

IN THE SUPREME COURT OF VICTORIA  
AT MELBOURNE  
COMMERCIAL COURT

S CI 2014

IN THE MATTER OF TRUBUILT PROJECTS PTY LTD (IN LIQUIDATION)

BETWEEN:

**Trubuilt Projects Pty Ltd (In Liquidation) ACN 123 394 972 & Ors**  
(see attached schedule)

and

Plaintiffs

**Wanissa Properties Pty Ltd ACN 133 366 800 & Ors**  
(see attached schedule)

Defendants

#### STATEMENT OF CLAIM

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Date of document: 15 October 2014  
Filed on behalf of the Plaintiffs  
**SBA Law**  
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607 Bourke Street  
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1. The first plaintiff, Trubuilt Projects Pty Ltd (In Liquidation) ACN 123 394 972 (**Trubuilt**)
  - (a) at all material times:
    - i. was duly incorporated according to law;
    - ii. carried on business constructing residential and commercial subdivisions of land under the builder's licence of Peter Mills;
  - (b) was placed into administration on 15 February 2013 pursuant to the provisions of Part 5.3A of the *Corporations Act 2001* (Cth) (**the Act**); and
  - (c) was wound up in insolvency pursuant to the provisions of Part 5.6 of the Act by order of the Federal Court of Australia made on 1 March 2013.
  
2. Trubuilt was the builder of a student hostel and apartment building complex at 7-13 Dudley Street, Caulfield East (**the Dudley Street development**) pursuant to a construction contract

(the **Construction Contract**) with the first defendant, Wanissa Properties Pty Ltd ACN 133 366 800 (**Wanissa**).

**Particulars**

The Construction Contract was in writing and dated 26 October 2009.  
A copy may be inspected at the offices of the plaintiffs' solicitors.

3. The second plaintiff is the liquidator of Trubuilt and sues in that capacity.
4. Wanissa is and was at all material times duly incorporated according to law.
5. At all material times Wanissa was a joint venturer in respect of the Dudley Street development.

**Particulars**

The joint venture (**the Joint Venture**) was recorded in an agreement between Wanissa on its own behalf and on behalf of the third defendant, Abd Gani Yusof (**Dato Gani**), and the fourth defendant Azizi Yom Ahmad (**Dato Azizi**) (together, **the Dato**s), of the one part; and PMCD Investments Pty Ltd ACN 128 630 928) (**PMCD**) of the other part. The agreement is in writing and dated 6 May 2009, and a copy may be inspected at the offices of the plaintiffs' solicitors.

6. PMCD held a 27% interest in the Joint Venture and Wanissa held the remaining 73% on its own behalf and on behalf of the Dato
s. To give effect to the arrangement, Wanissa became the Joint Venture entity. Pursuant to the Joint Venture, Wanissa agreed to issue 37 shares to PMCD, representing a 27% shareholding of the total number of 137 shares in Wanissa.7. At all material times the directors of each of Trubuilt and PMCD were Chris Dimitriou and Peter Mills and at all material times the shareholders of Trubuilt and PMCD were interests associated with Chris Dimitriou and Peter Mills.
8. At all material times the second defendant, Dennis Teen (**Teen**):
  - (a) was a director of Wanissa;
  - (b) held 72 ordinary shares in Wanissa on trust for the Dato
s; and
- (c) acted as agent for each of Wanissa, Dato Gani and Dato Azizi in respect of the Dudley Street development.

### Particulars

Wanissa, Dato Gani and Dato Azizi engaged Teen to act as their agent in respect of the Dudley Street development, and to hold the shares in Wanissa on trust for the Dato, in return for their agreement to pay Teen 5% of their share in any profit realised from a sale of the Dudley Street development and Teen so acted. Further particulars may be provided following the completion of discovery.

9. At all material times Dato Gani was:
  - (a) a director of Wanissa;
  - (b) the legal holder of 28 ordinary shares in Wanissa; and
  - (c) the beneficial holder of an additional 17 shares in Wanissa held by Teen on trust for him.
  
10. Dato Azizi was at all material times:
  - (a) between 22 September 2008 and 4 March 2010, a director of Wanissa;
  - (b) after 4 March 2010 a de facto director and therefore an officer of Wanissa; and
  - (c) the beneficial holder of 55 shares in Wanissa held by Teen on trust for him.
  
11. Pursuant to the Construction Contract, further or alternatively following the performance of construction work directed, requested, authorised and accepted by Wanissa, Trubuilt issued invoices (**Variation Orders**) to Wanissa for variations to the Dudley Street Development (**the variation work**).

