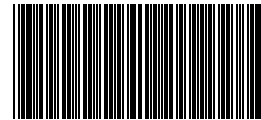




Filed: 4 March 2024 6:02 PM



D0001WT80C

Commercial List Response

COURT DETAILS

Court	Supreme Court of NSW
Division	Equity
List	Commercial
Registry	Supreme Court Sydney
Case number	2022/00184814

TITLE OF PROCEEDINGS

First Plaintiff	Keiran Liprini
First Defendant	Thirdi William Street Pty Ltd ACN 619508824
Second Defendant	H & M CONSTRUCTIONS (NSW) NO. 2 PTY LTD
Number of Defendants	6

FILING DETAILS

Filed for	SCOTT COLLIS CONSULTING PTY. LTD.,Defendant 5
Legal representative	Gregory Allen Skehan
Legal representative reference	
Telephone	02 8281 4555
Your reference	LKR.JYG.2207846

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 Response (List Response (FINAL))(32225883.1).pdf)

[attach.]

Form 1 (version 4)
Practice Note No. SC Eq 3

COMMERCIAL LIST RESPONSE

COURT DETAILS

Court	Supreme Court of New South Wales
Division	Equity Division
List	Commercial List
Registry	Sydney
Case number	2022/00184814

TITLE OF PROCEEDINGS

Plaintiff	Keiran Liprini
First Defendant	Thirdi William Street Pty Ltd ACN 619 508 824
Number of defendants	7

FILING DETAILS

Filed for	Scott Collis Consulting Pty Ltd , Fifth Defendant
Filed in relation to	Plaintiff's Amended Commercial List Statement filed on 31 October 2023
Legal representative	Greg Skehan, Colin Biggers & Paisley Pty Ltd
Legal representative reference	LKR.JYG.2207846
Contact name and telephone	John Georgas (02) 8281 4555
Contact email	John.georgas@cbp.com.au

COMMERCIAL LIST RESPONSE

The fifth defendant ("**SCC**") uses the definitions contained within the Amended Commercial List Statement (**the List Statement**) filed on 31 October 2023, unless otherwise defined in this List Response.

A. NATURE OF DISPUTE

1. Without admission, the fifth defendant, Scott Collis Consulting Pty Ltd (**SCC**) generally agrees with the nature of the dispute described by the plaintiff, Keiran Liprini (**Plaintiff**), in Part A of the List Statement, insofar as it concerns the claim made against SCC.

B. ISSUES LIKELY TO ARISE

1. SCC generally agrees that the issues identified by the Plaintiff in Part B of the List Statement, in respect of the claim made against SCC, are likely to arise, and says that in addition to those issues, the following issues are likely to arise:
 - (a) Whether the Plaintiff, and/or the Group Members, have standing to make a claim for alleged defects in any property in respect of which she is not, or they are not, the registered proprietors, including the common property.
 - (b) Whether the Plaintiff, and/or the Group Members, have suffered loss and damage caused by alleged defects in any property in respect of which she is not, or they are not, the registered proprietors, including the common property.

C. FIFTH DEFENDANT'S RESPONSES TO PLAINTIFF'S CONTENTIONS

In answer to the pleadings and particulars in the Plaintiff's List Statement, SCC responds as follows, adopting without admission the headings, numbering and defined terms of the List Statement:

The Parties

1. SCC admits paragraph C1.
2. SCC does not know and therefore denies paragraph C2.
3. SCC admits paragraph C3.

4. SCC admits paragraph C4.
5. Not used.
6. SCC admits paragraph C6.
7. SCC admits paragraph C7.
- 7A. SCC admits paragraph C7A.
- 7B. SCC admits paragraph C7B.

The Development

8. SCC admits paragraph C8.
9. SCC does not know and therefore denies paragraph C9.
10. SCC does not know and therefore denies paragraph C10.

Scope of work under the Construction Contract

11. SCC does not respond to the contentions in paragraph C11 as those contentions do not concern it.
12. SCC does not respond to the contentions in paragraph C12 as those contentions do not concern it.
13. SCC does not respond to the contentions in paragraph C13 as those contentions do not concern it.
14. SCC does not respond to the contentions in paragraph C14 as those contentions do not concern it.
15. SCC does not respond to the contentions in paragraph C15 as those contentions do not concern it.
16. SCC does not respond to the contentions in paragraph C16 as those contentions do not concern it.
17. SCC does not respond to the contentions in paragraph C17 as those contentions do not concern it.

