

OPAL TOWERS

SUPREME COURT OF NEW SOUTH WALES

ASSOCIATE'S RECORD OF PROCEEDINGS

FILE NUMBER: 2019/232749

NAME OF MATTER: Terry Walter Williamson v Sydney Olympic Park Authority
trading as Sydney Olympic Park Authority

DATE: 14 July 2022

CORAM: Black J

AJOURNMENT: Date: 11 October 2022 @ 10am

Listed for: (mention/direction/hearing etc) Motion (1 day)

Before: (Coram) Black J

Filed in Court for

VERDICT, ORDER OR DIRECTION:

Black J makes orders in accordance with Short Minutes of Order initialled by him and placed in the file.

THE COURT MAKES THE FOLLOWING ORDERS:

Distribution of the Settlement Notice

- 1 Pursuant to section 176(2) of the Act, the plaintiffs are to give notice to the Group Members of the proposed settlement by, on or before 4:00pm, Monday 18 July 2022, sending a copy of the notice at Annexure A to these orders [Annexure A is not published here. A redacted version is in Annexure B] to all group members, accompanied by a Chinese translation:
 - a. by email, where an email address for the group member has been obtained from the strata roll maintained in respect of Strata Plan 97315 (Strata Roll) or otherwise been made available to the plaintiffs from time to time; or
 - b. where no email address for the group member appears on the Strata Roll and no email address has otherwise been made available to the plaintiffs, by pre-paid ordinary post to the address for service of notices as recorded in the Strata Roll or as otherwise made available to the plaintiffs from time to time.
- 2 By 4:00pm, Monday 18 July 2022, the Registry of the Supreme Court of New South Wales shall display the redacted version of the notice appearing at Annexure B of

these orders on the Court's website, www.supremecourt.justice.nsw.gov.au, together with the following text:

Group Members may obtain an unredacted version of the Settlement Notice by emailing OpalTower@corrs.com.au.

Objections to proposed settlement

- 3 Any group member who wishes to oppose the proposed settlement:
 - a. by Wednesday 24 August 2022, must provide to the plaintiffs' solicitors written reasons why they oppose the proposed settlement by delivering them to the email address OpalTower@corrs.com.au; and/or
 - b. may attend, or send a representative to attend, the Supreme Court of New South Wales at 10am on 11 October 2022 when the Notice of Motion seeking orders for the approval of the settlement is to be heard and must be prepared to address the Court with reasons why the proposed settlement should not be approved.
- 4 By 29 August 2022, the plaintiffs are to file and serve copies of any objections that the plaintiffs' solicitors receive pursuant to order 4(a) above.

Timetable for application for settlement approval

- 5 By no later than 30 September 2022, the plaintiffs are to file and serve a notice of motion seeking an order approving the settlement under section 173 of the Act and for related orders including any funding equalisation order.
- 6 By no later than 30 September 2022, the parties are to file and serve any evidence in support of the order sought approving the settlement.
- 7 By no later than 4 October 2022, the parties are to file and serve any submissions in support of the orders sought approving the settlement.

Cost assessor

- 8 The Court appoints Roland Matters as independent cost assessor to prepare a report on the reasonableness of the legal costs and disbursements incurred by the plaintiffs. The independent cost assessor is to provide a report to the Court by 16 September 2022.

Contradictor

- 9 The Court appoints Ruth Higgins SC as a contradictor on the question of costs and other deductions to be made from the settlement sum.

Settlement Approval Hearing

- 10 The notice of motion seeking orders for approval of the settlement be listed for hearing on 11 October 2022.

ANNEXURE A NOT PUBLISHED

ANNEXURE B

OPAL TOWER CLASS ACTION – IMPORTANT NOTICE

NOTICE OF PROPOSED SETTLEMENT

Terry Walter Williamson and Helen Therese Williamson v Sydney Olympic Park Authority & Ors, Supreme Court of New South Wales Case No. 232749 of 2019 (Opal Tower Class Action)

PLEASE READ THIS NOTICE CAREFULLY

This notice contains important information about the proposed settlement of the Opal Tower Class Action. It has been distributed and published in accordance with orders made by the Supreme Court of NSW (the **Court**) on 8 July 2022. You should read this notice carefully, as your legal rights may be affected by the proposed settlement.

