

IN THE SUPREME COURT OF WESTERN AUSTRALIA  
REPRESENTATIVE PROCEEDINGS LIST

CIV 1878 of 2024

BETWEEN:

JAMES DANIEL BUCK First Plaintiff

JYOTI GHAI Second Plaintiff

JOHANNES HENDRIK VISSER Third Plaintiff

GAYLE VISSER Fourth Plaintiff

and

BGC RESIDENTIAL PTY LTD (ACN 052 543 450) First Defendant

J-CORP PTY LTD (ACN 009 063 076) Second Defendant

VENTURA HOME GROUP PTY LTD (ACN 093 870 618) Third Defendant

---

**WRIT OF SUMMONS**

---

Date of document: 24 July 2024

Filed on behalf of: The Plaintiffs

Date of filing: 24 July 2024

Prepared by:  
Morgan Alteruthemeyer Legal Group  
2/4 Adelaide Street  
FREMANTLE WA 6160

Telephone: 9336 7511  
Email: info@ma.legal  
Reference: SL:22225  
Spencer Lieberfreund

---

TO: BGC RESIDENTIAL PTY LTD (ACN 052 543 450)  
OF: G 67 Walters Drive, Osborne Park in the State of Western Australia.

TO: J-CORP PTY LTD (ACN 009 063 076)  
OF: G 67 Walters Drive, Osborne Park in the State of Western Australia.

TO: VENTURA HOME GROUP PTY LTD (ACN 093 870 618)  
OF: G 67 Walters Drive, Osborne Park in the State of Western Australia.

**FILED**

24 JULY 2024

Via eLodgment  
CENTRAL OFFICE  
SUPREME COURT

You are commanded that, within 10 days after service of this writ on you, exclusive of the day of such service, you cause an appearance to be entered for you in our Supreme Court in an action at the suit of the abovenamed plaintiffs; AND TAKE NOTICE that in default of your so doing the plaintiffs may proceed therein and judgment may be given in your absence.

Witness: THE HONOURABLE PETER QUINLAN Chief Justice of Western Australia the 24 day of July 2024.

Note: This writ may not be served later than 12 calendar months beginning with the above date unless renewed by order of the Court.

A defendant may appear to this writ by entering an appearance either personally or by solicitor at the Central Office of the Supreme Court, Barrack Street, Perth.



## STATEMENT OF CLAIM

### Contents

<b>A.</b>	<b><i>PARTIES</i></b> .....	<b>4</b>
	A.1. Plaintiffs .....	4
	A.2. Group Members.....	4
	A.3. BGC Group Companies .....	5
<b>B.</b>	<b><i>BGC HOME BUILDING CONTRACTS</i></b> .....	<b>6</b>
	B.1. BGC Price Increase Power and notices .....	8
	B.2. Time for completion, BGC Delay Non-Liability Clause, BGC Automatic Extension Clause and BGC Extension of Time Power, and notices.....	13
	B.3. BGC LDs Clause .....	16
<b>C.</b>	<b><i>PURPORTED NPIS INVALID, PURPORTED COVID GENERIC EOTs AND PURPORTED NON-COVID GENERIC EOTs INEFFECTIVE, AND BGC LDs CLAUSE UNFAIR</i></b> .....	<b>17</b>
	C.1. Purported NPIS invalid.....	17
	C.2. Purported COVID Generic EOTs and Purported Non-COVID Generic EOTs ineffective .....	19
	C.3. BGC Extension of Time Power unfair.....	25
	C.4. BGC LDs Clause unfair .....	27
<b>D.</b>	<b><i>GROUP MEMBERS PAY INCREASED PRICES, HOMES INCOMPLETE, AND LOSS</i></b> .....	<b>28</b>
	D.1. Loss and damage from payment of Purported NPIS and BGC LDs Clause	28
	D.2. Loss and damage from incomplete homes and Purported COVID Generic EOTs and Purported Non-COVID Generic EOTs .....	31
	D.3. Wrongful acceptance of payment or other consideration and failure to supply .....	32
<b>E.</b>	<b><i>RELIEF</i></b> .....	<b>34</b>
<b>F.</b>	<b><i>COMMON QUESTIONS</i></b> .....	<b>34</b>
	F.1. BGC Price Increase Power and notices .....	34
	F.2. Time for completion, BGC Delay Non-Liability Clause, BGC Extension of Time Power, notices, and BGC LDs Clause? .....	35
	F.3. S 36(4) ACL .....	36
	F.4. Loss and damage .....	36
	F.5. Relief .....	37

## A. PARTIES

### A.1. Plaintiffs

1. The First Plaintiff, James Buck, is a natural person capable of suing.
2. The Second Plaintiff, Jyoti Ghai, is a natural person capable of suing.
3. The Third Plaintiff, Johannes Hendrick Visser, is a natural person capable of suing.
4. The Fourth Plaintiff, Gayle Visser, is a natural person capable of suing.

### A.2. Group Members

5. The First Plaintiff, Second Plaintiff, Third Plaintiff, and Fourth Plaintiff bring this proceeding on their own behalf and, pursuant to Part 2 of the *Civil Procedure (Representative Proceedings) Act 2022 (WA) (CPRP Act)*, on behalf of all persons who:

- (a) on various dates between 15 January 2019 and 15 September 2022 entered BGC Home Building Contracts (as defined in paragraphs 16 to 18 below) with the First Defendant, Second Defendant, or Third Defendant (as the case may be); and
- (b) are not:
  - (i) a director, an officer, or a close associate (as defined in s 9 of the *Corporations Act 2001 (Cth) (Corporations Act)*) of the First Defendant, Second Defendant, or Third Defendant;
  - (ii) a director, an officer, or a close associate (as defined in s 9 of the *Corporations Act*) of any related entity of the First Defendant, Second Defendant, or Third Defendant; or
  - (iii) the Chief Justice, a Justice, a Master or Registrar of the Supreme Court of Western Australia or of the High Court of Australia; and
- (c) have suffered loss or damage by or resulting from the conduct of the First Defendant, Second Defendant, or Third Defendant, or have a claim in restitution against that Defendant, as pleaded in this Statement of Claim.

(together, **Group Members**).

6. As at the commencement of this proceeding, there are:
- (a) seven or more persons who have claims against the First Defendant;
  - (b) seven or more persons who have claims against the Second Defendant; and
  - (c) seven or more persons who have claims against the Third Defendant,
- within the meaning of s 6(1) of the CPRP Act.

**A.3. BGC Group Companies**

7. The First Defendant, BGC Residential Pty Ltd ACN 052 543 450:
- (a) was and is duly incorporated and able to be sued;
  - (b) at all material times engaged in "trade or commerce" within the meaning of s 2 of the *Competition and Consumer Act 2010* (Cth), Sch 2 (**ACL**) in carrying out a business of homebuilding; and
  - (c) is wholly owned by BGC (Australia) Pty Ltd ACN 005 736 005.
8. The Second Defendant, J-Corp Pty Ltd ACN 009 063 076:
- (a) was and is duly incorporated and able to be sued;
  - (b) at all material times engaged in "trade or commerce" within the meaning of s 2 of the ACL in carrying out a business of homebuilding; and
  - (c) is wholly owned by Kimpura Pty Ltd ACN 006 048 479.
9. The Third Defendant, Ventura Home Group Pty Ltd ACN 093 870 618:
- (a) was and is duly incorporated and able to be sued;
  - (b) at all material times engaged in "trade or commerce" within the meaning of s 2 of the ACL in carrying out a business of homebuilding; and
  - (c) is wholly owned by BGC (Australia) Pty Ltd ACN 005 736 005.
10. Kimpura Pty Ltd ACN 006 048 479 is wholly owned by Esther Investment Proprietary Limited ACN 004 459 536.

