



Federal Court of Australia

District Registry: New South Wales

Division: General

No: NSD215/2019

THE OWNERS - STRATA PLAN 87231

Applicant

3A COMPOSITES GMBH and another named in the schedule

Respondent

ORDER

JUDGE: JUSTICE WIGNEY

DATE OF ORDER: 06 October 2021

WHERE MADE: Sydney

THE COURT ORDERS THAT:

Shore Building Cross-Claims

1. The First, Second, Third, Fifth and Sixth Cross-Respondents to the statement of cross-claim filed pursuant to orders made on 20 September 2021 (**Shore Cross-Claim**) make any request for further and better particulars by 18 October 2021.
2. The First Respondent/Cross-Claimant respond to any requests for further and better particulars made in accordance with order 1 by 1 November 2021.
3. The Shore Cross-Respondents file and serve their defences to the Shore Cross-Claim by 29 November 2021.
4. The First Respondent/Cross-Claimant file and serve any reply by 13 December 2021.
5. By 22 December 2021:
 - a. the First Respondent/Cross-Claimant serve on the Shore Cross-Respondents the discovery given by the parties pursuant to order 4 of the orders made on 16 December 2020; and
 - b. the First Respondent/Cross-Claimant and the Shore Cross-Respondents give standard discovery to each other pursuant to r. 20.14 of the *Federal Court Rules 2011* (Cth) and serve that discovery on the Applicant, Sub-Group Representative and the Second Respondent.



6. The discovery is to be provided electronically in accordance with the document management protocol attached as Annexure C to the orders made on 16 December 2020.

Concourse Building Cross-Claims

7. The interlocutory applications filed by the First, and the Sixth and Seventh Cross-Respondents on 1 October 2021 to the cross-claim filed by the First Respondent/Cross-Claimant dated 22 July 2021 (**Concourse Cross-Claim**) be listed for case management hearing on 3 November 2021.
8. The First Respondent/Cross-Claimant is to advise the Cross-Respondents to the Concourse Cross-Claim of its position in relation to the discontinuance of the Concourse Cross-Claim by 27 October 2021.

Correspondence to States and Territories

9. Leave be granted for the First Respondent/Cross-Claimant to send a letter to the States of Queensland and South Australia, and any other State or Territory that consents to be a Group Member pursuant to s 33E(2) of the *Federal Court of Australia Act 1976* (Cth), in the terms set out in **Annexure A** to these orders.

Discovery

10. By 21 October 2021, the Respondents are to each substantively respond to the letter from the Applicant dated 3 September 2021 raising issues with the discovery provided by them.

Applicant's and Sub-Group Representative's lay and expert evidence

11. By 28 February 2022, each of the Applicant and the Sub-Group Representative is to file and serve any lay evidence by affidavit and expert reports which are intended to be relied upon at the initial trial.

Amended confidentiality order

12. Subject to compliance with the following orders 12a. to 12c., the First Respondent may provide any cross-respondent to any cross claim commenced by the First Respondent (**Cross-Respondent**) with Group Member Information only concerning the building or buildings the subject of the cross claim brought against that particular Cross-Respondent:
 - a. any part of the Group Member Information provided to the Cross-Respondent pursuant to these orders is to be kept confidential by the Cross-Respondent;



- b. further to order 12a. above, prior to the disclosure of any part of the Group Member Information to the Cross-Respondent, the Cross-Respondent must provide a written undertaking to the Court in the form set out in **Schedule A** to these orders to only use the Group Member Information provided to the Cross-Respondent to defend that particular cross claim only (as may be amended) or make any application in respect to it, and must not initiate contact with class members or potential class members except in the Cross-Respondent's ordinary course of business, and not regarding the primary proceeding or that particular cross-claim proceeding, or otherwise with the consent of all parties or with leave of the Court;
- c. prior to the disclosure of any part of the Group Member Information, a copy of the signed undertaking in the form contained in Schedule A must be provided to the First Respondent and the Applicant.

Subpoenas

13. Pursuant to r 24.01 of the *Federal Court Rules 2011* (Cth), leave be granted to issue the subpoenas addressed to the Willoughby City Council, Mornington Peninsula Shire Council, Mitcham City Council, Whitehorse City Council and Ku-Ring-Gai Council annexed to the requests for leave filed by the First Respondent/Cross-Claimant on 1 October 2021.

