

## NOTICE OF FILING

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### Details of Filing

Document Lodged: Defence - Form 33 - Rule 16.32  
File Number: VID996/2017  
File Title: MICHAEL ROBERT LUKE (IN HIS CAPACITY AS THE CO-EXECUTOR OF THE ESTATE OF ROBERT COLIN LUKE, DECEASED) & ANOR v AVEO GROUP LIMITED  
Registry: VICTORIA REGISTRY - FEDERAL COURT OF AUSTRALIA



*Sia Lagos*

Dated: 26/11/2021 2:42:39 PM AEDT

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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Form 33  
Rule 16.32

**FEDERAL COURT OF AUSTRALIA  
DISTRICT REGISTRY: VICTORIA  
DIVISION: GENERAL**

**VID 996 of 2017**

**MICHAEL ROBERT LUKE (IN HIS CAPACITY AS THE CO-EXECUTOR OF THE  
ESTATE OF ROBERT COLIN LUKE, DECEASED)**

First Applicant

**MEREDITH ANNE LUKE (IN HER CAPACITY AS THE CO-EXECUTOR OF THE  
ESTATE OF ROBERT COLIN LUKE, DECEASED)**

Second Applicant

and

**AVEO GROUP LIMITED (ACN 010 729 950)**

Respondent

**RESPONDENT'S DEFENCE TO ~~SECOND-THIRD~~ FURTHER AMENDED  
STATEMENT OF CLAIM**

In answer to the Applicants' ~~Second-Third~~ Further Amended Statement of Claim dated ~~5 February 2021~~ 3 November 2021 (~~Second-Third~~ Further Amended Statement of Claim), the Respondent (AGL) says as follows.

Defined terms have the same meaning as in the ~~Second-Third~~ Further Amended Statement of Claim unless otherwise stated.

**A. INTRODUCTION**

1. In response to the allegations in paragraph 1, AGL:
  - (a) admits the allegations in subparagraph 1(a);

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- (b) says that the Luke Applicants were the registered owners of the Luke Property from 2 June 2015 until 9 March 2016 when the Luke Property was transferred to AGL; and
  - (c) otherwise denies the allegations in subparagraph 1(b).
- 1A. In response to the allegations in paragraph 1A, AGL:
  - (a) admits the allegations in subparagraph 1A(a);
  - (b) says that Joan Mary Colombari's lease of Independent Living Unit 308 in Aveo Bayview Gardens was surrendered by virtue of a 'Surrender of Lease' dated 18 June 2015; and
  - (c) otherwise denies the allegations in subparagraph 1A(b).
- 2. In response to the allegations in paragraph 2, AGL:
  - (a) admits the allegations in subparagraph 2(a);
  - (b) says that the Aveo Business included retirement villages in Queensland, New South Wales, Victoria, South Australia and Tasmania;
  - (c) says that the Aveo Business does not presently include retirement villages in Western Australia, the Australian Capital Territory, the Northern Territory or New Zealand;
  - (d) says that the Aveo Business previously included, indirectly, New Zealand retirement villages;
  - (e) admits that the Aveo Business includes the operation of the retirement villages listed in Schedule 2 to the Further Amended Statement of Claim;
  - (f) otherwise says the allegation in subparagraph 2(b) is vague and therefore does not plead to it;
  - (g) admits the allegations in subparagraphs 2(c) to 2(f);

- (h) says that its ASX code changed from FKP to AOG on 10 December 2013, it was removed from the official list of the ASX at the close of trading on 2 December 2019, and otherwise admits the allegations in subparagraph 2(g);
- (i) admits the allegations in subparagraph 2(h);
- (j) admits that at all material times it has been the ultimate owner of all of the issued share capital in, and has 'controlled' within the meaning of the *Corporations Act*, RVGM, the 'Advisor' under the Securityholders Deed dated 18 October 2007 between (inter alios) Retirement Villages Australia Limited, RVNZ Investments Limited, Retirement Villages Group RE Limited and RVGM, and otherwise does not admit the allegations in subparagraph 2(i); and
- (k) says that at all times since about 29 April 2016 it has owned the majority of the stapled securities in RVG and otherwise does not admit the allegations in subparagraph 2(j).

2A. In response to the allegations in paragraph 2A, AGL:

- (a) says that Paul McAlpine was the General Manager of Sales in AGL's Retirement Division from 8 July 2013, was the Executive General Manager of Sales and Marketing from 11 December 2017 and was the Head of Sales and Marketing from 2 July 2018 until 31 October 2018;
- (b) says that Stephen Gook was the Marketing Manager for Queensland and South Australia in AGL's Retirement Division from 9 November 2011 and was the General Manager of Group Marketing from 27 June 2012;
- (c) says that Anthony Sargent was the General Manager of Finance in AGL's Retirement Division from 1 May 2008, was the General Manager of Strategy and Community Services from 19 April 2016 and was the General Manager of Group Commercial Operations from 2 July 2018 until 3 January 2020;

- (d) says that Alison Quinn was the Executive General Manager of AGL's Retirement Division from 11 February 2013 to 28 December 2015;
  - (e) says that Geoffrey Grady was the Chief Executive Officer and a director of AGL from 1 July 2013 to 29 November 2019;
  - (f) admits that Geoffrey Grady was an officer of AGL from 1 July 2013 to 29 November 2019;
  - (g) does not admit that Paul McAlpine, Stephen Gook, Anthony Sargent or Alison Quinn were or are officers of AGL at any material time; and
  - (h) otherwise denies the allegations in paragraph 2A.
3. AGL does not plead to paragraph 3 as it contains no allegations against it.
4. AGL does not plead to paragraph 4 as it contains no allegations against it.
- 4A. AGL does not plead to paragraph 4A as it contains no allegations against it.
5. In response to the allegations in paragraph 5, AGL:
- (a) admits that there are more than seven people who have or had a pre-AWFI in an Aveo Village since the Aveo Way Programme has been introduced (including executors, administrators, and lawful assigns of persons who held such interests); and
  - (b) otherwise does not know and cannot admit the allegations in paragraph 5.
- 5A. In response to the allegations in paragraph 5A, AGL:
- (a) admits that there are more than seven people who have or had a pre-AWLI in an Aveo Village since the Aveo Way Programme has been introduced (including executors, administrators, and lawful assigns of persons who held such interests); and
  - (b) otherwise does not know and cannot admit the allegations in paragraph 5A.

6. In response to the allegations in paragraph 6, AGL;
- (a) says that the Aveo Way Programme was introduced at the Peregian Springs village in approximately April 2015;
  - (b) says that the Aveo Way Programme had not been introduced at the Peregian Springs village at the time:
    - (i) of the 'Preliminary Assessment' of the Luke Property, namely 16 October 2014;
    - (ii) the 'Notice of Intention to Vacate' was executed on behalf of Robert Colin Luke, namely 21 October 2014;
    - (iii) of the 'Entitlement Assessment' of the Luke Property, namely 5 December 2014; and
    - (iv) the 'Property Occupations Form 6' signed by Robert Colin Luke and dated 21 January 2015, and the 'Appointment of Real Estate Agent' form dated 21 January 2015, were each provided by 'Kristine Smith' to Karol Kljajcin, namely 19 January 2015; and
  - (c) otherwise does not know and cannot admit the allegations in paragraph 6.
- 6A. In response to the allegations in paragraph 6A, AGL:
- (a) refers to and repeats paragraph 6 above and paragraph 48 below; and
  - (b) otherwise does not know and cannot admit the allegations in paragraph 6A.
- 6B. In response to the allegations in paragraph 6B, AGL:
- (a) says that the Aveo Way Programme was introduced at the Bayview Gardens village in approximately September 2014; and
  - (b) otherwise does not know and cannot admit the allegations in paragraph 6B.
- 6C. AGL does not plead to paragraph 6C as it contains no allegations against it.

7. In response to the allegations in paragraph 7, AGL:
  - (a) admits that there are more than seven Freehold Sales Sub-Group Members, Leasehold Sales Sub-Group Members, ARE Sub-Group Members, and System Group Members; and
  - (b) otherwise does not know and cannot admit the allegations in paragraph 7.

