

## **AMENDED SUMMONS**

### **COURT DETAILS**

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

### **TITLE OF PROCEEDINGS**

First Plaintiff	<b>Terry Walter Williamson</b>
Second Plaintiff	<b>Helen Therese Williamson</b>
<u>First Defendant</u>	<b>Sydney Olympic Park Authority</b>
<u>No of Defendants</u>	<b><u>3</u></b>

### **FILING DETAILS**

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

### **HEARING DETAILS**

This summons is listed for an initial case conference at 9 am Wednesday, 11 September 2019.

### **TYPE OF CLAIM**

Equity – Building dispute

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

### **REPRESENTATIVE ACTION**

- 1 The Plaintiffs brings this proceeding on their own behalf and as a representative proceeding pursuant to Part 10 of the *Civil Procedure Act 2005* (NSW).
- 2 The Group Members in this proceeding are all persons (other than the Defendants, Ecovie Group Pty Ltd or its related entities) who, at 24 December 2018, owned one or more lots in Strata Plan 97315 or the common property.

**COMMON QUESTIONS**

- 1 Whether the Statutory Warranties are implied into the D&C Contract between AAD and Icon?
- 2 If so, whether the Group Members are entitled to the same rights, as against SOPA, that AAD, as a party to the D&C Contract, has against Icon, in respect of the Statutory Warranties?
- 3 ~~Whether~~ What was the design and construction of the Opal Tower, as designed and constructed, had the System?
- 4 Whether Opal Tower, as designed and constructed, had the FC System Defects and / or the Strength Defects?
- 5 Whether the Observed Damage occurred?
- 6 Whether the FC System Defects and / or the Strength Defects caused damage to Opal Tower, including the Observed Damage?
- 7 Whether the Opal Work was carried out with due care and skill?
- 8 Whether the Opal Work was carried out in accordance with the plans and specifications set out in the D&C Contract?
- 9 Whether the Legal Compliance Warranty obliged compliance with AS3600:2009?
- 10 If so, whether the Opal Work was carried out in accordance with AS3600:2009?
- 11 Whether the Legal Compliance Warranty obliged compliance with the NCC?
- 12 If so, whether the Opal Work was carried out in accordance with the NCC?
- 13 Whether the materials supplied by Icon for the Opal Work were good and suitable for the purpose for which they were used?
- 14 Whether the Opal Work resulted in dwellings for Group Members that were reasonably fit for occupation as dwellings?

- 15 Whether Icon owed a duty of care to the Group Members to design and construct the Opal Tower (including the issuing of certificates) with reasonable care pursuant to s. 37(1) of the D&BP Act?
- 16 If Icon did owe a duty of care referred to in paragraph 15 above, whether it breached that duty of care?
- 17 Whether WSP owed a duty of care to the Group Members to design the Opal Tower (including the issue of certificates) with reasonable care pursuant to s. 37(1) of the D&BP Act?
- 18 If WSP did owe a duty of care referred to in paragraph 17 above, whether it breached that duty of care?
- 19 Whether Icon engaged in misleading or deceptive conduct in contravention of s. 18 of the ACL?
- 20 Whether Icon made a false or misleading representation that the Opal Work was of a particular standard, quality or grade in contravention of s. 29(1)(b) of the ACL?
- 21 If Icon did:
- a. engage in misleading or deceptive conduct in contravention of s. 18 of the ACL;
  - b. further or in the alternative, did make a representation of the kind referred to in paragraph 20 above.
- whether the Group Members suffered loss and damage because of that contravention (or those contraventions) such that they are entitled to recover the amount of the loss and damage pursuant to s. 236 of the ACL from Icon?
- 22 Whether WSP engaged in misleading or deceptive conduct in contravention of s. 18 of the ACL?

23 Whether WSP made a false or misleading representation that the Opal Work, further or in the alternative, the Opal Work – Design was of a particular standard, quality or grade in contravention of s. 29(1)(b) of the ACL?

24 If WSP did:

a. engage in misleading or deceptive conduct in contravention of s. 18 of the ACL;

b. further or in the alternative, did make a representation of the kind referred to in paragraph 23 above,

whether the Group Members suffered loss and damage because of that contravention (or those contraventions) such that they are entitled to recover the amount of the loss and damage pursuant to s. 236 of the ACL from WSP?

**RELIEF CLAIMED**

On the grounds set out in the Commercial List Statement, the Plaintiffs claim, on their own behalf, and on behalf of the Group Members:

- 1 Damages including damages for solatium.
- 1A Damages pursuant to s 236 of the ACL.
- 1B Pursuant to s 177(1)(f) of the *Civil Procedure Act 2005 (NSW)*, an award of damages in an aggregate amount.
- 2 Interest in accordance with s 100 of the *Civil Procedure Act 2005 (NSW)*.
- 3 Costs.
- 4 Interest on costs.
- 5 Such further or other orders as the Court deems fit.

### 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

Solicitor on the record

Date of signature

5 May 2021

### NOTICE TO DEFENDANT

If your solicitor, barrister or you do not attend the hearing, the court may give judgment or make orders against you in your absence. The judgment may be for the relief claimed in the summons and for the Plaintiffs' costs of bringing these proceedings.

Before you can appear before the court you must file at the court an appearance in the approved form.

### HOW TO RESPOND

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

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

- A legal practitioner.
- LawAccess NSW on 1300 888 529 or at [www.lawaccess.nsw.gov.au](http://www.lawaccess.nsw.gov.au).
- The court registry for limited procedural information.

Court forms are available on the UCPR website at [www.ucprforms.justice.nsw.gov.au](http://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

**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	Christopher John Pagent		
Practising certificate number	28450		
Firm	Corrs Chambers Westgarth		
Contact solicitor	Vanessa McGlynn		
Address	Level 9	8 Chifley	
	8-12	Chifley	Square
	Sydney	NSW	2000
Telephone	(02) 9210 6500		
Fax	(02) 9210 6611		
Email	<a href="mailto:chris.pagent@corrs.com.au">chris.pagent@corrs.com.au</a> ; <a href="mailto:vanessa.mcglynn@corrs.com.au">vanessa.mcglynn@corrs.com.au</a>		

**DETAILS ABOUT DEFENDANTS****First Defendant**

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

**Second Defendant**

Name Icon Co (NSW) Pty Ltd (ACN 604 790 409)  
Address Level 23 Rialto Towers  
525 Collins Street  
Melbourne VIC 3001

**Third Defendant**

Name WSP Structures Pty Ltd (ABN 78 006 769 339)  
Address Level 27  
680 George Street  
Sydney NSW 2000