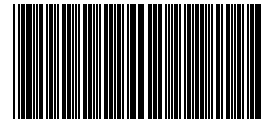




Filed: 26 July 2019 4:15 PM



D00015UXKV

Commercial List Statement

COURT DETAILS

Court	Supreme Court of NSW
Division	Equity
List	Commercial
Registry	Supreme Court Sydney
Case number	2019/00232749

TITLE OF PROCEEDINGS

First Plaintiff	Terry Williamson
First Defendant	SYDNEY OLYMPIC PARK AUTHORITY trading as Sydney Olympic Park Authority ABN 68010941405

FILING DETAILS

Filed for	Terry Williamson, Plaintiff 1
Legal representative	Christopher John Pagent
Legal representative reference	
Telephone	9210 6500
Your reference	9145405

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 Statement (3463-8984-4749-v1 - Commercial List Statement 25 July 2019.pdf)

[attach.]

Form 3A (version 7)
UCPR 6.2

COMMERCIAL LIST STATEMENT

COURT DETAILS

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

TITLE OF PROCEEDINGS

First Plaintiff	Terry Walter Williamson
Second Plaintiff	Helen Therese Williamson
First Defendant	Sydney Olympic Park Authority

FILING DETAILS

Filed for	Terry Walter Williamson and Helen Therese Williamson, Plaintiffs
Legal representative	Chris Pagent, Corrs Chambers Westgarth
Legal representative reference	28450
Contact name and telephone	Chris Pagent (02) 9210 6500
Contact email	chris.pagent@corrs.com.au

TYPE OF CLAIM

Equity – Building dispute

Representative proceeding under Part 10 of the *Civil Procedure Act 2005* (NSW).

These proceedings will be listed for an initial case conference at 9 am Wednesday, 11 September 2019.

A. NATURE OF THE DISPUTE

- 1 The Plaintiffs own, as joint tenants, one of the apartments in Opal Tower, a 36-storey residential building located in Sydney Olympic Park, which was evacuated on 24 December 2018 because of serious building defects. The Defendant is a statutory corporation. It formerly owned the site on which Opal Tower now stands, and it procured the development of the building.
- 2 On their own behalf, and as representatives for persons (other than the Defendant, Ecove or related entities) who owned, as at 24 December 2018, one or more lots in the Opal Tower or the common property, the Plaintiffs sue the Defendant for breaching statutory warranties which, the Plaintiffs contend, arise pursuant to the *Home Building Act 1989* (NSW), and are enforceable by the Plaintiffs and the Group Members against the Defendant.
- 3 The Plaintiffs contend that those warranties were breached because the contractor engaged to design and construct Opal Tower failed to complete the work it was engaged to carry out with due care and skill, in accordance with plans and specifications set out in and varied pursuant to the D&C Contract, in accordance with applicable laws, using materials that were good and suitable for the purpose for which they were used, or such as to yield dwellings that were fit for purpose.
- 4 The Plaintiffs contend that the defects which catalysed the evacuation of the building on 24 December 2018 were caused by those failings, and that Plaintiffs and Group Members have suffered loss and damage, including diminution in the value of their property, as a result.

B. CONTENTIONS

A. Parties and other entities

- 1 The Plaintiffs:
 - (a) are natural persons; and
 - (b) at all material times owned, and continue to own, as joint tenants, Unit 604 in the building known as the "Opal Tower" at 1 Brushbox Street, Sydney Olympic Park NSW 2127 (**Opal Tower**), being Lot 64 in Strata Plan 97315 (**Unit 604**).
- 2 The Defendant, Sydney Olympic Park Authority (**SOPA**):
 - (a) is, and was at all material times, a corporation constituted by section 5 of the *Sydney Olympic Park Authority Act 2001* (NSW) (**SOPA Act**); and
 - (b) is able to be sued.
- 3 Icon Co (NSW) Pty Ltd (ACN 604 790 409) (**Icon**):
 - (a) is, and was at all material times, a company incorporated in Australia; and
 - (b) at all material times after 11 June 2015, held and was required to hold, a contractor licence under the *Home Building Act 1989* (NSW) (**Home Building Act**).

Particulars

Icon currently holds Contractor Licence No. 282954C, commencing 11 June 2015 and expiring on 10 June 2022.

- 4 Australia Avenue Developments Pty Ltd (ACN 104 573 391) (**AAD**):
 - (a) is, and was at all material times, a company incorporated in Australia; and
 - (b) carries on the business of property development.
- 5 Ecove Group Pty Ltd (ACN 065 207 918) (**Ecove**):
 - (a) is, and was at all material times, a company incorporated in Australia;
 - (b) is, and was at all material times, the ultimate holding company of AAD; and
 - (c) carries on the business of property development.

B. Representative Proceedings

- 6 The Plaintiffs bring these proceedings on their own behalf and as a representative proceeding pursuant to Part 10 of the *Civil Procedure Act 2005* (NSW) on behalf of all persons (other than the Defendant, Ecove or its related entities) who, as at

24 December 2018, owned one or more lots in Strata Plan 97315 or the common property (the **Group Members**).

C. Development of Opal Tower

7 Opal Tower stands on land that was previously known as Site 68 Bennelong Parkway, Sydney, being Lots 73 and 75 in DP1134933 (the **Original Site**).