### Particulars

- (i) Variation Order 3 dated 29 September 2010 for works to extend the basement car park, in the amount of \$785,714.28.
- (ii) Variation Order 4 dated 20 November 2010 for works to expand the 2<sup>nd</sup> and 3<sup>rd</sup> floors of the student hostel and apartment building, in the amount of \$1,263,102.50.
- (iii) Variation Order 6 dated 1 October 2011 for construction of a 5<sup>th</sup> floor on each of the student hostel and apartment building, in the amount of \$2,363,721.80.

A copy of each invoice may be inspected at the offices of the plaintiffs' solicitors.

Further particulars may be provided following the completion of discovery.

12. In breach of the Construction Contract and/or despite request for payment, Wanissa has not paid to Trubuilt the sums due in respect of the variation work claimed in the Variation Orders, which sums are due and payable to Trubuilt.

**Particulars**

The requests were made between around January and May 2012 during conversations between Chris Dimitriou on behalf of Trubuilt and Teen on behalf of Wanissa.

Further particulars may be provided following the completion of discovery.

13. By reason of the matters pleaded in paragraphs 12 and 13, Wanissa is indebted to Trubuilt in the amount of \$4,412,538.58.
14. Alternatively Trubuilt claims \$4,412,538.58 as a fair and reasonable sum for the variation work upon a quantum meruit.
15. Further or alternatively:
- (a) at the time when it directed, requested, authorised and accepted the variation work, Wanissa did not have the funds to pay for the variation work;
  - (b) the financier of the Joint Venture, National Australia Bank Limited (**NAB**), declined to lend funds to Wanissa for the variation work;
  - (c) the Datos declined to contribute funds to the Joint Venture for the variation work.
16. Dimitriou and Mills, in their capacity as directors of one the joint venturers, PMCD, well knew of the matters referred to in the preceding paragraph.

**Particulars**

The knowledge of Dimitriou and Mills is to be inferred from the following:

- i. the Datos' failure and/or refusal to contribute equity or further equity to the Joint Venture pursuant to clauses 2.8, 6.2 and 6.5 of the Joint Venture agreement;
- ii. the absence of an offer from NAB of further funding of the Dudley Street development following Trubuilt's request in around December 2011 for NAB to extend its construction finance facility and the absence of any other source of funds to pay for the variation work;
- iii. The proposal of Trubuilt's bookkeeper, Romeo Pulido (**Pulido**) to Dimitriou dated in or around April 2012 to fund

the construction of the Dudley Street development by, inter alia, restructuring the Joint Venture.

17. Dimitriou and Mills in their capacity as directors of Trubuilt:
- (a) from about August 2010 caused Trubuilt to carry out the variation work and to carry its cost, notwithstanding that at the time the variation work was carried out Trubuilt was insolvent, alternatively became insolvent by reason of:
    - (i) carrying the cost of the variation work without payment for it; further or alternatively
    - (ii) incurring debts to Wanissa in respect of a loan of \$1.2 million from FJP Pty Ltd (**Sotos Loan**) and the loan of further funds procured by Wanissa from the sale of parts of the Dudley Street development;
  - (b) took no action in respect of covering the costs of the variation work and advised Teen that Trubuilt would carry those costs;
  - (c) did not to stop the carrying out of the variation work when the same were not funded by NAB or the Joint Venturers or paid for by Wanissa;
  - (d) preferred their interests and the interests of PMCD as Joint Venturer in obtaining a larger profit from the completion and sale of the Dudley Street development over either:
    - (i) pursuing and recovering the debts and/or sum due to Trubuilt in respect of the variation work; or
    - (ii) ceasing to incur costs in respect of the variation work, knowing those costs would not be paid either until the sale of the Dudley Street development or at all, such that Trubuilt would become indebted to its tradesmen, sub-contractors and suppliers in respect of the Dudley Street development by millions of dollars.
18. By the conduct referred to in the preceding paragraph, Dimitriou and Mills breached their respective obligations:
- (a) under section 181(1) of the Act;
    - (i) to exercise their powers and discharge their duties in good faith in the best interests of Trubuilt; and
    - (ii) to exercise their powers and discharge their duties for a proper purpose; and

(b) under section 182(1) of the Act not to improperly use their respective positions as directors of Trubuilt to:

- (i) gain an advantage for the Joint Venture including their own respective interests as Joint Venturers through PMDC; or
- (ii) cause detriment to Trubuilt.

19. Each of Wanissa, Teen, Dato Gani and Dato Azizi was a person involved in the contraventions by Dimitriou and Mills within the meaning of that expression in section 79 of the Act.

