

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane

NUMBER: BS 4023 of 23



**IN THE MATTER OF PCA (QLD) PTY LTD (SUBJECT TO A DEED OF
COMPANY ARRANGEMENT) ACN 141 148 24**

Applicant	Destination Brisbane Consortium Integrated Resort Operations Pty Ltd as trustee for The Destination Brisbane Consortium Integrated Resort Operating Trust and QWB Residential Precinct Operations Pty Ltd as trustee for QWB Residential Precinct Operations Trust
	and
Respondents	PCA (Qld) Pty Ltd (subject to Deed of Company Arrangement) ACN 141 148 245 and others according to the attached Schedule

**AFFIDAVIT OF GAVIN PATRICK GRAHAME
SWORN ON 9 APRIL 2024**

I, **Gavin Patrick Grahame** of Cbus Property Brisbane Pty Ltd (ACN 169 682 292) as trustee for the Brisbane Unit Trust (**Cbus Property**) at Level 33, 71 Eagle Street, Brisbane, Executive General Manager Queensland, states on oath:

1. I am the Executive General Manager, Development, QLD for Cbus Property and have been employed in this role since January 2013.
2. I am authorised to make this affidavit on behalf of Cbus Property.

	Page 1	
Deponent		Witness



AFFIDAVIT
Filed on behalf of the Sixth Respondent
Form 46, Version 2, approve 25 August 2022
Uniform Civil Procedure Rules 1999
Rule 431

Carter Newell Lawyers
Level 13
215 Adelaide Street
BRISBANE QLD 4000
Phone: 07 3000 8353
Fax: 07 3000 8488
Ref: PGM:EHG:166098
Email: PMead@carternewell.com

3. I make this affidavit from my own knowledge, except where otherwise stated, and where statements are not made from my own knowledge, they are made to the best of my information and belief after due enquiry, and I have set out the sources of my information.
4. At paragraph 5(a) of the Outline of Submission of the Applicants it is stated that "*neither DBC nor any of the other schedule 2 creditors have lodged proofs of debt...*". Cbus Property have submitted a Proof of Debt in relation to a project known as 443 Queen Street.
5. On or about 3 March 2022 Arnold Bloch Leibler submitted a Proof of Debt on behalf of Cbus Property relevant to 443 Queen Street through Deloitte's online system known as the Halo Platform.
6. At time the Proof of Debt was lodged Cbus Property was not aware of all of the claims that Cbus Property may have arising from the project at 443 Queen Street. By way of example, it did not include a claim in respect of the waterproofing defects that have been experienced at 443 Queen Street. Further, Cbus Property's contractual entitlements in respect of completing the 443 Queen Street project works could not be known until those works were completed.
7. Cbus Property is still not presently aware of the totality of the claims available to it against PCA (Qld) Pty Ltd (subject to Deed of Company Arrangement) ACN 114 148 245 (**PCA**) and WBHO Australia Pty Ltd (subject to Deed of Company Arrangement) (ACN 095 983 681) (**WBHO**) as issues with the build undertaken by PCA at 443 Queen Street continue to arise.
8. The total claims presently known to Cbus Property are proposed to be dealt with in a varied proof of debt. A copy of a draft varied proof of debt is at **Exhibit GPG1** to this affidavit. The variations to the proof of debt may likely require further refinement prior to being submitted via the Halo Platform.
9. Clause 14.4 of the Deed of Company Arrangement (DOCA) dated 21 July 2022 expressly incorporates regulation 5.6.56 of the Corporate Regulations 2001 (Cth) as though the reference to "liquidator" was a reference to the Deed Administrators. Cbus Property intends to write to the Deed Administrators to seek their consent to vary the Proof of Debt to make it clear what claims are included

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Deponent



Witness

in the Proof of Debt and what claims are included in Schedule 2 to the DOCA as attached to the Applicant's Amended Originating Application.

10. There are likely to be aspects of any claim which Cbus Property may seek leave to commence against PCA and WBHO in relation to 443 Queen Street to which a policy of insurance held by PCA and / or WBHO may respond.
11. Cbus Property are aware of the existence of a Contract Works policy of insurance, a Third Party Liability policy of insurance and a Professional Indemnity Policy of Insurance in relation to 443 Queen Street, based on certificates of currency provided by PCA.
12. Cbus Property is not currently aware of the extent, limits and availability of the insurance coverage. Cbus Property remains in a position that it will seek to commence proceedings with leave of the Court in respect of some of its claims but may also have claims that are not insured so that Cbus Property would seek to claim under the deed of company arrangement for those claims.
13. The distinction between those claims will be identified in Cbus Property's varied proof of debt.

The contents of this affidavit are true, except where they are stated on the basis of information and belief, in which case they are true to the best of my knowledge.

I understand that a person who provides a false matter in an affidavit commits an offence.

I state that:

- A. This affidavit was made in the form of an electronic document.
- B. This affidavit was electronically signed.
- C. This affidavit was made, signed and witnessed under part 6A of the *Oaths Act 1867*.



Deponent

Page 3



Witness

SWORN by:Gavin Patrick Grahame

Full name of deponent

at Pottsville NSW

Place where deponent is located

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Signature of deponent

9 April 2024

Date

BEFORE ME:Elisha Hilary Goosem

Full name of Witness

Australian Legal Practitioner

Type of witness

Carter Newell Lawyers

Name of law practice

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Signature of witness

9 April 2024

Date

SPECIAL WITNESS to complete – tick as applicable

- ☒ I am a special witness under the *Oaths Act 1867*.
(see section 12 of the *Oaths Act 1867*)
- ☒ This affidavit was made in the form of an electronic document.
- ☒ I electronically signed this affidavit.
- ☒ This affidavit was made, signed and witnessed under part 6A of the *Oaths Act 1867* – I understand the requirements for witnessing a document by audio visual link and have complied with those requirements.