You are receiving this notice because you signed a litigation funding agreement in the Opal Tower Class Action and/or because you have been identified as a likely group member.

If there is anything in this notice that you do not understand, you should contact the lawyers for the plaintiffs in the Opal Tower Class Action, Corrs Chambers Westgarth, or seek independent legal advice. You should not contact the Supreme Court of NSW.

A. BACKGROUND

- 1 The Opal Tower Class Action is brought by Terry and Helen Williamson (the **plaintiffs**) against Sydney Olympic Park Authority (**SOPA**), Icon Co (NSW) Pty Ltd (**Icon**) and WSP Structures Pty Ltd (**WSP**).
- 2 The plaintiffs bring the Opal Tower Class Action on their own behalf and on behalf of all persons who:
 - a. as at 24 December 2018, owned one or more lots in Opal Tower (being, Strata Plan 97315) or the common property of Opal Tower;
 - b. are not any of the following: SOPA, Icon, WSP, Ecove Group Pty Ltd or its related entities; and
 - c. did not 'opt-out' of the Class Action before 22 May 2020 or have not otherwise been permitted to opt-out by Court order(**Group Members**).

3 The plaintiffs are represented by solicitors Corrs Chambers Westgarth (**Corrs**).
The Opal Tower Class Action is being funded by Augusta Pool 1 UK Limited
(the **Funder**).

4 The class action arises out of the structural damage to Opal Tower that was
identified on Christmas Eve in 2018 and in the following months. The plaintiffs
allege that:

- a. SOPA did not comply with warranties imposed by the *Home Building Act 1989 (NSW) (HBA)*, in circumstances where SOPA owed those duties to the plaintiffs and Group Members in its capacity as a deemed developer under the HBA;
- b. Icon and WSP are liable for negligence occasioning economic loss (because they owed the plaintiffs and Group Members a duty to exercise reasonable care to avoid economic loss under the *Design and Building Practitioners Act 2020 (NSW)*);
- c. Icon and WSP engaged in misleading and deceptive conduct by issuing certain compliance and completion certifications, and making certain representations, in connection with the design and construction of Opal Tower;
- d. by reason of the defendants' conduct the plaintiffs and Group Members have suffered loss and damage, including diminution in the value of their apartments attributable to stigma, increased strata fees and other costs; as well as stress and inconvenience.

5 The allegations made by the plaintiffs in the Opal Tower Class Action are set
out in full in the plaintiffs' Further Amended Commercial List Statement dated 9
March 2022 (which can be obtained by emailing OpalTower@corrs.com.au).

6 SOPA, Icon and WSP each deny that they are liable to the plaintiffs and Group
Members.

7 Six cross-claims were also brought by the three defendants in the proceedings
(SOPA, Icon and WSP) as well as Australia Avenue Developments Pty Ltd and
Evolution Precast Systems Pty Ltd. The cross-claims concern primarily the
allocation of liability as between the defendants and other entities who had a
role in the development or construction of the Opal Tower.

8 The trial of the Opal Tower Class Action was scheduled to commence in May
2022. The trial did not commence because the parties were pursuing
settlement discussions, leading to the proposed settlement.

B. **SUMMARY OF SETTLEMENT**

9 On 19 May 2022, the Plaintiffs, on their own behalf and on behalf of Group
Members in the class action, reached an agreement to settle the Opal Tower
Class Action for [REDACTED] inclusive of all legal costs, disbursements, interest
and funding commission (the **Proposed Settlement**).