11. Esther Investment Proprietary Limited ACN 004 459 536 is wholly owned by:

(a) Andrew Benjamin Buckeridge; and

(b) Samuel Conrad Buckeridge,

in their capacity as the executors of the estate of Leonard Walter Buckeridge.

12. BGC (Australia) Pty Ltd ACN 005 736 005 is wholly owned by:

(a) Andrew Benjamin Buckeridge; and

(b) Samuel Conrad Buckeridge.,

in their capacity as the executors of the estate of Leonard Walter Buckeridge.

## **B. BGC HOME BUILDING CONTRACTS**

13. On 16 December 2020, the First Plaintiff and the First Defendant entered a contract (**Buck Contract**) for the supply of works comprising the construction of a single storey brick dwelling to be located at Lot 2201 on Deposited Plan 408427, Volume 2910, Folio 407, located on 14 Rivette Court, Darling Downs in the State of Western Australia.

### **Particulars**

(A) *The Buck Contract was signed 16 December 2020.*

(B) *On the proper construction of the Buck Contract the parties agreed that the Home Building Contracts Act 1991 (WA) (**HBC Act**) applied.*

14. On 26 November 2020, the Second Plaintiff and the Second Defendant entered a contract (**Ghai Contract**) for the supply of works comprising the construction of a single storey brick dwelling to be located at Lot 2 on Survey-Strata Plan 82354, Volume 2994, Folio 566, located on Tate Street with the property address then known as 3 Catherine Street, Bentley in the State of Western Australia.

### **Particulars**

(A) *The Ghai Contract was signed 26 November 2020.*

(B) *On the proper construction of the Ghai Contract the parties agreed that the HBC Act applied.*

15. On 28 October 2020, the Third Plaintiff and Fourth Plaintiff entered a contract with the Third Defendant (**Visser Contract**) for the supply of works comprising the construction of a single storey double brick dwelling to be located at Lot 2532 on Deposited Plan 47611, Volume 2605, Folio 868, located at 263 Dalyellup Boulevard, Dalyellup in the State of Western Australia.

#### Particulars

- (A) *The Visser Contract was signed 28 October 2020.*
- (B) *On the proper construction of the Visser Contract the parties agreed that the HBC Act applied.*
16. On various dates between 8 February 2019 and 23 May 2022, the First Defendant entered contracts with certain Group Members for the supply of works comprising:
- (a) constructing a dwelling; or
- (b) carrying out any associated works in connection with sub-paragraph (a),
- (together, **BGC Homebuilding Services**) (**BGC Residential Contracts**).
17. On various dates between 15 January 2019 and 11 August 2022, the Second Defendant entered contracts (**J-Corp Contracts**) with certain Group Members for the supply of works comprising BGC Homebuilding Services.
18. On various dates between 20 August 2020 and 15 September 2022, the Third Defendant entered contracts (**Ventura Home Contracts**) with certain Group Members for the supply of works comprising BGC Homebuilding Services,
- (the Buck Contract, Ghai Contract, Visser Contract, BGC Residential Contracts, J-Corp Contracts, and Ventura Home Contracts are together defined as **BGC Home Building Contracts**).
19. Subject to the matters pleaded in paragraph 40 below, each of the BGC Home Building Contracts was regulated by the HBC Act and in standard form comprising:
- (a) various clauses (including those relating to time, extensions of time, variations, and changes in costs, as pleaded in this Statement of Claim) (**Standard Terms**); and
- (b) Annexures A and B;

- (c) a Schedule which identified:
- (i) "Proprietor";
  - (ii) "Works";
  - (iii) "Contract Price";
  - (iv) "Finance";
  - (v) "Progress Payments";
  - (vi) "Date for Commencement of Work";
  - (vii) "Date for Completion of Work";
  - (viii) "Interest";
  - (ix) "Liquidated Damages" (as pleaded in section B.3. below); and
  - (x) "Guarantors".

**Particulars**

- (A) *Each BGC Home Building Contracts included one of the versions of the Standard Terms dated [June 2018], [December 2018], [June 2019] or [June 2020].*
- (B) *On the proper construction of the BGC Home Building Contracts, the parties agreed that the HBC Act applied.*

20. Each BGC Home Building Contract was a:

- (a) "consumer contract" within the meaning of ss 2 and 23(3) of the ACL; and
- (b) "standard form contract" within the meaning of ss 2 and 27 of the ACL.

**B.1. BGC Price Increase Power and notices**

21. Each BGC Home Building Contract provided that it was conditional on a building permit being obtained within 45 working days from the date of the BGC Home Building Contract.

**Particulars**

- (A) *BGC Home Building Contract, Standard Terms, clause 2(a)(ii).*



22. In the alternative to the preceding paragraph, this term was implied.

**Particulars**

(A) *Section 9(1) of the HBC Act.*

23. Each BGC Home Building Contract provided that, if certain conditions were not satisfied then:

- (a) subject to the rights pleaded in (b) and (c) of this paragraph, the terms and conditions would remain on foot and in full force unless agreed otherwise or terminated;
- (b) the parties had the rights pleaded in paragraph 25 below; and
- (c) the parties had rights to terminate by notice in writing subject to the First Plaintiff, Second Plaintiff, Third Plaintiff and Fourth Plaintiff, or Group Member(s) (as the case may be) using their best endeavours to obtain the finance.

**Particulars**

(A) *BGC Home Building Contract, Standard Terms, clauses 2(e).*

24. The conditions pleaded in the preceding paragraph included where a building permit had not been obtained within 45 working days from the date of the particular BGC Home Building Contract being signed.

**Particulars**

(A) *BGC Home Building Contract, Standard Terms, clauses 2(a)(ii) and (e).*

25. Further to paragraph 23(b) above, each BGC Home Building Contract provided that, if there was a delay in the commencement of works beyond 45 working days after the date of the contract, not being a delay caused by or attributable to the First Defendant, Second Defendant, or Third Defendant (as the case may be), that Defendant may, by notice in writing:

- (a) increase the Contract Price (as defined) by an amount set out in the notice; and
- (b) specify when any increased amount is payable which may be:
  - (i) not later than TEN (10) Days after the notice is given;

- (ii) at the time of the next progress payment;
- (iii) allocated equally to each future progress payment; or
- (iv) at the time of any other progress payment (including the final one),

(the **BGC Price Increase Power**).

**Particulars**

(A) *BGC Home Building Contract, Standard Terms, clause 3(e).*

26. In the alternative to the preceding paragraph, this term was implied.

**Particulars**

(A) *Sch 1, cl 4(a) of the HBC Act.*

27. Each BGC Home Building Contract provided that, if the HBC Act applied and the First Defendant, Second Defendant, Third Defendant (as the case may be), issued a notice of price increase (**NPI**), then:

- (a) if the price increase exceeded 5% of the Contract Price, the First Plaintiff, Second Plaintiff, Third Plaintiff and Fourth Plaintiff, or Group Member(s) (as the case may be) could terminate the contract within TEN (10) Days after receipt of a notice; or
- (b) regardless of the amount of the price increase notified in the NPI, if the First Plaintiff, Second Plaintiff, Third Plaintiff and Fourth Plaintiff, or Group Member(s) (as the case may be) considered that the amount was excessive or unjustified then he, she, or they could apply to the Building Commissioner within TEN (10) Days of receiving the NPI for a review of that amount.