**B. THE AVEO BUSINESS**

8. In response to the allegations in paragraph 8, AGL:
  - (a) refers to and repeats paragraph 2 above;
  - (b) says sales of units at Aveo Villages are effected by ARE or any other real estate agent engaged by an outgoing resident; and
  - (c) otherwise admits the allegations in paragraph 8.
9. AGL admits the allegations in paragraph 9.
10. In response to the allegations in paragraph 10, AGL:
  - (a) admits that the Luke Applicants' Management Agreement contained terms to the effect alleged in subparagraphs 10(a)-(d);
  - (b) says that approximately 71 different versions of the Freehold Group Member Management Agreements have been or are in existence;
  - (c) says that it will refer to those 71 different versions of the Freehold Group Member Management Agreements and their contents in full at trial;
  - (d) admits that certain, but not all, of the 71 versions of the Freehold Group Member Management Agreements contained terms to the effect alleged in subparagraphs 10(a)-(d); and
  - (e) otherwise denies the allegations in paragraph 10.

- 10A. In response to the allegations in paragraph 10A, AGL:
- (a) admits that the Colombari Applicants' Management Agreement contained terms to the effect alleged in subparagraphs 10A(a)(i), 10A(a)(ii)(A), 10A(a)(ii)(C) and 10A(b), subject to reference to the full terms and effect of the agreement;
  - (b) says that the capital gain entitlement under the Colombari Applicants' Management Agreement is set out in cl 20.4 of the agreement and in the definition of Capital Gain Percentage in the agreement's Information Table;
  - (c) says that the Information Table in the Colombari Applicants' Management Agreement provides, inter alia, that Ms Colombari was:
    - (i) entitled to a portion of any capital gain; but
    - (ii) liable to pay for the entirety of any capital loss;
  - (d) otherwise denies the allegation in subparagraph 10A(a)(ii)(B) insofar as it concerns the Colombari Applicants' Management Agreement;
  - (e) says that:
    - (i) some but not all of the Leasehold Group Member Management Agreements provide that any capital gain would be paid to the outgoing resident upon exit but that the capital gain would be reduced by the applicable exit/deferred management fee percentage under the agreement in question;
    - (ii) some but not all of the Leasehold Group Member Management Agreements provide that all of the capital gain would be paid to the outgoing resident upon exit if a specified premium (the 'Capital Gain Investment Option Price') had been paid by the outgoing resident at the time they entered the relevant village;
    - (iii) amongst Leasehold Group Member Management Agreements where an Exit Fee or Departure Fee is payable, none provides that all of the capital gain would be paid to the outgoing



resident upon exit where the resident had not paid the Capital Gain Investment Option Price at the time they entered the relevant village; and

- (iv) there are some 'transfer' agreements in which no Exit Fee or Departure Fee is payable and in which any capital gain in its entirety is payable to the exiting resident;
- (f) otherwise denies the allegation in subparagraph 10A(a)(ii)(B);
- (g) admits that, under cl 19.3 of the Colombari Applicants' Management Agreement, Ms Colombari was not prohibited from appointing the relevant Aveo manager (namely North Shore Retirement Villages Pty Ltd), or a person chosen by that manager, as the selling agent to market a new lease of Ms Colombari's unit;
- (h) says that at least 125 materially different versions of the Leasehold Group Member Management Agreements have been or are in existence;
- (i) says that it will refer to those 125 different versions of the Leasehold Group Member Management Agreements and their contents in full at trial;
- (j) admits that certain of the 125 versions of the Leasehold Group Member Management Agreements contained terms to the effect alleged in subparagraphs 10A(a)(i), 10A(a)(ii)(A), 10A(a)(ii)(C) and 10A(b);
- (k) admits that each Leasehold Group Member Management Agreement required, permitted or did not prohibit a Relevant Real Estate Agent to be appointed as the real estate agent for the lease of the resident's unit, and otherwise denies the allegations in subparagraph 10A(c); and
- (l) otherwise denies the allegations in paragraph 10A.

11. In response to the allegations in paragraph 11, AGL:

- (a) refers to and repeats paragraphs 10 and 10A above;

- (b) admits that certain, but not all, of the versions of the Freehold Group Member Management Agreements contained terms to the effect alleged in subparagraph 11(a) and says that AGL and/or the Relevant Aveo Manager was entitled to act in accordance with its rights under those agreements;
  - (c) denies that any of the Leasehold Group Member Management Agreements contained a term to the effect alleged in paragraph 11(b) (if such a term is being alleged) and otherwise denies that AGL or a Relevant Aveo Manager had a right to 'purchase a [Leasehold Group Member's] interest' as alleged;
  - (d) admits that, where a Management Agreement provided for an option for AGL or a Relevant Aveo Manager to purchase a resident's interest in a unit, AGL or the Relevant Aveo Manager was able to exercise that option in accordance with the terms of that Management Agreement;
  - (e) says that the allegation in subparagraph 11(c) is embarrassing because the circumstances in which the applicants allege that AGL or a Relevant Aveo Manager could 'otherwise offer to purchase' is unclear; and
  - (f) otherwise denies the allegations in paragraph 11.
12. [No allegation.]
13. In response to the allegations in paragraph 13, AGL:
- (a) says that AGL has maintained and does maintain a section on its website in which Aveo Villages are marketed;
  - (b) says that some Aveo Villages have maintained and does maintain an on-site sales office;
  - (c) admits that at each Aveo Village the marketing, sale and lease of interests in residential units in that Aveo Village takes place;

- (d) admits that AGL has been involved in determining the terms of Management Agreements with respect to villages owned by AGL at the time of execution of the Management Agreement;
  - (e) denies that AGL was involved in any way in determining the terms of Management Agreements with respect to villages not owned by AGL at the time of execution of the Management Agreement;
  - (f) refers to and repeats the contents of paragraphs 10 and 10A above; and
  - (g) otherwise denies the allegations in paragraph 13.
14. In response to the allegations in paragraph 14, AGL:
- (a) refers to and repeats paragraph 10 above;
  - (b) admits that the practice of Aveo Managers to secure their interests included registration of a mortgage or caveat or other registrable interest as provided for in the relevant Freehold Group Member Management Agreement; and
  - (c) otherwise denies the allegations in paragraph 14.
15. AGL denies the allegations in paragraph 15.

**C. THE AVEO WAY PROGRAMME**

16. In response to the allegations in paragraph 16, AGL:
- (a) says that the Aveo Way Programme was being developed from no later than June 2013;
  - (b) says that the Aveo Way Programme was first introduced in June 2014 at the Island Point retirement village;
  - (c) says that the Aveo Way Programme was introduced at the Peregian Springs retirement village in approximately April 2015;
  - (d) says that the Aveo Way Programme was introduced at the Bayview Gardens retirement village in approximately September 2014; and

- (e) otherwise denies the allegations in paragraph 16.
17. In response to the allegations in paragraph 17, AGL:
- (a) says that there are various versions of Management Agreements under the Aveo Way Programme;
  - (b) subject to reference to the operation of the Aveo Way Programme in its entirety, denies the allegations in subparagraph 17(a);
  - (c) subject to reference to the operation of the Aveo Way Programme in its entirety, denies the allegations in subparagraph 17(b);
  - (d) subject to reference to the operation of the Aveo Way Programme in its entirety, denies the allegations in subparagraph 17(d); and
  - (e) subject to reference to the operation of the Aveo Way Programme in its entirety, admits the allegations in subparagraph 17(e).
- 17A. In response to the allegations in paragraph 17A, AGL:
- (a) says that, in the usual course, there is no direct contact or communication between outgoing and incoming residents when a Pre-AWFI is sold under the Aveo Way Programme; and
  - (b) otherwise denies the allegations in paragraph 17A.
- 17B. In response to the allegations in paragraph 17B, AGL:
- (a) subject to reference to the operation of the Aveo Way Programme in its entirety, admits the allegations in subparagraph 17B(a);
  - (b) subject to reference to the operation of the Aveo Way Programme in its entirety, admits the allegations in subparagraph 17B(b);
  - (c) subject to reference to the operation of the Aveo Way Programme in its entirety, admits the allegations in subparagraph 17B(c);
  - (d) says that, in the usual course, there is no direct contact or communication between outgoing and incoming residents when a Pre-

AWLI is sold under the Aveo Way Programme and otherwise denies the allegations in paragraph 17B(d); and

- (e) says that the outgoing resident's Resale Price under Pre-AWLIs is not necessarily the same as the ingoing contribution paid by the incoming resident and otherwise denies the allegations in subparagraph 17B(e).

