

SUPREME COURT OF NEW SOUTH WALES

Danny Moussa v Camden Council Proceedings 2020 / 359004

IMPORTANT NOTICE

Camden Land Subsidence Representative Action

1. Why is this notice important?

A representative action has been commenced in the Supreme Court of New South Wales by Danny Moussa (“plaintiff”) against four parties, being Camden Council (“first defendant”), Cornish Group Spring Farm Pty Ltd (“second defendant”), SMEC Testing Services Pty Ltd (In Liquidation) (“third defendant”) and SMECTS Holdings Pty Ltd (“fourth defendant”).

The representative action claims damages for the plaintiff and group members for negligence by each of the defendants arising out of the approval for, development and sale of, some areas of land in the Spring Farm area at Camden as being suitable and fit for the construction of houses.

The Supreme Court of New South Wales has ordered that this notice be published for the information of persons who might be members of the group on whose behalf the action is brought and may be affected by the action. If you think that you may be a group member, then **you should read this notice carefully**. If there is anything in it that you do not understand, you should seek legal advice. You should not direct your questions to the Court.

2. What is a representative action?

A representative action is an action, commonly known as a class action, brought by one person (the “plaintiff”) on his or her own behalf, and on behalf of a group of people (“group members”) against one or more other people or entities (the “defendants”) where the plaintiff and group members have similar claims against the defendants.

Group members are bound by any judgment or settlement entered into in the representative action unless they have opted out of the proceeding. This means that:

- (a) If the representative action is successful, group members may be eligible for a share of any settlement monies or Court-awarded damages;
- (b) If the representative action is unsuccessful, group members are bound by that result;
- (c) Regardless of the outcome of the representative action, group members will not be able to pursue their claims against the defendant in separate legal proceedings unless they have opted out.

3. What is “Opt out”?

The plaintiff in a representative action does not need to seek the consent of group members to commence a representative action on their behalf or to identify a specific group member. However, group members can cease to be group members by opting out of the representative action. An explanation for how group members are able to opt out is found below in the section headed ‘How can you opt out of the proceeding’.

4. What is this representative action?

This representative action, the Camden Land Subsidence representative action, is brought by the plaintiff on his own behalf and on behalf of all persons who are “group members” as defined in the proceeding.

The action arises out of the approval for, development of, and sale of, some areas of land in the Spring Farm area at Camden as being suitable and fit for the construction of houses.

The plaintiff alleges, in the Amended Statement of Claim filed in the Supreme Court of NSW Proceeding 2020/359004, that he has suffered loss and damage in the nature of property damage and economic loss due to the his land in the Spring Farm area being unfit for residential building due to the unsound condition of the soil and fill on his land. It is also alleged that by statements made to group members in trade or commerce, the second, third and fourth defendants breached two provisions of the *Australian Consumer Law* and, further, that it was as a result of that negligence and those breaches that group members suffered loss or damage.

The defendants do not admit the allegations and defend the proceeding on the basis, among other things, that they were not negligent and did not breach the *Australian Consumer Law*. They each argue that they are not responsible for any loss or damage suffered by group members.

5. Are you a group member?

You are a Group Member in the representative action if you are a person or entity who or which own or owned land located within any of the areas highlighted in:

- (a) blue on the map attached to this Notice [being the area defined in the Amended Statement of Claim filed on 17 September 2021 (ASOC) as “the Cornish Masterplan Area”] and where that person acquired the land after 31 December 2010; or
- (b) red on the map attached to this Notice [being the area defined the ASOC as “the Spring Farm Area”] and where that person owned the land as at 1 January 2018 or acquired the land after 1 January 2018; or
- (c) are the legal representatives of the estates of any person who would be a Group Member but for their death after the date of their death, and who or which claim to have suffered damage or loss as a result of the conduct of the Defendants as pleaded in the ASOC (**Group Members**).

If you are unsure whether or not you are a group member, you should contact Andre Adams, of Mayweathers, on (02) 8020 5720 or springfarm@mayweathers.com.au or seek your own legal advice without delay.

6. Will you be liable for legal costs?

You will not become liable for any legal costs simply by remaining as a group member for the determination of any questions which are common to the plaintiff and group members. However:

- (a) If the preparation or finalisation of your personal claim requires work to be done in relation to issues that are specific to your claim, you can engage Mayweathers or other lawyers to do that work for you. A copy of the terms on which Mayweathers are acting in the group action may be obtained from them on the number, or on the email address shown below.
- (b) If any compensation becomes payable to you as a result of any order, judgment or settlement in the representative action, the Court may make an order that some of that compensation be used to help pay a share of the costs which are incurred by the plaintiff in running the representative action but which are not able to be recovered from the defendant; and
- (c) Representative actions are often settled out of court. If this occurs in the representative action, you may be able to claim from the settlement amount without retaining a lawyer.