8 At all material times prior to the registration of Strata Plan 97315, SOPA was the registered proprietor of the Original Site.

Particulars

Pursuant to section 7 of the SOPA Act, the land comprising "Sydney Olympic Park" was vested in SOPA in an estate in fee simple.

9 On or around 20 March 2014, SOPA entered into a Project Delivery Agreement with AAD and Ecove (as guarantor for AAD) pursuant to which AAD was required to develop the Original Site, including by designing and constructing Opal Tower as a mixed residential and commercial building (the **PDA**).

10 On or around 29 October 2015, AAD entered into an amended form of AS 4902-2000 Design & Construct Contract with Icon (the **D&C Contract**), pursuant to which AAD engaged Icon to carry out the Works (as defined in the D&C Contract) (**Opal Work**) in accordance with the D&C Contract.

11 Between October 2015 and around August 2018, Icon both directly, and through engaging subcontractors and consultants, purported to carry out the Opal Work.

12 On 23 October 2014, the Plaintiffs entered into an agreement styled "Contract for the Sale of Land" with SOPA and AAD to acquire Unit 604 (**Plaintiffs' Contract of Sale**).

13 On or about 10 August 2018, the Plaintiffs' Contract of Sale completed.

14 On 8 August 2018, a final occupation certificate was issued in respect of Opal Tower.

D. Lease of Unit 604

15 On or around 24 September 2018, the Plaintiffs entered into a written lease with Kabo Matlho, pursuant to which they leased Unit 604 to Kabo Matlho for a term of 12 months, commencing on 24 September 2018, at a rental of \$1,160 per fortnight, on the terms and conditions stated therein (**Unit 604 Lease**)

E. Statutory Warranties

16 At all material times, each residential unit in Opal Tower (**Residential Unit**) was:

- (a) designed for use as a residence; and

- (b) accordingly, a “dwelling” for the purposes of the Home Building Act.

Particulars

Home Building Act, s 3 and Schedule 1, clauses 1(1) and (3)(1).

- 17 Further, each of the following structures at Opal Tower was constructed for use in conjunction with the Residential Units (or any of them):

- (a) stairways, passageways, rooms, common areas and sky gardens, together with any pipes, wires, cables or ducts that were not for the exclusive enjoyment of any one dwelling; and
- (b) all major elements of Opal Tower that give support to the residential part of the building, including, without limitation, the structures referred to in paragraph 56 below,

(together, **Structures**).

- 18 By reason of the matter referred to in paragraph 17 above, each of the Structures was a “dwelling” within the meaning of the Home Building Act.

Particulars

Home Building Act, Schedule 1, clause 3(2).

- 19 By reason of the matters referred to in paragraphs 16 to 18 above:

- (a) the Opal Work was “residential building work” for the purposes of the Home Building Act; and
- (b) the D&C Contract, being a contract to perform the Opal Work, was a contract to do “residential building work” for the purposes of the Home Building Act.

Particulars

Home Building Act, Schedule 1, clause 2(1).

- 20 By reason of the matters referred to in paragraph 19 above, the following warranties by Icon were implied into the D&C Contract:

- (a) a warranty that the Opal Work would be done:
- (i) with due care and skill (**Care and Skill Warranty**); and
- (ii) in accordance with the plans and specifications set out in the D&C Contract, including any variations to them (**Plans and Specifications Warranty**);

- (b) a warranty that the Opal Work would be done in accordance with, and would comply with, all requirements imposed by law (**Legal Compliance Warranty**);
 - (c) a warranty that all materials supplied by Icon would be good and suitable for the purpose for which they were used (**Materials Warranty**); and
 - (d) a warranty that, if the Opal Work consisted of the construction of a dwelling, the work would result in a dwelling that was reasonably fit for occupation as a dwelling (the **Fit for Occupation Warranty**),
- (together, the **Statutory Warranties**).

Particulars

Home Building Act, s 18B(1)(a), (b), (c) and (e); Schedule 2, clause 1.

F. Notional Contracts – SOPA

- 21 At all material times, the residential building work undertaken in the construction of Opal Tower was done in connection with a residential development in which SOPA would own, and as of the date of this Commercial List Statement does own, four or more dwellings.
- 22 By reason of the matters pleaded in paragraph 21 above:
- (a) the Opal Work is deemed to have been done on behalf of SOPA for the purposes of section 3A(1) of the Home Building Act;
 - (b) SOPA is deemed to be a “developer” in relation to that residential building work; and
 - (c) SOPA is deemed to have itself done the residential building work for the purposes of section 18C of the Home Building Act.

Particulars

Home Building Act, ss 3A, 18C.

