

OUTCOME DETAILS

**Supreme Court - Civil
at Supreme Court Sydney
on 7 December 2020**

**2018/00353304-001 / Summons: Ashita Tomi Pty Ltd as trustee for Esskay Super Fund
v RCR TOMLINSON LTD trading as RCR Tomlinson Ltd**

This matter is listed for Directions (Commercial) on 28 May 2021 9:45 AM before the
Supreme Court - Civil at Supreme Court Sydney.

Estimated duration: 5 Minutes

VERDICT ORDER OR DIRECTION

HH Justice Hammerschlag makes the orders in the document entitled Consent Order dated
today's date and placed with the papers.

TERMS OF ORDER MADE BY THE COURT BY CONSENT

Evidence

1. By 10 May 2021, the plaintiffs are to serve any expert evidence in chief upon which they
intend to rely together with a provisional list of documents to be tendered.

Further directions

2. The matter be listed for further directions on 28 May 2021.
3. Liberty to restore on 3 days' notice.

Opt-out deadline

4. Pursuant to section 162 of the Civil Procedure Act 2005 (NSW) (the Act), 4.00 pm AEDT
on 19 March 2021 (the Opt-out Deadline) be fixed as the date on or before which a group
member (as defined in the Amended Commercial List Statement) may opt out of this
proceeding in accordance with these orders.

Notices

5. Pursuant to sections 175 and 176 of the Act, the form and content of the following notices
be approved:

5.1 the correspondence and notice set out in Schedule A to these Orders (Electronic and
Postal Notice); and

5.2 the notice set out in Schedule B to these Orders (Newspaper Notice).

Group Member contact information

6. The Court notes that the the Plaintiffs and Defendants have engaged Computershare Limited to act as an independent distribution agent (the Mail House) in respect of the distribution of the Electronic and Postal Notice.

7. Pursuant to sections 61, 176 and/or 183 of the Act, for the purposes of facilitating distribution of the Electronic and Postal Notice:

7.1 by no later than 22 January 2021, the First Defendant shall provide to the Mail House a list of shareholders recorded on the First Defendant's former share register who acquired an interest in shares in the First Defendant during the period from 28 December 2016 to 12 November 2018 (inclusive) (the Shareholder Register);

7.2 by no later than 22 January 2021, the First Defendant shall provide to the Mail House an electronic native format MS Excel spreadsheet of the Shareholder Register (or any electronic format acceptable to the Mail House to view and utilise such other electronic format) containing each the name, e- mail and/or and last known postal addresses of each person or entity listed in the Shareholder Register;

7.3 by no later than 22 January 2021, the Plaintiffs shall provide the Mail House with the email address for each person who has, at the date of these orders, provided their contact information to the Plaintiffs' solicitors (Quinn Emanuel), in respect of the proceeding.

Distribution of the Notices

8. Pursuant to sections 175 and 176 of the Act, the Electronic and Postal Notice and Newspaper Notice shall be distributed to group members according to the following procedure:

8.1 by no later than 5 February 2021, the First Defendant shall cause the Mail House to send a copy of the Electronic and Postal Notice to each shareholder, or if an email address is not available in respect of any such person, by ordinary prepaid post if a postal address is available in respect of any such person;

8.2 to the extent that any email sent in accordance with this order experiences a delivery failure, within five (5) business days of becoming aware of any such delivery failure, the First Defendant shall cause the Mail House to send a copy of the Electronic and Postal Notice by ordinary prepaid post to the person who was the intended recipient of the email, if a postal address is available in respect of such person;

8.3 by no later than 5 February 2021, the Plaintiffs shall cause a copy of the Newspaper Notice to be published in at least one (1) major newspaper publication in circulation in metropolitan areas in each capital city of each State and Mainland Territory of Australia;

8.4 by no later than 5 February 2021 and continuously thereafter up to the Opt Out Deadline, the Plaintiffs shall cause a copy of the Electronic and Postal Notice, together with a copy of the Litigation Funding Agreement, all current pleadings in this proceeding and a copy of these orders, to be displayed at the following URL: <https://portal.omnibridgeway.com/RCR> ;

8.5 by no later than 5 February 2021 and continuously thereafter up to the Opt Out Deadline, the Registrar of the Supreme Court of New South Wales shall cause a copy of the Electronic and Postal Notice and a copy of these orders to be posted on the class actions page of the website of the Supreme Court of New South Wales.

