



HIGH COURT OF AUSTRALIA

NOTICE OF FILING

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Details of Filing

File Number: S54/2024
File Title: Pafburn Pty Limited (ACN 003 485 505) & Anor v. The Owne
Registry: Sydney
Document filed: Form 27B - Amended Appellant's chronology
Filing party: Appellants
Date filed: 05 Jun 2024

Important Information

This Notice has been inserted as the cover page of the document which has been accepted for filing electronically. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties and whenever the document is reproduced for use by the Court.

Form 27B – Appellant’s chronology

Note: see rule 44.02.3.

S54/2024

IN THE HIGH COURT OF AUSTRALIA
SYDNEY REGISTRY

BETWEEN:

PAFBURN PTY LIMITED
(ACN 003 485 505)

First Appellant

MADARINA PTY LIMITED
(ACN 080 675 627)

Second Appellant

and

THE OWNERS – STRATA PLAN NO 84674

Respondent

AMENDED APPELLANTS’ CHRONOLOGY

Part I: Certification

This chronology is in a form suitable for publication on the internet.

Part II: List of Principal Events Leading to the Litigation

Date	Event	References
Circa 2008	The second appellant (Developer) retained the first appellant (Head Builder), to design and construct a residential strata title building located at 197 Walker Street, North Sydney, NSW (Building). The Building is an 8 level, high rise, apartment block, constructed over 2 basement carpark levels and comprises 19 residential lots.	ALS [C8], [C10] (ABFM 14) (FALR [C8], [C10]) (ABFM 140)

Date	Event	References
Between 2008 and late 2010	The Building was constructed.	ALS [C15I] (ABFM 20) FALR [C15I] (ABFM 146)
6 Dec 2010	The Final Occupation Certificate for the Building (OC 251/08) was issued.	ALS [C15I] (ABFM 20) FALR [C15I] (ABFM 146)
6 Dec 2010	The strata plan for the Building was registered and the respondent (OC) was incorporated and became the owner of the common property of the Building, succeeding the Developer as owner.	ALS [C5(c)] (ABFM 13-14) FALR at [C5] (ABFM 139)
10 Jun 2020	Parts 1 & 4 9 and cll 1, 4A-5 of Sch 1 of the <i>Design and Building Practitioners Act 2020</i> (NSW) (DBPA) commenced. ¹	
1 Dec 2020	The OC commenced the first instance proceedings in the Supreme Court of NSW, Equity Division, Technology and Construction List, proceedings number 2020 / 340673, against the Head Builder, the Developer and the Head Builder's waterproofing subcontractor (Superb Waterproofing Pty Ltd).	
27 Feb 2021	The Head Builder and the Developer filed a joint List Response (defence) denying liability to the OC's claims and pleading, amongst other defences, proportionate liability under Pt 4 of the <i>Civil</i>	

¹ By s 2(1) of the DBPA, Pts 1& 4 and cll 1, 4A-5 of Sch 1 of the DBPA commenced on the date of assent of the DBPA, being 10 June 2020 (see NSW Government Gazette No. 122, 12/6/2020, p.2628 - https://gazette.legislation.nsw.gov.au/so/download.w3p?id=Gazette_2020_2020-122.pdf).

Date	Event	References
	<i>Liability Act 2002 (NSW).</i>	
7 May 2021	Superb Waterproofing Pty Ltd was placed into liquidation and the proceedings stayed against it pursuant to s 471B(a) of the <i>Corporations Act 2001</i> (Cth).	
21 Jan 2022	Superb Waterproofing Pty Ltd was deregistered.	
8 Aug 2022	The OC amended its List Statement (claim). ²	ABFM 11-134
21 Sep 2022	The Head Builder and the Developer filed a joint First Amended List Response (FALR). ³	ABFM 135-277
11 Nov 2022	The OC filed a notice of motion seeking to summarily strike out the FALR, amongst other things, the proportionate liability defences for failing to disclose an arguable defence (the Motion).	ABFM 5-8
15 Dec 2022	An amended notice of motion was filed by the OC seeking to strike out further paragraphs of the FALR.	ABFM 9-10
16 Feb 2023	The Motion was heard before Justice K. Rees.	
23 Feb 2023	Reasons for judgment and orders were delivered by Justice Rees in respect of the Motion (PJ). ⁴	CAB 5-19
23 May 2023	The OC filed in respect of the PJ a Summons Seeking Leave to Appeal and draft notice of appeal in the NSW Court of Appeal, proceedings number 2023 / 84603.	CAB 23-26 (Summons) CAB 27-31 (Filed Notice of Appeal) CAB 74 (Lines 9 and 11)
1 Nov 2023	The NSW Court of Appeal (constituted by Justice J Ward, President of the Court of Appeal, Justice C Adamson & Acting Justice J Basten) heard	

² Amended Technology and Construction List Statement.

³ First Amended Technology and Construction List Response.

⁴ *The Owners – Strata Plan No 84674 v Pafburn Pty Ltd* [2023] NSWSC 116.

Date	Event	References
	concurrently the application for leave to appeal and the appeal.	
13 Dec 2023	Reasons for judgment and orders were delivered by the NSW Court of Appeal (AJ). ⁵	CAB 32-70
10 Jan 2024	The Head Builder and the Developer filed an application for special leave to appeal to the High Court of Australia.	
11 Apr 2024	Special leave to appeal was granted by the High Court of Australia.	CAB 76-77
24 April 2024	Notice of Appeal filed in the High Court	CAB 78-90

Dated ~~30 May~~ 4 June 2024

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⁵ *The Owners – Strata Plan No 84674 v Pafburn Pty Ltd* [2023] NSWCA 301.