



Issued: 29 July 2024 10:01 AM

JUDGMENT/ORDER

COURT DETAILS

Court	Supreme Court of NSW
Division	Common Law
List	Common Law General
Registry	Supreme Court Sydney
Case number	2022/00238642

TITLE OF PROCEEDINGS

First Plaintiff	Darran Kelly
First Defendant	Scenic Tours Pty Ltd ACN 002715602

DATE OF JUDGMENT/ORDER

Date made or given	26 July 2024
Date entered	26 July 2024

TERMS OF JUDGMENT/ORDER

GARLING J MAKES THE FOLLOWING ORDERS:

1 Pursuant to s 162 of the Civil Procedure Act 2005 (NSW) (hereafter 'the Act'), 4:00pm (AEST) on 27 September 2024 is fixed as the date by which a group member may opt out of this proceeding (hereafter the 'opt out date').

2 Pursuant to ss 175(1)(a) and 176(1) of the Act, the Court approves the form and content of the proposed notice of opt out to group members (hereafter 'the notice') in Annexure A.

3 Pursuant to s 176(2) of the Act, the notice is to be given to group members according to the following procedure.

4 By 2 August 2024, the defendant shall provide to IVE Group Australia Pty Ltd (ABN 58 000 205 210) (hereafter the 'mail house'), the third-party mail house that will distribute the notice to persons who booked a place and travelled on any of the river cruises in Europe listed in Schedule 1 of the notice (the 'group members'):

a. a copy of these orders; and
b. pursuant to section 176(3)(a) of the Act, the names, emails and postal address details of all group members, those details to be kept confidential.

5 By 9 August 2024, the defendant shall cause the mail house to:

a) send a copy of the notice by email to the group members referred to in paragraph 4 (or their agents) in respect to whom email addresses are known;
b) where the mail house receives an email delivery failure notification, attempt a second delivery to the intended recipient within five business days of becoming aware of the delivery failure (the 'second delivery attempt');
c) if the mail house receives a delivery failure notification in relation to the second delivery attempt, send the notice by prepaid ordinary post to the relevant person at the address for that person known to the defendant within five business days of receiving notice of the second delivery failure;

d) send a copy of the notice by prepaid ordinary post to the persons referred to in paragraph 4 (or their agents) in respect to whom email addresses are not known, but postal addresses are known.

6 By 2 August 2024, the plaintiff shall cause a copy of the notice to be sent by email to each group member who has as of the date of these orders identified themselves to either:

a) Omni Bridgeway Limited (ABN 45 067 298 088, Authorised Representative No. 1283703) (hereafter 'Omni Bridgeway'); or

b) Somerville Legal,

as a potential group member (whether or not they have become a member of the Scenic Tours Litigation Funding Scheme), and for whom Omni Bridgeway holds a current email address.

7 By 2 August 2024, the plaintiff's solicitor is to cause the notice, together with these orders to be displayed on the firm's website,

<https://www.somervillelegal.com.au/scenic-evergreen-class-action-2018/> and cause the notice to remain displayed until the opt out date.

8 By 2 August 2024, the plaintiff cause the notice, together with these orders to be displayed on the website of Omni Bridgeway

<https://portal.omnibridgeway.com/cases/register/scenic-tours-class-action-overview> continuously until the opt out date.

9 The notice may be amended before it is emailed, posted, displayed or published in order to correct any website or email address or telephone number or other non- substantive error.

10 If the legal representatives for either party receive a document purporting to be an opt-out notice on or before the opt out date, the legal representative is to file the notice within seven (7) days of receipt whereupon the document is to be treated as a regularly received opt out notice pursuant to the Court's orders.

11 Pursuant to s 162(2) of the Act and r 58.2(1) of the UCPR, any group member who wishes to opt out of this proceeding must, on or before the opt out date, deliver a completed notice to the Registry of the Supreme Court of New South Wales.

12 The legal representatives for the parties be granted leave to inspect the Court file and to copy any opt out notice filed by group members.

13 The costs of distributing the notice, including the costs charged by the mail house, in accordance with these orders above shall be invoiced to and paid in the first instance by the plaintiff, but ultimately be costs in the cause.

14 The parties have liberty to apply, on 3 days' notice, to restore the matter for directions.

15 Note that the Court has indicated minor change to be made to the Important Notice, but otherwise that Notice is approved.

16 Stand the proceedings over for directions before Garling J on 25.10.24.

17 Liberty to apply.

This matter is listed for Directions on 25 October 2024 9:30 AM before the Supreme Court - Civil at Supreme Court Sydney.

Estimated duration: 5 Minutes

SEAL AND SIGNATURE



Signature

Rebel Kenna

Capacity

Principal Registrar

Date

29 July 2024

If this document was issued by means of the Electronic Case Management System (ECM), pursuant to Part 3 of the Uniform Civil Procedure Rules (UCPR), this document is taken to have been signed if the person's name is printed where his or her signature would otherwise appear.

PERSON PROVIDING DOCUMENT FOR SEALING UNDER UCPR 36.12

Name

Darran Kelly, Plaintiff 1

Legal representative Benjamin Hemsworth
Legal representative reference
Telephone (02) 9923 2321

FURTHER DETAILS ABOUT Plaintiff(s)

First Plaintiff

Name Darran Kelly
Address 9 Dunn Street
BRIDGEWATER VIC 3516
Telephone
Fax
E-mail
Client reference

Legal representative

Name Benjamin Hemsworth
Practicing certificate number 51908
Address Level 10
32 Walker Street
NORTH SYDNEY NSW 2060
DX address
Telephone (02) 9923 2321
Fax
Email bhemsworth@somervillelegal.com.au
Electronic service address bhemsworth@somervillelegal.com.au

FURTHER DETAILS ABOUT Defendant(s)

First Defendant

Name Scenic Tours Pty Ltd
ACN 002715602
Address 25 Watt Street
NEWCASTLE NSW 2300