9. Any group member who wishes to opt out of this proceeding must, before the Opt Out Deadline, deliver an opt out form (being Annexure 1 to the Electronic and Postal Notice) (Opt Out Form) to the Registrar of the Supreme Court of New South Wales.

10. If, on or before the Opt Out Deadline, the solicitors for any party to the proceeding receive a notice purporting to be an Opt Out Form referable to this proceeding, the solicitors must file the notice with the Registry of the Supreme Court of New South Wales within seven (7) days of receipt, and the notice shall be treated as an Opt Out Form received by the Court at the time it was received by the solicitors.

11. The solicitors for any party have leave to inspect the Court file and copy any Opt Out Form filed in the Registry of the Supreme Court of New South Wales.

Confidentiality and non-contact

12. The Shareholder Register remains confidential and none of the plaintiffs, their legal representatives or any litigation funder (including any prospective litigation funder) may request disclosure of the Shareholder Register from the Mail House.

Costs

13. Pursuant to s 176(3) of the Act, the costs of and incidental to distributing the Electronic and Postal Notice and publishing the Newspaper Notice are initially to be paid by the Plaintiffs, on the basis that those costs will subsequently fall to be dealt with by the Court as part of the costs of the proceeding.

Justice D Hammerschlag

Signed

Date

SCHEDULE B – ABRIDGED NOTICE
IMPORTANT LEGAL NOTICE
RCR CLASS ACTION

What is this Notice?

A class action has been commenced in the Supreme Court of New South Wales on behalf of a group of persons (**Group Members**) against RCR Tomlinson Ltd (**RCR**) and two of its former directors and Chief Executive Officers, being Paul Dagleish and Bruce James (**RCR Class Action**).

The Court has ordered that this notice be published to persons who may be Group Members in the RCR Class Action.

The purpose of this notice is to inform Group Members in the RCR Class Action about their rights in relation to the RCR Class Action. For more information about the RCR Class Action, please visit <https://portal.omnibridgeway.com/RCR>.

Am I a Group Member of the RCR Class Action?

You may be a Group Member in the RCR Class Action if, during the period from 28 December 2016 to 12 November 2018, you:

- purchased, or otherwise acquired an interest in, RCR shares; or
- acquired a long exposure to RCR Shares by entering into equity swap confirmations in respect of RCR shares for a period extending beyond 28 August 2018.

If you believe you may be a Group Member in the RCR Class Action, you should read this notice carefully.

Your options in relation to the RCR Class Action

Group Members in the RCR Class Actions may respond to this notice in one of three ways:

1. **OPT OUT** – Group Members may opt out of the RCR Class Action by completing an Opt Out Notice and submitting it to the Registrar of the Supreme Court of New South Wales by **4.00pm (AEDT) on or before 19 March 2021**. A copy of the Opt-Out Notice and details of how to submit the Opt-Out Notice are available at http://www.supremecourt.justice.nsw.gov.au/Pages/sco2_classaction/Solar-Farms-Class-Actions.aspx or <https://portal.omnibridgeway.com/RCR>. Group Members who opt out of the RCR Class Action will cease to be Group Members in the RCR Class Action. They will not be bound by the outcome of the RCR Class Action and will not be eligible to receive any money from the RCR Class Action if the RCR Class Action is successful.
2. **DO NOTHING** – Group Members who do nothing in response to this notice will remain as Group Members in the RCR Class Action. They will be bound by the outcome of the RCR Class Action and may be eligible to receive money from the RCR Class Action if the RCR Class Action is successful.

ANNEXURE A

Form 115 (version 2)

UCPR 58.2

OPT OUT NOTICE

COURT DETAILS

Court	Supreme Court of New South Wales
Division	Equity
List	Commercial
Registry	Sydney
Case number	2018/00353304

TITLE OF PROCEEDINGS

Plaintiff	Ashita Tomi Pty Ltd as trustee for Esskay Super Fund ABN 79 582 038 569
Number of plaintiffs	3
Defendant	RCR Tomlinson Ltd ACN 008 898 486 (In Liquidation)
Number of defendants	3

GROUP MEMBER DETAILS

Name of Group Member	[name] , person opting out of representative proceedings
Address of Group Member	
Investment Certificate Numbers	
Legal representative (if any)	[solicitor] [firm]
Contact name and telephone	
Contact email	

OPT OUT NOTICE

Name of person opting out

Address of person opting out

I, a group member in these representative proceedings, opt out of the proceedings.

