

## NOTICE OF FILING

### Details of Filing

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File Number: NSD1174/2024  
File Title: SHASHANK BIST & ANOR v CYAN STONE CLYDESDALE ESTATE 1  
PTY LTD ACN 610 208 967 & ORS  
Registry: NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA



*Sia Lagos*

Registrar

### Important Information

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.

The date of the filing of the document is determined pursuant to the Court's Rules.



## Statement of claim

No. NSD1174 of 2024

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

**Shashank Bist** and another named in the schedule

Applicants

**Cyan Stone Clydesdale Estate 1 Pty Ltd ACN 610 208 967 (in Liquidation)** and others  
named in the schedule

Respondents

### THE PARTIES

1. This proceeding is commenced as a representative proceeding against the Respondents pursuant to Part IVA of the Federal Court of Australia Act 1976 (Cth) (**FCA**) by the Applicants, Mr Shashank Bist and Mrs Natalia Bist on their behalf and on behalf of other persons (the applicants and group members being referred to collectively as the **Group Members** unless expressly stated otherwise), each of whom being a person or entity who entered into a contract for the purchase of land from the 'vendors' (defined in paragraph 3) for lots of land at Clydesdale:
  - a. Precinct 3, 1270 Richmond Road, Marsden Park NSW 2765;
  - b. Precinct 3.1, 1270 Richmond Road, Marsden Park NSW 2765; and
  - c. Precinct 3.2, 1270 Richmond Road, Marsden Park NSW 2765.
2. The applicants, Mr Shashank Bist and Mrs Natalia Bist, are natural persons capable of suing.
3. The first to sixth respondents (the **Vendors**):
  - a. are corporations in liquidation;
  - b. were special purpose vehicles that were set up for the purpose of developing or selling the Clydesdale Land;

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Filed on behalf of (name & role of party)	Shashank Bist and Natalia Bist, the Applicants		
Prepared by (name of person/lawyer)	Robert Ishak		
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- c. each had Yading Wan as a director at all material times until the Vendors entered voluntary liquidation.
4. The seventh respondent, Astro Fort Clydesdale Pty Ltd (**Astro Fort Clydesdale**) is a corporation capable of being sued.
5. The eighth respondent, Astro Fort Holdings Pty Ltd:
  - a. is a corporation capable of being sued; and
  - b. owned, at all times since its incorporation, 100% of the shares of the seventh respondent legally and beneficially.
6. The ninth respondent, Marvia Joncos Holdings Pty Ltd:
  - a. is a corporation capable of being sued;
  - b. is the trustee of the Marvia Joncos Family Trust; and
  - c. owned, since its incorporation, the legal interest in the shares of the eighth respondent.
7. At all material times, Mingqiang Zheng (also known by the name John Zheng) was the sole director and secretary of each of the seventh to ninth respondents.
8. The seventh to ninth respondents (collectively, **Astro Fort**) were special purpose vehicles.
  - a. The matters pleaded in this paragraph are reproduced in the Schedule of Confidential Pleadings and Particulars at (A).
  - b. The matters pleaded in this paragraph are reproduced in the Schedule of Confidential Pleadings and Particulars at (A).
  - c. By reason of their common officeholding (as alleged in paragraph 7 above), any act done by one Astro Fort entity was within the knowledge of each other Astro Fort entity.
9. Boyuan Holdings Limited ("**BHL**")
  - a. is and was at all relevant times a corporation engaged in property development;
  - b. either directly or indirectly owned and controlled the Vendors;
  - c. had Yading Wan as a director at all material times;
  - d. owns 100 ordinary shares in the fourth respondent;
  - e. between 1 June 2020 and 4 March 2021, had Zena Nassar as a secretary.

10. BHL Legal Pty Ltd, ACN 639 936 439:
  - a. was a corporation deregistered on 11 May 2022;
  - b. immediately before deregistration, had the same registered address as BHL on the ASIC Register;
  - c. between 21 October 2019 and 26 March 2021, had Zena Nassar as a director and secretary; and
  - d. was the solicitor for the Vendors on their contracts of sale with the Group Members.

### THE MARKETING OF CLYDESDALE

11. At all material times until approximately May 2024, the Vendors were the registered proprietors of the land recorded on the NSW Register of Land as 5/1270086, 1140/1254249, 3/1277567 and 1131/1254249 ("**the Clydesdale Land**").
12. In about 2020 and 2021, BHL advertised to the general public a property development in Marsden Park that it was developing using the marketing name "Clydesdale", for the purpose of attracting members of the public to purchase lots in the Clydesdale Land "off the plan". That marketing was conducted via the following means:
  - a. marketing brochures titled "Clydesdale Estate" and "Clydesdale Gardens";
  - b. a catalogue of the draft plans for each of the individual lots, which included the following features of the lot:
    - i. the individual lot number;
    - ii. dimensions;
    - iii. shape;
    - iv. aspect; and
    - v. topographical features;
  - c. the Facebook page for BHL Group Aus;
  - d. ASX media release dated 12 August 2021;
  - e. the websites:
    - i. [myclydesdale.com.au](http://myclydesdale.com.au);
    - ii. [realestate.com.au](http://realestate.com.au);
    - iii. [openlot.com.au](http://openlot.com.au);

iv. mcgrathnicol.com.au.

v. pwrealty.com.au.

