

## AMENDED SUMMONS

### COURT DETAILS

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

### TITLE OF PROCEEDINGS

First Plaintiff	<b>Ashita Tomi Pty Ltd as trustee for Esskay Super Fund ABN 79 582 038 569</b>
Number of Plaintiffs	<b>3</b>
First Defendant	<b>RCR Tomlinson Limited ACN 008 898 486</b>
Number of Defendants	<b>3</b>

### FILING DETAILS

Filed for	<b>Ashita Tomi Pty Ltd, CJMcG Pty Ltd and Jorge Mayer, Plaintiffs</b>
Legal representative	Damian Scattini Quinn Emanuel Urquhart & Sullivan
Legal representative reference	07435-00002
Contact name and telephone	Meagan Bertolatti, +61 2 9146 3500
Contact email	<a href="mailto:meaganbertolatti@quinnemanuel.com">meaganbertolatti@quinnemanuel.com</a>

### HEARING DETAILS

Pursuant to the orders of Justice Hammerschlag made in 2018/00353304 on 15 August 2019, this proceeding is to be listed for further directions on 25 October 2019.

This summons is listed at

### TYPE OF CLAIM

Commercially misleading conduct

## RELIEF CLAIMED

On the grounds stated in the Commercial List Statement (**CLS**), the Plaintiffs claim, on their own behalf and on behalf of the Group Members:

1. An order pursuant to section 1317HA of the *Corporations Act 2001* (Cth) (**Corporations Act**) that the First Defendant pay compensation for the loss and damage caused by its contravention of section 674 of the Corporations Act.
2. An order that the First, Second and Third Defendants pay damages pursuant to:
  - 2.1 section 1041I(1) and/or section 1325 of the Corporations Act;
  - 2.2 section 12GF(1) of the *Australian Securities and Investment Commission Act 2001* (Cth) (**ASIC Act**); and/or
  - 2.3 section 236 of the Australian Consumer Law (**ACL**) set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth),

for the loss and damage caused by their conduct that was misleading or deceptive, or likely to mislead or deceive.
3. An order that:
  - 3.1 the First Defendant ~~and Third Defendants~~ pay statutory compensation pursuant to sections 729 and/or 1325 of the Corporations Act; and
  - 3.2 the Third Defendant pay statutory compensation pursuant to section 729 of the Corporations Act,

for the loss and damage caused by RCR's contravention of section 728 of the Corporation Act.
- 4 Interest.
- 5 Costs.
- 6 Such further or other order as the Court considers appropriate.

**REPRESENTATIVE PROCEEDING**

1. The Group Members to whom this proceeding relates are those persons referred to in paragraph 1 of Part C the CLS, being persons who or which:
    - 1.1 during the period from 28 December 2016 to 12 November 2018 inclusive (**Relevant Period**), acquired:
      - (a) an interest in ordinary shares in the First Defendant, RCR (**RCR Shares**) on the financial market operated by the Australian Securities Exchange Limited (**ASX**); or
      - (b) long exposure to RCR Shares by entering into equity swap confirmations in respect of the RCR Shares during the Relevant Period, for a period extending beyond 28 August 2018 (**RCR Equity Swaps**);
    - 1.2 suffered loss or damage by or resulting from the contraventions by the Defendants pleaded in the; and
    - 1.3 are not any of the following:
      - (a) a related party (as defined by section 228 of the Corporations Act) of RCR;
      - (b) a related body corporate (as defined by section 50 of the Corporations Act) of RCR;
      - (c) an associated entity (as defined by section 50AAA of the Corporations Act) of RCR;
      - (d) an officer or a close associate (as defined by section 9 of the Corporations Act) of RCR;
      - (e) a Chief Justice, Justice or Registrar of the Supreme Court of New South Wales or the High Court of Australia; or
      - (f) an officer or employee of, or other legal practitioner engaged by, the law firm Quinn Emanuel Urquhart & Sullivan,
- (collectively, **Group Members**).

**Nature of claims and relief sought**

2. The nature of the claims made by the Plaintiffs on behalf of themselves and Group Members are set out in Part A of the CLS.
3. The relief sought by the Plaintiffs on behalf of themselves and Group Members is set out above.

**Common questions of law and fact**

4. The questions of law or fact common to the claims of Group Members are (adopting the defined terms in the, and by reference to Parts and Sections in the CLS):

*In respect of the alleged breaches of RCR's continuous disclosure obligations:*

- 4.1 When did RCR become aware, within the meaning of Rule 19.12 of the Listing Rules, of the information pleaded below in Section V of Part C?
- 4.2 Whether the information pleaded below in Section VI of Part C was material non-public information of the kind that RCR was required to disclose, pursuant to its continuous disclosure obligations, upon becoming aware of such information.

*In respect of the alleged misleading or deceptive conduct:*

- 4.3 Whether the conduct pleaded below in Sections VII, VIII, IX of Part C was misleading or deceptive, or likely to mislead or deceive, in contravention of section 1041H of the Corporations Act, section 12DA(1) of the ASIC Act and/or section 18 of the ACL?
- 4.4 Whether the conduct pleaded below in Sections VII, VIII, IX of Part C was conduct of RCR, Dagleish and/or James respectively.
- 4.5 Whether the First and Third Defendants contravened section 1041E of the Corporations Act by reason of the conduct pleaded below in Section X of Part C.

