

IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMON LAW DIVISION
GROUP PROCEEDINGS LIST

S ECI 2024 00280

BETWEEN:

BARRY BERIH

Plaintiff

- and -

HOMES VICTORIA

Defendant

ORDER

JUDGE: The Honourable Justice Richards
DATE MADE: 12 July 2024
ORIGINATING PROCESS: Writ filed 24 January 2024
HOW OBTAINED: Upon receipt of a minute of consent orders dated 12 July 2024
ATTENDANCE: No appearance

OTHER MATTERS:

- A. The plaintiff commenced this proceeding on 24 January 2024 against three defendants — the State of Victoria, the Minister for Housing, and Homes Victoria.
- B. On 3 July 2024, in accordance with the orders of the Honourable Justice Richards made on 31 May 2024, the plaintiff filed an amended writ against Homes Victoria, omitting the former defendants the State of Victoria and the Minister for Housing.

THE COURT ORDERS BY CONSENT THAT:

Defendant's summons filed on 26 March 2024

1. Paragraph 1 of the defendant's summons filed on 26 March 2024 is dismissed, with costs of and incidental to reserved.
2. The costs of and incidental to paragraphs 2 and 3 of the defendant's summons filed on 26 March 2024 are reserved.



Distribution of the Opt-Out notice

3. By **26 July 2024**, the defendant is to distribute by ordinary post the Opt-Out Notice in the form contained in Annexure A to this order.

Trial

4. The matter is listed for trial at **10:30am** on **28 October 2024** on an estimate of two days.

Evidence and submissions

5. By **4:00pm** on **30 August 2024**, the plaintiff is to:
 - (a) file and serve any affidavits, and any expert reports on the question of impacts of displacement through urban renewal and/or the feasibility of refurbishing the housing towers that are the subject of this proceeding, in compliance with Order 44 of the *Supreme Court (General Civil Procedure) Rules 2015* (Vic) (**Rules**) on which the plaintiff wishes to rely at the trial;
 - (b) file and serve an outline of submissions; and
 - (c) serve a list of authorities on the defendant.
6. By **4:00pm** on **27 September 2024**, the defendant is to:
 - (a) file and serve any affidavits, and any expert reports in compliance with Order 44 of the Rules, on which the defendant wishes to rely at the trial;
 - (b) file and serve an outline of submissions; and
 - (c) serve a list of authorities on the plaintiff.
7. By **4:00pm** on **11 October 2024**, the plaintiff is to:
 - (a) file and serve any affidavits, and any supplementary expert reports in compliance with Order 44 of the Rules, on which the plaintiff wishes to rely in reply;
 - (b) file and serve an outline of submissions in reply; and
 - (c) serve an updated list of authorities on the defendant.

Court book and authorities

8. By **4:00pm** on **18 October 2024**, the defendant, in consultation with the plaintiff, is to prepare an electronic Court Book containing the originating process and all submissions, affidavits, and expert reports relied on by the parties.
9. The electronic Court Book is to:
 - (a) be a single fully text-searchable PDF document;



- (b) commence with an index identifying the date, description, and starting page number of each individual document, including where possible hyperlinks;
 - (c) include stamped page numbers that correspond with the display page numbers of the PDF, which, in the case of supplementary books, commence by immediately following on after the ending number of the previous PDF; and
 - (d) be bookmarked with the short-form name of each individual document.
10. By **4:00pm on 18 October 2024**, the defendant is to file and serve a combined list of authorities in searchable PDF form. Each citation in the combined list is to be hyperlinked to an individual file containing the text of the authority.

Costs and liberty to apply

- 11. Costs in the proceeding.
- 12. Liberty to apply.

DATE AUTHENTICATED: 12 July 2024



MR. Richards

THE HONOURABLE JUSTICE RICHARDS

ANNEXURE A

SUPREME COURT OF VICTORIA PUBLIC HOUSING TOWER DEMOLITION CLASS ACTION

BARRY BERIH

v

HOMES VICTORIA
(S ECI 2024 00280)

IMPORTANT NOTICE

On 24 January 2024, Barry Berih (the **plaintiff**) commenced a group proceeding in the Supreme Court of Victoria against Homes Victoria.