13. The Clydesdale property development:
- a. comprised the Clydesdale Land;
  - b. although the Clydesdale Land was not yet subdivided, was presented to the market as 154 unique plots of land, each specified in a draft unregistered plan of subdivision and also in marketing material produced by BHL, by its location, size, topographical features, aspect and proximity to utilities (“**Clydesdale Lot/s**”);
  - c. had an average lot size of approximately 621 square metres.

#### **THE APPLICANTS’ PURCHASE OF LOT 3202 IN THE CLYDESDALE LAND**

14. In or about December 2020, the Vendors, through their real estate agent, offered Mr and Mrs Bist the opportunity to purchase Lot 3202 of the Clydesdale Lots “off the plan”, on the terms of the Bist Contract (as defined below).
15. On about 22 December 2020, Mr and Mrs Bist entered into a “contract for the sale and purchase of land” with the Vendors (**Bist Contract**).

#### **Particulars**

The Bist Contract comprised the NSW Law Society standard contract for the sale and purchase of land; special conditions; seven schedules to the special conditions; and extensive annexures relating primarily to the subdivision of land.

16. The Bist Contract incorporated the following features:
- a. the purchase price was \$615,000;
  - b. the Lot was lot 3202 of the Clydesdale Lots with a land size of 600.4m<sup>2</sup>;
  - c. the contract was a conditional contract for the sale in due course of a specified lot (in the Clydesdale Lots), being lot 3202, yet to be created;
  - d. the lot was defined in a draft unregistered plan of subdivision;
  - e. special condition 36.1 required Mr and Mrs Bist to pay a 10% deposit in accordance with special condition 36.2. Pursuant to special condition 36.2(b), Mr and Mrs Bist could pay the deposit in two instalments (**Deposit**).
17. Material terms of the Bist Contract were:
- a. In clause 7.2, and clause 15 that unless the Contract was rescinded, the parties must complete the sale and purchase by the date for completion.

- b. In Clauses 42.1 and 54 that the Vendors could not sell the lot the subject of the contract for the sale and purchase of land to a third party, unless the contract was assigned or novated with notice, or the sale was otherwise structured such that any such third party new owner was under the same obligations to Mr and Mrs Bist as the Vendors.
18. In accordance with special condition 36.2 of the Bist Contract, Mr and Mrs Bist paid the Deposit totalling \$61,500.

**Particulars**

- a. on or around 15 and 16 December 2020, Mr and Mrs Bist paid \$30,750, being 5% of the Deposit.
  - b. on or around 15 April 2021, Mr and Mrs Bist paid a further \$30,750 being the remaining 5% of the Deposit.
19. In about March 2021, Mr and Mrs Bist paid stamp duty in connection with the Bist Contract.

**Particulars**

- a. Duties Notice of Assessment issued by Revenue NSW dated 16 March 2021 totalling \$20,030;
  - b. on or around 17 March 2021, Mr and Mrs Bist paid an instalment of \$20,000 in stamp duty;
  - c. on or around 18 March 2021, Mr and Mrs Bist paid the final instalment of \$3,030 in stamp duty.
20. On or around 7 September 2022, in expectation of the eventual completion of the Bist Contract, Mr and Mrs Bist retained Nesa Services Pty Ltd t/as Nexa Homes (**Nexa Homes**) to build them a house for the purposes of living in and raising a family in (**Building Contract**).

**Particulars**

- a. Nexa Homes Tender Agreement between Nexa Homes and Mr and Mrs Bist in relation to Lot 3202 Clydesdale Marsden Park NSW 2765 (Tender Reference Number NX-210) executed by Mr and Mrs Bist on 7 September 2022 to construct a Double Storey Single Occupancy Home.

21. In about September 2022, Mr and Mrs Bist paid Nexa Homes a deposit of \$35,900 pursuant to the Building Contract.

**Particulars**

- a. on or around 11 September 2022, Mr and Mrs Bist paid an instalment of \$20,000 towards the deposit to Nexa Homes;
- b. on or around 12 September 2022, Mr and Mrs Bist paid a further instalment of \$15,900 towards the deposit to Nexa Homes.