### Particulars

- i. Each of them was aware of the matters referred to in paragraphs 17 and 18.
- ii. In or about February 2010, well knowing that Trubuilt would be compelled to carry the cost of the variation work, Dato Gani and Dato Azizi decided not to contribute any further funds to the Dudley Street development, notwithstanding that the same was substantially incomplete (save that in November and December 2010 the Datos loaned funds to Trubuilt by way of direct payment to Renaissance, a Malaysian entity, for the provision of furniture, fittings and equipment for the Dudley Street development). The Datos' knowledge may be inferred from their email correspondence with Teen dated 26 January and 22 February 2010, copies of which are available for inspection at the offices of the plaintiffs' solicitors.
- iii. By no later than December 2010 Teen and therefore Wanissa, Dato Gani and Dato Azizi well knew, alternatively had reasonable grounds to suspect, that Trubuilt was unable to pay its debts as and when they fell due by reason, inter alia, of the matters referred to in paragraph 15 and of the fact that in order to maintain progress on the Dudley Street development, Teen was compelled to pay with his own funds various invoices of tradespeople engaged by Trubuilt for the Dudley Street Project because Trubuilt was unable to pay them, and further to lend some of his own funds to Trubuilt to enable it to pay pressing bills in respect of the Dudley Street Project that Trubuilt could not pay. Teen's knowledge may be inferred from email correspondence from Teen to Dato Gani dated 25 November 2010, a copy of which is available for inspection at the offices of the plaintiffs' solicitors.
- iv. From no later than 25 November 2010 Teen advised Dato Gani and Dato Azizi that there was a significant shortfall in funding for the Dudley Street development, including the variation work referred to in the particulars to paragraph 11, which was being carried by Trubuilt.
- v. By an email dated 20 January 2012 to the Datos, Teen informed them that the variation work were largely completed, that Trubuilt was owed \$2 million which was unfunded, and that Trubuilt was short of cash flow and "running out of steam". Teen further advised the Datos that he had secured the Sotos

loan of \$1.2m to enable a loan to be made to Trubuilt to assist it with its cashflow problems. Further, by an email dated 24 January 2012 Teen informed the Datos that Trubuilt was struggling with cash flow and that its works and subcontractors were requiring payment or they would not work. Copies of the emails are available for inspection at the offices of the plaintiffs' solicitors.

- vi. On or about 26 April 2012 Teen loaned \$40,000 of his own money to Trubuilt to assist with its cash flow difficulties, notwithstanding that he owed no obligation to do so.
- vii. Teen and therefore Wanissa and the Datos were informed in late 2011 or early 2012 by Dimitriou and/or Pulido, that Trubuilt had debts of approximately \$3 million in respect of the Dudley Street development, the majority of which were substantially overdue and that it was unable to pay those debts. Teen was also informed by Dimitriou and Pulido that Trubuilt was receiving numerous demands for payment and threats of recovery proceedings, and that creditors were obtaining judgments against it.
- viii. Teen and therefore Wanissa and the Datos were aware that if Trubuilt was not paid for the variation work, the costs of construction would be reduced and the profit on sale of the Dudley Street development would increase, providing a greater return to the Joint Venturers, including PMDC. Teen's knowledge may be inferred from his emails to the Datos dated 19 April 2010, 25 November 2010, 20 January 2012, 24 January 2012 and from his email correspondence with Pulido dated 11 July 2013, 5 and 6 August 2013, copies of which are available for inspection at the offices of the plaintiffs' solicitors.
- ix. From around April 2010 Teen on behalf of himself, Wanissa and the Datos agreed with Dimitriou on behalf of Trubuilt that Trubuilt would carry the cost of the Dudley Street development works not covered by NAB funding, including the cost of the variation works, and not demand payment of the same or the taking of any step to recover the same on the basis that the same would be paid on completion and sale of the Dudley Street development, and/or on the basis that the interests of Dimitriou and Mills would receive greater profit from the sale of the Dudley Street development. Teen's and the Datos' knowledge of such matters may be inferred from his emails to the Datos dated 19 April 2010, copies of are available for inspection at the offices of the plaintiffs' solicitors.
- x. Well knowing that Wanissa and PMCD as the joint venturers were indebted through Wanissa as contracting party with Trubuilt pursuant to the Construction Contract for the Dudley Street development for in excess of \$3 million, including in respect of the variation work, on 25 February 2013 Teen on behalf of Wanissa and the Datos, and Dimitriou on behalf of PMCD, signed a contract to sell the Dudley Street development to Thrushcross Land Holdings Limited (**Thrushcross**), a wholly owned subsidiary of a Malaysian government department, MARA, for a price of \$22.6 million on the basis that notwithstanding the said contract price, sums totaling \$4,750,000 would be paid out of the proceeds of sale to three corporations, Leuven Capital Sdn.

Bhd, Optimus Capital Group of Companies Sdn.Bhd and TRR Heritage Sdn.Bhd, being companies directly or indirectly associated with the interests of the Dato and directly or indirectly associated with the current CEO of MARA, Ahmad Nazim Bin Abd Rahman (**Nazim**) and/or current or former employees of MARA, Mazrul Haizad Bin Marof and Izaddeen Bin Daud. This would have and did have the effect of depriving the Joint Venturers of sufficient funds to pay Trubuilt what was owing to it and to pay a profit share to the Joint Venturers.