This group proceeding arises out of a decision (the **Decision**) to demolish and redevelop public housing towers at the following locations:

- (a) 120 Racecourse Road, Flemington;
- (b) 12 Holland Court, Flemington;
- (c) 33 Alfred Street, North Melbourne (the **Towers**).

You are being sent this notice because you are a resident in one of these towers, and have a rental agreement with Homes Victoria to live in one of the Towers.

The Supreme Court has ordered that this notice be published for the information of persons who might be group members on whose behalf this group proceeding is brought and who may be affected by it.

You should read this notice carefully as it may affect your rights. Any questions you have concerning the matters contained in this notice should not be directed to the Court. If there is anything in this notice that you do not understand, you should seek legal advice.

1. What is a group proceeding?

A group proceeding, also known as a class action, is a proceeding brought by a person (called a “plaintiff”) on their own behalf and on behalf of group members. This procedure is used where the plaintiff and the group members have similar claims against the defendant/s.

Group members are legally bound by any judgment given or settlement entered into in the group proceeding unless they choose not to participate by “opting out” of the

proceeding. This means that:

- (a) if the group proceeding is successful or settles, the outcome will legally bind group members;
- (b) if the group proceeding is unsuccessful, group members are bound by that result; and
- (c) regardless of the outcome of the group proceeding, group members will not be able to pursue their individual claims against the defendants in separate legal proceedings unless they have opted out.

2. What is the Public Housing Tower Demolition Class Action about?

A summary statement of the Public Housing Tower Demolition Class Action can be accessed by the following link: <https://bit.ly/TowerClassAction>. Alternatively, you can use the below QR Code to access the summary statement:



In summary, Mr Berih, as plaintiff, wants the Court to find that the Decision was legally invalid. Homes Victoria as the defendant, denies that the Decision is legally invalid and say that there is no basis for the Court to make any orders about its legal effect.

Mr Berih is also seeking declarations that the Decision was incompatible with group members' human rights under the *Charter of Human Rights and Responsibilities Act 2006 (Vic)* (the **Charter**), and that there was a failure to consider the group members' human rights in making the Decision. Homes Victoria as the defendant denies that the Charter applied to the Decision or, if it did, that the Decision unlawfully interfered with the plaintiff and Group members' human rights.

Mr Berih is also seeking an injunction to stop Homes Victoria from implementing the Decision, and an injunction requiring Homes Victoria to engage in a process of consultation and decision making in accordance with the decision-making model in the Paving The Way Forward Initiatives that Homes Victoria created for the residents of the Towers. Mr Berih is also seeking payment of his legal costs.

Homes Victoria denies there is basis for these orders, and instead seeks an order that Mr Berih pay its legal costs.

Mr Berih is not seeking that the Group Members receive any money from the class action whether through damages or compensation.

3. Are you a “group member”?

You are a group member in the class action if you live in one of the Towers, and are party to a rental agreement with Homes Victoria that entitles you to live in an apartment in one of the Towers.

4. What is “opting out”?

In a group proceeding, the plaintiff does not need to seek the consent of group members to commence the proceeding. However, group members can stop being group members by “opting out” of the group proceedings. If you fit the definition of a “group member”, but you do not want to continue to be a group member, you can opt out now.

5. Does a decision to opt out or remain a group member affect the relocation process?

Before the Court makes a decision in this Court proceeding, the group proceeding does not affect the relocation process currently being undertaken for residents of the Towers. Your decision whether to opt out or remain a group member has no effect on that process.

If Mr Berih succeeds in the Court proceeding then, at that time, Homes Victoria will decide how any judgment given in the proceeding affects the relocation process.