**THE GROUP MEMBERS' PURCHASE OF THE LOTS IN THE CLYDESDALE LAND**

22. Between about late 2020 and about late 2021, each Clydesdale Lot that was sold to a person or entity within the description of paragraph 1 was sold pursuant to a contract for the sale and purchase of land (**Group Members' Contract/s**).
23. In their material terms, each of the Group Members' Contracts was identical to the Bist Contract save as to the identification of each Clydesdale Lot; the price and, in particular, each Group Member Contract had clauses to the meaning and effect of the material terms of the Bist Contract pleaded in paragraph 17 above.
24. By the end of 2021, some or all of the Clydesdale Lots within the Clydesdale Land were the subject of a Group Members' Contract between the Vendors and Group Members and, in that sense, had been "sold" by the Vendors to Group Members.

**Particulars**

The Clydesdale Lots that were the subject of the Bist and Group Members' Contracts are comprised in the December 2021 Snapshot from the My Clydesdale Website.

25. During the period between late 2021 and mid 2024 the Clydesdale Land experienced a material increase in market value.

**Particulars**

See Schedule of Confidential Pleadings and Particulars at (B).

26. In about January 2022, BHL informed Group Members that civil work construction was expected to complete in the second half of 2022, allowing for land registration and settlements.

**Particulars**

Post made on the Facebook page of BHL Group.

27. In about July 2022, BHL informed Group Members that precinct 3.1 of the Clydesdale Land would be finished in May 2023 and precinct 3.2 of the Clydesdale Land would be finished in July 2023.

**Particulars**

- a. Clydesdale P3 Newsletter 'Update on Progress' dated 19 July 2022.
- i. Precinct 3.1 comprised lots 3201 to 3261.
  - ii. Precinct 3.2 comprised lots 3101 to 3193.
28. On about 20 December 2022, BHL informed Group Members that it forecast Precincts 3.1 and 3.2 would be registered by the second half of 2023.

**Particulars**

Clydesdale P3 Newsletter 'Further Update on progress December 2022' dated 20 December 2022.

29. On about 20 September 2023, BHL informed Group Members that registration would occur in December 2023 and settlements in January 2024 for Precinct 3.1 and for Precinct 3.2 registration would occur in May 2024 and settlements in June 2024.

**Particulars**

Letter from BHL to Group Members dated 20 September 2023.

**ASTRO FORT'S BUYING OF THE CLYDESDALE LAND**

30. Astro Fort Clydesdale was incorporated on 15 March 2024.
31. Between about March and May 2024, Astro Fort and the Vendors engaged in negotiations as to the sale of the Clydesdale Land by the Vendors to Astro Fort Clydesdale.
32. In the course of those negotiations, at a time not presently known to Mr and Mrs Bist, Astro Fort Clydesdale offered to purchase the Clydesdale Land from the Vendors.
33. Between about March and May 2024, Astro Fort and the **Finance Parties** engaged in negotiations as to Astro Fort Clydesdale obtaining finance for the purchase and development of the Clydesdale Land.

**Particulars**

Schedule of Confidential Pleadings and Particulars at (C) defines Finance Parties.



34. On a date set out in the Schedule of Confidential Pleadings and Particulars , Astro Fort and the Finance Parties entered into a finance agreement.

**Particulars**

- a. Schedule of Confidential Pleadings and Particulars at (C) defines Finance Parties.
35. Astro Fort Clydesdale entered into a contract for the sale and purchase of the Clydesdale Land with the Vendors containing a promise that Astro Fort Clydesdale pay the Vendors \$85,500,000 for the Clydesdale Land, the remaining material terms of which are set out in Schedule of Confidential Pleadings and Particulars at (F) and are repeated here ("**Astro Fort Contract**").
36. On or about 4 June 2024, pursuant to the Astro Fort Contract, Astro Fort Clydesdale paid money for the Clydesdale Land.

**Particulars**

The sum of the Astro Fort Contract is set out in Schedule of Confidential Pleadings and Particulars at (F).

37. On about 4 June 2024, the Vendors transferred the Clydesdale Land to Astro Fort Clydesdale and Astro Fort Clydesdale became the registered proprietor of the Clydesdale Land.
38. At no stage prior to the registration of Astro Fort Clydesdale as the proprietor of the Clydesdale Land did Astro Fort or the Vendors give Mr and Mrs Bist or the Group Members any notice of the contemplated or actual sale of the Clydesdale Land to Astro Fort Clydesdale.

**ASTRO FORT'S ATTEMPTS TO SELL THE CLYDESDALE LAND TO NEW BUYERS**

39. In about early September 2024, Astro Fort Clydesdale:
- a. planned to start selling the lots within the Clydesdale Land to the public;

**Particulars**

Schedule of Confidential Pleadings and Particulars at (D).

- b. disclaimed any responsibility to carry out the contracts of the Group Members or any continuing effect thereof; and

**Particulars**

- i. The Group Members were told by Ms Sherry Li of PW Realty that the contracts between the Vendors and the Group Members (including Mr and Mrs Bist) were 'nullified'.

- ii. Repeats the matter set out in the Schedule of Confidential Pleadings and Particulars at (F), at 1(h).
- c. for that purpose, provided price lists to real estate agents for the purposes of those estate agents finding willing buyers from the public for the lots (in an unregistered plan of subdivision) within the Clydesdale Land.