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**IN THE MATTER OF PCA (QLD) PTY LTD (SUBJECT TO A DEED OF
COMPANY ARRANGEMENT) ACN 141 148 24**

Applicant

**Destination Brisbane Consortium Integrated Resort
Operations Pty Ltd as trustee for The Destination
Brisbane Consortium Integrated Resort Operating
Trust and QWB Residential Precinct Operations Pty Ltd
as trustee for QWB Residential Precinct Operations
Trust**

and

Respondents

**PCA (Qld) Pty Ltd (subject to Deed of Company
Arrangement) ACN 141 148 245 and others according
to the attached Schedule**

CERTIFICATE OF EXHIBIT

Exhibit **GPG1** to the affidavit of **Gavin Patrick Grahame** sworn 9 April 2023.



Deponent



Witness
Lawyer

CERTIFICATE OF EXHIBIT
Filed on behalf of the Sixth Respondent
Form 47, Version 2
Uniform Civil Procedure Rules 1999
Rule 435

Carter Newell Lawyers
Level 13
215 Adelaide Street
BRISBANE QLD 4000
Phone: 07 3000 8353
Fax: 07 3000 8488
Ref: PGM:EHG:166098
Email: PMead@carternewell.com

4.443 Queen Street, Brisbane, Queensland

Information required	Comment	Status
Creditor entity	[name of Cbus SPV, ACN and address]	Cbus Property Brisbane Pty Ltd (ACN 169 683 292) as Trustee for the Brisbane Unit Trust (ABN 60 953 137 182) of Level 14, 447 Collins Street Melbourne VIC 3000 <u>(Cbus Property)</u>
Debtor entity	[Name of ProBuild entity, ACN and address]	PCA (QLD) Pty Ltd (PCA) ACN 114 148 245 Level 10, 580 St Kilda Road Melbourne VIC 3004
Brief summary of project	The 443 Queen Street project comprises a high end residential development being a 47 level residential tower, with 264 premium residential apartments including some ground floor retail in Brisbane city.	<p>The project has not reached Practical Completion but the adjusted Date for Practical Completion under the building contract is currently 25 September, 2020. Construction is approximately 90 per cent complete and contains significant defects.</p> <p><u>The project had not reached practical completion at the time PCA abandoned the project site and was placed into administration. The contract date for Practical Completion which was (following the grant of extension of time claims under the contract) 25 September 2020. PCA had not brought the contract works to Practical Completion by the date that PCA was placed into administration.</u></p> <p><u>By notice pursuant to the contract and dated 18 March 2022, Cbus Property took the whole of the work remaining to be completed under the contract out of PCA's hands.</u></p> <p><u>Cbus Property has, since that date, carried out the contract works by a new building contractor. Completion of the project works was substantially achieved on 27 October 2023, however some work remains to be completed.</u></p> <p><u>Significant defects in the design and constructions works carried out by PCA pursuant to the contract have been identified.</u></p>
Copy of construction agreement	[Eg D&C contract]	Construction Contract dated 8 August 2017
Brief summary of claim	Claim for defective works, <u>breach of contract and costs to complete project</u>	Claim for cost to complete <u>the contract works taken out of PCA's hands on 18 March 2022.</u>

Information required	Comment	Status
	<u>works taken out of PCA's hands.</u>	<p><u>Further claims for defective works, breach of the contract claims and damages.</u></p> <p><u>At the date of this notice, the full extent of the claims to be made against PCA is not known. PCA (Qld) Pty Ltd have not crystallised. Cbus Property is still being made aware of defects in the work undertaken by PCA.</u></p> <p><u>Pursuant to contract clause 39.6, Cbus Property is entitled to payment of the difference between its costs incurred in completing the works taken out of PCA's hands and the amount which would otherwise have been paid to PCA if the work had been completed by PCA.</u></p> <p><u>PCA breached the contract and was negligent in its design and construction work, in that works were defective and in need of rectification. Cbus Property claims the costs of identifying and rectifying defects in PCA's design and construction works including in respect of, but not limited to:</u></p> <ul style="list-style-type: none"> - <u>the façade;</u> - <u>the wet areas, bathrooms and planter boxes; and</u> - <u>waterproofing.</u> <p><u>Further, PCA breached the contract in that it failed to bring the works to practical completion by the contract date for Practical Completion. Cbus Property claims pursuant to the contract and at common law for loss and damage caused by that failure.</u></p> <p><u>PCA committed substantial breaches of the contract building contract entered on 8 August, 2017 both prior to and as a consequence of, its abandoning the works at the site. PCA claims pursuant to the contract and at common law for loss and damage caused by those breaches.</u></p>
Estimated quantum of claim	Approx. \$91.0 million Present estimate of claim	<p>\$90.745m — Refer Estimated Quantum of Claim.</p> <p><u>Approximately \$143,150,000</u></p>
Creditor signatory	[Name of director / attorney of Cbus SPV to	Rachel Taylor / Adrian Pozzo

Information required	Comment	Status
	sign / authorise lodgement of POD (if applicable)]	
Security		<p>Vero Performance Bond number 2017080266 dated 15th August 2017 \$4.95M</p> <p>Vero Performance Bond number 2017080267 dated 15th August 2017 \$4.95M</p> <p><u>NIL Cbus Property has now called on the security</u></p>
Guarantee		<p>Contractor performance guarantee between creditor and</p> <p>WBHO Australia Pty Ltd (ABN 11 095 983 681) dated on or about 2017</p>