*In respect of causation:*

- 4.6 Whether, during the Relevant Period, the Market Contraventions pleaded below in Sections VII, VIII, IX of Part C (or any one or combination of them) caused the market price of RCR Shares to be, or materially contributed to the market price of RCR Shares being, substantially greater than their true value

and/or the market price that would otherwise have been paid at the time of acquisition but for those Market Contraventions (or any one or combination of them).

- 4.7 Whether the decline in the price of RCR Shares pleaded in paragraphs 66 of Part C was caused or materially contributed to by the information communicated to the Affected Market by RCR in respect of the Market Contraventions.
- 4.8 Whether the price of RCR Shares would have fallen substantially if RCR had:
- (a) disclosed the EPC Solar Contract Risks Information, the Grounds Condition Information, the Project Issues Information, the Costs Overrun Information, the Write-downs Information and/or the FY18 Earnings Information prior to 28 August 2018;
  - (b) disclosed the FY19 Financial Information and the matters pleaded in paragraph 203 prior to 12 November 2018; and/or
  - (c) not engaged in the conduct the subject of the Market Contraventions.

*In respect of the 2017 Capital Raising:*

- 4.9 Whether, during the Relevant Period, the Cleansing Notice Misleading Conduct Contravention pleaded below in Sections VII of Part C caused the offer price in the 2017 Capital Raising to be, or materially contributed to the offer price in the 2017 Capital Raising being, substantially greater than the offer price otherwise would have been but for the Cleansing Notice Misleading Conduct Contravention.

*In respect of the 2018 Capital Raising:*

- 4.10 Whether the Prospectus contained statements that were misleading or deceptive.
- 4.11 Whether the Prospectus Contravention pleaded below in Section XIII of Part C caused the offer price in the Prospectus to be, or materially contributed to the offer price in the Prospectus being, substantially greater than the offer price otherwise would have been but for the Prospectus Contravention.

*In respect of all claims:*

- 4.12 What is the proper methodology for assessing the quantum of the loss or damage suffered by the Plaintiffs and Group Members as a result of the impugned conduct of RCR?

**SIGNATURE OF LEGAL REPRESENTATIVE**

I certify under clause 4 of Schedule 2 to the [Legal Profession Uniform Law Application Act 2014](#) that there are reasonable grounds for believing on the basis of provable facts and a reasonably arguable view of the law that the claim for damages in these proceedings has reasonable prospects of success.

I have advised the plaintiffs that court fees may be payable during these proceedings. These fees may include a hearing allocation fee.

Signature

A handwritten signature in black ink, appearing to read 'Alan Luther', written in a cursive style.

Capacity

Solicitor

Date of signature

~~30 August 2019~~ 6 March 2020

## NOTICE TO DEFENDANT

If your solicitor, barrister or you do not attend the hearing, the court may give judgment or make orders against you in your absence. The judgment may be for the relief claimed in the summons and for the plaintiff's costs of bringing these proceedings.

Before you can appear before the court you must file at the court an appearance in the approved form.

## HOW TO RESPOND

**Please read this summons very carefully. If you have any trouble understanding it or require assistance on how to respond to the summons you should get legal advice as soon as possible.**

You can get further information about what you need to do to respond to the summons from:

A legal practitioner.

LawAccess NSW on 1300 888 529 or at [www.lawaccess.nsw.gov.au](http://www.lawaccess.nsw.gov.au).

The court registry for limited procedural information.

Court forms are available on the UCPR website at [www.ucprforms.justice.nsw.gov.au](http://www.ucprforms.justice.nsw.gov.au) or at any NSW court registry.

## REGISTRY ADDRESS

Street address	Law Courts Building 184 Phillip Street Sydney NSW 2000 Australia
Postal address	Supreme Court of New South Wales GPO Box 3 Sydney NSW 2001 Australia
Telephone	1300 679 272

## **FURTHER DETAILS ABOUT PLAINTIFFS**

### **First Plaintiff**

Name **Ashita Tomi Pty Ltd as trustee for Esskay Super Fund  
ABN 79 582 038 569**

Address C/- Quinn Emanuel Urquhart & Sullivan  
Level 15, 111 Elizabeth Street  
Sydney NSW 2000

### **Second Plaintiff**

Name **CJMcG Pty Ltd as Trustee for the CJMcG  
Superannuation Fund ABN 54 719 709 616**

Address C/- Quinn Emanuel Urquhart & Sullivan  
Level 15, 111 Elizabeth Street  
Sydney NSW 2000

### **Third Plaintiff**

Name **Jorge Mayer**

Address C/- Quinn Emanuel Urquhart & Sullivan  
Level 15, 111 Elizabeth Street  
Sydney NSW 2000

### **Legal representative for the Plaintiffs**

Name Damian John Scattini

Firm Quinn Emanuel Urquhart & Sullivan

Contact solicitor Meagan Bertolatti

Address Level 15, 111 Elizabeth Street  
Sydney NSW 2000

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Electronic service address [meaganbertolatti@quinnemanuel.com](mailto:meaganbertolatti@quinnemanuel.com)

## **DETAILS ABOUT DEFENDANTS**

### **First Defendant**

Name **RCR Tomlinson Limited (In Liquidation) ACN 008 898  
486**

Address Level 23, Gateway, 1 Macquarie Place  
Sydney, New South Wales 2000

### **Second Defendant**

Name **Paul Joseph Dagleish**

Address 107/19 Hickson Road,  
Dawes Point NSW 2000



**Third Defendant**

Name

**Bruce Maxwell James**

Address

15 West Crescent Street,  
McMahon's Point NSW 2060