#### **Particulars**

1. E-mail of Lakshay Sharma on 22 August 2024 at 6.40pm to Mr Bist;
  2. Excel spreadsheet containing a list of lots, lot sizes and lot prices of part of the Clydesdale Land provided by Elders Real Estate to Group Members labelled "Current Pricing 21 August 2024".
40. At no stage did the Astro Fort entities or the Vendors give Mr and Mrs Bist or the Group Members notice of the attempt to sell the land the subject of the Bist and Group Members' Contracts to the public.

#### **ASTRO FORT'S STATE OF MIND**

41. Immediately before Astro Fort Clydesdale entering into the Astro Fort Contract, Astro Fort either knew or was wilfully blind or recklessly indifferent to the fact, that:
- a. the Clydesdale Land had been marketed as a property development called "Clydesdale" to the public;
  - b. some or all of the Clydesdale Lots were the subject of contracts between the Vendors and Group Members, of the general nature and effect of the essential terms of the Bist and Group Members' Contracts described in paragraphs 17 and 23 above, or there was otherwise an obligation on the Vendors in due course to convey to the Group Members lots the subject of an unregistered plan of subdivision of the Clydesdale Land;
  - c. it would be a breach by the Vendors of the contractual obligations described in (b) above:
    - i. to sell the land to Astro Fort Clydesdale; and/or
    - ii. to sell the land to Astro Fort Clydesdale without procuring completion of the Bist and Group Members' Contracts by creating an obligation in Astro Fort (whether by novation or assignment of the Bist and Group Members' Contracts or otherwise) to convey to Mr and Mrs Bist and Group Members' the lots in a registered plan of subdivision in due course, conforming to the conditions of the Bist and Group Members' Contracts;

- d. in the alternative to (c), it would cause the Vendors to breach the contractual obligations described in (b) above if completion or performance of the Bist and Group Members' Contracts became impossible by the Vendors selling the land to Astro Fort Clydesdale.

### **Particulars**

State of Mind Schedule of particulars.

### **ASTRO FORT CLYDESDALE'S INDUCEMENT OF THE VENDORS TO BREACH THEIR CONTRACT**

- 42. The Vendors, in breach of clauses 7.2, 15, 42.1 and 54 of the Bist and Group Members' Contracts:
  - a. entered into the Astro Fort Contract;
  - b. by entering into the Astro Fort Contract sold the land that would have comprised each of the Clydesdale Lots the subject of each Group Members' Contract and the Bist Contract to Astro Fort Clydesdale;
  - c. in the alternative to (b) sold the land set out in (b) without procuring completion of the Bist and Group Members' Contract by creating an obligation in Astro Fort (whether by novation or assignment of the Group Members' Contracts, the Bist Contract or otherwise) to convey to Group Members' lots in a registered plan of subdivision in due course, conforming to the conditions of the Bist and Group Members' Contracts;
  - d. agreed to the material term set out in the Schedule of Confidential Pleadings and Particulars at (F), at 1(h).
  - e. failed to complete each of the Bist and Group Members' Contracts by their date of completion or at all; and
  - f. sold the Clydesdale Land to Astro Fort thereby making it impossible for themselves to complete the Bist and the Group Member Contracts.
  
- 43. Astro Fort Clydesdale (immediately before the making of the Astro Fort Contract) well knew or was wilfully blind or recklessly indifferent to the state of mind matters (as are set out in paragraph 41), but wrongfully induced and procured the Vendors to breach the Bist and Group Members' Contracts (as set out in paragraph 42) by selling the Clydesdale Land to Astro Fort Clydesdale (on the terms of the Astro Fort Contract (as pleaded in paragraph 35)) rather than completing the Bist and Group Members' Contracts.

### Particulars

The inducement was the offer by Astro Fort Clydesdale to pay the Vendors \$85,500,000 for selling the Clydesdale Land to Astro Fort Clydesdale.

