Aiken

FILING DETAILS

Filed for	[redacted]
Legal representative	[redacted]
Legal representative reference	[redacted]
Contact name and telephone	[redacted]
Contact email	[redacted]

OPT OUT NOTICE

Name of person opting out:

Address of person opting out:

I, a group member in these representative proceedings, opt out of the proceedings.

I understand that in opting out:

I forego the right to share in any relief obtained by the representative party in the representative proceedings;

I am not entitled to receive any further notification about the conduct or disposition of the proceedings; and

To the extent that I have a claim against the defendant(s), any limitation period suspended by the commencement of the representative proceedings has recommenced to run.

SIGNATURE

Signature of legal representative

OR

Signature of or on behalf of
person opting out if not legally
represented

Capacity

Date of signature

NOTICE TO PERSON OPTING OUT

You must, within the time specified in the notice to group members:

file this form in the registry of the court at the address below, or in the manner provided in the notice to group members; and

serve a copy of this form on the representative party at the address, or in the manner provided, in the notice to group members.

REGISTRY ADDRESS

Street address	Supreme Court of NSW Law Courts Building, Queen's Square 184 Phillip Street Sydney NSW 2000
Postal address	Supreme Court of NSW GPO Box 3 Sydney NSW 2001
Telephone	1300 679 272