**Particulars**

(A) *BGC Home Building Contract, Standard Terms, clause 3(e)(ii) and (iii).*

28. In the alternative to the preceding paragraph, this term was implied.

**Particulars**

(A) *Sch 1, cl 5(1) of the HBC Act.*

29. Upon a review being requested, as pleaded in paragraph 27(b) above, each BGC Home Building Contract provided that:

- (a) the First Defendant, Second Defendant, or Third Defendant (as the case may be) was required to show that the price has been increased so as to reflect actual increases in costs between the date of the contract and the date of the notice; and
- (b) the Building Commissioner or State Administrative Tribunal could confirm, vary, or disallow the amount of the price increase.

**Particulars**

- (A) *BGC Home Building Contract, Standard Terms, clause 3(e)(iii).*

30. In the alternative to the preceding paragraph, this term was implied.

**Particulars**

- (A) *Sch 1, cl 5(1) of the HBC Act.*

31. Each BGC Home Building Contract provided that:

- (a) the BGC Price Increase Power had to be exercised; and
- (b) any notice as pleaded in paragraph 25 above had to be given, before construction commenced.

**Particulars**

- (A) *BGC Home Building Contract, Standard Terms, clause 3(e), properly construed in the circumstances pleaded in paragraphs 19 to 30 above (as applicable) and the provisions of the HBC Act.*

32. In the alternative to the preceding paragraph, this term was implied.

**Particulars**

- (A) *Section 9 and sch 1 cl 4 and 5 of the HBC Act, properly construed.*
- (B) *Alternatively, the term is implied in fact in the circumstances pleaded in paragraphs 19 to 30 above (as applicable).*

33. In the alternative to the preceding paragraph, each BGC Home Building Contract provided that:

- (a) the BGC Price Increase Power had to be exercised; and
- (b) any notice had to be given,

within a reasonable time of the First Defendant, Second Defendant, or Third Defendant (as the case may be) becoming aware of delay in the commencement of works beyond 45 working days after the date of the BGC Home Building Contract.

**Particulars**

- (A) *BGC Home Building Contract clause 3(e), properly construed in the circumstances pleaded in paragraphs 19 to 30 above (as applicable) and the provisions of the HBC Act.*

34. In the alternative to the preceding paragraph, this term was implied.

**Particulars**

- (A) *Section 9 and sch 1, cll 4 and 5 of the HBC Act, properly construed.*
- (B) *Alternatively, the term is implied in fact in the circumstances pleaded in paragraphs 19 to 30 above (as applicable).*

35. Further or in the alternative, each BGC Home Building Contract provided that:

- (a) the BGC Price Increase Power was conditional on the giving of notice of; and
- (b) any notice as pleaded in paragraph 25 above had to include, at least, an itemisation of the actual costs to have increased and the reasons for those increased costs.

**Particulars**

- (A) *BGC Home Building Contract, Standard Terms, clause 3(e), properly construed in the circumstances pleaded in paragraphs 19 to 30 above (as applicable) and the provisions of the HBC Act.*

36. In the alternative to the preceding paragraph, this term was implied.

**Particulars**

- (A) *Section 9 and sch 1 cll 4 and 5 of the HBC Act, properly construed.*

(B) *Alternatively, the term is implied in fact in the circumstances pleaded in paragraphs 19 to 30 above (as applicable).*

37. Further or in the alternative, the BGC Price Increase Power could only be exercised:

- (a) in good faith; and
- (b) for the purpose of increasing the contract price so as to reflect increases in actual costs between the date of the contract and the date of the commencement.

#### **Particulars**

(A) *BGC Home Building Contract, Standard Terms, clause 3(e), properly construed in the circumstances pleaded in paragraphs 19 to 30 above (as applicable) and the provisions of the HBC Act.*

38. In the alternative to the preceding paragraph, this term was implied.

#### **Particulars**

- (A) *Section 9 and sch 1 cl 4 and 5 of the HBC Act, properly construed.*
- (B) *Alternatively, the term is implied in fact in the circumstances pleaded in paragraphs 19 to 30 above (as applicable).*

#### **B.2. Time for completion, BGC Delay Non-Liability Clause, BGC Automatic Extension Clause and BGC Extension of Time Power, and notices**

39. Each BGC Home Building Contract provided that the First Defendant, Second Defendant, or Third Defendant (as the case may be) was to commence the Works (as defined and comprising the BGC Homebuilding Services) within the time specified in item 6 of the Schedule.

#### **Particulars**

(A) *BGC Home Building Contract, Standard Terms, clause 11(a).*

40. On the proper construction of the BGC Home Building Contract, other than those contracts between the Third Defendant and certain Group Members which expressly referred to “working days” in the Schedule (**Specific Ventura Home Building Contracts**), the reference to “days” specified in item 6 of the Schedule was a reference to calendar days.

41. Further to the matters pleaded in paragraph 19(c)(vii) above, each BGC Home Building Contract provided that the First Defendant, Second Defendant, or Third Defendant (as the case may be) was to complete the Works (as defined and comprising the BGC Homebuilding Services) within the number of days specified in item 7 of the Schedule, subject to certain prescribed exceptions (**BGC Completion Date**).

**Particulars**

- (A) *The Buck Contract represented that the First Defendant was to complete the home of the First Plaintiff within 300 days.*
- (B) *The Ghai Contract represented that the Second Defendant was to complete the home of the Second Plaintiff within 365 days.*
- (C) *The Visser Contract represented that the Third Defendant was to complete the home of the Third Plaintiff and Fourth Plaintiff within 300 days.*

42. On the proper construction of the BGC Home Building Contract, other than the Specific Ventura Home Building Contracts, the reference to “days” specified in item 7 of the Schedule was a reference to calendar days.

43. Each BGC Home Building Contract purported to limit the First Defendant’s, Second Defendant’s, or Third Defendant’s (as the case may be) liability for any delay or failure to commence the works or complete the works after commencement due to any cause beyond its control, including any delay in the supply of materials or shortage of labour (**BGC Delay Non-Liability Clause**).

**Particulars**

- (A) *BGC Home Building Contract, Standard Terms, clause 11(b).*

44. Each BGC Home Building Contract provided that, in the event of any delay over which the particular defendant had no control, including any delay in the supply of materials or shortage of labour, the time for contractual completion would be extended and for which period the First Defendant, Second Defendant, or Third Defendant (as the case may be) would not be liable in accordance with the BGC Delay Non-Liability Clause (**BGC Automatic Extension Clause**).

**Particulars**

- (A) *BGC Home Building Contract, Standard Terms [Version: June 2020], clause 11(b) and (c).*

(B) *BGC Home Building Contract, Standard Terms, other than [Version: June 2020], clause 11(b).*

45. The BGC Delay Non-Liability Clause pleaded in paragraph 43 above was subject to the First Defendant, Second Defendant, or Third Defendant (as the case may be) exercising its contractual right to extend the time for completion of the works (**BGC Extension of Time Power**).

**Particulars**

(A) *BGC Home Building Contract, Standard Terms [Version: June 2020], clause 11(d).*

(B) *BGC Home Building Contract, Standard Terms, other than [Version: June 2020], clause 11(c).*

46. The BGC Automatic Extension Clause or BGC Extension of Time Power was:

- (a) limited to extending time from the BGC Completion Date only to the extent of any delays or failure to commence the works or complete the works for which the First Defendant, Second Defendant, or Third Defendant (as the case may be) was not liable; and
- (b) subject to the matters pleaded in paragraphs 47 to 49 below.

**Particulars**

(A) *BGC Home Building Contract, Standard Terms [Version: June 2020], clauses 11(b) – (d).*

(B) *BGC Home Building Contract, Standard Terms other than [Version: June 2020], clauses 11(b)–(c).*

(C) *In the alternative, this term is implied.*

47. On the proper construction of the BGC Home Building Contract, any extension of time pursuant to the BGC Automatic Extension Clause or BGC Extension of Time Power was conditional on the First Defendant, Second Defendant, or Third Defendant (as the case may be) giving to the First Plaintiff, Second Plaintiff, Third Plaintiff and Fourth Plaintiff, or Group Member(s) (as the case may be) a notice of any extension of time within 20 Days of it being aware of both the cause and the extent of the delay.

