

OUTCOME DETAILS

**Supreme Court - Civil
at Supreme Court Sydney
on 28 February 2020**

2019/00232749-003, 2019/00232749-002, 2019/00232749-001 / Cross Summons 002: Icon Co (NSW) Pty Ltd v WSP Structures Pty Ltd, Cross Summons 001: SYDNEY OLYMPIC PARK AUTHORITY trading as Sydney Olympic Park Authority v Australia Avenue Developments Pty Ltd, Summons: Terry Williamson v SYDNEY OLYMPIC PARK AUTHORITY trading as Sydney Olympic Park Authority

I make the orders in the document entitled Short Minutes of Order which I have initialled, dated today's date and placed with the papers.

The proceedings are stood over to the directions list on 17th April 2020

Short Minutes of Order

The Court makes the following orders:

Pleadings

1 Grant leave to Icon to file and serve any Fourth Cross Claim Cross Summons and List Statement by 20 March 2020.

2 Grant leave to AAD and Ecove to file and serve any Fifth Cross Claim Summons and List Statement by 20 March 2020.

3 The time for Evolution to file and serve a list response to the Third Cross Claim List Statement filed by WSP be extended to 27 March 2020.

4 Grant leave to Evolution to file and serve any Sixth Cross Claim Cross Summons and List Statement by 10 April 2020.

Evidence

5 The time for the plaintiffs to serve all evidence in chief in relation to liability be extended to 27 March 2020.

6 The time for the defendant to notify all parties as to whether it intends to serve any evidence on liability be extended to 8 April 2020.

Opt Out

7 Pursuant to 162(1) of the Civil Procedure Act 2005 (NSW), 22 May 2020 be fixed as the date by which a Group Member may opt out of this proceeding (Opt Out Date).

8 Pursuant to sections 175 and 176 of the Civil Procedure Act, the form and content of the Opt-out Notice in Schedule A be approved (Notice).

9 On or before 6 March 2020, the plaintiffs shall cause a certified translation of the Notice to be prepared in Simplified Chinese. Reference in these orders to "Notice" will hereinafter include a reference to both the English and Certified Simplified Chinese versions of the Notice.

10 On or before 6 March 2020, the defendant and first and second cross-defendants to the first cross-claim shall each provide a list to the plaintiffs of the lots it or its related entities owned in Strata Plan 97315 on 24 December 2018.

11 On or before 27 March 2020, the plaintiffs shall obtain the following information from the strata roll maintained in respect of Strata Plan 97315:

- a. the name of the holder of the estate in fee simple of each lot; and
- b. the address for service of notices recorded in the strata roll in respect of each of each lot.

12 Pursuant to section 176(2) of the Civil Procedure Act, the Notice be given to Group Members according to the following procedure:

- a. On or before 10 April 2020, the plaintiffs shall cause, through their solicitors, a copy of the Notice to be sent to all Signed Group Members:
 - i. by email, where an email address for the Signed Group Member is available; or
 - ii. where no email address for the Signed Group Member is available, by pre-paid ordinary post to the address for service of notices as recorded in the strata roll maintained in respect of Strata Plan 97315 and obtained pursuant to order 11 of these orders.
- b. On or before 10 April 2020, the plaintiffs shall cause, through their solicitors, a copy of the Notice to be sent to all Non-signed Group Members by pre-paid ordinary post to the Non-signed Group Members' address for service of notices as recorded in the strata roll maintained in respect of Strata Plan 97315 and obtained pursuant to order 11 of these orders.
- c. On or before 10 April 2020, the plaintiffs shall cause, through their solicitors, a copy of the Notice to be sent to The Owners - Strata Plan 97315 by pre-paid ordinary post to the following address:

The Owners - Strata Plan 97315
1 Brushbox Street
Sydney Olympic Park NSW 2127

13 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 10 April 2020 until the final disposition of this proceeding.

14 Pursuant to ss 162(2) and 183 of the Civil Procedure Act, any Group Member wishing to opt out of the proceeding must, before the Opt Out Date, file a completed 'Opt-out Notice' in the form set out in Annexure A to Schedule A to these orders (or in the form of the certified translation of the Out-out Notice prepared in accordance with order 9 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 Corrs Chambers Westgarth).

15 If, on or before the Opt Out Date, the solicitors for any party receive 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.

16 The costs of, and incidental to, the procedure set out in orders 9 and orders 5 to 6 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 plaintiffs but shall be costs in the cause.

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

18 The proceedings be listed for further directions on 17 April 2020.

19 Liberty to apply on three days' notice.

Definitions

AAD means Australia Avenue Developments Pty Ltd, the First Cross Defendant to the First Cross Claim.