17C. In response to the allegations in paragraph 17C, AGL:

- (a) admits that a deferred management fee is payable under the Aveo Way Programme Management Agreements by residents upon termination of the Management Agreement;
- (b) says that the deferred management fee is calculated in varying ways depending on the terms of the Aveo Way Programme Management Agreement;
- (c) says that the variations of Aveo Way Programme Management Agreements contain deferred management fee formulae which vary both in rate of accrual and maximum deferred management fee percentage;
- (d) admits that certain Management Agreements under the Aveo Way Programme had a maximum deferred management fee of 35% of the ingoing contribution accumulating over three years;
- (e) admits that in certain Aveo Way Programme Management Agreements there is an Aveo Membership Fee of \$1,500 in the first year increasing by 2.5% each year;
- (f) otherwise denies the allegations in subparagraph 17C(a); and
- (g) says that, with respect to the allegations in subparagraph 17C(b):
  - (i) outgoing residents under Aveo Way Programme Management Agreements receive a refund of their ingoing contribution against which fees or charges owing are set off;

- (ii) residents under Aveo Way Programme Management Agreements are neither entitled to any capital gain nor liable to suffer any capital loss;
- (iii) under some Aveo Way Management Agreements:
  - 1. the resident is liable to pay the difference between the fair market value of the relevant property and the actual sale price of the property but only if the resident decides to sell the property for less than the fair market value; and
  - 2. any such difference between the fair market value and the price for which the resident decides to sell the property is not a capital loss; and
- (iv) it otherwise denies the allegations.

18. AGL denies the allegations in paragraph 18.

19. In response to the allegations in paragraph 19, AGL:

- (a) admits the allegations in subparagraph 19(a);
- (b) subject to reference to the full terms and effect of the Standard Form Letter and the operation of the Aveo Way Programme in its entirety, admits the allegations in subparagraph 19(b); and
- (c) admits the allegations in subparagraph 19(c) and says that no such consent of the resident was required.

20. AGL denies the allegations in paragraph 20.

20A. AGL denies the allegations in paragraph 20A.

20B. AGL denies the allegations in paragraph 20B.

21. AGL denies the allegations in paragraph 21.

21A. AGL denies the allegations in paragraph 21A.

22. AGL denies the allegations in paragraph 22.
23. AGL admits the allegations in paragraph 23.
24. In response to the allegations in paragraph 24, AGL:
  - (a) admits the allegations in subparagraph 24(a); and
  - (b) denies the allegations in subparagraph 24(b).
25. In response to the allegations in paragraph 25, AGL:
  - (a) refers to and repeats paragraphs ~~21 and~~20 to 21A above;
  - (b) denies that the Applicants or any of the Group Members did or will receive less money by selling a Pre-AWFI or surrendering a Pre-AWLI in an Aveo Village under the Aveo Way Programme than if they sold their Pre-AWFI under the Relevant Former Contract or surrendered their Pre-AWLI on the basis that the incoming resident would have entered into a new lease in the form of the Relevant Former Contract or substantially in the form of the Relevant Former Contract;
  - (c) admits that neither AGL nor any of the Relevant Aveo Managers nor ARE told the Applicants or any of the Group Members that they would, or would be likely to, receive less money by selling a Pre-AWFI or surrendering a Pre-AWLI in an Aveo Village under the Aveo Way Programme than if they sold their Pre-AWFI under the Relevant Former Contract or surrendered their Pre-AWLI on the basis that the incoming resident would have entered into a new lease in the form of the Relevant Former Contract or substantially in the form of the Relevant Former Contract; and
  - (d) otherwise denies the allegations in paragraph 25.
26. In response to the allegations in paragraph 26, AGL:
  - (a) to the extent that it is alleged that AGL, the Relevant Aveo Manager and the Relevant Real Estate Agent (as applicable) did not or will not disclose (as the case may be) complete and accurate information to the

Applicants and Group Members (whether adverse or beneficial) as to the introduction or operation of the Aveo Way Programme, ~~AGL~~ denies those allegations; and

- (b) otherwise does not plead to the allegations in paragraph 26, as the expectations of the Applicants and Group Members are not known to AGL.

27. In response to the allegations in paragraph 27, AGL:

- (a) refers to and repeats paragraphs 25 and 26 above; and
- (b) otherwise does not plead to the allegations in paragraph 27 as the expectations of the Applicants and Group Members are not known to AGL.

27A. In response to the allegations in paragraph 27A, AGL:

- (a) refers to and repeats paragraphs 25 and 26 above; and
- (b) otherwise does not plead to the allegations in paragraph 27A as the expectations of the Applicants and Group Members are not known to AGL.

#### **D. THE SALE OF ROBERT COLIN LUKE'S PROPERTY**

28. In response to the allegations in paragraph 28, AGL:

- (a) says that 21 Gracemere Boulevard, Peregian Springs, comprises a number of different titles; and
- (b) otherwise admits the allegations in paragraph 28.

29. AGL admits the allegations in paragraph 29.

30. AGL admits the allegations in paragraph 30.

31. In response to the allegations in paragraph 31, AGL:

- (a) admits that some directors and secretaries of ARH have from time to time been directors and secretaries of AGL;



- (b) otherwise denies the allegations in subparagraph 31(a); and
  - (c) says the allegations in subparagraph 31(b) are vague and embarrassing and does not plead to those allegations.
- 32. In response to the allegations in paragraph 32, AGL:
  - (a) says that ARH operates a number of Aveo Villages, including Peregian Springs;
  - (b) refers to and repeats paragraph 2 above; and
  - (c) otherwise denies the allegations in paragraph 32.
- 33. AGL admits the allegations in paragraph 33.
- 34. AGL admits the allegations in paragraph 34.
- 35. AGL admits the allegations in paragraph 35.
- 36. In response to the allegations in paragraph 36, AGL:
  - (a) refers to and repeats the full terms and effect of clause 4.10 of the Luke Applicants' Management Agreement and otherwise denies the allegations in subparagraph 36(a);
  - (b) admits the allegation in subparagraph 36(b);
  - (c) admits the allegation in subparagraph 36(c);
  - (d) admits the allegation in subparagraph 36(d); and
  - (e) admits the allegation in subparagraph 36(e).
- 37. Subject to reference to the full terms and effect of cll 11 and 13, and Schedule B, of the Luke Applicants' Management Agreement, AGL admits the allegations in paragraph 37.
- 38. AGL admits the allegations in paragraph 38.
- 39. AGL admits the allegations in paragraph 39.

40. AGL admits the allegations in paragraph 40.
41. In response to the allegations in paragraph 41, AGL:
- (a) says that the Second Applicant signed an Enduring Power of Attorney for Robert Colin Luke on 1 September 2007;
  - (b) says that the copy of the Enduring Power of Attorney in its possession was certified on 3 October 2014; and
  - (c) otherwise, subject to reference to the full terms and effect of the Enduring Power of Attorney, admits the allegations in paragraph 41.
42. AGL admits the allegations in paragraph 42.
43. In response to the allegations in paragraph 43, AGL:
- (a) says that Meg Rossiter was at all material times employed by ARE;
  - ~~(b)~~ denies that Meg Rossiter was employed by, or on behalf of, ARH and AGL; and
  - ~~(b)~~(c) otherwise admits the allegations in paragraph 43.
44. In response to the allegations in paragraph 44, AGL:
- (a) admits that the preliminary assessment was provided to the Luke Applicants;
  - (b) says that an 'Entitlement Assessment' dated 5 December 2014 was provided to Robert Colin Luke under cover of an email dated 9 December 2014 from Karol Kljajcin to the Second Applicant, along with an Appointment of Agent Form 6 (and accompanying 'Appointment of Real Estate Agent' schedule), which form:
    - (i) stated inter alia that 'the client acknowledges that the Agent has given the client a market price in obtaining an initial listing of the property in the following range: \$379,000'; and