**Particulars**

- (A) *BGC Home Building Contract, Standard Terms [Version: June 2020], clause 11(d).*
- (B) *BGC Home Building Contract, Standard Terms other than [Version: June 2020], clause 11(c).*
- (C) *In the alternative, this term is implied.*

48. Further or in the alternative, any extension of time pursuant to the BGC Automatic Extension Clause or BGC Extension of Time Power was conditional on the First Defendant, Second Defendant, or Third Defendant (as the case may be) giving to the First Plaintiff, Second Plaintiff, Third Plaintiff and Fourth Plaintiff, or Group Member(s) (as the case may be) notice of the specific delays affecting the specific contractual works under the particular BGC Home Building Contract and why that specific delay had the effect of extending the time of the BGC Completion Date.

**Particulars**

- (A) *BGC Home Building Contract, Standard Terms, clause 11.*
- (B) *In the alternative, this term is implied.*

49. Further or in the alternative, the BGC Extension of Time Power could only be exercised:

- (a) in good faith; and
- (b) for the purpose of extending time to the extent of the specific delays affecting the specific contractual works under the particular BGC Home Building Contract.

**Particulars**

- (A) *BGC Home Building Contract, Standard Terms, clause 11.*
- (B) *In the alternative, this term is implied.*

**B.3. BGC LDs Clause**

50. Each BGC Home Building Contract provided that, if the First Defendant, Second Defendant, or Third Defendant (as the case may be) breached its obligations to complete the works as pleaded at paragraph 41 above, it would be liable to pay the First Plaintiff, Second Plaintiff, Third Plaintiff and Fourth Plaintiff, or Group Member(s)



(as the case may be) liquidated damages at the rate of \$30.00 per “Day” for each “Day” beyond the due date for practical completion until practical completion occurred (**BGC LDs Clause**).

**Particulars**

(A) *BGC Home Building Contract, Standard Terms, clause 11(k) and item 9 of the Schedule.*

**C. PURPORTED NPIS INVALID, PURPORTED COVID GENERIC EOTs AND PURPORTED NON-COVID GENERIC EOTs INEFFECTIVE, AND BGC LDs CLAUSE UNFAIR**

**C.1. Purported NPIS invalid**

51. On 9 April 2021, the First Defendant issued a purported NPI to the First Plaintiff (**First Plaintiff NPI**).

**Particulars**

(A) *The First Defendant issued the First Plaintiff NPI for \$10,353.00.*

52. On 23 November 2021, the Second Defendant issued a purported NPI to the Second Plaintiff (**Second Plaintiff NPI**).

**Particulars**

(A) *The Second Defendant issued the Second Plaintiff NPI for \$7,930.00.*

53. On 23 November 2021, the Third Defendant issued a purported NPI to the Third Plaintiff and Fourth Plaintiff (**Third Plaintiff / Fourth Plaintiff NPI**).

**Particulars**

(A) *The Third Defendant issued the Third Plaintiff / Fourth Plaintiff NPI for \$10,983.00 which was varied on 14 December 2022 by -\$3,483.16 to \$7,500.00.*

54. On various dates after 15 January 2019, the First Defendant, Second Defendant, or Third Defendant (as the case may be) issued purported NPIS to Group Members (together with the First Plaintiff NPI, Second Plaintiff NPI and Third Plaintiff / Fourth Plaintiff NPI, the **Purported NPIS**).

55. By each Purported NPI, the First Defendant, Second Defendant, or Third Defendant (as the case may be) purported to exercise the BGC Price Increase Power so as to increase the price of the particular BGC Home Building Contract.
56. Each Purported NPI was given after construction had commenced, or should have commenced, under the relevant BGC Home Building Contract.
57. In the premises of paragraphs 31 and 32 above and the preceding paragraph, the purported exercise of the BGC Price Increase Power and Purported NPIs were each invalid.
58. In the alternative to the preceding paragraph, the Purported NPIs were not given within a reasonable time of the First Defendant, Second Defendant, or Third Defendant (as the case may be) becoming aware of delay in the commencement of the specific contractual works after the date of the particular BGC Home Building Contract.

#### Particulars

(A) *A reasonable time is prior to commencement of the works or within a few days of commencing the works, being the time when any increases in cost attributable to delay in commencement would be known.*

59. In the premises of paragraphs 33 and 34 above and the preceding paragraph, the purported exercise of the BGC Price Increase Power and Purported NPIs were invalid.
60. Further or in the alternative, the Purported NPIs did not itemise the actual costs purported to have increased and the reasons for those increased actual costs.
61. In the premises of paragraphs 35 and 36 above and the preceding paragraph, the purported exercise of the BGC Price Increase Power or Purported NPIs were invalid.
62. Further or in the alternative, the BGC Price Increase Power was not exercised in accordance with the terms of the particular BGC Home Building Contract and the Purported NPIs were not given:
- (a) in good faith; and
  - (b) for the purpose of increasing the contract price so as to reflect actual increases in costs between the date of the contract and the date of the commencement of the works.

### Particulars

(A) *Paragraphs 56, 58, 60, and the particulars to paragraph 58 are repeated.*

63. In the premises of paragraphs 37 and 38 above and the preceding paragraph, the purported exercise of the BGC Price Increase Power and Purported NPIs were invalid.

### C.2. Purported COVID Generic EOTs and Purported Non-COVID Generic EOTs ineffective

#### *Purported COVID Generic EOTs*

64. On or about 3 February 2022, the First Defendant issued to the First Plaintiff a document which purported to be a notice of extension of time relating to delays purportedly caused by COVID- 19 (**First Defendant's Purported COVID Generic EOT**).

### Particulars

(A) *The First Defendant's Purported COVID Generic EOT claimed a total of 105 Days extension of time broken down to:*

- (i) *50 Days due to COVID-19 impacts on supply-chain, including, but not limited to, shipping delays, truck impacts and material shortages;*
- (ii) *40 Days due to COVID-19 impacts on available labour, including but not limited to, stimulus-caused impacts, border controls reducing labour available and long-wait times on labour;*
- (iii) *15 Days due to COVID-19 associated pandemic restraints imposed in direct connection with the pandemic.*

65. On or about 3 February 2022, the Second Defendant issued to the Second Plaintiff a document which purported to be a notice of extension of time relating to delays purportedly caused by COVID-19 (**Second Defendant's Purported COVID Generic EOT**).

### Particulars

(A) *The Second Defendant's Purported COVID Generic EOT claimed a total of 105 Days extension of time broken down to:*

- (i) *50 Days due to COVID-19 impacts on supply-chain, including, but not limited to, shipping delays, truck impacts and material shortages;*

- (ii) *40 Days due to COVID-19 impacts on available labour, including but not limited to, stimulus-caused impacts, border controls reducing labour available and long-wait times on labour.*
- (iii) *15 Days due to COVID-19 associated pandemic restraints imposed in direct connection with the pandemic.*

66. On or about 3 February 2022, the Third Defendant issued to the Third Plaintiff and Fourth Plaintiff a document which purported to be a notice of extension of time relating to delays purportedly caused by COVID-19 (**Third Defendant's Purported COVID Generic EOT**).