- xi. Teen's knowledge of the association between Nazim and those companies to be paid sums totaling \$4,750,000 may be inferred from Nazim's email to Teen on 4 July 2013 attaching invoices from those companies, a copy of which is available for inspection at the plaintiffs' solicitors.
- xii. Teen's knowledge of the indebtedness of Wanissa to Trubuilt may be inferred from the matters referred to in paragraph 15 and from Teen's email to the Dato dated 20 January 2012, a copy of which is available for inspection at the offices of the plaintiffs' solicitors.
- xiii. Teen and therefore Wanissa and the Dato well knew that Dimitriou and Mills would not take any step to have Trubuilt seek to recover what was owed to it for the variation work or stop the payment of the said sum of \$4,750,000, and that they were content for PMCD to receive its increased share of the profits from the sale of the Dudley Street development instead of Trubuilt recovering what was owed to it for the variation work. Teen's knowledge may be inferred from his emails to the Dato dated 19 April 2010, his email to Dato Gani dated 25 November 2010, his email to Loke dated 4 February 2011 and the email from Pulido to Teen dated 11 July 2013, copies of which are available for inspection at the offices of the plaintiffs' solicitors.
- xiv. Wanissa, Teen and the Dato well knew that the said sum of \$4,750,000 should have been retained by the joint venturers and used by Wanissa to discharge its indebtedness to Trubuilt referred to in paragraph 14 hereof. Wanissa, Teen and the Dato assisted Dimitriou and Mills to procure a higher profit share for PMCD by joining in the sale to Thrushcross and partaking in the distribution of the proceeds of the sale without paying what was owed to Trubuilt for the variation work. The knowledge of Wanissa, Teen and the Dato may be inferred from the matters referred to in paragraphs 15 in subparagraphs (ii) to (x) of the particulars to paragraph 19.
- xv. Further particulars may be provided following the completion of discovery.

20. By reason of their involvement in the contraventions by Dimitriou and Mills of section 181(1) and section 182(1) of the Act, as alleged in the preceding paragraph, each of Wanissa, Teen, Dato Gani and Dato Azizi contravened those provisions.



Particulars

Section 181(2) and section 182(2) of the Act.

21. In the premises as pleaded in the preceding paragraph, Trubuilt has suffered loss and damage.

Particulars

The sum of \$4,412,538.58 owing in respect of the variation work.

**AND THE PLAINTIFFS CLAIM:**

- A. \$4,412,538.58
- B. Alternatively \$4,412,538.58 upon a quantum meruit.
- C. Further or alternatively damages.
- D. Further or alternatively compensation pursuant to section 1317H of the *Corporations Act 2001* (Cth).
- E. Interest pursuant to statute.
- F. Costs.
- G. Such further or other relief as the Court considers appropriate.

Dated: 15 October 2014

P J Bick.

C Pierce.



**SBA Law**

Lawyers for the Plaintiff

1. **Place of trial-**  
Melbourne
2. **Mode of trial-**  
Before a Judge sitting alone.
3. **This writ was filed-**  
For the plaintiff by a solicitor of SBA Law.
4. **The address of the plaintiff is-**  
Level 19, 15 William Street  
Melbourne Victoria 3000
5. **The address for service of the plaintiff is-**  
C/- SBA Law  
Level 13, 607 Bourke Street  
Melbourne Victoria 3000
6. **The address of the First Defendant is-**  
Level 9, 167 Queen Street  
Melbourne Victoria 3000
7. **The address of the Second Defendant is-**  
4 Adrian Avenue  
Vermont South Victoria 3133
8. **The address of the Third Defendant is-**  
2919 Jalan Enam Kemensah Heights 68000  
Ulu Klang Selangor Darul Ehsan  
Malaysia
9. **The address of the Fourth Defendant is-**  
46 Jalan Satu Taman Tun Abdul Razak  
Ampang  
Malaysia

## SCHEDULE OF PARTIES

<b>Trubuilt Projects Pty Ltd (In Liquidation) ACN 123 394 972</b>	First Plaintiff
<b>Andrew Reginald Yeo in his capacity as liquidator of Trubuilt Projects Pty Ltd (In Liquidation) ACN 123 394 972</b>	Second Plaintiff
<b>Wanissa Properties Pty Ltd ACN 133 366 800</b>	First Defendant
<b>Dennis Teen</b>	Second Defendant
<b>Abd Gani Yusof (Dato Gani)</b>	Third Defendant
<b>Azizi Yom Ahmad (Dato Azizi)</b>	Fourth Defendant