#### KNOWINGLY CONCERNED IN UNCONSCIONABLE CONDUCT

44. The Bist and Group Members' Contracts were entered into by the Vendors in trade or commerce, in connection with the supply or possible supply of services to Mr and Mrs Bist and each of the Group Members.
45. In their dealings with Mr and Mrs Bist and Group Members in connection with the Bist and Group Member Contracts, the Vendors engaged in conduct which was unconscionable in all the circumstances. The relevant circumstances were that the Vendors:
  - a. entered into the Bist and Group Members' Contracts (as alleged in paragraphs 17 and 23 above);
  - b. entered into the Astro Fort Contract (as alleged in paragraph 35 above);
  - c. by entering into or as a result of entering into the Astro Fort Contract, sold the land that would have comprised each Clydesdale Lot the subject of each Group Members' Contract and the Bist Contract to Astro Fort Clydesdale (as alleged in paragraphs 30 to 37 above);
  - d. in the alternative to (c) sold the land set out in (c) without procuring completion of the contract by creating an obligation in Astro Fort (whether by novation or assignment of the Group Members' Contracts, the Bist Contract or otherwise) to convey to Group Members' lots in a registered plan of subdivision in due course, conforming to the conditions of the Bist and Group Members' contracts;
  - e. breached each of the Bist and Group Members' Contracts (as alleged in paragraph 42 above);
  - f. sold the Clydesdale Land to Astro Fort Clydesdale thereby making it impossible for themselves to complete the Bist and the Group Member's Contracts (as alleged in paragraph 42 above);
  - g. in the circumstances pleaded in this paragraph, knowingly engaged in a breach of the Bist and Group Members' Contracts by:
    - i. making the performance of those contracts impossible by the conduct in (b) and the subsequent transfer of the Clydesdale Land; and/or

- ii. deliberately entering into the Astro Fort Contract knowing the consequences of that conduct as set out in (c) to (f) above and each of them; and
  - iii. deliberately entering into the Astro Fort Contract and facilitating the subsequent transfer of the Clydesdale Land in circumstances where that breached the Bist and Group Members' Contracts (as set out in paragraph 42) the terms of which were well known to them.
- h. failed to act in good faith.

#### **Particulars to (h)**

The Vendors failed to act in good faith as they negotiated the Astro Fort Contract with Astro Fort Clydesdale without including the Group Members in that negotiation, or telling them about it, in circumstances where they had, (by the conduct alleged first in paragraph 26 and then at later times in paragraphs 27 to 29 above) encouraged the applicants and Group Members to believe that Bist and the Group Member Contracts would be completed, and where Group Members did not know that the Vendors and Astro Fort Clydesdale were in secret negotiations with one another aimed at selling the Clydesdale Lots already sold to the Group Members to Astro Fort Clydesdale with an intention of depriving the Group Members of their rights under the Bist and Group Members' Contracts (being the rights set out at paragraphs 17 and 23 above) by causing title in the Clydesdale Lands to be transferred to Astro Fort Clydesdale with no corresponding transfer of the Vendor's obligations pursuant to the Bist and Group Members' Contracts.

46. By reason of the matters pleaded in paragraphs 44 to 45 above, the Vendors contravened s 21 of Schedule 2 of the *Competition and Consumer Act 2010* (Cth) (**ACL**).
47. By reason of the following matters and each of them, each of the Astro Fort entities was a person "involved in" (within the meaning of that term as defined by s 2 of the ACL) the contravention of s 21 (the subject of paragraph 46) pleaded in paragraphs 44 to 46 above:
- a. the state of mind of Astro Fort (as alleged in paragraph 41 above);
  - b. the entry by Astro Fort Clydesdale into the Astro Fort Contract (as alleged in paragraphs 31, 32, 35 and 36 above);

- c. Astro Fort Clydesdale and the eighth respondent entering into and receiving the benefit of a contract with the Finance Parties and or each of the Astro Fort entities receiving the benefit of Astro Fort Clydesdale becoming the registered proprietor of the land (as alleged in paragraphs 8, 34 and 37 above);

**Particulars**

Particulars of the contract with the Finance Parties are set out in the Schedule of Confidential Pleadings and Particulars at (B).

- d. the inducement of the Vendors by Astro Fort Clydesdale to enter into the Astro Fort Contract;

**Particulars**

The inducement was the offer by Astro Fort Clydesdale to pay the Vendors \$85,500,000 for selling the Clydesdale Land to Astro Fort Clydesdale pursuant to the Astro Fort Contract as pleaded in paragraphs 31, 32 and 35 above).

- e. in September 2024, Astro Fort planned for lots to start being sold within the Clydesdale Land to the public (without regard to the Bist or the Group Members' Contracts) (as alleged in paragraph 39 above);
- f. Astro Fort Clydesdale has disclaimed any responsibility to carry out the Bist or the Group Members' Contracts and or any continuing effect thereof (as alleged in paragraph 39(b) above); and
- g. Astro Fort Clydesdale provided price lists to real estate agents for the purposes of those estate agents finding willing buyers from the public for the lots within the Clydesdale Lands (as alleged in paragraph 39 above);

whereby each of the acts of Astro Fort Clydesdale so specified above was done by and for the benefit of each and all of the Astro Fort entities, each with the knowledge of each of the said acts, as set out in paragraph 8.

**UNLAWFUL MEANS CONSPIRACY**

Astro Fort and the Vendors

48. From March 2024, the Vendors unlawfully conspired with the Astro Fort entities with an intent to injure the Group Members by unlawful means, those means being the:
- a. commission of the tort of inducing breach of contract, being Astro Fort Clydesdale's inducing the Vendors to breach the Bist and Group Members' Contracts for the sale and purchase of land, which is pleaded at paragraphs 42 to 43 above; and

- b. contravention of s 21 of the ACL (statutory unconscionable conduct), which is pleaded at paragraphs 44 to 46 above.