#### Particulars

- (A) *The Third Defendant's Purported COVID Generic EOT claimed a total of 105 Days extension of time broken down to:*
  - (i) *50 Days due to COVID-19 impacts on supply-chain, including, but not limited to, shipping delays, truck impacts and material shortages;*
  - (ii) *40 Days due to COVID-19 impacts on available labour, including but not limited to, stimulus-caused impacts, border controls reducing labour available and long-wait times on labour;*
  - (iii) *15 Days due to COVID-19 associated pandemic restraints imposed in direct connection with the pandemic.*

67. On or about 3 February 2022, each of the First Defendant, Second Defendant, or Third Defendant (as the case may be) issued to Group Members documents which purported to be notices of extensions of time relating to delays purportedly caused by COVID-19 (together with the First Defendant's Purported COVID Generic EOT, Second Defendant's Purported COVID Generic EOT, and Third Defendant's Purported COVID Generic EOT, **Purported COVID Generic EOTs**).

68. In the alternative, by the Purported COVID Generic EOTs, each of the First Defendant, Second Defendant, or Third Defendant (as the case may be) purported to:
- (a) notify the Plaintiffs or Group Members (as the case may be) of the operation of the BGC Automatic Extension Clause; or
  - (b) exercise the BGC Extension of Time Power so as to extend the time for completion of the works.

69. At the time the Purported COVID Generic EOTs were issued, the First Plaintiff, the Second Plaintiff, Third Plaintiff and Fourth Plaintiff, and Group Members were at various different build stages.

**Particulars**

- (A) *The First Defendant's Purported COVID Generic EOT was issued 45 days after the 'slab down' stage was completed.*
- (B) *The Second Defendant's Purported COVID Generic EOT was issued 219 days after the 'slab down' stage was completed and while the bricklaying stage was in progress, that stage being completed 17 working days thereafter.*
- (C) *The Third Defendant's Purported COVID Generic EOT was issued 231 days after the 'slab down' stage was completed and on the same day the roof cover stage was completed.*
70. By each and every of the Purported COVID Generic EOTs, the First Defendant, Second Defendant, or Third Defendant (as the case may be) purported to extend the build time for the respective build by:
- (a) 50 Days due to unspecified supply-chain delays;
- (b) 40 Days due to unspecified impacts on available labour; and
- (c) 15 Days associated with unspecified pandemic restraints.

71. Each of the Purported COVID Generic EOTs was issued without regard to the build stage of the specific contractual works the subject of the particular BGC Home Building Contract as at the date of the Purported COVID Generic EOT.

72. In the premises of paragraph 46 above and the preceding paragraph, the notices were of no effect.

73. The First Defendant, Second Defendant, or Third Defendant (as the case may be) were aware of the cause and extent of the delays (if any which gave rise to an extension of time) as they related to each of the BGC Home Building Contracts prior to 5 January 2022.

**Particulars**

- (A) *5 January 2022 was 20 working days prior to the Purported COVID Generic EOTs.*

- (B) *Extensions of 105 days were claimed referable to alleged circumstances (COVID-19), which had existed in Western Australia since at least 24 March 2020.*
- (C) *Terms of each Purported COVID Generic EOT.*
74. Further or in the alternative, the Purported COVID Generic EOTs did not include notice of the specific delays affecting the specific contractual works delayed under the particular BGC Home Building Contract and the reasons for the same.
75. In the premises of paragraph 47, 48, 73 and 74 above:
- (a) the BGC Automatic Extension Clause did not extend time to complete the specific contractual works on the particular BGC Home Building Contract;
- (b) the purported exercise of the BGC Extension of Time Power was ineffective;  
or
- (c) the Purported COVID Generic EOTs were ineffective.
76. Further or in the alternative, the BGC Extension of Time Power was not exercised or Purported COVID Generic EOTs not given:
- (a) in good faith; and
- (b) for the purpose of extending time to the extent of the specific delays affecting the specific contractual works still to be completed under the particular BGC Home Building Contract.

### **Particulars**

- (A) *This is to be inferred from the matters pleaded in paragraphs 64 to 71 above.*
- (B) *Neither the First Defendant, Second Defendant nor the Third Defendant informed the affected Group Members as to the steps they had taken to mitigate the alleged delays, either before or after the Purported COVID Generic EOTs were issued.*
- (C) *No details were provided of the “careful analysis” alleged to have been performed in order for the relevant Defendant to determine the total extent of the delay to the time to complete the specific contractual works by reasons attributable to the pandemic claimed in the particular Purported COVID Generic EOT.*

(D) *Each Purported COVID Generic EOT listed the same number of days to adjust the build time and the same reason for the adjustment for each BGC Home Building Contract notwithstanding that the builds were not at the same progress stage.*

(E) *Each Purported COVID Generic EOT did not provide details of the alleged unavailability of labour, impacts on supply-chain including material shortages, or the purported COVID-19-associated pandemic restraints, that being the alleged basis of/for each Defendant exercising the BGC Extension of Time Power as to the specific extension of Days.*

77. In the premises of paragraph 49 above and the preceding paragraph, the purported exercise of the BGC Extension of Time Power and/or Purported COVID Generic EOTs were ineffective.

*Purported Non-COVID Generic EOTs*

78. On or about 10 October 2022 and 6 February 2023, the First Defendant issued purported notices of an extension of time to the First Plaintiff (**First Defendant's Purported Non-COVID Generic EOTs**).

**Particulars**

(A) *The First Defendant's Purported Non-COVID Generic EOT dated 10 October 2022 was issued at the brickwork stage for 164 Days due to trade labour shortage.*

(B) *The First Defendant's Purported Non-COVID Generic EOT dated 6 February 2023 was issued at the roof cover stage for 67 Days due to trade labour & material shortage.*

79. On or about 24 October 2022 and 14 August 2023, the Second Defendant issued a purported notices of an extension of time to the Second Plaintiff (**Second Defendant's Purported Non-COVID Generic EOTs**).

**Particulars**

(A) *The Second Defendant's Purported Non-COVID Generic EOT dated 24 October 2022 was issued at the roof cover stage for 145 Days due to trade labour & material shortage.*

(B) *The Second Defendant's Purported Non-COVID Generic EOT dated 14 August 2023 was issued at the floor and wall tiling stage for 54 Days due to trade labour shortage.*

80. On or about 13 October 2021, the Third Defendant issued a purported notice of an extension of time to the Third Plaintiff and Fourth Plaintiff (**Third Defendant's Purported Non-COVID Generic EOT**).

**Particulars**

- (A) *The Third Defendant's Purported Non-COVID Generic EOT dated 13 October 2021 was issued 2 days after the completion of the bricklaying stage for 90 working days due to trade shortages, waiting on concreters and bricklayers start.*
81. On various dates after 15 January 2019, the First Defendant, Second Defendant, and Third Defendant (as the case may be) issued purported notices of extensions of time (together with the First Defendant's Purported Non-COVID Generic EOT, Second Defendant's Purported Non-COVID Generic EOT, and Third Defendant's Purported Non-COVID Generic EOT, **Purported Non-COVID Generic EOTs**).
82. By the Purported Non-COVID Generic EOTs, each of the First Defendant, Second Defendant, or Third Defendant (as the case may be) purported to:
- (a) notify the Plaintiffs or Group Members (as the case may be) of the purported operation of the BGC Automatic Extension Clause; or
- (b) exercise the BGC Extension of Time Power so as to extend the time for completion.
83. At the time the Purported Non-COVID Generic EOTs were issued, the First Plaintiff, Second Plaintiff, Third Plaintiff and Fourth Plaintiff, and Group Members were at various different build stages.

**Particulars**

- (A) *Paragraphs 78, 79 and 80 are repeated.*
84. The Purported Non-COVID Generic EOTs did not include notice of the specific delays affecting the specific contractual works under the particular BGC Home Building Contract and the reasons for the same and did not, on the proper construction of the BGC Home Building Contract, extend the time to complete construction of the particular dwelling pursuant to the relevant BGC Home Building Contract.