- (ii) identified that in making the assessment the Agent undertook a 'comparison of the most recent sale [sic] on a particular unit or serviced apartment. Capital growth for particular regions gained through FKP's statistical data including comparison with recent land, residential housing and apartments [sic] prices. Previous independent valuations and historical valuations over recent years';
  - (c) admits that the preliminary assessment bore an Aveo Trade Mark;
  - (d) admits that the preliminary assessment states, inter alia, '[s]hould you have any queries regarding this matter, please do not hesitate to contact the Sales Consultant, Meg Rossiter at Aveo Peregian Springs...';
  - (e) admits that the preliminary assessment was not signed; and
  - (f) otherwise denies the allegations in paragraph 44.
45. In response to the allegations in paragraph 45, AGL:
- (a) says that it is not aware of any challenge made to AGL with respect to the estimated resale price; and
  - (b) otherwise does not know and cannot admit the allegations in paragraph 45.
46. AGL denies the allegations in paragraph 46.
47. In response to the allegations in paragraph 47, AGL:
- (a) says that the 'Notice of Intention to Vacate' form signed by the Second Applicant on 2 October 2014 states that vacant possession will be 'available' on 3 November 2014; and
  - (b) otherwise admits the allegations in paragraph 47.
48. In response to the allegations in paragraph 48, AGL:
- (a) says that by email of 19 January 2015 a 'Property Occupations Form 6' (and accompanying 'Appointment of Real Estate Agent' schedule)

signed by Robert Colin Luke and bearing a date of 21 January 2015 was provided to Karol Kljajcin;

- (b) says that ARE was appointed by Robert Colin Luke as the agent for Robert Colin Luke with respect to the Luke Property by virtue of the 'Property Occupations Form 6' (and accompanying 'Appointment of Real Estate Agent' schedule);
- (c) says that ARE is, indirectly, a wholly-owned subsidiary of AGL;
- (d) says that the 'Property Occupations Form 6' states that:
  - (i) the 'term of appointment' is 23 January 2015 to 24 March 2015; and
  - (ii) 'the client and the agent agree that the commission including GST payable for the service to be performed by the agent is: 5% of the first \$18,000.00 of the Sale Price plus 2.5% of the balance of the Sale Price plus 10% GST';
- (e) says that the accompanying 'Appointment of Real Estate Agent' form signed by Robert Colin Luke on 16 December 2014 and signed by the 'Agent' on 21 January 2015 provides, inter alia, that '[i]f the client and the Agent sign this form on different dates, the commencement date will be the later of these dates';
- (f) refers to and repeats the contents of paragraph 44 above;
- (g) refers to the full terms and effect of the 'Property Occupations Form 6' and 'Appointment of Real Estate Agent' documents; and
- (h) otherwise denies the allegations in paragraph 48.

49. In response to the allegations in paragraph 49, AGL:

- (a) says that by an Enduring Power of Attorney dated 10 November 2014, Robert Colin Luke appointed the Luke Applicants as two of four attorneys;

- (b) refers to the full terms and effect of that Enduring Power of Attorney, including the provision that the Enduring Power of Attorney is revoked upon the death of Robert Colin Luke; and
  - (c) otherwise denies the allegations in paragraph 49.
- 50. AGL admits the allegations in paragraph 50.
- 51. AGL does not know and cannot admit the allegations in paragraph 51.
- 52. Subject to reference to the full terms and effect of the Luke Applicants' Management Agreement, AGL admits the allegations in paragraph 52.
- 53. AGL admits the allegations in paragraph 53.
- 54. In response to the allegations in paragraph 54, AGL:
  - (a) admits the allegations in subparagraph 54(a);
  - (b) says that the Luke Applicants:
    - (i) were offered the choice between the 'Standard' marketing package or, for a fee, the 'Premium' marketing package which package included, inter alia, advertising of the Luke Property on the Aveo website; but
    - (ii) elected not to have the Luke Property marketed by way of the 'Premium' package;
  - (c) says that refurbishment works were undertaken on the Luke Property in accordance with the works agreed in the period 23 January 2015 to 19 March 2015;
  - (d) says that:
    - (i) during the period January 2015 to September 2015 the Peregian Springs village was advertised in brochures distributed to letter boxes, local newspapers, radio stations and on television;

- (ii) the Luke Property was advertised by way of a flyer containing photographs, a floorplan, an accompanying description and price of \$379,000, and which included Meg Rossiter's name and phone number, which flyer was displayed in the sales window at Peregrine Springs and handed to potential purchasers;
  - (iii) during the period March 2015 to September 2015 the Luke Property was inspected by potential purchasers on at least 18 occasions; and
  - (iv) during the period February 2015 to September 2015 at least eight potential purchasers expressed an interest in the Luke Property;
- (e) says that:
- (i) Meg Rossiter received, on behalf of the Luke Applicants, an offer to purchase the Luke Property for the listed price of \$379,000 which offer was communicated by email to the Second Applicant on 1 May 2015;
  - (ii) the Second Applicant informed Meg Rossiter by email on 2 May 2015 that Robert Colin Luke's estate was subject to probate; and
  - (iii) the offer to buy the Luke Property was retracted as a result of the estate being subject to probate, which fact was communicated to the Second Applicant by email on 3 May 2015; and
- (f) otherwise denies the allegations in subparagraph 54(b).

55. AGL admits the allegations in paragraph 55.

56. Subject to reference to the full terms and effect of the email, AGL admits the allegations in paragraph 56.

57. AGL admits the allegations in paragraph 57.

58. Subject to reference to the full terms and effect of the email, AGL admits the allegations in paragraph 58.

59. In response to the allegations in paragraph 59, AGL:
- (a) says that Sandy Spencer, on or about 7 July 2015, telephoned the First Applicant and said words to the effect that:
    - (i) the Aveo Way Programme and the transition to leasehold was being introduced in various Aveo Villages;
    - (ii) the Aveo Way Programme was being introduced at Aveo Peregian Springs at that time; and
    - (iii) people did not buy into retirement villages for capital gains; and
  - (b) otherwise denies the allegations in paragraph 59.
60. Subject to reference to the full terms and effect of the email, AGL admits the allegations in paragraph 60.
61. In response to the allegations in paragraph 61, AGL:
- (a) says that there was not, in the email of 13 July 2015, any further explanation as to the 'difficulties associated with residing within Freehold Schemes in retirement' referred to in that email;
  - ~~(b)~~ (b) refers to and repeats paragraphs 20 to 20B above; and
  - ~~(b)(c)~~ otherwise denies the allegations in paragraph 61.
62. Subject to reference to the full terms and effect of the email, AGL admits the allegations in paragraph 62.
63. Subject to reference to the full terms and effect of the Standard Form Letter, AGL admits the allegations in paragraph 63.
64. AGL admits the allegations in paragraph 64.
65. Subject to reference to the full terms and effect of the Luke Applicants' Sale Contract, AGL admits the allegations in paragraph 65.
66. Subject to reference to the full terms and effect of the Luke Applicants' Sale Contract, AGL admits the allegations in paragraph 66.

67. In response to the allegations in paragraph 67, AGL:
- (a) refers to and repeats paragraphs 21 and 25 above; and
  - (b) otherwise, denies the allegations in paragraph 67.
68. [No allegation.]
69. In response to the allegations in paragraph 69, AGL:
- (a) refers to and repeats paragraph 48 above; and
  - (b) otherwise admits the allegations in paragraph 69.
70. In response to the allegations in paragraph 70, AGL:
- (a) refers to and repeats paragraph 48 above; and
  - (b) otherwise admits the allegations in paragraph 70.
71. AGL admits the allegations in paragraph 71.
- DA. THE SURRENDER OF JOAN MARY COLOMBARI'S LEASE**
- 71A. AGL admits the allegations in paragraph 71A.
- 71B. AGL admits the allegations in paragraph 71B.
- 71C. AGL admits the allegations in paragraph 71C.
- 71D. In response to the allegations in paragraph 71D, AGL:
- (a) admits that some directors and secretaries of ANSRV have from time to time been directors and secretaries of AGL;
  - (b) otherwise denies the allegations in subparagraph 71D(a); and
  - (c) says the allegations in subparagraph 71D(b) are vague and embarrassing and does not plead to those allegations.