Ecove means Ecove Group Pty Ltd, the Second Cross Defendant to the First Cross Claim.

Evolution means Evolution Precast Systems Pty Ltd, the First Cross Defendant to the Third Cross Claim.

Icon means Icon Co (NSW) Pty Ltd, the Third Cross Defendant to the First Cross Claim, the Cross Claimant to the Second Cross Claim and the Second Cross Defendant to the Third Cross Claim.

WSP means WSP Structures Pty Ltd, the First Cross Defendant to the Second Cross Claim and Cross Claimant to the Third Cross Claim.

Signed Group Members means Group Members who have signed a retainer agreement with Corrs Chambers Westgarth in relation to this proceeding.

Group Members has the meaning given to it in paragraph 6 of the Commercial List Statement.

Non-signed Group Members means Group Members who have not signed a retainer agreement with Corrs Chambers Westgarth in relation to in this proceeding.

Schedule A

Opal Tower Class Action

Supreme Court of New South Wales Case No. 232749 of 2019

IMPORTANT NOTICE

Why are you getting this notice?

A class action has been filed against Sydney Olympic Park Authority (SOPA) on behalf of all persons who, as at 24 December 2018, owned one or more lots in Opal Tower (being, Strata Plan 97315) or the common property of Opal Tower (other than SOPA, Ecove or its related entities).

The class action, filed in the NSW Supreme Court, claims that SOPA did not comply with warranties which arise under the Home Building Act.

The New South Wales Supreme Court has ordered that this notice be published for the information of persons who are members of the class on whose behalf the action is brought.

You are getting this notice because you may have been an owner of a lot in Opal Tower on 24 December 2018. This notice describes the class action and the steps you should take if you don't want to be part of the class action. You should read this notice carefully. Any questions about any of the matters in this notice should not be directed to the Court. Instead, if there is anything in this notice you do not understand, you should seek independent legal advice.

What is this all about?

A class action is a claim which is made by one or more people (called the Plaintiffs) for the benefit of people with similar or related claims (called the Group Members).

The Plaintiffs in this case are Terry and Helen Williamson. Mr and Mrs Williamson own an apartment in Opal Tower, and owned that apartment on 24 December 2018.

Mr and Mrs Williamson's class action is for the benefit of all persons who owned one or more lots in Opal Tower or the common property of Opal Tower on 24 December 2018 (other than SOPA, Ecove or its related entities). The Plaintiffs do not need to seek the consent of Group Members to start the class action on their behalf. However, Group Members can cease to be Group Members by opting out of the class action.

If Group Members do not opt out of the class action, they will be 'bound' by the outcome in the class action. A binding result can happen in two ways: (a) a trial followed by a judgment of the Court, or (b) a settlement at any time. If there is a judgment or a settlement of a class action, Group Members will not be able pursue the same claims and may not be able to pursue similar or related claims against the defendant or any of the cross-defendants in any other legal proceedings.

Further, Group Members should be aware that, in any judgment following trial, the Court will likely decide various factual and legal issues which are common to the claims made by the Plaintiffs and Group Members. Unless that judgment is successfully appealed, those findings bind the Plaintiffs, Group Members, defendant and cross-defendants. Importantly, if there are other proceedings between a Group Member and the defendant or any of the cross-defendants, it may be that the parties are not permitted to raise arguments in that proceeding which are inconsistent with a factual or legal issue decided in the class action.

Currently, no date for a mediation or trial has been set for the class action.

The Plaintiffs claim that:

(a) Pursuant to the Home Building Act, Group Members have the benefit of warranties enforceable against SOPA in relation to work done, and materials supplied, in carrying out the design and the construction of Opal Tower- specifically, warranties that:

- (i) the work would be done with due care and skill;
 - (ii) the work would be in accordance with the plans and specifications;
 - (iii) the work would be done in accordance with and comply with the law;
 - (iv) materials that were supplied would be good and suitable for the purpose for which they were used; and
 - (v) the work would result in the construction of dwellings that were reasonably fit for occupation as dwellings,
- (together, the "Warranties");

(b) SOPA breached those warranties;

(c) SOPA is liable for loss Group Members have suffered because it breached those warranties including, for example:

- (i) any drop in value of your apartments;
- (ii) lost rental income;

- (iii) loss of rental income under any future lease;
- (iv) out-of-pocket expenses you incurred in the period you were not able to access your apartment;
- (v) compensation for increased strata fees, legal fees and other professional costs; and
- (vi) inconvenience, stress and vexation.

The defendant to the class action is SOPA. SOPA denies liability to the Plaintiff and Group Members and is defending the class action and has filed a cross-claim against Australia Avenue Developments, Ecove and Icon Co (NSW).