**Particulars**

- (A) *The Plaintiffs refer to the terms of the Purported Non-COVID Generic EOTs.*



85. In the premises of paragraphs 47, 48 and 84 above:
- (a) the BGC Automatic Extension Clause did not extend time;
  - (b) the purported exercise of the BGC Extension of Time Power was ineffective;  
or
  - (c) the Purported Non-COVID Generic EOTs were ineffective.
86. Further or in the alternative, the BGC Extension of Time Power was not exercised and Purported Non-COVID Generic EOTs not given:
- (a) in good faith; and
  - (b) for the purpose of extending time to the extent of the specific delays affecting the specific contractual works still to be completed under the particular BGC Home Building Contract.

#### Particulars

- (A) *This is to be inferred from the matters pleaded in paragraphs 78 to 84 above.*
  - (B) *The Purported Non-COVID Generic EOTs did not provide details of the labour and the materials, the alleged short supply of which was said to be the basis for the Purported Non-COVID Generic EOTs.*
  - (C) *Further particulars may be provided following discovery.*
87. In the premises of paragraph 49 above and the preceding paragraph, the purported exercise of the BGC Extension of Time Power or Purported COVID Generic EOTs were ineffective.

#### **C.3. BGC Extension of Time Power unfair**

88. Further or in the alternative to the matters pleaded in section C.2. above, the BGC Extension of Time Power purported to include as a circumstance said to justify the exercise of that power, any delay in the supply of materials or shortage of labour.

#### Particulars

- (A) *BGC Home Building Contract, Standard Terms [Version: June 2020], clause 11(b)(vii).*
- (B) *BGC Home Building Contract, Standard terms other than [Version: June 2020], clause 11(b)(vi).*

89. Further to the matter pleaded in the preceding paragraph, each BGC Home Building Contract provided that, in determining whether there was any delay in the supply of materials or shortage of labour for the purpose of the BGC Extension of Time Power, the First Defendant, Second Defendant, or Third Defendant (as the case may be) was not under any obligation to pay more for labour and materials than it budgeted for in determining the Contract Price, thereby excusing permanent non-performance by the First Defendant, Second Defendant, or Third Defendant (as the case may be) of the Home Building Contract.

**Particulars**

(A) *BGC Home Building Contract, chaussette to clause 11.*

90. The BGC Automatic Extension Clause or BGC Extension of Time Power would permit the First Defendant, Second Defendant, or Third Defendant (as the case may be) to extend time for an indefinite period because:

(a) the prices of materials or labour have increased above that provided for in the budget utilised to determine the Contract Price due to any reason, whether foreseeable or unforeseeable; or

(b) it mis-priced the BGC Home Building Contract.

91. In the premises of the matters pleaded at paragraphs 88 and 89 above and the preceding paragraphs, the BGC Automatic Extension Clause or BGC Extension of Time Power:

(a) caused a significant imbalance in the contracting parties' rights and obligations arising under the BGC Home Building Contract;

(b) was not reasonably necessary in order to protect the legitimate interests of the First Defendant, Second Defendant, or Third Defendant (as the case may be); and

(c) caused detriment to the Group Member(s) in being so applied or relied upon.

**Particulars**

(A) *The BGC Automatic Extension Clause or BGC Extension of Time Power places the consumer at significant risk throughout the build.*

(B) *The BGC Automatic Extension Clause or BGC Extension of Time Power effectively avoids the operation of ss 8(4) and 13 of the HBC Act.*

(C) *The BGC Automatic Extension Clause or BGC Extension of Time Power would thereby excuse permanent non-performance.*

92. Clause 11 of the BGC Home Building Contracts, insofar as the:

- (a) BGC Automatic Extension Clause extended time on the basis of the matters pleaded in paragraphs 88 and 89 above; or
- (b) BGC Extension of Time Power extended time on the basis of the matters pleaded in paragraphs 88 and 89 above,

was “unfair” within the meaning of s 23(1)(a) of the ACL.

93. In the premises, the BGC Automatic Extension Clause or BGC Extension of Time Power is void.

#### **Particulars**

(A) *Section 23(1) of the ACL.*

94. In the premises of the preceding paragraph, the:

- (a) BGC Automatic Extension Clause; or
- (b) BGC Extension of Time Power,

were ineffective to the extent purportedly provided by the:

- (c) Purported COVID Generic EOTs; and
- (d) Purported Non-COVID Generic EOTs,

and the Purported COVID Generic EOTs and Purported Non-COVID Generic EOTs were ineffective.

#### **C.4. BGC LDs Clause unfair**

95. Each BGC LDs Clause was in standard form.

96. Each BGC LDs Clause was not separately negotiated between the First Defendant, Second Defendant, or Third Defendant (as the case may be) and First Plaintiff, Second Plaintiff, Third Plaintiff and Fourth Plaintiff, or Group Member(s) (as the case may be).

### Particulars

- (A) *Paragraph 50 is repeated.*
97. In the premises of the matters pleaded at paragraphs 95 and 96, the BGC LDs Clause purported to cap the First Defendant's, Second Defendant's, or Third Defendant's (as the case may be) liability for delays beyond any legitimate interest of it and:
- (a) without regard to the individual circumstances of the First Plaintiff, Second Plaintiff, Third Plaintiff and Fourth Plaintiff, or Group Member(s) (as the case may be);
  - (b) irrespective of the nature and extent of delay(s); and
  - (c) is disproportionately low relative to potentially recoverable unliquidated damages.
98. In the premises of the matters pleaded at paragraphs 95 to 96 and the preceding paragraph, the BGC LDs Clause:
- (a) caused a significant imbalance in the contracting parties' rights and obligations arising under the BGC Home Building Contract;
  - (b) was not reasonably necessary in order to protect the legitimate interests the First Defendant, Second Defendant, or Third Defendant (as the case may be); and
  - (c) caused detriment to the Group Member(s) in being so applied or relied upon.
99. In the premises of the preceding paragraph, the BGC LDs Clause is "unfair" within the meaning of s 23(1)(a) of the ACL.
100. In the premises, the BGC LDs Clause is void.

### Particulars

- (A) *Section 23(1) of the ACL.*
- D. GROUP MEMBERS PAY INCREASED PRICES, HOMES INCOMPLETE, AND LOSS**
- D.1. Loss and damage from payment of Purported NPIs and BGC LDs Clause**
101. The First Plaintiff paid the increased price demanded by the First Plaintiff Purported NPI.

**Particulars**

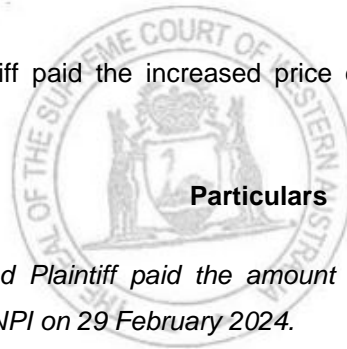
(A) *The First Plaintiff paid the amount demanded in the First Plaintiff Purported NPI on 31 August 2023.*

102. In the premises of the matters pleaded at paragraph 63 and the preceding paragraph:

- (a) there was no basis under the BGC Home Building Contract for the First Defendant to demand the amount sought in the First Plaintiff Purported NPI;
- (b) there was no basis under the BGC Home Building Contract for the First Plaintiff to make a payment for an increased price in accordance with the First Plaintiff Purported NPI; or
- (c) payment was made on a mistake that payment of an increased price in accordance with the First Plaintiff Purported NPI was due.