7. What will happen if you choose to remain a group member?

Unless you opt out, you will be bound by the outcome of the representative action. If the representative action is successful, you will be entitled to a share in the benefit of any order, judgment or settlement in favour of the plaintiff and group members (although in some cases, you may have to satisfy certain conditions before your entitlement arises). If the action is unsuccessful or is not as successful as you might have wished, you will not be able to sue on the same claim in any other proceedings.

8. How can you remain a group member?

If you wish to **remain** a group member there is **nothing you need to do** at the present time. You are invited to contact the plaintiff's solicitors, Mayweathers, and register as a group member so that further notices about the representative action can be sent to your preferred address.

9. How can you opt out of the representative action?

If you do **not wish to be** a group member you must opt out of the representative action.

If you opt out, you will not be bound by or entitled to share in the benefit of any order, judgment or settlement in the representative action, but you will be at liberty to bring your own claim against the defendant, provided that you issue Court proceedings within the time limit applicable to your claim.

If you wish to bring your own claim against any of the defendants, you should seek your own legal advice about your claim and the applicable time limit **before** opting out.

If you wish to opt out of the representative action you **must** do so by completing an "Opt Out Notice" in the form shown below, then return it to the Registrar of the Supreme Court of NSW at the address on the form. **IMPORTANT: the Opt Out Notice must reach the Registrar by no later than 4.00pm on 23 December 2021**, otherwise it will not be effective.

10. Where can you obtain copies of relevant documents?

Copies of relevant documents, including the Amended Statement of Claim may be obtained by:

- (a) Downloading them from www.mayweathers.com.au; or
- (b) Inspecting them between 9am and 5pm at the office of Mayweathers, contact

details for which are available from www.mayweathers.com.au or by calling (02) 8020 5720.

- (c) Inspecting them on the Supreme Court's website:
https://www.supremecourt.justice.nsw.gov.au/Pages/sco2_classaction/Camden-Land-Subsidence-Class-Action.aspx

Please consider the above matters carefully. If there is anything of which you are unsure, you should contact Andre Adams, of Mayweathers, on (02) 8020 5720 or springfarm@mayweathers.com.au or seek your own legal advice without delay.

This Notice is published pursuant to orders of the Supreme Court of New South Wales made on 27 October 2021.

MAP OF SPRING FARM, NSW 2570



OPT OUT NOTICE

COURT DETAILS

Court	Supreme Court of New South Wales
Division	Common Law
List	Common Law General
Registry	Sydney
Case number	2020/00359004

TITLE OF PROCEEDINGS

Plaintiff	DANNY MARIELLE MOUSSA
First Defendant	CAMDEN COUNCIL
Second Defendant	CORNISH GROUP SPRING FARM PTY LTD ACN 120 837 381
Third Defendant	SMEC TESTING SERVICES PTY LTD (IN LIQUIDATION) ACN 101 164 792
Fourth Defendant	SMECTS HOLDINGS PTY LTD ACN 063 746 823

GROUP MEMBER DETAILS

Name of Group Member	<i>(Name of person opting out)</i>
Legal representative	<i>(If applicable)</i>
Contact name and telephone	
Contact email	
Address of Group Member	

OPT OUT NOTICE

Name of person opting out

I, _____ a Group Member in these representative proceedings,

opt out of the proceedings. I understand that in opting out:

- 1 I forego the right to share in any relief obtained by the representative party in the representative proceedings;
- 2 I am not entitled to receive any further notification about the conduct or disposition of the proceedings; and
- 3 To the extent that I have a claim against the Defendants, any limitation period suspended by the commencement of the representative proceedings has recommenced to run.

SIGNATURE

Signature of legal representative

Signature of or on
behalf of person opting
out if not legally
represented

Capacity

[eg solicitor, authorised officer of person
opting out, person opting out]

Date of signature

NOTICE TO PERSON OPTING OUT

If you wish to opt out, you must, by **4.00pm (Sydney Time) on 23 December 2021**:

- 1 file this form in the registry of the court at the address below,
or in the manner provided in the notice to group members;
and
- 2 serve a copy of this form on the representative party at the
address, or in the manner provided, in the notice to group
members.

REGISTRY ADDRESS

Street address	Supreme Court of NSW Law Courts Building, Queen's Square 184 Phillip Street Sydney NSW 2000
Postal address	Supreme Court of NSW GPO Box 3 Sydney NSW 2001
Telephone	1300 679 272