71E. In response to the allegations in paragraph 71E, AGL:

- (a) says that ANSRV operates a number of Aveo Villages, including Bayview Gardens;
- (b) refers to and repeats paragraph 2 above; and
- (c) otherwise denies the allegations in paragraph 71E.

71F. In response to the allegations in paragraph 71F, AGL:

~~(a) — says that at no time did Ms Colombari acquire any property by virtue of her lease at Bayview Gardens;~~

~~(b)~~(a) says that:

- (i) Ms Colombari entered into a 99 year lease with ANSRV dated 8 May 2008;
- (ii) the lease commenced on 26 May 2008;
- (iii) the Colombari Applicants' Management Agreement was included as Annexure A to the lease; and
- (iv) Ms Colombari's Incoming Contribution under the Management Agreement was \$390,000; and

~~(e)~~(b) otherwise denies the allegations in paragraph 71F.

71G. In response to the allegations in paragraph 71G, AGL:

- (a) refers to and repeats paragraph 71F above; and
- (b) otherwise admits the allegations in paragraph 71G.

71H. In response to the allegations in paragraph 71H, AGL:

- (a) refers to and repeats paragraph 10A above; and
- (b) otherwise denies the allegations in paragraph 71H.

71I. AGL does not know and cannot admit the allegations in paragraph 71I.

- 71J. AGL does not know and cannot admit the allegations in paragraph 71J.
- 71K. In response to the allegations in paragraph 71K, AGL:
- (a) says that on or about 26 May 2014 Rebecca Williams, an employee of AGL, prepared a document containing information with respect to Ms Colombari's transfer from an independent living unit in Bayview Gardens to a serviced apartment in Bayview Gardens;
  - (b) says that the proposed resale price in that document was \$360,000; and
  - (c) otherwise denies the allegations in paragraph 71K.
- 71L. In response to the allegations in paragraph 71L, AGL:
- (a) says that on or about 29 May 2014, Dianne Vickrage-Hill, Sales Consultant at the Respondent, provided the Third Applicant with a financial results upon transfer form, with a resale price of \$360,000, and a proposed transfer acceptance form; and
  - (b) otherwise denies the allegations in paragraph 71L.
- 71M. AGL admits the allegations in paragraph 71M.
- 71N. AGL admits the allegations in paragraph 71N.
- 71O. AGL admits the allegations in paragraph 71O.
- 71P. In response to the allegations in paragraph 71P, AGL:
- (a) says that the documents the subject of the allegations in paragraph 71P were received by ANSRV and are dated 9 December 2014 but does not know when they were received; and
  - (b) otherwise admits the allegations in paragraph 71P.
- 71Q. In response to the allegations in paragraph 71Q, AGL:
- (a) says that the Third Applicant was provided with an Entitlement Assessment for the Colombari Property on or about 20 January 2015 which gave an estimated resale value of \$370,000; and

- (b) otherwise denies the allegations in paragraph 71Q.

71R. In response to the allegations in paragraph 71R, AGL:

- (a) admits the allegations in subparagraph 71R(a);
- (b) admits the allegations in subparagraph 71R(b);
- (c) says that cl 17.2 of the Colombari Applicants' Management Agreement provides that ANSRV will notify Ms Colombari, in writing, of the amount it considers, acting reasonably, is the Resale Value (namely, the fair market value of Ms Colombari's lease) when a pre-termination notice is given;
- (d) says that the Third Applicant instructed Dianne Vickrage-Hill on 18 September 2014 to list Ms Colombari's unit for \$375,000; and
- (e) otherwise denies the allegations in subparagraph 71R(c).

71S. In response to the allegations in paragraph 71S, AGL:

- (a) refers to and repeats subparagraph 71R(d) above;
- (b) says that the Third Applicant challenged the estimated resale price of the unit and instructed Dianne Vickrage-Hill to alter the listed price of the unit, including in emails dated 15 September 2014 and 18 September 2014;
- (c) says that cll 17.1(b) and 19.2 of the Colombari Applicants' Management Agreement provide that the Resale Value of Ms Colombari's unit is to be determined on the basis of the lease in use at the time the lease is to be entered by the new resident;
- (d) otherwise denies the allegations in subparagraph 71S(a); and
- (e) does not know and cannot admit the allegations in subparagraph 71S(b).

71T. In response to the allegations in paragraph 71T, AGL:

- (a) refers to and repeats paragraph 71S above;

- (b) says that the Third Applicant, as attorney for Ms Colombari, executed a Sales Inspection Report and Exclusive Agency Agreement on 28 January 2015 pursuant to which, inter alia, ARE was appointed from 28 January 2015 to 28 April 2015 as the exclusive agent to sell Ms Colombari's unit; and
- (c) otherwise denies the allegations in paragraph 71T.

71U. In response to the allegations in paragraph 71U, AGL:

- (a) says Ms Colombari personally executed a Surrender of Lease which was provided to Minter Ellison (solicitors for ANSRV) under cover of letter dated 26 May 2015; and
- (b) otherwise denies the allegations in paragraph 71U.

71V. In response to the allegations in paragraph 71V, AGL:

- (a) says Mr and Mrs Wabitsch executed a Lease with ANSRV with respect to the Colombari Property which was provided to Minter Ellison (solicitors for ANSRV) under cover of letter dated 12 May 2015;
- (b) says that the Wabitschs' Lease commenced on 15 June 2015 for a period of 99 years;
- (c) says that the Wabitschs' Management Agreement was included as Annexure A to the Lease;
- (d) says that the Ingoing Contribution under the Wabitschs' Management Agreement was \$380,000;
- (e) otherwise denies the allegations in subparagraph 71V(a); and
- (f) admits the allegations in subparagraph 71V(b).

71W. AGL admits the allegations in paragraph 71W.

71X. AGL denies the allegations in paragraph 71X.

71Y. ~~[No allegation.]~~In response to the allegations in paragraph 71Y, AGL:

(a) refers to and repeats paragraphs 20 to 20B above; and

(b) otherwise denies the allegations in paragraph 71Y.

71Z. In response to the allegations in paragraph 71Z, AGL:

(a) refers to and repeats paragraphs 71R and 71T above; and

(b) otherwise admits the allegations in paragraph 71Z.

**E. RESPONDENT'S DIRECT CONTRAVENTIONS IN RESPECT OF THE LUKE APPLICANTS AND FREEHOLD GROUP MEMBERS**

72. In response to the allegations in paragraph 72, AGL:

(a) says that certain emails from Karol Kljajcin to the Luke Applicants contained an email signature including the words 'Sales Assistant, Aveo Peregian Springs, Retirement, Aveo';

(b) says that Karol Kljajcin was at all material times employed by AGL as a part time Sales Assistant at the Peregian Springs village;

(c) otherwise denies the allegations in subparagraph 72(a)(i);

(d) admits the allegations in subparagraph 72(a)(ii);

(e) admits the allegations in subparagraph 72(b);

(f) admits the allegations in subparagraph 72(c);

(g) admits the allegations in subparagraph 72(d);

(h) says that Karol Kljajcin was authorised at all material times by AGL to:

(i) send the correspondence referred to in subparagraphs 72(a) and 72(b) and to use the Aveo Trade Marks in doing so; and

(ii) market and promote the Aveo Way Programme using material produced by the Respondent;

- (i) otherwise says the allegation in subparagraph 72(e) is vague and does not plead to it; ~~and~~
- (j) refers to and repeats subparagraphs 72(b) and 72(h) above and otherwise denies the allegations in subparagraph 72(f)(i);
- ~~(j)~~(k) denies that Karol Kljajcin is or ever was an officer or agent of AGL or that AGL ever held her out as such and otherwise denies the allegations in subparagraph 72(f)(ii);
- (l) says that in the premises of subparagraph 72(b) above, and insofar as the actions of Karol Kljajcin were of the kind outlined in subparagraph 72(h) above, those actions are taken for the purpose of the Australian Consumer Law, by s 139B(2) of the Australian Consumer Law, to have been engaged in also by AGL; and
- (m) otherwise says that the allegations in subparagraph 72(f)(iii) are vague and denies those allegations.