103. In the premises of the preceding paragraph, the First Plaintiff is entitled to recover that sum.

104. The Second Plaintiff paid the increased price demanded by the Second Plaintiff Purported NPI.



**Particulars**

(A) *The Second Plaintiff paid the amount demanded in the Second Plaintiff Purported NPI on 29 February 2024.*

105. In the premises of the matters pleaded at paragraph 63 and the preceding paragraph:

- (a) there was no basis for payment of an increased price in accordance with the Second Plaintiff Purported NPI; or
- (b) there was no basis under the BGC Home Building Contract for the Second Plaintiff to make a payment for an increased price in accordance with the Second Plaintiff Purported NPI; or
- (c) payment was made on a mistake that payment of an increased price in accordance with the Second Plaintiff Purported NPI was due.

106. In the premises of the preceding paragraph, the Second Plaintiff is entitled to recover that sum.

107. The Third Plaintiff and Fourth Plaintiff paid the increase demanded by the Third Plaintiff / Fourth Plaintiff Purported NPI.

**Particulars**

(A) *The Third Plaintiff and Fourth Plaintiff paid the amount demanded in the Third Plaintiff / Fourth Plaintiff Purported NPI on 15 December 2022.*

108. In the premises of the matters pleaded at paragraph 63 and the preceding paragraph:

(a) there was no basis for payment of an increased price in accordance with the Third Plaintiff / Fourth Plaintiff Purported NPI; or

(b) there was no basis under the BGC Home Building Contract for the Third Plaintiff and Fourth Plaintiff to make a payment for an increased price in accordance with the Third Plaintiff / Fourth Plaintiff Purported NPI; or

(c) payment was made on the mistake that payment of an increased price in accordance with the Third Plaintiff / Fourth Plaintiff Purported NPI was due.

109. In the premises of the preceding paragraph, the Third Plaintiff and Fourth Plaintiff are entitled to recover that sum.

110. Group Members have paid the increased price of his or her or their BGC Home Building Contract in accordance with the particular Purported NPI.

**Particulars**

(A) *Paragraphs 57, 60, 61, 63 are repeated.*

111. In the premises of the matters pleaded at paragraph 63 above and the preceding paragraph:

(a) there was no basis for payment of an increased price in accordance with the particular Purported NPI; or

(b) there was no basis under the BGC Home Building Contract for Group Members to make a payment for an increased price in accordance with the Purported NPI; or

(c) payment was made on the mistake that payment of an increased price in accordance with the particular Purported NPI was due.

112. In the premises of the preceding paragraph, Group Members are entitled to recover those sums.

**D.2. Loss and damage from incomplete homes and Purported COVID Generic EOTs and Purported Non-COVID Generic EOTs**

113. In the premises of the matters pleaded in 75, 77, 93, and 94 above, together or separately, the First Defendant, Second Defendant, or Third Defendant (as the case may be) do not have the benefit of any purported or claimed extension of time beyond the particular BGC Completion Date.
114. In the premises of the matters pleaded in paragraphs 85, 87, 93, and 94 above, together or separately, the First Defendant, Second Defendant, or Third Defendant (as the case may be) does not have the benefit of any purported or claimed extension of time beyond the particular BGC Completion Date.
115. In breach of the obligation pleaded in paragraph 41 above, the First Defendant has failed to complete the First Plaintiff's home by the BGC Completion Date or such later time as the First Defendant was entitled.

**Particulars**

(A) *The First Defendant did not complete the First Plaintiff's home within 300 days in accordance with clause 11(a) of the Buck Contract.*

116. In the premises of the preceding paragraph, the First Plaintiff has suffered loss and damage by reason of the First Defendant's breach.
117. In breach of the obligation pleaded in paragraph 41 above, the Second Defendant has failed to complete the Second Plaintiff's home by the particular BGC Completion Date or such later time as the Second Defendant was entitled.

**Particulars**

(A) *The Second Defendant did not complete the Second Plaintiff's home within 365 days in accordance with clause 11(a) of the Ghai Contract.*

118. In the premises of the preceding paragraph, the Second Plaintiff has suffered loss and damage by reason of the Second Defendant's breach.
119. In breach of the obligation pleaded in paragraph 41 above, the Third Defendant has failed to complete the Third Plaintiff and Fourth Plaintiff's home by the particular BGC Completion Date or such later time as the Third Defendant was entitled.

**Particulars**

- (A) *The Third Defendant did not complete the Third Plaintiff and Fourth Plaintiff's home within 300 days in accordance with clause 11(a) of the Visser Contract.*
120. In the premises of the preceding paragraph, the Third Plaintiff and Fourth Plaintiff have suffered loss and damage by the Third Defendant's breach.
121. In breach of the obligation pleaded in paragraph 41 above, the First Defendant, Second Defendant, or Third Defendant (as the case may be) have failed to complete certain or all Group Members' homes (as the case may be) by the particular BGC Completion Date or such later time as the First Defendant, Second Defendant, or Third Defendant (as the case may be) was entitled.
122. In the premises of the preceding paragraph, those Group Members have suffered loss and damage by the First Defendant's, Second Defendant's, or Third Defendant's (as the case may be) breach.

**Particulars**

- (A) *To the extent that liquidated damages have been paid to a Group Member, that Group Member's damages ought to be reduced to that extent.*
- (B) *The payment of any liquidated damages is an admission by the First Defendant, Second Defendant, or Third Defendant (as the case may be) that loss and damages was (and is) not less than \$30.00 per day.*

**D.3. Wrongful acceptance of payment or other consideration and failure to supply**

123. At the time of entering any particular BGC Home Building Contract, the First Defendant, Second Defendant, or Third Defendant (as the case may be) accepted payment or other consideration for the supply of the BGC Homebuilding Services.

**Particulars**

- (A) *The Defendants accepted the payment of a deposit pursuant to preliminary agreements which form part of the BGC Home Building Contracts.*
- (B) *On or about 2 September 2020, the First Defendant accepted payment of \$2,000.00 deposit from the First Plaintiff.*
- (C) *On or about 21 August 2020, the Second Defendant accepted payment of \$5,000.00 deposit from the Second Plaintiff.*



(D) *On or about 7 August 2020, the Third Defendant accepted payment of \$2,000.00 deposit from the Third Plaintiff and Fourth Plaintiff.*

124. The supply of BGC Homebuilding Services was a supply of a “good or service” within the meaning of s 36 of the ACL.
125. At the time of entering any particular BGC Home Building Contract, the First Defendant, Second Defendant, or Third Defendant (as the case may be) represented that the particular BGC Homebuilding Services would be completed by the particular BGC Completion Date.

#### **Particulars**

(A) *The Plaintiffs repeat the particulars to paragraph 41.*

126. In the premises of paragraphs 7(b), 8(b), 9(b), respectively and 124 above, and the preceding paragraph, the First Defendant, Second Defendant, or Third Defendant (as the case may be) was obligated to supply the particular BGC Homebuilding Services by the particular BGC Completion Date.

#### **Particulars**

(A) *Section 36(4) of the ACL.*

127. In the alternative, in the premises of paragraphs 7(b), 8(b), 9(b), respectively and paragraphs 124 and 125 above, the First Defendant, Second Defendant, or Third Defendant (as the case may be) was obligated to supply the particular BGC Homebuilding Services by the particular BGC Completion Date, subject to any valid extension of time.
128. In the premises of paragraphs 123 to 127 above and the preceding paragraph, the First Plaintiff has suffered loss and damage.

#### **Particulars**

(A) *Paragraph 115 is repeated.*

129. In the premises of paragraphs 123 to 127 above, the Second Plaintiff has suffered loss and damage.

#### **Particulars**

(A) *Paragraph 117 is repeated.*

130. In the premises of paragraphs 123 to 127 above, the Third Plaintiff and Fourth Plaintiff have suffered loss and damage.