I understand that in opting out:

- 1 I forego the right to share in any relief obtained by the representative party in the representative proceedings;
- 2 I am not entitled to receive any further notification about the conduct or disposition of the proceedings; and

- 3 to the extent that I have a claim against the defendants, any limitation period suspended by the commencement of the representative proceedings has recommenced to run.

SIGNATURE

Signature of legal representative

Signature of or on behalf of person opting out if not legally represented

Capacity

[eg solicitor, authorised officer of person opting out, person opting out]

Date of signature

NOTICE TO PERSON OPTING OUT

You must, within the time specified in the notice to group members file this form in the registry of the court at the address below, or in the manner provided in the notice to group members.

1

REGISTRY ADDRESS

Street address	Supreme Court of NSW Law Courts Building, Queen's Square 184 Phillip Street Sydney NSW 2000
Postal address	Supreme Court of NSW GPO Box 3 Sydney NSW 2001
Telephone	1300 679 272

SCHEDULE A
IMPORTANT LEGAL NOTICE
OPT OUT NOTICE
SUPREME COURT OF NEW SOUTH WALES
RCR TOMLINSON CLASS ACTION

**THIS NOTICE IS VERY IMPORTANT - PLEASE READ IT CAREFULLY,
AS IT MAY AFFECT YOUR LEGAL RIGHTS**

What is this Notice?

1. This is an important notice issued to you by the Supreme Court of New South Wales. You are receiving this notice because the Court considers that you are likely to be a Group Member in a class action that has been commenced against RCR Tomlinson Ltd (in liquidation) (**RCR**) and two of its former directors and Chief Executive Officers, namely Paul Dalgleish and Bruce James (**RCR Class Action**).
2. This notice provides you with the opportunity to opt out of the RCR Class Action if you do not want to remain a Group Member. If you want to remain a Group Member in the RCR Class Action, you do not need to do anything in response to this notice. If you want to opt out, you must do so by **4.00pm (AEDT) on 19 March 2021** in the manner described in this notice.
3. You should read this notice carefully. If there is anything in this notice that you do not understand, you should seek legal advice. Any questions you have concerning the matters contained in this notice should not be directed to the Court.

What is the RCR Class Action?

4. The RCR Class Action is brought by three **Plaintiffs** (Ashita Tomi Pty Ltd, CJMcG Pty Ltd and Jorge Mayer) on their own behalf and on behalf of all persons who are "Group Members".
5. The Group Members in the RCR Class Action are persons who, during the period from **28 December 2016 to 12 November 2018** (inclusive): (i) acquired an interest in shares in RCR, or (ii) acquired a long exposure to shares in RCR by entering into equity swap confirmations in respect of shares in RCR for a period extending beyond 28 August 2018.
6. You are a Group Member if you meet that definition, even if you have taken no step to participate in the RCR Class Action.

7. In the RCR Class Action, the Plaintiffs allege that between late December 2016 and November 2018 (when RCR was placed into administration), RCR breached its continuous disclosure obligations and the Defendants engaged in misleading or deceptive conduct. Those claims relate to RCR's disclosures to the market about its solar farm construction projects and its financial position more generally. The Plaintiffs allege these disclosures were deficient and misleading, including disclosures made in the prospectus issued by RCR in connection with a capital raising undertaken by RCR in late 2018. The Plaintiffs are seeking to recover damages and compensation from the Defendants on behalf of Group Members for losses they claim were caused by that conduct. The Defendants deny the Plaintiffs' allegations and are defending the claims in the RCR Class Action.
8. The RCR Class Action is being conducted by a firm of solicitors called Quinn Emanuel Urquhart & Sullivan (**Quinn Emanuel**). It is being funded by two litigation funders called Burford Capital and Omni Bridgeway (the **Funders**).
9. If you are unsure whether you are a Group Member, you should contact Quinn Emanuel at rcrclassaction@quinnemanuel.com or by telephone on (02) 9146 3500, or seek your own legal advice without delay. You may inspect copies of the key documents filed in connection with the RCR Class Action at the following websites:
 - a. http://www.supremecourt.justice.nsw.gov.au/Pages/sco2_classaction/Solar-Farms-Class-Actions.aspx;
 - b. <https://portal.omnibridgeway.com/RCR>.