6. How else does the Public Housing Tower Demolition Class Action affect the group members?

If Mr Berih obtains the declarations and injunctions summarised at point 2 above, Homes Victoria will have to reconsider the Decision, or remake the Decision. Thus, if the orders are made, they will necessarily affect all of the residents in the Towers in this way.

7. What should group members do?

If you fit the definition of a group member, the following two options are available to you:

Option 1: Remain a group member

If you wish to remain a group member, you do not need to do anything. The plaintiff will continue to bring the proceeding on your behalf up to the point where the Court determines the questions that are common to the claims of the plaintiff and the group members.

Option 2: Opt-out of being a group member

If you do not want to be a group member, you should opt out of the proceeding.

If you wish to opt out, you must complete a “Notice of opting out by group member” in the form **attached** to this notice and return it by post to the Supreme Court of Victoria at 436 Lonsdale Street, Melbourne, Victoria 3000, Australia.

If you opt out, then you will stop being a group member. You will be able to bring your own claim against Homes Victoria provided that you commence proceedings within the time limit applicable to your claim.

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

8. When do you have to decide what to do?

You must decide what to do before 4 October 2024. If you want to opt out you must send your “Notice of opting out by group member” by post to the Supreme Court so that it arrives **before** that deadline.

9. If you continue to be a group member, will you be liable for legal costs?

No.

Group members in a group proceeding are not liable for any legal costs associated with bringing the proceedings.

The plaintiff is liable for all legal costs, and he has obtained lawyers to act on a pro bono basis.

10. Where can you obtain further information or have questions answered?

You can contact the plaintiff’s solicitors, Inner Melbourne Community Legal (**IMCL**):

Email: info@imcl.org.au

Phone: (03) 93281885.



Website: www.imcl.org.au

If you want to be kept up to date with the proceeding as a group member, and receive all further notices, you may wish to formally register with IMCL so that you get information and notices sent directly to you.

Alternatively, you may wish to obtain legal advice from another lawyer.

11. Where can you obtain copies of relevant documents?

A copy of the summary statement, and a copy of the plaintiff's writ and general indorsement of claim, can be accessed at the following links and QR codes:

Summary Statement	Writ and General Indorsement of Claim
 https://bit.ly/TowerClassAction	 https://bit.ly/TowerClassAction2

You can also obtain these documents, and other relevant documents, by:

- (a) downloading them from www.imcl.org.au;
- (b) telephoning IMCL on (03) 9328 1885 and requesting a copy to be posted or emailed;
- (c) inspecting them by visiting the Registry of the Supreme Court of Victoria in Melbourne at Level 2, 436 Lonsdale Street, Melbourne; or
- (d) downloading them from the Supreme Court website: www.supremecourt.vic.gov.au/areas/group-proceedings.

* * *

Please consider the above matters carefully. If you are not sure whether you are a group member or want further information, you can contact IMCL on (03) 93281885, or seek your own legal advice. You should not delay in making your decision, as the deadline for the opt out is **4 October 2024**.

This notice is published pursuant to orders made by the Supreme Court on 12 July 2024.

FORM 18AB

NOTICE OF OPTING OUT BY GROUP MEMBER

IN THE SUPREME COURT VICTORIA
AT MELBOURNE
COMMON LAW DIVISION
GROUP PROCEEDINGS LIST

S ECI 2024 00280

BETWEEN

BARRY BERIH

Plaintiff

and

HOMES VICTORIA

Defendant

To: The Prothonotary, Supreme Court of Victoria Registry
Level 2, 436 Lonsdale Street
Melbourne VIC 3000

Inner Melbourne Community Legal
2/508 Queensberry Street
North Melbourne VIC 3051

Victorian Government Solicitor's Office
PO Box 4356
Melbourne VIC 3001

I, (print name), a group member in the
above group proceeding, give notice under section 33J(2) of the **Supreme Court Act 1986**
that I am opting out of this proceeding.

Dated:

Signature of group member or the group members' lawyer:

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Address of group member:

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