18. SCC does not respond to the contentions in paragraph C18 as those contentions do not concern it.
19. SCC does not respond to the contentions in paragraph C19 as those contentions do not concern it.
20. SCC does not respond to the contentions in paragraph C20 as those contentions do not concern it.
21. SCC does not respond to the contentions in paragraph C21 as those contentions do not concern it.
22. SCC does not respond to the contentions in paragraph C22 as those contentions do not concern it.
23. SCC does not respond to the contentions in paragraph C23 as those contentions do not concern it.
24. SCC does not respond to the contentions in paragraph C24 as those contentions do not concern it.
25. SCC does not respond to the contentions in paragraph C25 as those contentions do not concern it.
26. SCC does not respond to the contentions in paragraph C26 as those contentions do not concern it.
27. SCC does not respond to the contentions in paragraph C27 as those contentions do not concern it.

Consultancy agreement

28. Not used.
- 28A. SCC does not respond to the contentions in paragraph C28A as those contentions do not concern it.
- 28B. SCC does not respond to the contentions in paragraph C28B as those contentions do not concern it.
29. SCC does not respond to the contentions in paragraph C29 as those contentions do not concern it.

30. In response to the contentions in paragraph C30, SCC:
- (a) denies the contentions; and
 - (b) says that it was engaged by RiteFlow Plumbing Pty Ltd to provide hydraulic design services for the residential development at 31-41 William Street, Alexandria, Sydney.

Performance of the D&C Works

31. SCC does not respond to the contentions in paragraph C31 as those contentions do not concern it.
- 31A. SCC does not respond to the contentions in paragraph C31A as those contentions do not concern it.
32. SCC does not respond to the contentions in paragraph C32 as those contentions do not concern it.
33. SCC does not respond to the contentions in paragraph C33 as those contentions do not concern it.
34. SCC does not respond to the contentions in paragraph C34 as those contentions do not concern it.
35. SCC does not respond to the contentions in paragraph C35 as those contentions do not concern it.

Statutory warranties

36. SCC does not respond to the contentions in paragraph C36 as those contentions do not concern it.
37. SCC does not respond to the contentions in paragraph C37 as those contentions do not concern it.
38. SCC does not respond to the contentions in paragraph C38 as those contentions do not concern it.

Statutory Warranties provided by Thirdi

39. SCC does not respond to the contentions in paragraph C39 as those contentions do not concern it.

40. SCC does not respond to the contentions in paragraph C40 as those contentions do not concern it.
41. SCC does not respond to the contentions in paragraph C41 as those contentions do not concern it.

Statutory Warranties provided by H&M

42. SCC does not respond to the contentions in paragraph C42 as those contentions do not concern it.
43. SCC does not respond to the contentions in paragraph C43 as those contentions do not concern it.

Breach of Statutory Warranties

44. SCC denies the contentions in paragraph C44.
45. SCC does not respond to the contentions in paragraph C45 as those contentions do not concern it.

Duty of care under the DBP Act

46. SCC admits the contentions in paragraph C46.
47. SCC does not know and therefore denies the contentions in paragraph C47.
- 47A. In response to the contentions in paragraph C47A, SCC:
 - a. admits that to the extent it performed work involved in the preparation of a hydraulic design for the residential development, such work was “construction work” within the meaning of the DBP Act; and
 - b. otherwise, denies the contentions.
- 47B. In response to the contentions in paragraph C47B, SCC;
 - a. admits that by operation of section 37 of the DBP Act, it had a statutory duty to exercise reasonable care to avoid economic loss caused by defects in or related to a building for which its “construction work” was done, and arising from its “construction work”; and