Who is paying the legal costs of the RCR Class Action?

10. The costs of running the RCR Class Action, including any adverse costs orders, are being paid by the Funders. The Funders have agreed with the Plaintiffs and those Group Members who have signed a Litigation Funding Agreement with the Funders to fund the RCR Class Action on the basis that if the RCR Class Action is successful, the costs incurred by the Funders, along with a funding commission, will be paid to them out of any damages or compensation recovered from the Defendants.
11. If the class action is successful, the Court may be asked to make an order that would have the effect of distributing the burden of the legal costs and funding commission amongst all persons who have benefitted from the RCR Class Action, including those who have not signed a Litigation Funding Agreement. Such an order, if made, may require each Group Member to pay a proportion of the legal costs, and a reasonable funding commission, out of that Group Member's share of any damages or

compensation, whether or not they have entered into any agreement with the Funders. You do not need to sign a Litigation Funding Agreement to remain a Group Member in the RCR Class Action.

12. The rate of funding commission payable to the Funders is likely to vary depending upon when any settlement or judgment occurs. The Litigation Funding Agreement provides for percentages as follows (subject to the Court's approval):

Time to Resolution	Percentage of Resolution Sum
For each Resolution which occurs on or after 1 July 2020 but on or before 31 December 2020	12.5%
For each Resolution which occurs on or after 1 January 2021 but on or before 30 June 2021	17.5%
For each Resolution which occurs on or after 1 July 2021 but on or before 31 December 2022.	22.5%
For each Resolution which occurs on or after 1 January 2023	25%

13. The funding terms are set out in the Litigation Funding Agreement. You can obtain a copy of the Litigation Funding Agreement and further information about the RCR Class Action, by going to <https://portal.omnibridgeway.com/RCR> or by contacting Omni Bridgeway's Client Liaison Team on 1800 016 464 (toll free) or via email at rcrclassaction@omnibridgeway.com.
14. Any settlement of the RCR Class Action must be approved by the Court as being fair and reasonable. If the Court approves a settlement, it may make orders that it considers just with respect to the distribution of any money paid under a settlement. If there is a judgment and the Court makes an award of damages, the Court may order that the Plaintiffs' reasonably incurred costs (to the extent they are not likely to be recoverable from the Defendants) be reimbursed out of the damages awarded and may also make any other order the Court thinks just.

What are your options in relation to this notice?

15. You may do one of three things in response to this notice:
- a. opt out of the RCR Class Action; or
 - b. do nothing.
16. If you have any questions in relation to your options below, please contact Omni Bridgeway's Client Liaison Team on 1800 016 464 (toll free) or via email at rcrclassaction@omnibridgeway.com.

Option 1 – opt out

17. Any Group Member may opt out of the RCR Class Action by completing the “Opt Out Notice” enclosed and submitting it to the Registry of the Supreme Court of New South Wales by **4.00pm (AEDT) on or before 19 March 2021**. Details of where to post or deliver the Opt Out Notice are included in the Opt Out Notice. A copy of the Opt Out Notice is also available electronically at:
 - a. http://www.supremecourt.justice.nsw.gov.au/Pages/sco2_classaction/Solar-Farms-Class-Actions.aspx;
 - b. <https://portal.omnibridgeway.com/RCR>.
18. Group Members who opt out of the RCR Class Action will cease to be Group Members in the RCR Class Action. They will not be bound by the outcome of the RCR Class Action and will not be eligible to receive any money from the RCR Class Action if the RCR Class Action is successful.
19. If you are unsure of how opting out will affect your rights, you should seek legal advice before opting out.

Option 2 – do nothing

20. Group Members who do nothing in response to this notice will remain as Group Members in the RCR Class Action. They will be bound by the outcome of the RCR Class Action, win or lose, and may be eligible to receive money from the RCR Class Action if the RCR Class Action is successful. Group Members will be bound by any settlement or judgment of the Court, including any legal and factual issues that the Court decides. If you think you have claims against a defendant which are based on your individual circumstances or which are additional to the claims described in the RCR Class Action, then you should seek legal advice.