**Particulars**

As to intention to injure, see Schedule of Confidential Pleadings and Particulars at (E).

49. In pursuance of the said conspiracy, the following overt acts were done, namely in committing the tort of inducing breach of contract, and contravening s 21 of the ACL:
- a. the first to seventh respondents entered into the Astro Fort Contract (as alleged in paragraph 35 above);
  - b. the Vendors willingly transferred and Astro Fort Clydesdale willingly received the conveyance of the Clydesdale Land (as alleged in paragraph 36 and 37 above); and
  - c. Astro Fort Clydesdale offered and provided, and the Vendors willingly agreed to receive and received an inducement for the sale of the Clydesdale Land from the Vendors to Astro Fort Clydesdale (as alleged in paragraphs 31, 32, 35 and 36 above).
  - d. Astro Fort Clydesdale and the eighth respondent entering into and receiving the benefit of a contract with the Finance Parties and or each of the Astro Fort entities receiving the benefit of Astro Fort Clydesdale becoming the registered proprietor of the land (as alleged in paragraphs 8, 34 and 37 above);

**Particulars**

Particulars of the contract with the Finance Parties are set out in the Schedule of Confidential Pleadings and Particulars at (B).

- e. in September 2024, Astro Fort Clydesdale planned for lots to start being sold within the Clydesdale Land to the public (without regard to the Bist or the Group Members' Contracts) (as alleged in paragraph 39 above);
- f. Astro Fort Clydesdale has disclaimed any responsibility to carry out the Bist or the Group Members' Contracts and/or any continuing effect thereof (as alleged in paragraph 39(b) above); and
- g. Astro Fort Clydesdale provided price lists to real estate agents for the purposes of those estate agents finding willing buyers from the public for the lots within the Clydesdale Lands (as alleged in paragraph 39 above).

50. Each of the acts specified in the previous paragraph was done by the person or persons therein alleged on behalf of themselves and their co-conspirators in furtherance of the said conspiracy.
51. Further or in the alternative, the respondents were joint tort-feasors.
52. Each of the acts of Astro Fort Clydesdale so specified was done by and for the benefit of each and all of the Astro Fort entities, each with the knowledge of each of the of said acts, as set out in paragraph 8.

### Astro Fort

53. From about March 2024, the seventh to ninth respondents unlawfully conspired with an intention to injure the Group Members by unlawful means, those means being the:
- a. commission of the tort of inducing breach of contract, being the Bist and the Group Members' Contracts for the sale and purchase of land with the Vendors, which is pleaded at paragraphs 42 to 43 above; and
  - b. the contravention of s 21 of the ACL (statutory unconscionable conduct), which is pleaded at paragraphs 44 to 46 above.

### **Particulars**

As to intention to injure, see the Schedule of Confidential Pleadings and Particulars at (E).

54. In pursuance of the said conspiracy, the following overt acts were done, namely in committing the tort of inducing breach of contract or the contravention of s 21 of the ACL:
- a. Astro Fort Clydesdale entered into the Astro Fort Contract (as alleged in paragraph 35 above);
  - b. Astro Fort Clydesdale willingly agreed to receive and received the conveyance of the Clydesdale Land (as alleged in paragraphs 36 to 37 above);
  - c. Astro Fort Clydesdale and the eighth respondent entering into and receiving the benefit of a contract with the Finance Parties and or each of the Astro Fort entities receiving the benefit of Astro Fort Clydesdale becoming the registered proprietor of the land (as alleged in paragraphs 8, 34 and 37 above);

### **Particulars**

Particulars of the contract with the Finance Parties are set out in the Schedule of Confidential Pleadings and Particulars at (B).



- d. the inducement of the Vendors by Astro Fort Clydesdale to enter into the Astro Fort Contract (as alleged in paragraphs 31, 32, 35 and 36 above);
  - e. in September 2024, Astro Fort Clydesdale planned for lots to start being sold within the Clydesdale Land to the public (without regard to the Group Members' Contracts) (as alleged in paragraph 39 above);
  - f. Astro Fort disclaimed any responsibility to carry out the Group Members' Contracts and or any continuing effect thereof (as alleged in paragraph 39(b) above); and
  - g. Astro Fort Clydesdale provided price lists to real estate agents for the purposes of those estate agents finding willing buyers from the public for the lots within the Clydesdale Lands (as alleged in paragraph 39 above).
55. Each of the acts specified in the previous paragraph was done by the person or persons therein alleged on behalf of themselves and their co-conspirators in furtherance of the said conspiracy.
56. Further or in the alternative, the seventh to ninth respondents were joint tort-feasors.