10 Because the proceeding is a class action, a judge of the Court will need to
approve the Proposed Settlement as being fair and reasonable, and in the

interest of Group Members, before it takes effect. At 10am on 11 October 2022, the Court will be asked to approve the Proposed Settlement at the Supreme Court of New South Wales, Queens Square Sydney (**Settlement Approval Hearing**).

- 11 Corrs and senior counsel for the plaintiffs recommended the settlement and regard it as a fair and reasonable settlement. A settlement is a compromised resolution which in this case reflects the risks and costs associated with a 40 day trial (and any further appeals). If the plaintiffs were successful at trial, the Court would be unlikely to award 100% of the damages claimed. Even in that scenario, there are significant costs associated with a 40 day trial and any further appeal, which would erode the compensation available to Group Members. There is also the risk of the Court finding against the plaintiffs, or only in part for the plaintiffs, in which case the Group Members could recover nothing or an amount that is less than the sum of the Proposed Settlement.
- 12 It is not presently possible to provide an estimate of how much each Group Member will receive from the Proposed Settlement. Further information in respect of that issue is provided in Section E below.
- 13 The distribution of the settlement sum will be in accordance with a "Settlement Distribution Scheme" that is being developed by Corrs. The Settlement Distribution Scheme will set out the procedure for distributing the settlement sum and will need to be approved by the Court as fair and reasonable. The Court will consider that issue on 11 October 2022 as part of its consideration of whether to approve the Proposed Settlement.
- 14 The person responsible for administering the Settlement Distribution Scheme is called the "administrator". Subject to the approval of the Court, the administrator will be Marcus Ayres of Kroil.
- 15 On 8 July 2022, the Court approved the form and content of this Notice. The purpose of this Notice is to inform you of, and explain, your rights in relation to, the Proposed Settlement.

C. WHAT GROUP MEMBERS MUST DO

- 16 If the Proposed Settlement is approved at the Settlement Approval Hearing, the settlement will be binding on all Group Members. This will mean that no Group Member will be able to take any further action in respect of matters the subject of the Opal Tower Class Action.
- 17 There are two options which Group Members should consider:
- a. **If you support the Proposed Settlement** then there is nothing further you need to do at this stage. If the settlement is approved, you will be entitled to receive your share of the settlement sum in accordance with the Settlement Distribution Scheme (if approved), as outlined below at 22.
 - b. **If you oppose the Proposed Settlement and wish to object** then you must send written notice explaining why you are objecting to the Proposed Settlement to OpalTower@corrs.com.au by 24 August 2022. If you do so, your objections will be provided to the Court. You or a legal representative

may also attend the Settlement Approval Hearing to give oral reasons why you think the Proposed Settlement should not be approved.

D. WHO IS A GROUP MEMBER

18 You are a Group Member if you meet the definition of Group Members as outlined in paragraph 2 of this Notice.

19 Only Group Members are entitled to a distribution of money from the Proposed Settlement.

E. PROPOSED SETTLEMENT: FURTHER INFORMATION

20 [REDACTED]

21 Subject to Court approval, the following amounts will be deducted from the Settlement Sum:

a. Reimbursement payments to the Plaintiffs

First, and if approved by the Court, reimbursement payments will be deducted from the Settlement Sum and paid to each of the plaintiffs, both of whom undertook a significant role in advancing the claim on behalf of Group Members as a whole. Those payments will be for modest amounts and are intended as reimbursement for the significant time involved in prosecuting the Opal Tower Class Action in the interests

of Group Members and on their behalf. We anticipate this amount to be in the order of \$20,000 per plaintiff.

b. Legal costs and Funder Entitlements

Secondly, the contractual entitlements of the Funder and the plaintiffs' reasonable legal costs will be deducted from the Settlement Sum. The way in which the plaintiffs' reasonable legal costs will be determined is explained below.

