

SUMMONS

COURT DETAILS

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

TITLE OF PROCEEDINGS

Plaintiff	BMC Super Holdings No.3 Pty Ltd (ACN 609 901 617)
First defendant	Mariners FC Developments Pty Ltd (ACN 141 144 158)
Second Defendant	North Construction & Buildings Pty Ltd (ACN 147 507 702)

FILING DETAILS

Filed for	BMC Super Holdings No.3 Pty Ltd, Plaintiff
Legal representative	Brendan Hoffman, Bradbury Legal
Legal representative reference	190762
Contact name and telephone	Brendan Hoffman, (02) 9030 7400

HEARING DETAILS

This summons is listed at

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 on 17 August 2022.

RELIEF CLAIMED

- 1 The Plaintiff, on its own behalf and on behalf of the other Group Members, claims:
 - a. Damages
 - b. Damages pursuant to s.236 of the Australian Consumer Law, Schedule 2 of the *Competition and Consumer Act 2010* (Cth)
 - c. Interest in accordance with s100 of the *Civil Procedure Act 2005* (NSW)
 - d. Costs;
 - e. Interest on Costs; and
 - f. Such other order as the Court considers appropriate.

REPRESENTATIVE PROCEEDINGS

Group Members

- 1 The Plaintiff brings this proceeding on its own behalf and as a representative proceeding pursuant to Part 10 of the Civil Procedure Act 2005 (NSW).
- 2 The Group Members to whom this proceeding relates are those persons referred to in paragraph 5 of the Contentions in the Commercial List Statement (**CLS**), being persons who or which:
 - a. (other than the Defendants and/or their related entities) as at 30 June 2022, owned one or more lots in Stata Plan 93145 or the Common Property (the **Group Members**).

Nature of the Claims and Relief Sought

- 3 The nature of the claims made by the Plaintiff on its own behalf and on behalf of the Group Members is set out in the CLS
- 4 The relief sought by the Plaintiff on its own behalf and on behalf of the Group Members is set out above.

COMMON QUESTIONS OF LAW AND FACT

- 1 Whether North Construction installed a defective air conditioning system at the building located at 1 Bryant Drive Tuggerah, NSW (the **Building**).
- 2 Whether North Construction installed defective cladding in the Building.
- 3 Whether North Construction installed defective spandrels or spandrels that were not fit for purpose in the Building.
- 4 Whether the Building had a sufficient number of Power Factor Correction Units installed throughout the Building.

Statutory Duty of Care

- 5 Whether North Construction and/or Mariners FC owed a statutory duty of care to the Group Members pursuant to the *Design and Building Practitioners Act 2020* (NSW).
- 6 If so, did North Construction and/or Mariners FC breach that statutory duty of care?
- 7 Whether the defects to the Building arose by reason of North Construction and/or Mariners FC Breach of that statutory duty of care.

Breach of Contract

- 8 Whether there was an express or implied contractual term in the Sale of Land contracts entered into by each of the Group Members that required Mariners FC to provide a Building with an air conditioning system, cladding, spandrels and FCUs that were fit for purpose and free from defects.
- 9 If so, did Mariners FC breach that/those terms?
- 10 Whether there was an express or implied contractual term in the Sale of Land contracts entered into by each of the Group Members that required Mariners FC to provide a Building that complied with construction requirements, development consent and the Building Code of Australia.
- 11 If so, did Mariners FC breach that term?

Misleading & Deceptive Conduct

- 12 Whether Mariners FC made representations that the air conditioning, cladding, spandrels and FCUs were free from defects and fit for purpose and installed correctly.

13 If so, whether, contrary to those representations, the air conditioning, cladding, spandrels and FCUs were not fit for purpose and/or not free from defects and/or not installed correctly.

14 Whether those representations were made in trade or commerce.

15 Whether those representations were made in contravention of section 18 of the Australia Consumer Law.

Loss and Damage

16 What rectification works must be conducted to render the Building free from the defects claimed?

17 What is the cost of rectifying the defects in the Building?

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 plaintiff[s] that court fees may be payable during these proceedings. These fees may include a hearing allocation fee.

Signature



Capacity

Solicitor in the employ of the Solicitor on Record

Date of signature

29 June 2022

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 plaintiff's 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.
- The court registry for limited procedural information.

Court forms are available on the UCPR website at www.ucprforms.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

[on separate page]

PARTY DETAILS**PARTIES TO THE PROCEEDINGS****Plaintiff**BMC SUPER HOLDINGS NO.3 PTY
LIMITED, plaintiff**Defendants**MARINERS FC DEVELOPMENTS PTY LTD,
first defendantNORTH CONSTRUCTION & BUILDING PTY
LTD, second defendant**FURTHER DETAILS ABOUT PLAINTIFF[S]****Plaintiff**

Name	BMC SUPER HOLDINGS NO.3 PTY LIMITED		
Address	LEVEL 3		
	130	PARRY	STREET
	NEWCASTLE WEST	NSW	2302

Legal representative for plaintiff

Name	Brendan Hoffman
Practising certificate number	29984
Firm	Bradbury Legal
Contact solicitor	Brendan Hoffman
Address	Ground Floor, 437 Kent Street, Sydney NSW 2000

Telephone	(02) 9030 7400
Email	brendan@bradburylegal.com.au
Electronic service address	brendan@bradburylegal.com.au

DETAILS ABOUT DEFENDANTS**First defendant**

Name	MARINERS FC DEVELOPMENTS PTY LTD		
Address	UNIT 1		
	1	PIONEER	AVENUE
	TUGGERAH	NSW	2259

Second defendant

Name NORTH CONSTRUCTION & BUILDING PTY LTD

Address
755 HUNTER STREET
NEWCASTLE NSW 2302
WEST