73. In response to the allegations in paragraph 73, AGL:

- (a) says that certain emails from Meg Rossiter to the Luke Applicants contained an email signature including the words 'Sales Consultant, Aveo Peregian Springs, Retirement, Aveo Group' and otherwise denies the allegations in subparagraph 73(a)(i);
- (b) admits the allegations in subparagraph 73(a)(ii);
- (c) admits the allegations in subparagraph 73(b);
- (d) admits the allegations in subparagraph 73(c);
- (e) says that Meg Rossiter was at all material times employed by ARE;
- (f) admits the allegations in subparagraph 73(d); and
- (g) denies the allegations in subparagraph 73(e).

74. In response to the allegations in paragraph 74, AGL:
- (a) says that certain emails from Sandy Spencer to the Luke Applicants contained an email signature including the words 'Territory Sales Manager QLD North' and 'Aveo Group';
  - (b) says that Sandy Spencer was at all material times employed by ARE;
  - (c) otherwise denies the allegations in subparagraph 74(a)(i);
  - (d) admits the allegations in subparagraph 74(a)(ii);
  - (e) refers to and repeats paragraph 59 above and otherwise admits the allegations in subparagraph 74(b);
  - (f) admits the allegations in subparagraph 74(c); and
  - (g) denies the allegations in subparagraph 74(d).
75. AGL does not know and cannot admit the allegations in paragraph 75.
76. In response to the allegations in paragraph 76, AGL:
- (a) to the extent that AGL introduced and promoted the purchase of units in Aveo Villages pursuant to the Aveo Way Programme, admits that it was:
    - (i) in trade or commerce; and
    - (ii) in connection with the supply or possible supply of goods or services to a person; and
  - (b) otherwise denies the allegations in subparagraphs 76(a) and 76(b).
77. In response to the allegations in paragraph 77, AGL:
- (a) refers to and repeats paragraphs 8 to 15, 18, 20-21 to 27, and 75 above;
  - (b) denies that the Applicants or the Group Members did or will achieve a lower sale price and/or a longer sale period in respect of their unit

under or as a result of marketing and selling the unit in accordance with the Aveo Way Programme;

(c) admits that AGL did not inform the Applicants or the Group Members that they would or would likely achieve a lower sale price and/or a longer sale period in respect of their unit under or as a result of marketing and selling the unit in accordance with the Aveo Way Programme; and

(d) otherwise denies the allegations in paragraph 77.

77A. AGL denies the allegations in paragraph 77A.

78. AGL denies the allegations in paragraph 78.

79. In response to the allegations in paragraph 79, AGL:

(a) says the allegations in paragraph 79 are rolled-up and embarrassing;

(b) denies that it had any obligation to act in the way apparently alleged in paragraph 79; and

(c) otherwise denies the allegations in paragraph 79.

80. AGL denies the allegations in paragraph 80.

81. AGL denies the allegations in paragraph 81.

82. In response to the allegations in paragraph 82, AGL:

(a) admits that it made the No Worse Off Representation to the Luke Applicants by virtue of the email from Karol Kljajcin to the Luke Applicants dated 21 September 2015 at 1.17pm;

(b) refers to and repeats paragraphs 21, 21A and 25 above; and

(c) otherwise denies the allegations in paragraph 82.

83. AGL refers to and repeats paragraph 82 above and otherwise denies the allegations in paragraph 83.



84. AGL denies the allegations in paragraph 84.
85. In response to the allegations in paragraph 85, AGL:
- (a) refers to and repeats the contents of paragraphs 21, 21A, 25 and 82 above;
  - (b) says that if AGL made the No Worse Off Representation to Freehold Group Members (which is denied) AGL had reasonable grounds for doing so; and
  - (c) otherwise denies the allegations in paragraph 85.
86. AGL denies the allegations in paragraph 86.
87. In response to the allegations in paragraph 87, AGL:
- (a) refers to and repeats the allegations in paragraphs 82 and 85 above;
  - (b) does not know and cannot admit the allegations in paragraph 87 that the Luke Applicants as co-executors of the Luke Estate agreed to sell the Luke Property pursuant to the Aveo Way Programme in reliance upon the No Worse Off Representation; and
  - (c) says that if AGL made the No Worse Off Representation to Freehold Group Members (which is denied), AGL does not know and cannot admit the allegations in paragraph 87 that some or all of the Freehold Sales Sub-Group Members agreed to sell their properties pursuant to the Aveo Way Programme in reliance upon the No Worse Off Representation.
- 87A. AGL denies the allegations in paragraph 87A.
88. AGL denies the allegations in paragraph 88.

**F. THE RESPONDENT'S INVOLVEMENT IN CONTRAVENTIONS BY AVEO MANAGERS - LUKE APPLICANTS AND FREEHOLD GROUP MEMBERS**

89. In response to the allegations in paragraph 89, AGL:
- (a) refers to and repeats paragraph 72 above;
  - (b) admits that 'Aveo Peregian Springs Country Club' is a business name owned by ARH and that ARH operated the Peregian Springs village at all material times;
  - (c) otherwise denies the allegations in subparagraph 89(a);
  - (d) denies the allegations in subparagraph 89(b); and
  - (e) denies that Karol Kljajcin is or ever was an officer or agent of ARH or that ARH ever held her out as such and otherwise denies the allegations in subparagraph 89(c).
90. In response to the allegations in paragraph 90, AGL:
- (a) refers to and repeats paragraph 73 above;
  - (b) denies the allegations in subparagraphs 90(a) and 90(b); and
  - (c) denies that Meg Rossiter is or ever was an officer or agent of ARH or that ARH ever held her out as such and otherwise denies the allegations in subparagraph 90(c).
91. In response to the allegations in paragraph 91, AGL:
- (a) to the extent that ARH and the Aveo Way Managers introduced and promoted the Aveo Way Programme in their Aveo Villages, admits that it was:
    - (i) in trade or commerce; and
    - (ii) in connection with the supply or possible supply of goods or services to a person; and

- (b) otherwise denies the allegations in subparagraphs 91(a) and 91(b).
92. AGL denies the allegations in paragraph 92.
- 92A. AGL denies the allegations in paragraph 92A.
93. AGL denies the allegations in paragraph 93.
94. In response to the allegations in paragraph 94, AGL:
- (a) says the allegations in paragraph 94 are rolled-up and embarrassing;
  - (b) denies that it had any obligation to act in the way apparently alleged in paragraph 94; and
  - (c) otherwise denies the allegations in paragraph 94.
95. AGL denies the allegations in paragraph 95.
96. In response to the allegations in paragraph 96, AGL:
- (a) refers to and repeats paragraph 2 above;
  - (b) otherwise admits the allegations in subparagraphs 96(a) and 96(b);
  - (c) refers to and repeats paragraphs 16 to 20 and ~~5469~~ to 70 above;
  - (d) admits that it caused and facilitated the introduction of the Aveo Way Programme into certain Aveo Villages, including Aveo Peregian Springs; and
  - (e) otherwise denies the allegations in subparagraph 96(c).
97. AGL refers to and repeats paragraphs 2, 8, 29 to 32 and 92 to 96 above and otherwise denies the allegations in paragraph 97.
98. AGL denies the allegations in paragraph 98.
99. AGL denies the allegations in paragraph 99.

100. In response to the allegations in paragraph 100, AGL:
- (a) refers to and repeats paragraphs ~~21,20~~ to 21A, 25 and 26 above;
  - (b) says that ARE, by virtue of the email from Meg Rossiter to the Second Applicant dated 17 June 2015 at 2.58pm, represented to the Second Applicant that selling the Pre-AWFI in accordance with the Aveo Way Programme would not or was not likely to result in reduction of the amount the Luke Applicants would receive had the Pre-AWFI been sold under the terms of the their Relevant Former Contract, and that the Luke Applicants would be no worse off if they agreed to sell pursuant to the Aveo Way Programme; and
  - (c) otherwise denies the allegations in paragraph 100.
101. AGL denies the allegations in paragraph 101.
102. AGL denies the allegations in paragraph 102.
103. In response to the allegations in paragraph 103, AGL:
- (a) refers to and repeats paragraphs ~~21,20~~ to 21A, 25 and 100 above;
  - (b) says that ARE had reasonable grounds for making the representation referred to in paragraph 100(b) above; and
  - (c) otherwise denies the allegations in paragraph 103.
104. AGL denies the allegations in paragraph 104.
105. In response to the allegations in paragraph 105, AGL:
- (a) refers to and repeats the allegations in paragraphs 100 and 103 above;
  - (b) does not know and cannot admit the allegations in paragraph 105 that the Luke Applicants relied upon the representation referred to in paragraph 100(b) above in agreeing to sell the Luke Property pursuant to the Aveo Way Programme; and

- (c) says that if the Aveo Way Managers made the Aveo Way Manager's No Worse Off Representation to Freehold Group Members (which is denied), AGL does not know and cannot admit the allegations in paragraph 105 that some or all of the Freehold Sales Sub-Group Members relied upon the Aveo Way Manager's No Worse Off Representation in agreeing to sell the Freehold Sales Sub-Group Members' properties pursuant to the Aveo Way Programme.