Funder Entitlements

Under the litigation funding agreements entered into by most Group Members, those Group Members are obliged to pay to the Funder:

- (a) the claimant's share of the 'Project Costs'. The Project Costs include legal costs and disbursements associated with the proceedings (including investigations before commencing the proceedings and any alternative dispute resolution process) and the upfront adverse cost insurance premium. As at 31 May 2022, the Project Costs (including work in progress) totalled around \$8.7M; and
- (b) the Funder's Commission, calculated as 2.6 x the claimant's share of the Project Costs (excluding any administrative fee or adverse costs insurance premium that is payable from Claim Proceeds). As at 31 May 2022, the Commission totalled around \$15M. However, the Funder has agreed to reduce the multiple from 2.6 to 2.3, which means that the Funder's Commission is reduced by around \$1.8M to around \$13.2M.

(Funder Entitlements).

The Funder's Entitlements can only be deducted from the Settlement Sum if and to the extent that they are approved by the Court as being fair and reasonable.

As set out under Section F below, the plaintiffs intend to bring a funding application, which may result in Group Members who have not entered into a litigation funding agreement also being ordered to pay a portion of the Funder's Entitlements.

Legal costs

The plaintiffs' legal costs will be assessed by an independent costs expert, and they must be approved by the Court as being reasonable in the context of the Proposed Settlement before they can be deducted. Corrs estimate the legal costs as at 31 May 2022 in the class action were around \$6.5M. Of that figure, around \$5.7M is included in the Project Costs described above.

The figure reflects the legal work involved in investigating and prosecuting the Opal Tower Class against three defendants on behalf of Group Members. This estimate of legal costs includes the costs of barristers, the cost of obtaining expert evidence, and technology costs to

prepare for the trial which was scheduled to commence on 2 May 2022. Further costs will be incurred in relation to the Settlement Approval Hearing. Corrs estimate those costs to be around \$350,000.

c. Deferred insurance premium

Thirdly, a payment to the insurer for deferred adverse cost insurance premium in the amount of \$2.24M will be deducted from the Settlement Sum, in addition to the upfront adverse cost insurance premium noted in paragraph b. (a).

- 22 After the deductions outlined above, the remainder of the Settlement Sum will be distributed to Group Members in accordance with a Settlement Distribution Scheme (if approved). The amount available for distribution Group Members has not fully been determined. Having regard to the deductions set out above, and assuming Court approval is obtained on those terms, the total amount of the Settlement Sum available for distribution (based on costs as at 31 May 2022) will be approximately [REDACTED] (**Distribution Sum**). That amount may be slightly revised based on costs as at the date of the Settlement Approval Hearing. It is important to note that as the Distribution Sum is less than the total of the plaintiffs' and Group Members' claim, the plaintiffs' and Group Members will be compensated for a proportion of their loss only.
- 23 At the time of distribution of this Notice, the parties are yet to finalise the Settlement Distribution Scheme. The following general information can be provided at this time.
- 24 Corrs propose to determine payments to Group Members in a way that broadly reflects the way they put the plaintiffs' case. This will likely result in the Distribution Sum being allocated as follows as between the types of losses claimed in the Opal Tower Class Action:
- a. 85% allocated to damages for diminution in value of Group Members' units;
 - b. 10% allocated to losses for stress, anxiety and inconvenience; and
 - c. 0% allocated to increased strata fees;
 - d. 5% allocated to claims for other losses incurred by Group Members.
- 25 0% will be allocated to increased strata fees because compensation for those fees will be recovered by the Owners' Corporation, for the benefit of the owners of Opal Tower, as part of a settlement in the Owners' Corporation's related claim against Icon and WSP.
- 26 As stated above, it is not presently possible to provide an estimate of how much each Group Member will receive out of the Distribution Sum. As a general guideline, based on the evidence filed by the plaintiffs in the proceedings and the relevant legal principles, Corrs anticipates that the Settlement Distribution Scheme will operate on the following basis:
- a. entitlements to damages for diminution in value (which account for 85% of the Distribution Sum) will be calculated based on the methodology of the plaintiffs' valuation expert, Mr Lunney, adjusted to reflect that the

Distribution Sum is insufficient to cover 100% of each Group Member's claimed loss. The methodology Mr Lunney used was to:

- i. calculate the unaffected value of each unit as at 8 April 2022, based on the previous sale price of each unit, with appropriate adjustments for market movements between the date of the sale and the date of valuation; and
- ii. apply a diminution factor of between 12.5% and 22.5% (depending on the size of the unit) to calculate the diminution in value of each unit.