- b. otherwise, denies the contentions, including the alleged scope of the duty of care contended for in column 5 of Schedule C to the List Statement.
- 47C. SCC denies the contentions in paragraph 47C, on the basis of the denial in paragraph 47 above.
- 47D. In response to the contentions in paragraph C47D, SCC:
 - a. admits that the statutory duty under the DBP Act is non-delegable; and
 - b. otherwise, denies the contentions.
- 47E. SCC does not know and therefore denies paragraph C47E.
- 47F. SCC denies the contentions in paragraph C47F.
- 47G. SCC denies the contentions in paragraph C47G.
- 47H. SCC denies the contentions in paragraph C47H.
- 47I. SCC denies the contentions in paragraph C47I.
- 47J. SCC denies the contentions in paragraph C47J.
- 48. Not used.
- 49. Not used.
- 50. Not used.
- 51. Not used.
- 52. Not used.
- 53. Not used.
- 54. Not used.
- 55. Not used.

Duty of care owed by Kimy Air

- 56. SCC does not respond to the contentions in paragraph C56 as those contentions do not concern it

- 57. SCC does not respond to the contentions in paragraph C57 as those contentions do not concern it.
- 57A. SCC does not respond to the contentions in paragraph C57A as those contentions do not concern it.
- 57B. SCC does not respond to the contentions in paragraph C57B as those contentions do not concern it.
- 57C. SCC does not respond to the contentions in paragraph C57C as those contentions do not concern it.
- 58. SCC denies paragraph C58 on the basis that it contains no allegations against it.
- 58A. SCC does not respond to the contentions in paragraph C58A as those contentions do not concern it.
- 58B. SCC does not respond to the contentions in paragraph C58B as those contentions do not concern it.
- 58C. SCC does not respond to the contentions in paragraph C58C as those contentions do not concern it.
- 58D. SCC does not respond to the contentions in paragraph C58D as those contentions do not concern it.
- 59. SCC does not respond to the contentions in paragraph C59 as those contentions do not concern it. .

Duty of care owed by SCC

- 60. In response to the contentions in C60, SCC:
 - (a) admits that it undertook “construction work” within the meaning of section 36(a) of the DBP Act, being the preparation of a hydraulic design; and
 - (b) otherwise, denies the contentions.
- 61. In response to the contentions in C61, SCC:
 - (a) admits that, to the extent it carried out “construction work” in that part of the building that forms the Plaintiff’s Terrace, then it owed the Plaintiff the statutory duty of care in respect of that construction work; and

(b) otherwise, denies the contentions, including the alleged scope of the duty of care contended for in column 5 of Schedule C to the List Statement.

61A. SCC denies the contentions in C61A.

61B. SCC denies the contentions in C61B.

61C. SCC denies the contentions in C61C.

62. SCC denies the contentions in C62.

62A. SCC denies the contentions in C62A.

62B. SCC denies the contentions in C62B.

62C. In response to the contentions in C62C, SCC;

a. admits that, to the extent any statutory duty was owed by it, then any such statutory duty was, by operation of section 39 of the DBP Act, non-delegable; and

b. otherwise, denies the contentions.

62D. SCC denies the contentions in C62D.

63. SCC denies the contentions in C63.

Duty of care owed by Aiken Design & Consulting Pty Ltd

63A. SCC does not respond to the contentions in paragraph C63A as those contentions do not concern it.

63B. SCC does not respond to the contentions in paragraph C63B as those contentions do not concern it.

63C. SCC does not respond to the contentions in paragraph C63C as those contentions do not concern it.

63D. SCC does not respond to the contentions in paragraph C63D as those contentions do not concern it.

63E. SCC does not respond to the contentions in paragraph C63E as those contentions do not concern it.

- 63F. SCC does not respond to the contentions in paragraph C63F as those contentions do not concern it.
- 63G. SCC does not respond to the contentions in paragraph C63G as those contentions do not concern it.
- 63H. SCC does not respond to the contentions in paragraph C63H as those contentions do not concern it.
- 63I. SCC does not respond to the contentions in paragraph C63I as those contentions do not concern it.
- 63J. SCC does not respond to the contentions in paragraph C63J as those contentions do not concern it.
- 63K. SCC does not respond to the contentions in paragraph C63K as those contentions do not concern it.