- 23 The Plaintiffs and those Group Members who acquired or otherwise directly derived title to their lots or the common property in Strata Plan 97315 from SOPA are:
- (a) immediate successors in title to a developer (namely, SOPA) for the purposes of section 18C(1) of the Home Building Act; and
 - (b) therefore entitled to the benefit of the Statutory Warranties from SOPA as if SOPA were required to hold a contractor licence and had done the residential building work to design and construct Opal Tower under a contract with the Plaintiffs and each such Group Member.

Particulars

Home Building Act, s 18C(1).

- 24 The Group Members who did not acquire their lots in Strata Plan 97315 from SOPA are:
- (a) each successors in title to a person entitled to the benefit of the Statutory Warranties from SOPA for the purposes of section 18D(1) of the Home Building Act; and
 - (b) therefore entitled to the same rights as their predecessor in title in respect of the Statutory Warranties.

Particulars

Home Building Act, s 18D(1).

- 25 In the premises, the Plaintiffs and the Group Members are entitled to the benefit of the Statutory Warranties from SOPA as if SOPA were required to hold a contractor licence and had done the residential building work to design and construct Opal Tower under a contract with the Plaintiffs or the relevant Group Member to do that work (the **SOPA Statutory Warranties**).

Particulars

Home Building Act, ss 18C , 18D(1).

G. Legal Compliance Warranty – Building Code of Australia

- 26 Pursuant to the *Environmental Planning and Assessment Act 1979* (NSW) (as relevantly in force) (**EPA**):
- (a) if an environmental planning instrument provided that specified development could not be carried out except with development consent, a person could not carry out the development on land to which the provision applied unless:
 - (i) such a consent had been obtained and was in force; and
 - (ii) the development was carried out in accordance with the consent and the instrument; and

Particulars

EPA, s. 76A.

- (b) an “environmental planning instrument” was defined to mean an environmental planning instrument (including a SEPP) made, or taken to have been made, under Part 3 and in force; and

Particulars

EPA, ss. 4(1) (defined term “environmental planning instrument”).

- (c) a “SEPP” was defined to mean a state environmental planning policy.

Particulars

EPA, ss. 4(1) (defined term “SEPP”) and 24(2).

SEPP Major Development

- 27 The Sydney Olympic Park site, upon which the Original Site is situated, is (and, at all materials times, was) a State significant site within the meaning of the *State Environmental Planning Policy (State Significant Precincts) 2005*, formerly known as, *inter alia*, the *State Environmental Planning Policy (Major Development) 2005* (**SEPP Major Development**).

Particulars

Section 7 and Schedule 3, Part 23, cl. 1 of the SEPP Major Development.

- 28 The Original Site is (and at all materials times was) zoned “Zone B4 Mixed Used” for the purposes of the SEPP Major Development.

Particulars

Schedule 3, Part 23, clause 7 and the Land Zoning Map of the SEPP Major Development.

- 29 The development of the Opal Tower (as set out in the Development Application referred to in paragraphs 38 and 40 below) (**Development**) was not “environmental protection works” or “recreation areas” within the meaning of Schedule 3, Part 23, clause 9(2) of the SEPP Major Development.

- 30 By reason of the matters referred to in paragraphs 27 to 29 above, the Development on the Original Site was permitted with consent.

Particulars

Schedule 3, Part 23, clause 9(3) of the SEPP Major Development.

- 31 Further:

- (a) pursuant the SEPP Major Development, a development, other than a development that was permitted:
- (i) without consent (under Schedule 3, Part 23, clause 9(2) of the SEPP Major Development); or

- (ii) with consent (under Schedule 3, Part 23, clause 9(3) of the SEPP Major Development),

was prohibited on land within that zone;

Particulars

Schedule 3, Part 23, clause 15 of the SEPP Major Development.

- (b) by reason of the matter referred to in paragraph 30 above and the matter referred to in subparagraph (a) above, the Development was prohibited on the Original Site without consent.

SEPP (SRD)

32 Pursuant to the *State Environmental Planning Policy (State and Regional Development) 2011 (SEPP (SRD))* a development was declared to be a State significant development for the purposes of the EPA Act if:

- (a) the development on the land concerned was, by operation of an environmental planning instrument, not permissible without development consent under Part 4 of the Act; and
- (b) the development was specified in Schedule 1 or 2 of the SEPP (SRD).

Particulars

Clause 8(1) of the SEPP (SRD).

33 Pursuant to Schedule 2 of the SEPP SRD, State significant developments included developments:

- (a) that had a capital investment value or more than \$10 million; and
- (b) on land identified as being within the Sydney Olympic Park Site (as set out in the State Significant Sites Map).

Particulars

Clause 2(f) of Schedule 2 of the SEPP (SRD).

34 As a matter of fact:

- (a) the Original Site was within the Sydney Olympic Park Site; and
- (b) the Development had a capital investment value of approximately \$130,241,000, being a value more than \$10 million.

35 By reason of the matters referred to in:

- (a) paragraph 31 above (the Development required consent under Part 4 of the EPA Act); and

- (b) paragraph 34 above (the Development was a development specified in Schedule 2 of the SEPP (SRD)),

the Development was a State significant development.