You can contact Corrs, the lawyers for the plaintiffs in the Class Action, at OpalTower@corrs.com.au, to obtain details of the diminution in value of your unit as calculated by Mr Lunney.

- b. entitlements to damages for stress, anxiety and inconvenience (which account for 10% of the Distribution Sum) will vary depending on a number of factors, including whether the Group Member is an occupier or not. Occupiers will receive a greater allocation for stress, anxiety and inconvenience than non-occupiers.
- c. entitlements to damages in respect of claims for other losses (which account for 5% of the Distribution Sum) will be depend on the individual circumstances of each such claim, and will be determined by the Administrator.

F. FUNDING APPLICATION

27 Throughout the Opal Tower Class Action, the Funder has:

- a. paid approximately \$8.7M in Project Costs, including for most of the plaintiffs' legal fees and disbursements; and
- b. given an indemnity up to the amount of \$10M to the plaintiffs to protect them against any adverse cost order made against them.

28 The plaintiffs and most of the Group Members have entered into a litigation funding agreement with the Funder under which the Funder is entitled to recover the Funder Entitlements.

29 Group Members who have not entered into a funding agreement with the Funder do not presently have an obligation to contribute to the Funder Entitlements.

30 The plaintiffs intend to apply to the Court for a 'funding equalisation order'. This order seeks to spread the cost of the Funder Entitlements equally across all Group Members. It does so by reducing each Group Member's entitlement to share in the Settlement Sum by a proportionate share of the Funder Entitlements, regardless of whether they have entered into a litigation funding agreement with the Funder or not.

31 The effect of this order would not increase the amount paid to the Funder. Instead, it would distribute the contribution to the Funder in equal proportion

among all eligible Group Members, so that all Group Members proportionately share in the payment of the Funder's Entitlements (and recoveries).

32 The Court will be asked to approve the funding equalisation order on 11 October 2022.

33 You do not need to support or object to the funding equalisation order. However, if you do wish to do so, you must lodge a written statement by 24 August 2022 by emailing OpalTower@corrs.com.au. Such statements will be provided to the Court.

34 You or a legal representative may also (but do not need to) attend the Settlement Approval Hearing in the Supreme Court of NSW on 11 October 2022.

G. FREQUENTLY ASKED QUESTIONS

How does this relate to the claim brought by the Owners Corporation?

35 The class action is a different proceeding to that brought by the Owners Corporation. Corrs does not act for the Owners Corporation. Any question you have in relation to that proceeding should be directed to the Owners Corporation or its legal representatives.

Is the Proposed Settlement an admission of liability by the defendants?

36

[REDACTED]

Will Group Members be required to pay any legal fees?

37 You will not need to make any out of pocket payment for legal costs relating to the Opal Tower Class Action or the administration of the Proposed Settlement.

38 As set out above, the plaintiffs' legal fees (in an amount to be approved by the Court) will be deducted from the Settlement Sum before distribution.

What do I need to do to receive money from the settlement?

39 At this stage, you do not need to do anything. If the Proposed Settlement is approved by the Court, the administrator will contact you about what steps you will need to take. This may take up to one month after the Settlement Approval Hearing.

Who should I contact if I have any other questions?

40 If you have any questions regarding the Proposed Settlement or the information provided in this notice, you can contact the lawyers for the plaintiffs in the Class Action, Corrs Chambers Westgarth at:

OpalTower@corrs.com.au

(+61) 02 9210 6187

41 You may also wish to seek independent legal advice.

42 Please do not contact the Supreme Court of New South Wales as it will not be able to answer your questions about the Proposed Settlement.