105A. AGL denies the allegations in paragraph 105A.

106. AGL denies the allegations in paragraph 106.

107. AGL denies the allegations in paragraph 107.

108. AGL denies the allegations in paragraph 108.

109. AGL denies the allegations in paragraph 109.

**G. THE RESPONDENT'S INVOLVEMENT IN CONTRAVENTIONS BY ARE  
- LUKE APPLICANTS AND FREEHOLD GROUP MEMBERS**

110. In response to the allegations in paragraph 110, AGL:

- (a) refers to and repeats paragraph 72 above;
- (b) says that Karol Kljajcin signed the Form 6 as a registered real estate salesperson and was authorised by ARE to do so; and
- (c) otherwise denies the allegations in paragraph 110.

111. In response to the allegations in paragraph 111, AGL:

- (a) refers to and repeats paragraphs 48, 72 and 110 above; and
- (b) otherwise denies the allegations in paragraph 111.

112. In response to the allegations in paragraph 112, AGL:

- (a) refers to and repeats paragraph 72 above; and
- (b) otherwise denies the allegations in subparagraphs 112(a) and 112(b).

112A. In response to the allegations in paragraph 112A, AGL:

(a) refers to and repeats paragraphs 6, 42 to 71 and 72 above; and

(b) otherwise denies the allegations in paragraph 112A.

113. In response to the allegations in paragraph 113, AGL:

(a) refers to the full terms and effect of the Standard Form Letter; and

(b) otherwise admits the allegations in paragraph 113.

114. In response to the allegations in paragraph 114, AGL:

(a) refers to and repeats paragraph 72 above; and

(b) otherwise denies the allegations in paragraph 114.

115. In response to the allegations in paragraph 115, AGL:

(a) says that ARE is, indirectly, a wholly-owned subsidiary of AGL;

(b) otherwise denies the allegations in subparagraph 115(a);

(c) admits the allegations in subparagraph 115(b);

(d) admits the allegations in subparagraph 115(c);

(e) says that in South Australia, AGL has historically used an external real estate agent for the sale of units; and

(f) admits the allegations in subparagraph 115(d).

116. In response to the allegations in paragraph 116, AGL:

(a) refers to and repeats paragraph 10 above; and

(b) otherwise denies the allegations in paragraph 116.

117. In response to the allegations in paragraph 117, AGL:

(a) admits that Robert Colin Luke appointed ARE as the property agent for the sale of the Property pursuant to Form 6;

- (b) admits that some other ARE Sub-Group Members appointed ARE as the property agent for the sale of their properties pursuant to Form 6;
- (c) refers to the full terms and effect of the respective Form 6s; and
- (d) otherwise denies the allegations in paragraph 117.

118. In response to the allegations in paragraph 118, AGL:

- (a) says that the allegations in paragraph 118 are rolled-up and embarrassing;
- (b) refers to and repeats paragraph 117 above; and
- (c) otherwise denies the allegations in paragraph 118.

119. In response to the allegations in paragraph 119, AGL:

- (a) says that the allegations in paragraph 119 are rolled-up and embarrassing;
- (b) refers to and repeats paragraphs 117 and 118 above; and
- (c) otherwise denies the allegation in paragraph 119.

120. AGL denies the allegations in paragraph 120.

121. AGL denies the allegations in paragraph 121.

122. In response to the allegations in paragraph 122, AGL:

- (a) refers to and repeats paragraphs 2, 16 to 20 and 72 to 74 above;
- (b) admits the allegations in subparagraph 122(a);
- (c) admits the allegations in subparagraph 122(b);
- (d) admits that AGL caused and facilitated the introduction of the Aveo Way Programme into Aveo Villages, including Aveo Peregian Springs;

- (e) ~~says that the allegation in subparagraph 122(d) appears to be incorrectly cross-referenced~~ refers to and repeats paragraphs 6A, 20 to 20B and 116 above;
  - (f) admits the allegations in subparagraph 122(e);
  - (g) admits the allegations in subparagraph 122(f); and
  - (h) otherwise denies the allegations in paragraph 122.
123. AGL denies the allegations in paragraph 123.
124. AGL denies the allegations in paragraph 124.
125. AGL denies the allegations in paragraph 125.
126. In response to the allegations in paragraph 126, AGL:
- (a) says the allegations in paragraph 126 are rolled-up and embarrassing;
  - (b) denies that it had any obligation to act in the way apparently alleged in paragraph 126; and
  - (c) otherwise denies the allegations in paragraph 126.
127. AGL does not know and cannot admit the allegations in paragraph 127.
128. AGL denies the allegations in paragraph 128.
129. AGL denies the allegations in paragraph 129.
130. AGL denies the allegations in paragraph 130.
131. AGL denies the allegations in paragraph 131.
132. AGL denies the allegations in paragraph 132.
133. AGL denies the allegations in paragraph 133.
134. AGL denies the allegations in paragraph 134.
135. AGL denies the allegations in paragraph 135.



## H. RESPONDENT'S DIRECT CONTRAVENTIONS IN RESPECT OF THE COLOMBARI APPLICANTS AND LEASEHOLD GROUP MEMBERS

136. In response to the allegations in paragraph 136, AGL:
- (a) says that certain emails from Dianne Vickrage-Hill to the Colombari Applicants contained an email signature including the words 'Sales Consultant, Aveo Bayview Gardens, Retirement;
  - (b) says that Dianne Vickrage-Hill was at all times from 25 August 2008 to 15 September 2018 employed by ARE as, variously, a Sales Host, a Property and Lifestyle Consultant, and a Sales Consultant, at the Bayview Gardens village;
  - (c) otherwise denies the allegations in subparagraph 136(a)(i);
  - (d) admits the allegations in subparagraph 136(a)(ii);
  - (e) admits the allegations in subparagraph 136(b);
  - (f) says that Dianne Vickrage-Hill was authorised at all material times by AGL to send the correspondence referred to in subparagraphs 136(a) and 136(b) and to use the Aveo Trade Marks in doing so;
  - (g) otherwise says the allegation in subparagraph 136(c) is vague and does not plead to it; and
  - (h) denies that Dianne Vickrage-Hill is or ever was an officer or agent of AGL or that AGL ever held her out as such and otherwise denies the allegations in subparagraph 136(d).
137. AGL does not know and cannot admit the allegations in paragraph 137.
138. In response to the allegations in paragraph 138, AGL:
- (a) to the extent that AGL introduced and promoted the purchase of units in Aveo Villages pursuant to the Aveo Way Programme, admits that it was:
    - (i) in trade or commerce; and

(ii) in connection with the supply or possible supply of goods or services to a person; and

(b) otherwise denies the allegations in subparagraphs 138(a) and 138(b).

139. In response to the allegations in paragraph 139, AGL:

(a) refers to and repeats paragraphs 8 to 15, ~~21-20~~ to 27A, and 137 above;

(b) denies that the Applicants or the Group Members did or will achieve a lower sale price and/or a longer sale period in respect of their unit under or as a result of marketing and selling the unit in accordance with the Aveo Way Programme;

(c) admits that AGL did not inform the Applicants or the Group Members that they would or would likely achieve a lower sale price and/or a longer sale period in respect of their unit under or as a result of marketing and selling the unit in accordance with the Aveo Way Programme; and

(d) otherwise denies the allegations in paragraph 139.