Conditions may be imposed by the Minister

36 Pursuant to the EPA Act:

- (a) the Minister was the consent authority for any State significant development;

Particulars

Section 89D of the EPA Act.

- (b) the Minister was to determine a development application in respect of any State significant development by granting consent to the application with such modifications of the proposed development or on such conditions as the Minister might determine (or otherwise refuse consent to the application); and

Particulars

Section 89E(11) of the EPA Act.

- (c) the Minister was permitted to delegate any of the Minister's functions conferred or imposed by under the EPA Act to certain persons and entities.

Particulars

Section 23(1) of the EPA Act.

Conditions imposed by the EPA Regulation

37 Further to the matters referred to in paragraph 36 above, a development consent was subject to such conditions as may be prescribed by the regulations, including, that the building work must be carried out in accordance with the Building Code of Australia.

Particulars

- A. Section 80A(11) of the EPA Act.
- B. Section 4 of the EPA Act (defined terms "building" and "building work").
- C. Clause 136A(1) of the *Environmental Planning and Assessment Regulation 2000* (NSW) as relevantly in force (**EPA Regulation**).

Development Consent for the Development

38 Development application no. SSD 6603 for the Development was submitted by Ecove to the Minister for Planning on or about 5 November 2014 (**Development Application**).

- 39 The Acting Executive Director of Infrastructure and Industry Assessment, under delegation dated 16 February 2015, granted consent to the Development Application in a development consent dated 18 June 2015 (**Development Consent**).
- 40 On or about August 2015, an application to modify the Development Consent under s. 96 was submitted by Ecove to the Minister (**Modification**).
- 41 On or about 15 December 2015, Acting Executive Director of Key Sites and Industry Assessments, under delegation dated 16 February 2015, approved the Modification to the Development Consent (**Modified Consent**).
- 42 The Development Consent was:
- (a) expressly subject to the conditions in Schedule 2 of the Development Consent;
 - (b) by reason of the matter referred to in paragraph 37 above, given on the condition that the Opal Work comprising building work would be carried out in accordance with the Building Code of Australia.
- 43 Schedule 2 of the Development Consent included the following condition (among others):
- “A4. All aspects of the building design shall comply with the applicable performance requirements of the Building Code of Australia so as to achieve and maintain acceptable standards of structural sufficiency, safety (including fire safety), health and amenity for the ongoing benefit of the community. Compliance with the performance requirements can only be achieved by:
- (a) complying with the deemed to satisfy provisions; or
 - (b) formulating an alternative solution which:
 - i) complies with the performance requirements; or
 - ii) is shown to be at least equivalent to the deemed to satisfy provision, or
 - iii) a combination of a) and b)”.
- 44 The condition referred to in paragraph 43 above was not amended by the Modified Consent.
- 45 By reason of the matters referred to in:
- (a) paragraph 26 (Development required to be carried out in accordance with conditions); and
 - (b) paragraphs 42 and 44 above (compliance with the Building Code of Australia),

the Opal Work was required, by law, to be designed and constructed in accordance with the National Construction Code of Australia as then in force (**NCC**).

Particulars

Clause 136A(4) of the EPA Regulation.

- 46 By reason of the matters referred to in paragraph 45 above, the Legal Compliance Warranty included a warranty that the Opal Work would be designed and constructed in accordance with the NCC.

NCC

- 47 Under the NCC:

- (a) a building solution will comply with the BCA if it satisfies the Performance Requirements;

Particulars

NCC, Section A0.4.

- (b) compliance with the Performance Requirements can only be achieved by:
- (i) complying with the Deemed-to-Satisfy Provisions; or
 - (ii) formulating an Alternative Solution which –
 - 1. complies with the Performance Requirements; or
 - 2. is shown to be at least equivalent to the Deemed-to-Satisfy Provisions; or
 - 3. a combination of both;

Particulars

NCC, Section A0.5.

- (c) in relation to the structure of a building:
- (i) the Performance Requirements state that a building or structure, during construction and use, with appropriate degrees of reliability, must:
 - 1. perform adequately under all reasonably expected design actions; and
 - 2. withstand extreme or frequently repeated design actions; and
 - 3. be designed to sustain local damage, with the structural system as a whole remaining stable and not being damaged to an extent disproportionate to the original local damage; and

4. avoid causing damage to other properties,
by resisting the actions to which it may reasonably expect to be subjected.

Particulars

NCC, Part B, sections BP1.1 and BP 1.2.

- (ii) where a building is proposed to comply with the Deemed-to-Satisfy Provisions:

1. the Performance Requirements in (relevantly) BP.1.1 and BP.1.2 are satisfied by complying with (among other things) B.1.4 of Part B1;

Particulars

Part B1, Section B1.0(a).

2. B.1.4 of Part B1 provides that the structural resistance and forms of construction must be determined in accordance with Australian Standard AS3600–2009 in relation to concrete construction (including reinforced and prestressed concrete).