Icon Co (NSW) denies liability to SOPA, Icon Co (NSW) is defending the class action, and has filed a cross-claim against WSP Structures.

WSP Structures denies liability to Icon Co (NSW), is defending the class action, and has filed a cross-claim against Evolution Precast Systems and Icon Co (NSW).

How do you know if you are affected by this class action?

You are a Group Member in this class action if, on 24 December 2018, you owned one or more lots in Opal Tower (being Strata Plan 97315) or the common property of Opal Tower (and if you are not SOPA, Ecove or any of Ecove's related entities).

Who pays the lawyers?

The Plaintiffs' lawyers are Corrs Chambers Westgarth. A company called Augusta Pool 1 UK Limited (the Funder) is funding the class action, which means that it is paying the Plaintiffs' legal costs, including the Plaintiffs' costs of bringing the claim on behalf of all Group Members.

You do not have to pay money in order to participate in this case. If the class action fails, you will not have to pay anything.

Intention to seek a funding order

The majority of Group Members have entered into litigation funding agreements with the Funder. Those agreements describe what those Group Members are required to pay the Funder in the event that their claims are resolved successfully.

Some Group Members have not entered into litigation funding agreements with the Funder.

If there is a successful judgment or settlement, the Funder intends to make an application to the Court requiring all Group Members - whether they have signed a litigation funding agreement or not - to pay a commission to the Funder in return for the Funder's contribution to the successful prosecution of the claims. That commission will not be any higher than the commission stipulated in the litigation funding agreements that most Group Members have already signed.

If, in all the circumstances it is fair, just, equitable and in accordance with principle, the Court is likely to make an appropriately framed order to prevent unjust enrichment and equitably and fairly to distribute the burden of reasonable legal costs, fees and other expenses, including reasonable litigation funding charges or commission, amongst all persons who have benefited from the action.

What do you need to do if you want to continue to be part of this case?

You do not need to do anything to stay part of this case. You will continue to be part of this case unless you follow the steps in the next section and "opt out" of the class action.

You do not need to register, but you may do so by emailing [opaltower\(5\)corrs.com.au](mailto:opaltower(5)corrs.com.au) or by phoning (+612) 9210 6187. Registration will ensure that you continue to be informed about the progress of the class action.

As noted above, all persons who owned a lot in Opal Tower on 24 December 2018 who do not opt out, will be bound by the result of the class action in so far as it relates to them.

What do you need to do if you do not want to be part of this case?

Some people who owned a lot in Opal Tower on 24 December 2018 may not wish to be part of the class action. They may not wish to claim damages from SOPA, or they may wish to do that by themselves rather than as part of a class action. If you opt out of the class action, you will:

- a) not be affected by any orders made in the class action;
- b) not be permitted to participate in the distribution of any damages award or settlement outcome (you will not receive any compensation) in the class action; and
- c) be entitled to commence separate legal proceedings against the defendant or any of the cross-defendants in relation to the matters the subject of the class action on your own behalf, if you wish to do so.

If you do not want to be part of the class action, you need to fill out a form and send it to the New South Wales Supreme Court by 22 May 2020. The form is called an "Opt-Out Notice" and it is Annexure A to this notice. You can also get a copy of the Opt Out Notice at:

1 online at the Supreme Court of NSW's website

(<http://www.supremecourt.justice.nsw.gov.au/>):

2 by emailing opaltower@corrs.com.au;

3 by writing to:

Opal Tower Class Action Corrs Chambers Westgarth GPO Box 9925 Sydney NSW 2001
Australia

You should be aware that, if you do not want to be part of the class action and you do not opt out by 22 May 2020, you may not be given an opportunity to opt out at a later date, unless the Court allows you to do so.

Justice D Hammerschlag

Signed

Date

Annexure A – Opt-out Notice

COURT DETAILS

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

TITLE OF PROCEEDINGS

First Plaintiff	Terry Walter Williamson
Second Plaintiff	Helen Therese Williamson

Defendant **Sydney Olympic Park Authority (ABN 68 010 941 405)**

PREPARATION DETAILS

Prepared for

[person opting out of proceedings]

Legal representative

Contact name and telephone

Contact email

OPT OUT NOTICE

_____ (name of group member), registered proprietor of unit _____ (unit number) in Opal Tower as at 24 December 2018, a group member in these representative proceedings, gives notice under section 162 of the *Civil Procedure Act 2005*, that _____ (name of group member) is opting out of the class action.

Date: _____

_____ (signature)

_____ (print name)

_____ (capacity, eg, group member / lawyer for Group member / position in company, if signing on company's behalf)