Duty of care owed by Mr Aiken

- 63L. SCC does not respond to the contentions in paragraph C63L as those contentions do not concern it.
- 63M. SCC does not respond to the contentions in paragraph C63M as those contentions do not concern it.
- 63N. SCC does not respond to the contentions in paragraph C63N as those contentions do not concern it.
- 63O. SCC does not respond to the contentions in paragraph C63O as those contentions do not concern it.
- 63P. SCC does not respond to the contentions in paragraph C63P as those contentions do not concern it.
- 63Q. SCC does not respond to the contentions in paragraph C63Q as those contentions do not concern it.
- 63R. SCC does not respond to the contentions in paragraph C63R as those contentions do not concern it.

- 63S. SCC does not respond to the contentions in paragraph C63S as those contentions do not concern it.
- 63T. SCC does not respond to the contentions in paragraph C63T as those contentions do not concern it.
- 63U. SCC does not respond to the contentions in paragraph C63U as those contentions do not concern it.
- 63V. SCC does not respond to the contentions in paragraph C63V as those contentions do not concern it.
- 63W. SCC does not respond to the contentions in paragraph C63W as those contentions do not concern it.
- 63X. SCC does not respond to the contentions in paragraph C63X as those contentions do not concern it.
- 63Y. SCC does not respond to the contentions in paragraph C63Y as those contentions do not concern it.
- 63Z. SCC does not respond to the contentions in paragraph C63Z as those contentions do not concern it.
- 63AA. SCC does not respond to the contentions in paragraph C63AA as those contentions do not concern it.
- 63BB. SCC does not respond to the contentions in paragraph C63BB as those contentions do not concern it.

Loss and damage

63. SCC denies the contentions in paragraph C64.
64. SCC denies the contentions in paragraph C65, and denies that the Plaintiff is entitled to the relief claimed in its Summons.

Further responses to the claim made against SCC

65. Further, and in response to the whole of the Plaintiff's claim against SCC, SCC says:
- (a) pursuant to section 37(3) of the DBP Act, the Plaintiff's claim for breach of the SCC Statutory Duty is to be determined as if the duty were a duty established by the common law;
 - (b) any claim for damages for harm resulting from negligence (under statute or otherwise) which the Plaintiff may be entitled to (which entitlement is denied) is to be assessed pursuant to the relevant provisions of the *Civil Liability Act 2002* (NSW) (**CLA**); and
 - (c) SCC did not fail to exercise reasonable care and skill within the meaning of section 5 of the CLA.
66. Further or in the alternative to paragraph C65 above, SCC says that nothing it did or omitted to do was causative of any harm suffered by the Plaintiff (which is denied) within the meaning of section 5D of the CLA.
67. Further or in the alternative to paragraph C66 above, SCC says that under section 50 of the CLA:
- (a) at all material times SCC was "a professional" within the meaning of section 50;
 - (b) in providing the SCC Services, SCC was providing "a professional service" within the meaning of section 50;
 - (c) in providing the SCC Services, SCC acted in a manner that was widely accepted in Australia by peer professional opinion as competent professional practice; and
 - (d) accordingly, SCC did not incur any liability in negligence (which includes a claim for breach of the SCC Statutory Duty) arising from the provision of the SCC Services.
68. Further, SCC contends that to the extent that the Plaintiff is not, and/or the Group Members are not, the registered proprietor or proprietors of any property found to contain defects caused by the work or omissions of SCC (which is denied), then the Plaintiff has not, and/or the Group Members have not, suffered any loss or damage, and is/are not entitled to recover damages against SCC.

D. QUESTIONS APPROPRIATE FOR REFERRAL TO A REFEREE

1. The questions of:
- (a) the existence or otherwise of the alleged defects;
 - (b) the cause of the alleged defects;
 - (c) the necessary and reasonable method of rectification of the alleged defects;
and
 - (d) the cost of the rectification,
- are appropriate for referral.

E. A STATEMENT AS TO WHETHER THE PARTIES HAVE ATTEMPTED MEDIATION; WHETHER THE PARTY IS WILLING TO PROCEED TO MEDIATION AT AN APPROPRIATE TIME

1. The parties have not yet attempted mediation but SCC is willing to do so at an appropriate time.

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 probable facts and a reasonably arguable view of the law that the defence to the claim for damages in these proceedings has reasonable prospects of success.

Signature of legal representative



Capacity

Solicitor

Date of signature

4 March 2024