139A. AGL denies the allegations in paragraph 139A.

140. AGL denies the allegations in paragraph 140.

141. AGL denies the allegations in paragraph 141.

142. AGL denies the allegations in paragraph 142.

143. AGL denies the allegations in paragraph 143.

144. In response to the allegations in paragraph 144, AGL:

(a) refers to and repeats paragraphs 21, 21A, 25 and 141 above;

(b) says that if AGL made the Leasehold No Worse Off Representation (which is denied) AGL had reasonable grounds for doing so; and

(c) otherwise denies the allegations in paragraph 144.

145. AGL denies the allegations in paragraph 145.

146. AGL denies the allegations in paragraph 146.

146A. AGL denies the allegations in paragraph 146A.

147. AGL denies the allegations in paragraph 147.

**I. THE RESPONDENT'S INVOLVEMENT IN CONTRAVENTIONS BY AVEO MANAGERS - COLOMBARI APPLICANTS AND LEASEHOLD GROUP MEMBERS**

148. In response to the allegations in paragraph 148, AGL:

- (a) refers to and repeats paragraph 136 above;
- (b) admits that 'Aveo Bayview Gardens' is a business name owned by ANSRV and that ANSRV operated the Bayview Gardens village at all material times;
- (c) otherwise denies the allegations in subparagraph 148(a);
- (d) denies the allegations in subparagraph 148(b); and
- (e) denies that Dianne Vickrage-Hill is or ever was an officer or agent of ANSRV or that ANSRV ever held her out as such and otherwise denies the allegations in subparagraph 148(c).

149. In response to the allegations in paragraph 149, AGL:

- (a) to the extent that ANSRV and the Aveo Way Managers introduced and promoted the Aveo Way Programme in their Aveo Villages, admits that it was:
  - (i) in trade or commerce; and
  - (ii) in connection with the supply or possible supply of goods or services to a person; and
- (b) otherwise denies the allegations in subparagraphs 149(a) and 149(b).

150. AGL denies the allegations in paragraph 150.
151. AGL denies the allegations in paragraph 151.
152. In response to the allegations in paragraph 152, AGL:
  - (a) refers to and repeats paragraph 2 above;
  - (b) otherwise admits the allegations in subparagraphs 152(a) and 152(b);
  - (c) refers to and repeats paragraphs 16 to 20 and 71Z above;
  - (d) admits that it caused and facilitated the introduction of the Aveo Way Programme into certain Aveo Villages, including Aveo Bayview Gardens; and
  - (e) otherwise denies the allegations in subparagraph 152(c).
153. AGL refers to and repeats paragraphs 2, 8, 29 to 32 and 149 to 152 above and otherwise denies the allegations in paragraph 153.
154. AGL denies the allegations in paragraph 154.
155. AGL denies the allegations in paragraph 155.
156. AGL denies the allegations in paragraph 156.
157. AGL denies the allegations in paragraph 157.
158. AGL denies the allegations in paragraph 158.
159. In response to the allegations in paragraph 159, AGL:
  - (a) refers to and repeats paragraphs 21, 21A, 25 and 156 above;
  - (b) says that if ANSRV or any of the Leasehold Aveo Way Managers made the Leasehold Aveo Way Manager's No Worse Off Representation (which is denied) they had reasonable grounds for doing so; and
  - (c) otherwise denies the allegations in paragraph 159.
160. AGL denies the allegations in paragraph 160.

- 161. AGL denies the allegations in paragraph 161.
- 162. AGL denies the allegations in paragraph 162.
- 163. AGL denies the allegations in paragraph 163.
- 164. AGL denies the allegations in paragraph 164.
- 165. AGL denies the allegations in paragraph 165.

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- 166. In response to the allegations in paragraph 166, AGL:
  - (a) refers to and repeats paragraphs 2, 3, 6A, 8-15, 16, 17A, 17B, 23, 24, 29-32, 34, 35-37, 39, 40, 43-44, 52, 53, 55-60, 62, 69, 71B-71E, 71G-71J, 71Z, 72-74, 75, 76, 77, 80, 89-92, 94, 95, ~~112, 115~~110-116, 118, 120, 137, 139 and 150 above; and
  - (b) otherwise denies the allegations in paragraph 166.
- 167. In response to the allegations in paragraph 167, AGL:
  - (a) says that the term 'Available Levers' is vaguely defined and is embarrassing;
  - (b) refers to and repeats paragraph 166 above; and
  - (c) otherwise denies the allegations in paragraph 167.
- 168. In response to the allegations in paragraph 168, AGL:
  - (a) refers to and repeats paragraphs 16, 17, 17B, 17C, 20, 21, 22, 24 and 25 above, and paragraph 173 below; and
  - (b) otherwise denies the allegations in paragraph 168.
- 169. In response to the allegations in paragraph 169, AGL:
  - (a) says that the term 'Available Levers' is vaguely defined and is embarrassing;

- (b) refers to and repeats paragraphs 16-27A, 38-69, 71I-71Z, 72-75, 77, 79, 80, 82, 84, 87, 89, 90-92, 94-97, 100, 102, 105, 107, 110-120, 122, 123, 126, 127, 129, 131, 132, 136, 137, 139, 141, 143, 146, 148, 150, 152, 153, 156, 158, 161, 163 and 166-168 above; and
- (c) otherwise denies the allegations in paragraph 169.
170. In response to the allegations in paragraph 170, AGL:
- (a) refers to and repeats paragraphs 2, 2A, 3, 8, 13, 16, 17-17C, 18, 19, ~~20, 21, 21A, 23,~~ 24, 25, 28-32, 34, 36, 37, 39-70, 71B-71Z, 72-74, 76, 77, 79, 80, 82, 84, 89-91, 92, 94-99, 100, 102, 105, 107-120, 122-126, 127, 131, 133-136, 138, 139, 141, 143, 148, 149, 150, 152-156, 158, 161 and 163-166 above; and
- (b) otherwise denies the allegations in paragraph 170.
171. In response to the allegations in paragraph 171, AGL:
- (a) refers to and repeats paragraphs 76, 91, 138, 149 and 167-170 above; and
- (b) otherwise denies the allegations in paragraph 171.
172. AGL denies the allegations in paragraph 172.
173. In response to the allegations in paragraph 173, AGL:
- (a) refers to and repeats paragraphs 3, 16-17C, ~~20-22, 25,~~ 64, 70, 71, 71V-71Z, 77, 78, 80, 81, 87, 88, 92, 93, 95, 105, 106, 120, 121, 132, 139, 140, 143, 147, 150, 151, 158 and 162 above; and
- (b) otherwise denies the allegations in paragraph 173.
174. In response to the allegations in paragraph 174, AGL:
- (a) refers to and repeats paragraphs 2, 3, 6A, 8, 10, 15, 17, 17B, 17C, ~~21, 21A~~20-22, 22-25, 26-27A, 29-32, ~~43-44,~~ 48, ~~56-57,~~ 67, 70, 71B-71E, 71X, 72-74, 75, 77, 79, 80, 82, 84, 86, 87, 92, 94, 95, 96, 97, 100, 102, 104, 105, 110-120, 122, 123, 126-130, 133, 139, 141, 143, 145, 146, 147, 150, 152, 153, 156, 158, 160, 163 and 166 above; and
- (b) otherwise denies the allegations in paragraph 174.

175. AGL denies the allegations in paragraph 175.

176. AGL denies the allegations in paragraph 176.

177. AGL denies the allegations in paragraph 177.

178. AGL says further that any claim of a Group Member based on a cause of action which accrued outside the limitation period ascribed to that cause of action, including by virtue of s 236 of the ACL, is barred.

**DATED:** ~~12 February 2021~~ 26 November 2021



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Signed by John Mitchell  
Solicitor for the Respondent

This pleading was prepared by Banjo McLachlan and Jesse Rudd and settled by Philip Crutchfield of Counsel.

**Certificate of lawyer**

I John Mitchell certify to the Court that, in relation to the defence to the ~~second~~ third further amended statement of claim filed on behalf of the Respondent, 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: ~~12 February 2021~~ 26 November 2021



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Signed by John Mitchell  
Solicitor for the Respondent