



Issued: 30 November 2023 1:18 PM

## JUDGMENT/ORDER

### COURT DETAILS

Court	Supreme Court of NSW
Division	Equity
List	Commercial
Registry	Supreme Court Sydney
Case number	2018/00353304

### TITLE OF PROCEEDINGS

First Plaintiff	Ashita Tomi Pty Ltd as trustee for Esskay Super Fund ABN 79582038569
First Defendant	RCR TOMLINSON LTD trading as RCR Tomlinson Ltd ACN 008898486
Second Defendant	Paul Joseph Dagleish
Number of Defendants	3

### DATE OF JUDGMENT/ORDER

Date made or given	29 November 2023
Date entered	29 November 2023

### TERMS OF JUDGMENT/ORDER

This matter is listed for Motion (Commercial List) on 23 February 2024 9:15 AM before the Supreme Court - Civil at Supreme Court Sydney.

Estimated duration: 5 Minutes

HH makes orders in terms of short minutes of order initialled and dated today's date.

Short Minutes of Order

THE COURT NOTES:

1 The Plaintiffs and the Defendant have agreed to settle the Proceeding on the terms and conditions set out in the Deed of Settlement and Release dated 12 September 2023 (the Settlement Deed) (the RCR Settlement). The Plaintiffs' litigation funders, Omni Bridgeway Limited (ACN 067 298 088) in its capacity as appointed agent and investment manager for each of Omni Bridgeway (Fund 2) Pty Ltd (ACN 621 682 504) and Omni Bridgeway (Fund 3) Pty Ltd (ACN 621 682 460) and Burford Asia Investments Pte Ltd (together the Funders) are parties to the Settlement Deed.

2 The RCR Settlement requires approval of the Supreme Court of New South Wales (Court) under s 173 of the Civil Procedure Act 2005 (NSW) (the Act).

THE COURT ORDERS BY CONSENT

Registration Administrator

3 Mr Simon R. Weeks (Director of Sonority Pty Ltd trading as The Advisory Company) is approved as the third-party administrator of the registration process outlined in Orders 7 to 13 below (the Registration Administrator).

4 Omni Bridgeway is to electronically provide to the Registration Administrator the Data Set (as defined in Schedule 1 to these orders), within 5 business days of the date of these orders.

#### Notice of Proposed Settlement

5 The form and content of the:

- (a) notice set out at Annexure A to these orders (Settlement Notice); and
- (b) registration notice set out at Schedule A to the Settlement Notice (Registration Notice);
- (c) objection notice set out at Schedule B to the Settlement Notice (Objection Notice); and
- (d) covering email set out at Annexure B to these orders (Covering Email),

(together the RCR Settlement Notice) are approved for the purposes of ss 175(4), 175(5) and 176(1) of the Act.

#### Distribution of the RCR Settlement Notice

6 Pursuant to s 176(2) of the Act, notice is to be provided to Group Members (as defined in the Further Amended Commercial List Statement filed on 6 July 2023) in accordance with the procedure set out in Orders 7 to 13 below.

7 Continuously throughout the period from 4 December 2023 to 19 January 2024, the RCR Settlement Notice will be:

- (a) posted by the Registration Administrator on <https://rcrsettlement.com.au>;
- (b) posted on the "Solar Farms (RCR Tomlinson) Class Action" section of the class actions page of the website of the Supreme Court of New South Wales; and
- (c) available for inspection at the Sydney Registry of the Supreme Court of New South Wales.

8 By 29 November 2023, for the purposes of notifying Group Members of the RCR Settlement, the Plaintiffs are to:

- (a) engage Computershare Limited to act as the independent agent (the Mail House) in respect of the distribution of the Covering Email; and
- (b) provide the Mail House with a list of shareholders who opted out of the Proceeding in accordance with the orders made 7 December 2020.

9 By 29 November 2023, the Plaintiffs are to instruct the Mail House to prepare a list of shareholders who:

- (a) acquired RCR Securities during the period 24 August 2017 to 12 November 2018 (inclusive);
- (b) who did not opt out of the Proceeding; and
- (c) for whom an email address is held,  
(the RCR Shareholder Register).

10 On 4 December 2023, the solicitors for the Plaintiffs shall cause the Mail House to send to each shareholder on the RCR Shareholder Register the Covering Email, with a link to the Settlement Notice.

11 To the extent that any email sent in accordance with Order 10 above experiences a delivery failure, the Mail House is to notify the solicitors for the Plaintiffs and the Registration Administrator within five (5) business days of becoming aware of it.

12 The RCR Settlement Notices approved pursuant to Order 5 above, may be amended before they are emailed, displayed or published in order to correct any website or email address or telephone number or other non-substantive error.

13 Pursuant to s 176(3)(b) of the Act, the costs of and incidental to distributing the RCR Settlement 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.

#### Group Member objections to RCR Settlement

14 By 4:00pm AEDT on 19 January 2024, any Group Member who intends to oppose the RCR Settlement and submit to the Court that it should not be approved (Objector) must complete and return to the solicitors for the Plaintiffs a copy of the Objection Notice appearing at Schedule B to the Settlement Notice (and any supporting material) and state the grounds on which they oppose the RCR Settlement (such statement not to exceed 2 pages in length).

15 By 29 January 2024, the solicitors for the Plaintiffs are to provide to the Defendant and the Funders a copy of all Objection Notices and any supporting material that was returned pursuant to Order 14 above.

