

EPPING GARDENS AGED CARE GROUP PROCEEDING
Agnello v Heritage Care Pty Ltd
(Supreme Court of Victoria Case No. S ECI 2020 03282)



CLASS ACTION SUMMARY STATEMENT

Case: S ECI 2020 03282

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1. What is a class action?

Where seven or more people have claims that arise out of similar 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 trading as Epping Gardens (**Epping Gardens**). The claim alleges that Epping Gardens failed to care for its residents adequately and to protect them from the SARS-CoV-2 virus, causing death or serious injury to its residents and mental or nervous shock to those people close to them.

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

You are a group member if you:

- a. at any point from February 2020 sustained mental or nervous shock in connection with a person with whom you had a close proximate relationship and who was or is a resident at Epping Gardens and who was killed, injured or put in danger by Epping Gardens' acts or omissions;
- b. are a legal personal representative of the estates of any deceased persons who came within subparagraph (a) above; or
- c. are a resident at Epping Gardens who at any point from February 2020 sustained injury, mental or nervous shock, loss and damage and/or were put in danger by Epping Gardens' acts or omissions.

The current statement of claim also includes certain employees of Epping Gardens in the group, however, Carbone Lawyers is in the process of amending the description of the group to exclude those employees.

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 Carmela Agnello was a resident at Epping Gardens and died from contracting the SARS-CoV-2 virus 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 21 October 2020, 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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