

## NOTICE OF FILING

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### Details of Filing

Document Lodged: Reply - Form 34 - Rule 16.33  
File Number: NSD215/2019  
File Title: THE OWNERS - STRATA PLAN 87231 v 3A COMPOSITES GMBH & ANOR  
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



*Sia Lagos*

Dated: 20/05/2020 4:28:36 PM AEST

Registrar

### Important Information

As required by the Court's Rules, this Notice has been inserted as the first page of the document which has been accepted for electronic filing. 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.

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## Reply to Defences to Amended Statement of Claim

No. NSD215 of 2019

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

### The Owners – Strata Plan No 87231

Applicant

**3A Composites GmbH** and another named in the schedule

Respondents

Terms defined in the Applicant's Amended Statement of Claim (**ASOC**) have the same meaning in this Reply, unless otherwise indicated.

1. The Applicant joins issue with the First Respondent's Defence to the ASOC (**3A Defence**) and the Second Respondent's Defence to the ASOC (**HVG Defence**), save insofar as the same consists of admissions or is the subject of specific further plea in this Reply.
2. In reply to paragraphs 1(d) of the 3A Defence and paragraph 7(h) of the HVG Defence and each subsequent paragraph in the 3A Defence and the HVG Defence which refers to and repeats these sub-paragraphs, or employs the term "Third Party Products" (as defined in those sub-paragraphs), the Applicant:
  - (a) denies that the alteration of Alucobond PE Core Cladding by means of the methods referred to in those paragraphs caused the relevant product (being an aluminium composite panel, as defined in paragraphs 6 to 10 of the ASOC) to cease to be the same goods manufactured or supplied by 3A Composites and/or HVG for the purposes of the TPA or the ACL;
  - (b) further, says that:
    - (i) the methods of alteration referred to in those paragraphs are each Fabrication Methods (as defined at paragraph 53 of the ASOC);
    - (ii) at all material times, 3A Composites and HVG represented that Alucobond PE

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Filed on behalf of (name & role of party)	The Owners – Strata Plan No 87231, Applicant		
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Core Cladding could be fabricated by third parties prior to (or as part of) being fitted to buildings, including by the Fabrication Methods, as pleaded at paragraph 53 of the ASOC (and substantially admitted at paragraph 53(c) of the 3A Defence and paragraph 53(a) of the HVG Defence);

- (iii) the application of the Fabrication Methods to Alucobond PE Core Cladding did not constitute the using up or transformation of those products in the course of production or manufacture, or in the course of repairing or treating other goods or fixtures on land, but rather constituted the ordinary or common means of using or affixing Alucobond PE Core Cladding to a building in accordance with 3A Composites and HVG's promotional material;
  - (iv) accordingly, the application of the Fabrication Methods to the Alucobond PE Core Cladding did not result in any material change to the nature of the Alucobond PE Core Cladding (as defined in the ASOC), such that it ceased to be the same goods manufactured and supplied by 3A Composites and/or HVG or ceased to have the properties described at paragraphs 11 to 36 of the ASOC for the purposes of the TPA or ACL;
- (c) further or in the alternative, says that:
- (i) the supply by any persons of any Third Party Products was a supply of Alucobond PE Core Cladding together with other property or services which supply constituted a supply of Alucobond PE Core Cladding for the purposes of the TPA (s 4C(c)) and ACL (s 11(c));
  - (ii) further or in the alternative, the supply of Third Party Products by any person was a re-supply of Alucobond PE Core Cladding in an altered form or condition or a supply of goods in which Alucobond PE Core Cladding had been incorporated, which supply continued to constitute a re-supply of Alucobond PE Core Cladding for the purposes of the TPA (s 4C(e)) and the ACL (s 11(e));
- (d) further or in the alternative, says that to the extent that any Third Party Products constituted a different product to Alucobond PE Core Cladding (which is denied), then at all material times:
- (i) 3A Composites and HVG remained manufacturers of any Third Party Products for the purposes of s 74A of the TPA and s 7 of the ACL for the reasons pleaded at paragraphs 4 and 5 of the ASOC, as the changes to the products resulting from the Fabrication Methods were immaterial (as pleaded at paragraph 2(b)(iv) above);

- (ii) further or in the alternative, 3A Composites was the deemed manufacturer of any Third Party Products for the purposes of s 74A of the TPA and s 7 of the ACL because it:
- (A) continued to hold itself out to the public as the manufacturer of the Third Party Products; and/or
  - (B) caused or permitted HVG to continue to hold it out to the public, in connection with the supply of Third Party Products, as the manufacturer of such products; and/or
  - (C) caused or permitted its name and/or the Trademark to continue to be applied to the Third Party Products,


and each allegation in the ASOC concerning Alucobond PE Core Cladding is to be read, *mutatis mutandis*, as applying to any Third Party Products.

### Particulars

3A Composites expressly and/or impliedly held itself out to the public (or caused or permitted HVG to hold it out) as the manufacturer of the Third Party Products by:

- A. representing that Alucobond PE Core Cladding could be fabricated by means of the Fabrication Methods as pleaded at paragraph 53(a) of the ASOC;
- B. including images of various types of buildings fitted with Third Party Products on its websites and in its promotional material, as particularised at paragraph 52 of the ASOC and by way of further particulars provided by way of letter from the Applicant's solicitors to 3A Composites' solicitors dated 28 April 2020 (the **Website Particulars Letter**); and/or
- C. authorising or approving representations by HVG to the effect of paragraphs A. and B. above, as particularised at paragraphs 52 and 53 of the ASOC and in the Website Particulars Letter.

Date: 20 May 2020




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Signed by Bill Petrovski  
Lawyer for the Applicant

This pleading was prepared by J K S Entwisle and W A D Edwards, and settled by I Roberts SC.

**Certificate of lawyer**

I Bill Petrovski certify to the Court that, in relation to the reply filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for:

- (a) each allegation in the pleading; and
- (b) each denial in the pleading; and
- (c) each non admission in the pleading.

Date: 20 May 2020



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Signed by Bill Petrovski  
Lawyer for the Applicant

**SCHEDULE**

No: NSD215 of 2019

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

Second Respondent:  
Halifax Vogel Group Pty Ltd ACN 104 808 853

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