#### **LOSS AND DAMAGE**

57. By reason of each of the breaches, contraventions and causes of action set out above, the Mr and Mrs Bist have suffered loss and damage, comprising:
- a. loss of the chance to purchase lot 3202 for the price in the Bist Contract;
  - b. loss of the use and benefit of lot 3202;
  - c. loss of the increase in value of lot 3202 in the period between the Bist Contract and the present;
  - d. loss of the chance to purchase alternate land;
  - e. financial losses, by way of:
    - i. loss of the use of the money paid into a deposit and stamp duty for a number of years;
    - ii. fees paid to engage builders to build a home on the lot once the development was completed;
    - iii. fees paid to engage legal advisors and or conveyancers in relation to the purchase of their lot;
  - f. the loss of the benefit of the terms of the Bist Contract pleaded at paragraphs 15 to 17 above.

- g. anxiety, anguish, distress and hurt feelings, resultant from the transfer of the land that they were entitled to receive by the contract for the sale and purchase of land in secret and without their knowledge entitles the applicants to aggravated damages.
58. By reason of each of the breaches, contravention and causes of action set out above, the Group Members have suffered loss and damage, comprising:
- a. loss of the chance to purchase their respective lot for the price in the Group Member Contract;
  - b. loss of the use and benefit of the respective lot the subject of the Group Member Contract;
  - c. loss of the increase in value of the lot the subject of the Group Member Contract in the period between the Group Member Contract and the present;
  - d. loss of the chance to purchase alternate land;
  - e. financial losses, by way of:
    - i. loss of the use of the money paid into a deposit and stamp duty for a number of years;
    - ii. any other amount that may be raised in their individual cases for damages (including but not limited to fees paid to engage financial advisors, legal advisors and or conveyancers in relation to the purchase of their respective lot);
    - iii. the loss of the benefit of the material terms of the Group Members' Contract as pleaded in paragraphs 22 and 23 above.
59. The applicants and Group Members are entitled to exemplary damages.

#### **Particulars**

- i. Property developers ought be discouraged from requiring purchasers to provide by way of deposit and stamp duty considerable sums of money, which are kept from the use of those purchasers for many years, on the promise of the property developer to provide to those purchasers the relevant property, in circumstances where:
  1. When the market has gone up, that property developer does not provide that land to the purchasers, but rather sells that land to another property developer such that greater profits can be taken from the sale of that land; and in contrast

2. Where the market has gone down, compel their purchasers to pay the original contract price.
- ii. The Court should impose a considerable disincentive on the behaviour in (i) on the second in time property developer in circumstances where property developers are ordinarily special purpose vehicles meaning that the first in time property developer is unlikely to be able to be substantially pursued by the purchaser for their breach of contract because such an entity, having fulfilled its purpose can go into liquidation leaving few assets to meet a wide range of claims.
  - iii. Without such a disincentive, the economically rational behaviour for property developers will be to enter into contracts with purchasers with the intention of only selling with them if the market has gone down and otherwise to not honour their contract and in the meantime deprive those purchasers of their funds (deposit and stamp duty), sometimes for many years. If the economically rational position is that purchasers will always lose value from purchasing off the plan, then the market will cease to function as no rational person would buy property off the plan.
  - iv. Further, the practices in (i) show a contumelious disregard for the rights of purchasers of land 'off the plan', in this case being Mr and Mrs Bist and the Group Members.

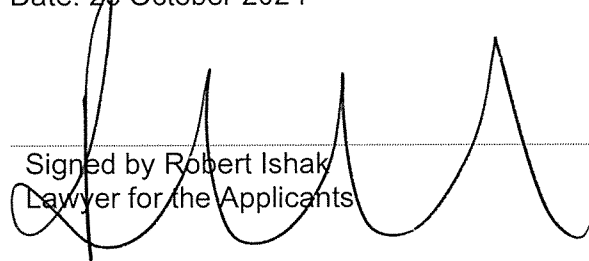
## **RELIEF CLAIMED**

60. On the grounds stated in this Statement of Claim, the following relief is claimed:

- a. Damages pursuant to s 236 of the ACL.
- b. Compensation pursuant to s 237 of the ACL.
- c. An order pursuant to s 243(h) of the ACL directing Astro Fort Clydesdale to execute an instrument that terminates or otherwise has the effect of terminating the transfer numbered 'AU125521' or otherwise causes the reconveyance of the Clydesdale Land to the Vendors (or otherwise causes the conveyance of the Clydesdale Lots to Mr and Mrs Bist and the Group Members).
- d. In circumstances where the Vendors receive the property the subject of paragraph 60(c), an order for specific performance of the Bist and Group Members Contract or an order otherwise requiring a transfer of the said property to Mr and Mrs Bist and the Group Members.

- e. Aggravated and exemplary damages pursuant to ss 236 and/or 237 of the ACL (that relief not being precluded by s 87ZB of the *Competition and Consumer Act 2010* (Cth)) or alternatively pursuant to s 23 of the *Federal Court of Australia Act 1976* (Cth).
- f. Damages.
- g. Aggravated damages.
- h. Exemplary damages.
- i. Costs.
- j. Interest pursuant to ss 51A and 52 of the *Federal Court of Australia Act 1976* (Cth).
- k. Any further or other order the Court deems fit.