Substituted and deemed service on the Fourth Shore Cross-Respondent

14. Pursuant to r 10.24(c) of the *Federal Court Rules 2011* (Cth), by 11 October 2021, copies of the Shore Cross-Claim, a sealed copy of the orders of Wigney J dated 20 September 2021, and a sealed copy of these orders, (collectively, **Shore Cross-Claim Documents**), are taken to have been served on the Fourth Shore Cross-Respondent 5 days after the later of the Shore Cross-Claim Documents:
 - a. being sent by express registered post to 24 Mackillop Drive, Baulkham Hills, NSW, 2153; and
 - b. being left at the door of 24 Mackillop Drive, Baulkham Hills, NSW, 2153.

Further case management hearing

15. The proceeding be listed for a further case management hearing on 17 March 2022.



THE COURT NOTES THAT:

16. Unless otherwise defined in these orders or the context otherwise requires, the definitions used in the Court's orders made on 30 October 2020 are applied to the orders above.

Date that entry is stamped: 8 October 2021

Sia Lagos
Registrar



Schedule

No: NSD215/2019

Federal Court of Australia
District Registry: New South Wales
Division: General

Second Respondent HALIFAX VOGEL GROUP PTY LIMITED

CROSS CLAIM

Cross-Claimant 3A COMPOSITES GMBH

Cross Respondent AW EDWARDS PTY LTD ACN 000 045 849

Second Cross Respondent FRANCIS-JONES MOREHEN THORP PTY LTD ACN 101 197 219

Third Cross Respondent TOLAND PTY LTD ACN 003 027 478

Fourth Cross Respondent HENDRY GROUP PTY LTD (ACN 006 693 232)

Fifth Cross Respondent AURECON LIMITED ACN 156 139 847

Sixth Cross Respondent ARUP PTY LTD ACN 000 966 165

Seventh Cross Respondent MARIANNE FOLEY

CROSS CLAIM

Cross-Claimant 3A COMPOSITES GMBH

Cross Respondent PRESTIGE APARTMENTS AUSTRALIA PTY LTD ACN 140 808 180

Second Cross Respondent MODERNISE INSTALLATIONS PTY LTD ACN 139 299 415

Third Cross Respondent VICTOR ROBERT BRYCE LAKE & ASSOCIATES PTY LTD ACN 060 744 729

Fourth Cross Respondent RAMANATHAN SHANMUGANANTHAN



Fifth Cross Respondent LAWTOW PTY LTD 085 480 691

Sixth Cross
Respondent RONNSTAR PTY LTD ACN 085 480 646



ANNEXURE A – LETTER TO STATES AND TERRITORIES

8 October 2021

To Paula Freeleagus
GR Cooper Crown Solicitor
c/- Crown Law, 50 Ann Street
Brisbane QLD 4000

Dear Colleagues

NSD 2015 of 2019: The Owners – Strata Plan 87231 v 3A Composites GmbH & Anor (“Proceeding”) Request for information – State of Queensland

Overview

- 1 We act for the first respondent, 3A Composites GmbH (**3A**) in the Proceeding in the Federal Court of Australia.
- 2 We refer to the State of Queensland’s notice of consent to be a group member dated 24 November 2020, and we understand you act for the State of Queensland.
- 3 The purpose of this letter is to request the State of Queensland to complete the questionnaire **attached** as Annexure B to this letter (which we note is voluntary).

3A’s potential cross-claims

- 4 3A denies the allegations made by the Applicant in the Proceeding. If despite those denials, 3A is unsuccessful in defending the Applicant’s claims and is found to be liable to the Applicant for loss or damage suffered by the Applicant, then 3A may rely upon cross-claims for contribution against certain third parties involved in the design, construction and/or certification of the relevant buildings.
- 5 Any cross-claims brought by 3A will not affect any compensation that 3A may be ordered to pay to class members, including to the State of Queensland.
- 6 In order to properly investigate the availability of any such cross-claims, 3A must first ascertain the buildings or building parts:
 - (a) **owned by, or previously owned by the State of Queensland; or**
 - (b) **in which the State of Queensland has or has previously had a leasehold interest which includes an obligation to rectify defects of a kind associated with Alucobond PE Core Cladding (as defined in the Amended Statement of Claim),**

1.1.1 in respect of which the State of Queensland claims to have suffered loss for the purposes of the Proceeding (State Owned/Leased Buildings).