16 By 29 January 2024, the solicitors for the Plaintiffs shall deliver to the Associate:

(a) a copy of all materials submitted by Objectors in accordance with Order 14 above, where those materials:

(i) shall be delivered in a sealed pack marked "Confidential – not to be opened save by leave of the Court"; and

(ii) pursuant to s 183 of the Act are to be designated as confidential on the Court's file with access restricted to the parties to the Proceeding;

(b) alternatively, where no materials have been submitted by Objectors in accordance with Order 14 above, an affidavit made by the Plaintiffs' solicitors deposing to that fact.

17 Any Objector who has complied with Order 14 above, may attend the hearing of the Final Approval Motion (as that term is defined in Order 21 below) in person and seek leave to be heard for that purpose, but must use their best endeavours to notify the solicitors for the Plaintiffs of their intention to do so, in writing, 14 days before the hearing of the Final Approval Motion.

#### Settlement registration

18 Pursuant to s 183 of the Act, any Group Member who wishes to participate in the RCR Settlement must register their claim before 4:00pm AEDT on 19 January 2024 (Registration Deadline) by:

(a) completing the Registration Form (in the form set out in the Registration Notice) online at <https://rcrsettlement.com.au>; or

(b) emailing a copy of the Registration Form to the Registration Administrator at [rcrsettlement@theadvisoryco.com](mailto:rcrsettlement@theadvisoryco.com).

19 Any Group Member who:

(a) registered its/his/her interest in the Proceeding by completing and submitting a registration form pursuant to the orders made on 11 November 2022; or

(b) as at the date of these orders, has signed a litigation funding agreement with Omni Bridgeway and/or Burford; and

(c) in each case, has not opted out of the Proceeding,

is deemed to have registered for the purposes of the RCR Settlement.

20 The solicitors for the Plaintiffs are to provide to the solicitors for the Defendant a confidential Microsoft Excel file of the names, address, dates of birth and country of birth of all Group Members (as applicable) who have registered in the Proceeding (Confidential Schedule) for the purposes of undertaking sanction checks which are to be performed by the specific RCR insurers notified by the Defendant to the Plaintiffs. The Confidential Schedule is to be kept confidential and not provided to any third party.

#### Timetabling of Final Approval Motion and Hearing

21 By 12 February 2024, the Plaintiffs are to file and serve a motion seeking approval of the RCR Settlement under s 173 of the Act (Final Approval Motion), together with any evidence and written submissions in support.

22 The Funders are granted leave to intervene in the application for approval of the RCR Settlement and shall file any affidavit material and outline of submissions within 14 days of the Final Approval Motion being filed and served.

23 By 12 February 2024, the Defendant is to file and serve any evidence and written submissions in relation to the Final Approval Motion.

24 Subject to any further order of the Court, the Plaintiffs, the Defendant and the Funders are granted leave to file any affidavit or annexure or part thereof, and any written submissions, in respect of which they seek confidentiality orders, by email to the Associate of Ball J marked in the subject line with the word "confidential" and is excused from any requirement to electronically file, or serve any such affidavit or annexure or any part thereof or any written submissions on any party in that form, but shall instead electronically file and serve that affidavit or annexure or written submissions in redacted form.

25 The Final Approval Motion be listed for directions on 23 February 2024.

#### General

26 Such further or other orders as the Court sees fit.

27 Liberty to apply.

#### SCHEDULE 1

##### Data Set

Data Set means:

1 A single Microsoft Excel file setting out the following information for Group Members (as applicable):

(a) Contact details: name, postal address, email address, phone number(s), company;

(b) Claimant details: claimant name, legal entity, ABN, HIN/SRN, registered address; and

(c) Claim Details: trade date, trade type and category, trade quantity, amount paid/received, opening/closing balance.

2 For each Group Member, a folder containing the following documents (as applicable):

- (a) Funding Agreement;
- (b) Group Member Registration Form;
- (c) Proof of Claim;
- (d) Opt Out Notice;
- (e) Agreement Side Letter;
- (f) Solicitor Retainer;
- (g) Power of Attorney;
- (h) Death Certificate;
- (i) Will/Grant of Probate; and
- (j) Deed of Change of Trustee.

#### SEAL AND SIGNATURE

Signature

Capacity

Date

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 Ashita Tomi Pty Ltd as trustee for Esskay Super Fund, Plaintiff 1

Legal representative Damian Scattini

Legal representative reference

Telephone (02)91463888

#### FURTHER DETAILS ABOUT Plaintiff(s)

First Plaintiff

Name Ashita Tomi Pty Ltd as trustee for Esskay Super Fund

ABN 79582038569

Address St James Level 15

111 Elizabeth Street

SYDNEY NSW 2000

Telephone 0438 774 577

Fax

E-mail

stevene@belvedereshares.com.au

Client reference

#### Legal representative

Name Damian Scattini

Practicing certificate number 3028

Address Level 15

DX address	111 Elizabeth Street SYDNEY NSW 2000
Telephone	(02)91463888
Fax	(07) 323601966
Email	damianscattini@quinnemanuel.com
Electronic service address	damianscattini@quinnemanuel.com

#### **FURTHER DETAILS ABOUT Defendant(s)**

##### **First Defendant**

Name	RCR TOMLINSON LTD trading as RCR Tomlinson Ltd ACN 008898486
Address	Level 23 1 Macquarie Place SYDNEY NSW 2000

##### **Second Defendant**

Name	Paul Joseph Dagleish
Address	

##### **Third Defendant**

Name	Bruce Maxwell James
Address	