48 By reason of the matters referred to in paragraph 46 above, the Legal Compliance Warranty included a warranty that the concrete construction comprising the Opal Work would be constructed:

- (a) in accordance with AS3600;
- (b) alternatively, according to an Alternative Solution is shown to be at least equivalent to the AS3600;
- (c) alternatively, a combination of (i) and (ii) above.

AS3600:2009

49 AS3600:2009 requires, among other things, that:

- (a) concrete structures shall be designed for ultimate strength and serviceability limit states in accordance with the general principles and procedures for design as set out in AS/NZS 1170.0 and the specific requirements of Clauses 2.2 and 2.3;

Particulars

AS3600:2009, CI 2.1.1

- (b) the strength check procedure for use in conjunction with:
- (i) linear elastic methods of analysis of indeterminate structures and members;
 - (ii) simplified methods of analysis of indeterminate structures and members; and
 - (iii) static analysis of determinate structures,
- shall be carried out as follows:
- (iv) it shall be confirmed that the design capacity is equal to or greater than the design action effect, for all critical cross-sections and regions;

Particulars

AS3600:2009, Cl 2.2.1.

H. Plans and Specifications Warranty – FC Drawings

50 Under the D&C Contract:

- (a) all plans and specifications for the Opal Work, including any variations to those plans and specifications, were taken to form part of (and, therefore, taken to be “set out in”) the D&C Contract;

Particulars

- A. The term is implied into the D&C Contract by law.
- B. Home Building Act, s. 7E(1) (Terms of contracts) and Schedule 2, cl. 1(1).

- (b) the D&C Contract contained plans and specifications (**Preliminary Plans and Specifications**); and

Particulars

The Preliminary Plans and Specifications were contained in the Principal’s project requirements (Annexure Part R).

- (c) as part of the Opal Work, Icon was required to develop the Preliminary Plans and Specifications (and, in doing so, vary them).

Particulars

D&C Contract, General Conditions, cl. 2.2(a)(iii), 2.2(a)(iv), 8.3 and 8.4.

51 Icon in fact developed the Preliminary Plans and Specifications (and, therefore, varied them) pursuant to the term referred to in paragraph 50(c) above (**FC (For Construction) Drawings**).

Particulars

The FC Drawings include the plans and specification in Schedule 1.

- 52 By reason of the matters referred to in paragraphs 50 to 51 above, the FC Drawings were “plans and specifications set out in the contract” within the meaning of s 18B(1)(a) of the Home Building Act (either because they were “plans and specifications for the Opal Work” or because they were variations to “plans and specifications for the Opal Work”).
- 53 By reason of the matters referred to in paragraph 52 above, the Plans and Specification Warranty included a warranty that Opal Work would be constructed in accordance with the FC Drawings.
- 54 Among other things, the FC Drawings required material and workmanship for the Opal Work to be in accordance with “SAA Codes”, “Building Regulations” and “the requirements of any other relevant statutory authorities”.

Particulars

FC Drawing S.00.003 General Notes Sheet.

- 55 By reason of the matters referred to in paragraph 54 above, the material and workmanship for the Opal Work was required to be in accordance with NCC, (being a Building Regulation) and AS3600:2009 (being an AAS Code).

I. Defects in the Design and Construction of Opal Tower

Opal Tower – Structural features

- 56 Opal Tower, as designed and constructed, possessed the following structural features:
- (a) the building was a reinforced concrete structure with post-tensioned concrete floor slabs (**Slabs**);
 - (b) “inset slots” located on each external face of the building, with the walls of those slot sections (**Slot Walls**):
 - (i) constructed from precast reinforced concrete panels and other in-situ elements; and
 - (ii) acting as columns transmitting vertical loads to the individual supporting columns beneath each Slot Wall, (**Columns**); and
 - (c) supporting columns below each Slot Wall, which were connected to the Slot Wall by horizontal, load-bearing “hob beams” (**Hob Beams**),
- (together, the **System**).

Particulars

The System comprises:

- (i) Slot Wall 1 which is shown on FC Drawing S06.001 A and also shown as:
 - 1. Column C2 between levels 4 and 10 and levels 16 and 26 on FC Drawing S04.001 H and S04.002 H; and
 - 2. Column C22 between levels 4 and 10 and levels 16 and 26 on FC Drawings S04.003 H and S04.004 I.
- (ii) Slot Wall 4 which is shown on FC Drawing S06.002 A and also shown as:
 - 1. Column C7 between levels 10 and 16 on FC Drawing S04.001 H; and
 - 2. Column C26 between levels 10 and 16 on FC Drawing S04.005 H.
- (iii) Slot Wall 5 which is shown on FC Drawing S06.003 A and also shown as:
 - 1. Column C9 between levels 16 and 26 on FC Drawings S04.001 H and S04.002 H; and
 - 2. Column C40 between levels 16 and 26 on FC Drawings S04.007 H and S04.008 I.
- (iv) Slot Wall 8 which is shown on FC Drawing S06.003 A and also shown as
 - 1. Column C14 between levels 10 and 16 on FC Drawings S04.003 H; and
 - 2. Column C32 between levels 10 and 16 on FC Drawing S04.005.
- (v) Slot Wall 9 which is shown on drawing S06.004 A and also shown as:
 - 1. Column C16 between levels 4 and 10 and levels 16 and 26 on FC Drawing S04.003 H and S04.004 I; and
 - 2. Column C34 between levels 4 and 10 and levels 16 and 26 on FC Drawings S04.005 H and S04.006 H.
- (vi) Slot Wall 12 which is shown on drawing S06.005 A and also shown as:
 - 1. Column C21 between levels 10 and 16 on FC Drawing S04.003 H;
 - 2. Column C38 between levels 10 and 16 on FC Drawing S04.007 H.