- 7 At present, 3A does not have sufficient information about the State Owned/Leased Buildings to enable it to make the necessary inquiries into the third parties involved in the design, construction and/or certification of those buildings or to investigate properly any cross-claims that may be available to it.
- 8 The risk of prejudice to 3A due to it not having this information was acknowledged by Wigney J in *The Owners – Strata Plan No 87231 v 3A Composites GmbH (No 3)* [2020] FCA 748 (a copy of which is **enclosed**) (**emphasis added**):



- a. [231]... *As has already been made clear, it is appropriate or necessary to ensure justice is done in the proceeding to make an order the effect of which is to request, by notice, group members to register by a particular date and to provide, as part of the registration process, certain specified information and documentation. There is no sound reason to doubt that the majority of group members who receive that notice will, in due course, register their claims (assuming they do not opt out) and provide the requested information and documentation. That is so even if the request to register is not expressed in mandatory terms and there is no “sanction” in the form of Order 7.*
- b. [232] *The responses received in response to the envisaged registration notice will allow 3A to investigate and, if thought necessary and desirable, to prosecute any cross claims for contribution that are considered to be available. That will in turn considerably reduce the risk of any prejudice to 3A which may arise from the potential operation of any relevant long stop limitation periods that may apply to any of its contribution claims. It may not entirely exclude the risk that some unregistered group member may come forward at some later stage when any contribution claims that 3A might have in respect of that group member’s claim may be subject to a limitation period. For the reasons already given, however, there is at this stage nothing to suggest that the risk of that occurring is anything more than remote or theoretical.*

Questionnaire

- 9 On 30 October 2020, Wigney J made orders (**attached** as Annexure A) (**Orders**), including that the Owners Strata Plan – 87231 (the **Applicant**) was to publicise or otherwise communicate documents including a questionnaire in the form of schedule H of the Orders (as reproduced in Annexure B of this letter) (**Questionnaire**).
- 10 In compliance with paragraph 9 above and Order 11 of the Orders, the Final Registration Spreadsheet (as defined in the Orders) has been completed and delivered to our client. However, the Final Registration Spreadsheet does not contain the information that 3A needs to progress its investigation of potential cross-claims.
- 11 The State of Queensland’s response to the Questionnaire would facilitate 3A’s investigation of cross-claims that it may have against the relevant third parties in relation to the design, construction and/or certification of the State Owned/Leased Buildings.
- 12 For those reasons, 3A requests that the State of Queensland provides to OBL, pursuant to Order 10 of the Orders, completed Questionnaires in relation to each of the State Owned/Leased Buildings, following which our client will receive (via the



Applicant's solicitors) the relevant information contemplated by Order 10. The Second Respondents to the Proceeding also support this request for the State of Queensland to provide completed Questionnaires.

- 13 Completion of the Questionnaire by Class Members was, and remains, voluntary.
- 14 If the State of Queensland chooses not to complete the Questionnaire, then our client reserves its rights to take further steps to obtain the information requested.
- 15 We look forward to receiving your response by [**insert date that is 14 days from the date of this letter**].

Yours sincerely

**Sam Dundas | Partner
King & Wood Mallesons**

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This communication and any attachments are confidential and may be privileged.

Annexure A – Orders

Annexure B – Questionnaire (as it appeared in Schedule H to the orders of Wigney J made in the Proceeding on 30 October 2020)



SCHEDULE A

Cross-Respondents' form of undertaking

[*INSERT Cross-Respondent's name*], acknowledges that the Court has ordered that any Group Member Information (as defined in the Court's orders dated 30 October 2020) provided is to be kept confidential and undertakes to the Court to only use the Group Member Information to defend the cross-claim in respect to the building or buildings located at [*INSERT building address or addresses*] (**Cross-Claim**) or make any application in respect to it, and must not initiate contact with class members or potential class members except in [*INSERT Cross-Respondent's name*]'s ordinary course of business, and not regarding the primary proceeding or the Cross-Claim, or otherwise with the consent of all parties or with leave of the Court.

DATE:

.....

Signed by: