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Cladding class action: Not our fault, Alucobond supplier says

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Alucobond panels complied with all relevant laws and codes and it was only the decisions of consultants and contractors that resulted in them being used in ways that were dangerous and created risk of fire, the country's largest supplier of polyethylene-core panels says in its defence to a potentially devastating class action claim.

The 100 per cent PE-core aluminium composite cladding sheets "were capable of being used or fitted onto buildings by qualified professionals" in ways that met state and territory requirements as well as the National Construction Code, Sydney-based Halifax Vogel Group said in defence documents filed with the Federal Court.

As a result, any fault for incorrect use lay with the contractors who put the ACP panels on buildings and certifiers who declared it to be used safely, not HVG, which disclosed all necessary information to allow its products to be used safely, the company said.

"The obligation to use building products, including ACPs, in a safe manner, in compliance with all relevant standards, codes and regulations, is on the builder, architect and/or the developer," HVG says.

The outcome of the case matters. A judgment could give compensation to owners of potentially thousands of apartments across Australia, as well as owners of commercial and government buildings and even long-term leaseholders with the obligation to rectify defects.

The dispute revolves around the use of Australian Consumer Law over an issue that would normally be fought between consumers – apartment owners – and the

builder, as was the case in the long-running legal action over combustible cladding on Melbourne's Lacrosse tower.

The lead applicants are owners of 17 apartments in the Shore Dolls Point, at 172-174 Russell Avenue, in Sydney's southern suburb of Dolls Point. HVG during 2011 and 2012 supplied 128 panels for use on the four-level building.

ACL guarantee cited

In their statement of claim, owners in the case backed by litigation funder IMF Bentham and represented by William Roberts Lawyers argue the panels failed to meet standards set by consumer protection laws and carried a "material risk" of causing or spreading fire

The owners argue that Alucobond PE-core cladding was "at all material times" a good acquired for consumption under Australian Consumer Law and was subject to an ACL guarantee that it be of acceptable quality.

In its statement, HVG argues that the Alucobond panels were not goods for use or consumption as defined by ACL or the Trade Practices Act and anyone being supplied with the panels was not a consumer under those laws.

The company also says that facade contractor Modernise Installations, which put the panels on the building, acquired the panels for the purpose of resupply to the building and did not meet the definition of a consumer.



Owners of the 17 apartments in Shore Dolls Point, at 172-174 Russell Avenue, are lead claimants in the cladding class action suit against the suppliers of Alucobond panels. **Louise Kennerley**

HVG says the panels were not subject to either the Acceptable Quality Guarantee of ACL or the Merchantable Quality provisions of the TPA, which in general terms require them to be fit for the purpose. A second line of defence, common in legal arguments, is that if the court finds that either provision does apply, then any non-compliance with those guarantees is the fault of parties responsible for installing and certifying the product.

Arguments by both sides have yet to be finalised. Late last week, Federal Court Justice Michael Wigney ruled that 3A Composites, the German manufacturer of the panels, had a prima facie case to answer and gave the applicants leave to serve their statement of claim against the Osnabruck-based company.

3A Composites will now have to hire local lawyers to represent it and draft a defence to the claims.

In addition last week, HVG replaced its solicitors, appointing Sparke Helmore in place of firm Quinn Emanuel, which prepared the defence document. Its new lawyers may amend the original defence statement.

HVG did not respond to a question as to why it replaced its solicitors. HVG has retained barrister Nicholas Owens, SC.



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