

AGNELLO v HERITAGE CARE PTY LTD (S ECI 2020 03282)
CLASS ACTION SUMMARY STATEMENT



Case: S ECI 2020 03282
Filed on: 19/05/2021 12:16 PM

1. What is a class action?

Where seven or more people have claims that arise out of same, similar or related circumstances, a class action can be brought by one lead plaintiff on their own behalf and representing others.

2. Who is the Epping Gardens Aged Care Group Proceeding against, and what is the claim for?

The claim is against Heritage Care Pty Ltd regarding its aged care facility at 25 Willandra Drive, Epping VIC 3076 (**Epping Gardens**). The claim alleges that, between 26 February and 9 September 2020, Epping Gardens failed to provide residential care services with reasonable care and made misleading or deceptive statements, exposing its residents to neglect and/or COVID-19 and causing loss or damage to its residents and their families.

3. Who is a group member in the Epping Gardens Aged Care Group Proceeding?

The group members to whom this proceeding relates (**group members**):

- (a) are Residents and Family who suffered loss or damage in the COVID-19 Period as a result of Epping Gardens' failure to provide residential care services with reasonable care and/or its misleading or deceptive statements;
- (b) are the legal personal representatives of the estates of Residents who suffered such loss or damage;
- (c) are not any of the persons mentioned in s 33E(2) of the *Supreme Court Act 1986* (Vic), where:
 - (i) "Residents" mean persons who were resident at Epping Gardens at any time in the COVID-19 Period;
 - (ii) "Family" means partners, sons-in-law or daughters-in-law, siblings, children, grandchildren, cousins, nieces or nephews of a Resident;
 - (iii) "loss or damage" means any one or more of:
 - (1) personal injury or death, whether by contracting COVID-19 or otherwise;
 - (2) pain and suffering;
 - (3) mental or nervous shock;
 - (4) disappointment and distress;
 - (5) injured feelings;
 - (6) funeral expenses;
 - (7) medical and like expenses;
 - (8) other economic loss consequent on personal injury or death;
 - (iv) "COVID-19 Period" means the period 26 February 2020 to 9 September 2020.

4. What is the role and responsibility of the lead plaintiff?

The role of the lead plaintiff is to be the representative for the class. They will provide instructions to Carbone Lawyers regarding the conduct of the case and may give evidence during the proceeding. In hearing the lead plaintiff's case, the Court will be asked to make findings in relation to questions of fact and/or law that are common to all group members. In this case, the lead plaintiff is Mr Sebastian

Agnello, whose mother Mrs Carmela Agnello was a resident at Epping Gardens and died from contracting COVID-19 at Epping Gardens.

5. Who is the law firm acting for the lead plaintiff? Carbone Lawyers.

6. How is the Epping Gardens Aged Care Group Proceeding funded?

Unless there is a successful outcome to the Epping Gardens Aged Care Group Proceeding (such as a settlement that is approved by the Court or a judgment by the Court awarding damages to group members), Carbone Lawyers' legal costs stemming from this class action will be borne by Carbone Lawyers. Carbone Lawyers has assisted group members in obtaining a litigation loan for disbursement funding from Equal Access Funding Pty Ltd (**EAF**) and has underwritten this litigation loan, meaning that repayment is guaranteed to EAF by our law firm. In the event of a successful outcome, any amounts due to Carbone Lawyers and EAF must first be approved by the Court before they can be deducted from the money to be paid to group members. Those deductions will never exceed a group member's recovery.

In the event that there is not a successful outcome, group members cannot be pursued for costs by Epping Gardens – the *Supreme Court Act 1986* (Vic) prohibits orders for costs against group members.

7. How are legal fees and disbursements charged?

Carbone Lawyers' legal costs are calculated using time-based billing and include an "Uplift" success fee of 25 per cent, which shall only be payable by group members upon a successful outcome and which shall be calculated as a percentage of the fees charged under the scale of costs, not as a percentage of the compensation. In the Epping Gardens Aged Care Group Proceeding, EAF is paying for all disbursements whilst the case is underway. These legal costs and disbursements are "conditional" and are only recoverable in the event of a successful outcome. Carbone Lawyers will, at no stage, pursue group members for payment of its legal costs and disbursements.

It may be that the Court makes orders which have the effect of ensuring that all group members are treated equally in terms of the amount deducted from their recovery for legal funding costs, regardless of whether they had a Retainer with Carbone Lawyers and a Funding Agreement with EAF.

8. Are there any other class actions that have been, or are likely to be, filed against the defendant in the present class action, and which relate to the same subject matter as the present class action?

As of 19 May 2021, the Epping Gardens Aged Care Group Proceeding is the only class action in Australia that has been commenced on behalf of the group members defined in point 3 above.

9. Who can group members contact for further information about the case?

For further information about the Epping Gardens Aged Care Group Proceeding, group members may contact Carbone Lawyers, at zero out of pocket cost, via:

Email info@carbonelawyers.com.au

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