**Particulars**

(A) *Paragraph 119 is repeated.*

131. In the premises of paragraphs 123 to 127 above, Group Members have suffered loss and damage.

**Particulars**

(A) *Paragraph 121 is repeated.*

**E. RELIEF**

132. The First Plaintiff, Second Plaintiff, Third Plaintiff and Fourth Plaintiff claim on each of their own behalf, and on behalf of Group Members, the relief set out below under Part 2 of the CPRP Act:

- (a) Damages;
- (b) Costs;
- (c) Interest pursuant to section 32 of the *Supreme Court Act 1935*; and
- (d) Such further or other orders as the Court may deem appropriate.

**F. COMMON QUESTIONS**

The questions of law or fact common to the claims of Group Members are as follows.

**F.1. BGC Price Increase Power and notices**

1. Did the BGC Price Increase Power have to be exercised and any notice increasing the Contract Price pursuant to it have to be given before construction commenced?
2. Did the BGC Price Increase Power have to be exercised and any notice increasing the Contract Price pursuant to it have to be given within a reasonable time of the First Defendant, Second Defendant, or Third Defendant (as the case may be) becoming aware of delay in the commencement of works beyond 45 working days after the date of the BGC Home Building Contract?
3. If so, what constituted a reasonable time?

4. Did the exercise of the BGC Price Increase Power and any notice increasing the Contract Price pursuant to it have to include at least itemisation of the costs purported to have increased and the reasons for those increased costs?
5. Could the BGC Price Increase Power only be exercised:
  - (a) in good faith; and
  - (b) for the purpose of increasing the Contract Price so as to reflect actual increases in costs between the date of the Contract and the date of the notice?
6. Was/were the purported exercise(s) of the BGC Price Increase Power and Purported NPIs invalid?

**F.2. Time for completion, BGC Delay Non-Liability Clause, BGC Extension of Time Power, notices, and BGC LDs Clause?**

7. In each BGC Home Building Contract other than the Specific Ventura Home Building Contracts, was the reference to “days” specified in item 6 of each contractual Schedule a reference to calendar days or business days?
8. In each BGC Home Building Contract other than the Specific Ventura Home Building Contracts, was the reference to “days” specified in item 7 of each contractual Schedule a reference to calendar days or business days?
9. Was any extension of time obtained pursuant to the BGC Automatic Extension Clause or BGC Extension of Time Power conditional on the First Defendant, Second Defendant, or Third Defendant (as the case may be) giving to the First Plaintiff, Second Plaintiff, Third Plaintiff and Fourth Plaintiff, or Group Member(s) (as the case may be) a notice of any extension of time within 20 Days of it being aware of both the cause and the extent of the delay?
10. Was any extension of time pursuant to the BGC Automatic Extension Clause or BGC Extension of Time Power conditional on the First Defendant, Second Defendant, or Third Defendant (as the case may be) giving to the First Plaintiff, Second Plaintiff, Third Plaintiff and Fourth Plaintiff, or Group Member(s) (as the case may be) notice of the specific delays affecting the specific contractual works still to be completed under the particular BGC Home Building Contract and the reasons for the same?
11. Could the BGC Extension of Time Power (as defined) only be exercised:
  - (a) in good faith; and

(b) for the purpose of extending time to the extent of the specific delays affecting the specific contractual works still to be completed under the particular BGC Home Building Contract?

12. Was/were the Purported COVID Generic EOTs ineffective?
13. Was/were the Purported Non-COVID Generic EOTs ineffective?
14. Was/is the BGC Automatic Extension Clause or BGC Extension of Time Power (as defined) void as “unfair” within the meaning of s 23(1)(a) of the ACL?
15. And otherwise, was the extension of time sought be obtained pursuant to the Purported COVID Generic EOTs ineffective?
16. And otherwise, was the extension of time sought be obtained pursuant to the Purported Non-COVID Generic EOTs ineffective?
17. Was/is the BGC LDs Clause void as “unfair” within the meaning of s 23(1)(a) of the ACL?

**F.3. S 36(4) ACL.**

18. Was the supply of BGC Homebuilding Services a supply of a “good or service” within the meaning of s 36 of the ACL?
19. Did each of the BGC Home Building Contracts provide that the BGC Homebuilding Services contemplated in the particular contract would be completed within a specified period, namely on or before the BGC Completion Date?
20. Did the First Defendant, Second Defendant or Third Defendant represent that the BGC Homebuilding Services contemplated in the particular contract would be completed within a specified period, namely on or before the BGC Completion Date at the time, or before it accepted payment for each of the BGC Home Building Contracts?

**F.4. Loss and damage**

21. Whether the Plaintiff and some or all of the Group Members have suffered loss and damage?
22. Which, if any, heads of loss (as pleaded and particularised) are recoverable and on what basis?
23. Whether the Plaintiff and some or all of the Group Members may recover sums paid in accordance with the Purported NPIs?

**F.5. Relief**

24. Whether, by reason thereof, the Plaintiff and some or all of the Group Members are entitled to the relief sought and, if so, on what basis?

Morgan Alteruthemeyer  
For  
JC GILES  
NJ LANDIS  
S PUTTICK  
COUNSEL FOR THE PLAINTIFFS



Place of Trial: Perth

This writ was issued by or on behalf of the Plaintiffs and the Group Members.

The First Plaintiff's geographical address is:

14 Rivette Court  
DARLING DOWNS WA 6122

The First Plaintiff's service details are:

C/- Morgan Alteruthemeyer  
2/4 Adelaide Street  
FREMANTLE WA 6160

The Second Plaintiff's geographical address is:

3 Catherine Street  
BENTLEY WA 6102

The Second Plaintiff's service details are:

C/- Morgan Alteruthemeyer  
2/4 Adelaide Street  
FREMANTLE WA 6160



The Third Plaintiff's geographical address is:

263 Dalyellup Boulevard  
DALYELLUP WA 6230

The Third Plaintiff's service details are:

C/- Morgan Alteruthemeyer  
2/4 Adelaide Street  
FREMANTLE WA 6160

The Fourth Plaintiff's geographical address is:

263 Dalyellup Boulevard  
DALYELLUP WA 6230

The Fourth Plaintiff's service details are:

C/- Morgan Alteruthemeyer  
2/4 Adelaide Street  
FREMANTLE WA 6160

*Indorsement as to Service*

This writ was served by me at

On BGC RESIDENTIAL PTY LTD (ACN 052 543 450) (the First Defendant)

on \_\_\_\_\_ day \_\_\_\_\_ the \_\_\_\_\_ day  
of \_\_\_\_\_ 2024.

Indorsed the \_\_\_\_\_ day of \_\_\_\_\_ 2024.

(Signed).....

(Address).....

This writ was served by me at

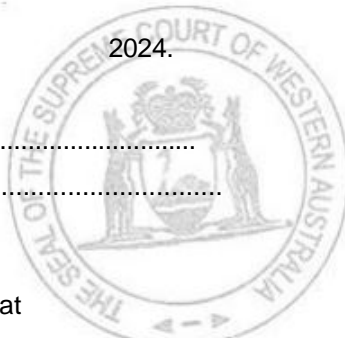
on J-CORP PTY LTD (ACN 009 063 076) (the Second Defendant)

on \_\_\_\_\_ day \_\_\_\_\_ the \_\_\_\_\_ day  
of \_\_\_\_\_ 2024.

Indorsed the \_\_\_\_\_ day of \_\_\_\_\_ 2024.

(Signed).....

(Address).....



This writ was served by me at

on VENTURA HOME GROUP PTY LTD (ACN 093 870 618) (the Third Defendant)

on \_\_\_\_\_ day \_\_\_\_\_ the \_\_\_\_\_ day  
of \_\_\_\_\_ 2024.

Indorsed the \_\_\_\_\_ day of \_\_\_\_\_ 2024.

(Signed).....

(Address).....