57 The System in whole or in part:

- (a) was not designed or constructed:
 - (i) to the capacity required by clauses 2.1.1 and 2.2.1 of AS3600:2009 having regard to the actual loads to which the System in whole or in part was subjected or likely to be subjected; and

- (ii) to the capacity required by clauses 2.1.1 and 2.2.1 of AS3600:2009 having regard to the design loads for the System in whole or in part determined under AS1170.1:2002;
- (b) was not otherwise constructed in accordance with the FC Drawings in that:
- (i) joints between the Hob Beams and each of the Slot Walls 1, 4, 5, 8, 9 and 12 were not grouted to full width in accordance with detail 1 shown on FC Drawing S06.010 E;
 - (ii) part of a Hob Beam at level 10 immediately above Columns C16 and C34 was not constructed using the top reinforcement specified in FC Drawing S09.220 C;
 - (iii) part a Hob Beam at level 10 immediately above Columns C2 and C34 was not constructed using the top reinforcement specified in drawing S09.220 C;
 - (iv) part of Slot Wall 12 at level 10 (as shown on FC Drawing S.06.001 A) was not constructed using the bottom horizontal reinforcement as shown on FC Drawing S06.011 C; and
 - (v) each of the Slot Walls 1, 4, 5, 8, 9 and 12 were manufactured to be at least 20 mm thicker than the width specified in the FC Drawings; and
- (c) was designed or constructed such that:
- (i) an electrical conduit was placed in the zone of concrete covering the area immediately above Column C38; and
 - (ii) a dowel bar used to connect the reinforced and precast concrete elements between the Hob Beam on Level 10 was cut during construction,

(together, **System Defects**).

58 Further and in the alternative to the matter referred to in paragraph 57 above:

- (a) the concrete supplied and used by Icon to construct the System:
- (i) was less than the strength specified in the FC Drawings (65 MPa); and
 - (ii) by reason of the matter referred to in subparagraph (i) above, not concrete that was good and / or suitable for the purpose for which the concrete was being used; and

- (b) further or in the alternative to the matter referred to in subparagraph (a) above, the FC Drawings did not identify, or did not adequately identify, the required strength of the concrete to be supplied and used by Icon to construct the System, (together, **Strength Defects**).

Observed damage

59 On 24 December 2018:

- (a) residents of Opal Tower reported hearing loud cracking noises within Opal Tower;
- (b) cracks were visually identified in a Column on Level 10 of Opal Tower; and
- (c) all of the residents of Opal Tower were evacuated by emergency services.

60 Following the evacuation of Opal Tower on 24 December 2018, physical damage to Opal Tower was identified to the Slot Walls, Columns, Beams and Slabs as follows:

(a) at level 4:

- (i) spalling and cracking of Hob Beam and precast concrete panels which comprise Slot Wall 1 (that is, Columns C2 and C22);
- (ii) spalling and cracking of Hob Beam and precast concrete panels which comprise Slot Wall 9 (that is, Columns C16 and C34); and
- (iii) cracking the slab in the vicinity of Slot Walls 1 and 9 on level 4;

(b) at level 10:

- (i) spalling and cracking of Hob Beam and precast concrete panels which comprise Slot Wall 12 (that is, Columns C21 and C38); and
- (ii) permanent vertical displacement, deformation and cracking of the Slab in the vicinity of Slot Wall 12 at level 10; and

(c) at level 16:

- (i) cracking of precast concrete panels which comprise Slot Wall 1 (that is, Columns C2 and C22);
- (ii) cracking of precast concrete panels which comprise Slot Wall 5 (that is, Columns C9 and C40); and
- (iii) cracking of precast concrete panels which comprise Slot Wall 9 (that is, Columns C16 and C34),

(the **Observed Damage**).

61 The System Defects, further or in the alternative, the Strength Defects (or any of System Defects and Strength Defects) caused damage to Opal Tower, including the Observed Damage.

J. Breach of SOPA Statutory Warranties

62 By reason of the matters referred to in subparagraphs 57(a), 57(b), 57(c) and 58(b) (or any of them), SOPA breached the Due Care and Skill Warranty.

63 By reason of the matters referred to in subparagraphs 57(a), 57(b) and 58(a) (or any of them), SOPA breached the Plans and Specifications Warranty.

64 By reason of the matters referred to in subparagraph 57(a) SOPA breached the Legal Compliance Warranty.

65 By reason of the matters referred to in subparagraph 58(a), SOPA breached the Materials Warranty.

66 Furthermore, by reason of the System Defects, further or in the alternative, the Strength Defects (or any of System Defects and Strength Defects), Opal Tower or, alternatively, parts of Opal Tower including Unit 903, were not reasonably fit for occupation in breach of the Fit for Occupation Warranty.

67 By reason of the matters referred to in paragraphs 62 to 66 above (or any of them), SOPA breached one or more of the SOPA Statutory Warranties.

K. Loss and damage

68 Following the evacuation of Opal Tower on 24 December 2018:

- (a) Icon immediately took occupation of Unit 604;
- (b) Icon has continuously and exclusively occupied Unit 604 since;
- (c) Kabo Matlho terminated the Unit 604 Lease; and
- (d) the Plaintiffs have been unable to let Unit 604 on equivalent terms to the terms of the Unit 604 Lease or at all.

69 The Plaintiffs and the Group Members have each suffered loss and damage by reason of SOPA's breach or breaches of the SOPA Statutory Warranties.

Particulars

The Plaintiffs' loss and damage includes:

- A. the cost of rectifying Unit 604 to the extent such rectification costs are borne by each of the Plaintiffs, including strata fees payable by the Plaintiffs to fund rectification costs;
- B. the diminution in the value of Unit 604 resulting from the System Defects, further or in the alternative, the Strength Defects (or any of System Defects and Strength Defects);
- C. out of pocket expenses incurred by each of the Plaintiffs during the period they were unable to access Unit 604 and as a result of that lack of access;
- D. loss of rental income under the Unit 604 Lease;
- E. loss of rental income under any future lease;
- F. strata fees paid or payable by the Plaintiffs to fund increased insurance premiums, legal and other professional costs incurred by the The Owners - Strata Plan No. 97315 as a result of the System Defects, further or in the alternative, the Strength Defects (or any of System Defects and Strength Defects);
- G. out of pocket expenses and professional costs incurred by the Plaintiffs in defending proceedings commenced by the tenant of Unit 604, Kabo Matlho, in the NSW Civil and Administrative Tribunal; and
- H. damages for inconvenience, stress and vexation.

Further particulars of the Plaintiffs' losses may be provided after the service of evidence in chief.

The Group Members' loss and damage includes:

- I. the cost of rectifying their Residential Units to the extent such rectification costs are borne by them;
- J. the diminution in the value of their Residential Units resulting from the System Defects, further or in the alternative, the Strength Defects (or any of System Defects and Strength Defects);
- K. out of pocket expenses incurred by them during the period they are unable to access their Residential Units and as a result of that lack of access;
- L. loss of rental income;
- M. loss of rental income under any future lease;
- N. strata fees to paid or payable by the Group Members' to fund increased insurance premiums, legal and other professional costs incurred by The Owners - Strata Plan No. 97315 as a result of the System Defects, further or in

the alternative, the Strength Defects (or any of System Defects and Strength Defects;

- O. damages for inconvenience, stress and vexation; and
- P. in the case of the The Owners - Strata Plan No. 97315, the costs of rectifying the common property to the extent that such rectification costs are borne by it, and any increased insurance premiums, legal and other professional costs incurred by it as a result of the System Defects, further or in the alternative, the Strength Defects (or any of System Defects and Strength Defects).

70 The Plaintiffs, on their own behalf and on behalf of other Group Members, claim:

- (a) damages;
- (b) interest in accordance with s 100 of the *Civil Procedure Act 2005* (NSW);
- (c) costs; and
- (d) interest on costs.

SCHEDULE 1 – For Construction Drawings (FC Drawings)

Drawing Number	Title
S00.003 A	General Notes Sheet
S04.001 H	Column Schedule Sheet 01
S04.002 H	Column Schedule Sheet 02
S04.003 H	Column Schedule Sheet 03
S04.004 I	Column Schedule Sheet 04
S04.005 H	Column Schedule Sheet 05
S04.006 H	Column Schedule Sheet 06
S04.007 H	Column Schedule Sheet 07
S04.008 I	Column Schedule Sheet 08
S06.001 A	Precast Wall Elevation Sheet 01
S06.002 A	Precast Wall Elevation Sheet 02
S06.003 A	Precast Wall Elevation Sheet 03
S06.004 A	Precast Wall Elevation Sheet 04
S06.005 A	Precast Wall Elevation Sheet 05
S06.010 A	Typical Precast Wall Details Sheet 01
S06.011 C	Typical Precast Wall Details Sheet 02
S09.220 C	Level 04 General Arrangement Plan

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 claim for damages in these proceedings has reasonable prospects of success.

I have advised the plaintiffs that court fees may be payable during these proceedings. These fees may include a hearing allocation fee.

Signature



Capacity

Christopher John Pagent

Date of signature

25.7.19

NOTICE TO DEFENDANT

If you do not file a defence within 28 days of being served with this statement of claim:

- **You will be in default in these proceedings.**
- **The court may enter judgment against you without any further notice to you.**

The judgment may be for the relief claimed in the statement of claim and for the plaintiffs' costs of bringing these proceedings. The court may provide third parties with details of any default judgment entered against you.

HOW TO RESPOND

Please read this statement of claim very carefully. If you have any trouble understanding it or require assistance on how to respond to the claim you should get legal advice as soon as possible.

You can get further information about what you need to do to respond to the claim from:

- A legal practitioner.
- LawAccess NSW on 1300 888 529 or at www.lawaccess.nsw.gov.au.
- The court registry for limited procedural information.

You can respond in one of the following ways:

- 1 If you intend to dispute the claim or part of the claim, by filing a defence and/or making a cross-claim.**
- 2 If money is claimed, and you believe you owe the money claimed, by:**

- Paying the plaintiff all of the money and interest claimed. If you file a notice of payment under UCPR 6.17 further proceedings against you will be stayed unless the court otherwise orders.
- Filing an acknowledgement of the claim.
- Applying to the court for further time to pay the claim.

3 If money is claimed, and you believe you owe part of the money claimed, by:

- Paying the plaintiff that part of the money that is claimed.
- Filing a defence in relation to the part that you do not believe is owed.

Court forms are available on the UCPR website at www.ucprforms.justice.nsw.gov.au or at any NSW court registry.

REGISTRY ADDRESS

Street address	Supreme Court of New South Wales Law Courts Building 84 Phillip Street Sydney NSW 2000
Postal address	Supreme Court of New South Wales GPO Box 3 Sydney NSW 2001
Telephone	1300 679 272

AFFIDAVIT VERIFYING

Name Terry Walter Williamson
 Address [REDACTED]
 Occupation Company director
 Date 25 July 2019

I say on oath:

- 1 I am the First Plaintiff.
- 2 I believe that the allegations of fact in the statement of claim are true.

SWORN

Signature of deponent

Terry Williamson

Name of witness

VANESSA LAURE MCGLYNN

Address of witness

8 Chifley, 8-12 Chifley Square, Sydney NSW 2000

Capacity of witness

Solicitor

And as a witness, I certify the following matters concerning the person who made this affidavit (the **deponent**):

- 1 I saw the face of the deponent.
- 2 I have confirmed the deponent's identity using the following identification document:

NSW Driver Licence [REDACTED]

Identification document relied on (may be original or certified copy) †

Signature of witness

[Signature]

Note: The deponent and witness must sign each page of the affidavit. See UCPR 35.7B.

[* The only "special justification" for not removing a face covering is a legitimate medical reason (at April 2012).]

[† "Identification documents" include current driver licence, proof of age card, Medicare card, credit card, Centrelink pension card, Veterans Affairs entitlement card, student identity card, citizenship certificate, birth certificate, passport or see Oaths Regulation 2011.]

AFFIDAVIT VERIFYING

Name Helen Therese Williamson
 Address [REDACTED]
 Occupation Theologian
 Date 25 July 2019

I say on oath:

- 1 I am the Second Plaintiff.
- 2 I believe that the allegations of fact in the statement of claim are true.

SWORN at

Signature of deponent

H Williamson

Name of witness

VANESSA LAURE MCGLYNN

Address of witness

8 Chifley, 8-12 Chifley Square, Sydney NSW 2000

Capacity of witness

Solicitor

And as a witness, I certify the following matters concerning the person who made this affidavit (the **deponent**):

- 1 I saw the face of the deponent.
- 2 I have confirmed the deponent's identity using the following identification document:

NSW Driver Licence No. [REDACTED]

Identification document relied on (may be original or certified copy) †

Signature of witness

[Signature]

Note: The deponent and witness must sign each page of the affidavit. See UCPR 35.7B.

[* The only "special justification" for not removing a face covering is a legitimate medical reason (at April 2012).]

[† "Identification documents" include current driver licence, proof of age card, Medicare card, credit card, Centrelink pension card, Veterans Affairs entitlement card, student identity card, citizenship certificate, birth certificate, passport or see Oaths Regulation 2011.]

FURTHER DETAILS ABOUT PLAINTIFFS**First Plaintiff**

Name Terry Walter Williamson
 Address C/- Corrs Chambers Westgarth
 Level 9, 8 Chifley, 8-12 Chifley Square, Sydney NSW
 2000

Second Plaintiff

Name Helen Therese Williamson
 Address C/- Corrs Chambers Westgarth
 Level 9, 8 Chifley, 8-12 Chifley Square, Sydney NSW
 2000

Legal representative for Plaintiffs

Name Chris Pagent
 Practising certificate number 28450
 Firm Corrs Chambers Westgarth
 Address Level 9
 8 Chifley
 8-12 Chifley Square
 Sydney NSW 2000
 Telephone (02) 9210 6162
 Fax (02) 9210 6611
 Email chris.pagent@corrs.com.au
 Electronic service address chris.pagent@corrs.com.au

DETAILS ABOUT DEFENDANT**Defendant**

Name Sydney Olympic Park Authority
 Address Level 8
 5 Olympic Boulevard
 Sydney Olympic Park NSW 2127