Date: 25 October 2024



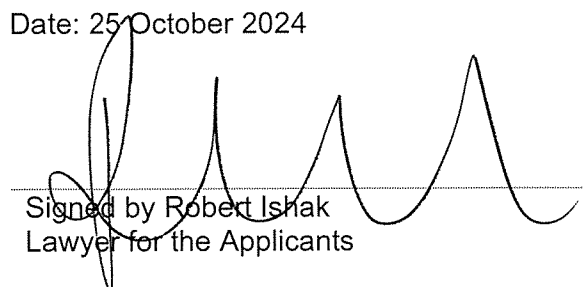
Signed by Robert Ishak  
Lawyer for the Applicants

This pleading was prepared by P Braham SC, Q Rares and S Steinhoff of counsel, and Robert Ishak, solicitor.

### Certificate of lawyer

I Robert Ishak certify to the Court that, in relation to the statement of claim filed on behalf of the Applicant, the factual and legal material available to me at present provides a proper basis for each allegation in the pleading.

Date: 25 October 2024



Signed by Robert Ishak  
Lawyer for the Applicants

**Schedule**

No: NSD1174/2024

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

Second Applicant	NATALIA BIST
Second Respondent	CYAN STONE CLYDESDALE ESTATE 2 PTY LTD (ACN 610 209 106)(IN LIQUIDATION)
Third Respondent	CYAN STONE CLYDESDALE ESTATE 3 PTY LTD (ACN 610 210 494) (IN LIQUIDATION)
Fourth Respondent	CYAN STONE CLYDESDALE PTY LTD (ACN 610 008 172) (IN LIQUIDATION)
Fifth Respondent	CYAN STONE CLYDESDALE DEVELOPMENT PTY LTD (ACN 610 008 467) (IN LIQUIDATION)
Sixth Respondent	CYAN STONE CLYDESDALE HOLDINGS PTY LTD (ACN 610 008 510) (IN LIQUIDATION)
Seventh Respondent	ASTRO FORT CLYDESDALE PTY LTD (ACN 675 838 507)
Eighth Respondent	ASTRO FORT HOLDINGS PTY LTD (ACN 675 830 270)
Ninth Respondent	MARVIA JONCOS HOLDINGS PTY LTD (ACN 671 948 502)

**STATE OF MIND SCHEDULE OF PARTICULARS**

1. Astro Fort knew that the land had been put to market some years ago as Clydesdale. In fact:
  - a. Astro Fort Clydesdale named themselves Astro Fort 'Clydesdale', making it very obvious that they knew the land in Marsden Park had been marketed that way;
  - b. Astro Fort Clydesdale's agents advertise the lots as 'Clydesdale'.
  - c. Astro Fort Clydesdale's agents use at least parts of the marketing brochure used by the Vendors in the original sale to the Group Members.
2. Clydesdale's official website from at least December 2021 to at least March 2024 was clearly displayed "all stages sold out".
3. The lot numbers are painted on the ground outside each of the Group Members' land.
4. A simple Google search for Mr and Mrs Bist's lot 3202 returns a result on the reputable website realestate.com.au that the lot has been sold.
5. BHL's facebook page shows that precinct 3 was fully pre-sold as at 19 or 20 January 2022.
6. BHL made an announcement to the ASX that it had completed the sale of its Clydesdale precincts 2 and 4 on 12 August 2021.
7. The website OpenLot reports that 95% of Clydesdale had sold out, and such a website is accessible by a simple Google search.
8. Astro Fort Clydesdale is a property developer that has bought a major, part completed, property development through a special purpose vehicle and then continued that development. Any property developer looking to buy a property development that has had properties marketed to the public would check if lots had been sold.
9. Any property developer spending \$85.5m on a development already marketed to the public would be expected to do more than just a Google search on the property unless they were deliberately closing their eyes to the possibility of sales or were recklessly indifferent to whether they had been sold.
10. Astro Fort used and is using real estate agents (for example PW Realty) who have sold these lots to Group Members before.
11. Repeat the Schedule of Confidential Pleadings and Particulars at (F), at 1(h).
12. The Group Members were told by Ms Sherry Li of PW Realty that the contracts between the Vendors and the Group Members were 'nullified'.

13. Astro Fort, in over 200 pages of evidence put on in the interlocutory injunction proceedings, has never denied notice of the prior sales to Mr and Mrs Bist and Group Members.
14. In the circumstances above, Astro Fort purchased the lands from the Vendors intending to sell those lands under new contracts for the sale of land and thereby intended to cause the Vendors to breach the contracts with those who had already purchased lots within Clydesdale from the Vendors.
15. Notice is a matter entirely in Astro Fort's knowledge, and in those circumstances further particulars will be added after discovery.