



**IN THE FEDERAL CIRCUIT COURT
OF AUSTRALIA
AT BRISBANE**

File No: BRG151/2016

DIRECTOR, FAIR WORK BUILDING INDUSTRY INSPECTORATE
Applicant

FOREST MEIERS CONSTRUCTION PTY LTD ACN 159 535 574
First Respondent

WILLIAM MUNRO
Second Respondent

OSWALD BLACKER
Third Respondent

SONG POH (PETER) SIA
Fourth Respondent

ORDER

BEFORE: JUDGE JARRETT

DATE: 17 July 2019

MADE AT: BRISBANE

APPEARANCES: Made in Chambers

BY CONSENT THE COURT DECLARES THAT:

1. The first respondent contravened s.340 of the *Fair Work Act 2009* (Cth) (FW Act) by refusing to engage C&K Tiling Pty Ltd (C&K Tiling) to supply and install tile at the Remora Road project located at the corner of Remora Road and MacArthur Avenue, Hamilton, Queensland (Project) because C&K Tiling had a workplace right represented by:
 - (a) the benefit of having the C & K Tiling Pty Ltd Enterprise Agreement (C&K Agreement); and
 - (b) the choice that it made when it entered into the C&K Agreement not to have it cover the Construction, Forestry, Mining, Energy Union (CFMEU).



2. The first respondent contravened s.354 of the FW Act by discriminating against C&K Tiling because the employees of C&K Tiling were covered by an enterprise agreement that did not cover the CFMEU.
3. The second respondent contravened s.340 of the FW Act by reason of being involved with the first respondent's contravention at Declaration 1 above for the purposes of s.550 of the FW Act.
4. The second respondent contravened s.354 of the FW Act by reason of being involved with the first respondent's contravention at Declaration 2 above for the purposes of s.550 of the FW Act.

THE COURT ORDERS THAT:

5. By reason of Item 19 of Schedule 2 to the *Building and Construction Industry (Consequential and Transitional Provisions) Act 2016* (Cth), the name of the applicant in this proceeding be amended to Australian Building and Construction Commissioner.
6. The proceedings against the third and fourth respondents be dismissed.
7. The first respondent pay to C&K Tiling Pty Ltd the sum of \$239,830.14 consisting of:
 - (a) \$200,000 compensation; and
 - (b) \$39,830.14 in pre-judgement interest, within twenty eight (28) days of this order.
8. The applicant file and serve written submissions and any evidence in relation to penalty by 25 July, 2019.
9. The respondents file and serve written submissions and any evidence in relation to penalty by 22 August, 2019.
10. The applicant file and serve any written submission and any evidence in reply in relation to penalty by 5 September, 2019.
11. The application be adjourned to **18 September, 2019 at 10:00am** for a penalty hearing (with an estimated hearing time of one (1) day) in the Federal Circuit Court of Australia sitting at Brisbane.



12. No order as to costs.

13. There be liberty to apply.

By the Court

DATE ENTERED: 17 July, 2019

Adele Byrne
Registrar