

OUTCOME DETAILS

**Supreme Court - Civil
at Supreme Court Sydney
on 11 July 2018**

2017/00347082-001 / Summons: Nakali Pty Limited v SURFSTITCH GROUP LIMITED

Orders made in accordance with the Short Minute of Order, initialled by Stevenson J, dated today and placed with the papers.

SHORT MINUTE OF ORDER

Contradictor

1. Mr Guy Donnellan, of the New South Wales bar, is appointed as contradictor (Contradictor) to the plaintiff's application for:

- (a) approval of the proposed settlement of the proceeding;
- (b) the orders sought in the plaintiff's notice of motion of 4 July 2018;
- (c) orders in respect of group members' rights to opt out;
(Settlement Application).

2. The costs of the Contradictor will be plaintiff's costs of the proceeding.

3. Evidence filed in support of the application for approval of the settlement in proceeding 2017/193375 (McConnell Proceedings) be evidence in this Settlement Application.

Notice to Group Members

4. By 4:00pm on 12 July 2018 the plaintiff deliver to the Contradictor and the parties its proposed notice informing group members concerning:

- (a) their right to opt out of the proceeding (by a date to be fixed at the hearing scheduled for 20 September 2018);
- (b) the Settlement Application; and
- (c) the directions made in Orders 9 to 12 inclusive below;
(Group Member Notice) or indicate that it proposes that the Group Member Notice be in substantially the same form as the Group Member Notice in the McConnell Proceedings.

5. By 4:00pm on 20 July 2018 the plaintiff, and the Contradictor and the parties, deliver to the Associate to his Honour Justice Stevenson their proposed terms for the Group Member Notice together with submissions not longer than two (2) pages in support of their proposed terms.

6. Subject to further order of the Court, within 7 days after approval of the Group Member Notice by the Court the Administrators of the Defendant (Administrators) cause the Group Member Notice to be sent to the Subordinated Creditors of the Defendant at the email or postal addresses held by the Administrators in respect of each Subordinated Creditor.

Directions – settlement approval and common fund order

Confidential material from plaintiffs

7. Pursuant to section 7 of the Court Suppression and Non-Publication Orders Act 2010, on the ground that the order is necessary to prevent prejudice to the proper administration of justice, the plaintiff be given leave to:

- (a) file as a Confidential Affidavit and/or Confidential Submissions;
- (b) subject to further order of the Court, not otherwise serve (other than on the Contradictor), any affidavit or submission in respect of the plaintiff's Settlement Application.

8. In relation to any Confidential Affidavit and/or Confidential Submissions on which the plaintiff proposes to rely in support of the Settlement Application, the plaintiff is directed, on or before 23 August 2018:

- (a) to provide to the Associate to his Honour Justice Stevenson, the original and one copy of any Confidential Affidavit and/or Confidential Submissions in an envelope marked with the details of the Proceeding and a notation that it is a "Confidential [Affidavit or Submissions] for Purposes of Settlement Application – not to be opened other than by order of the Court or a Judge"; and
- (b) to serve on the Contradictor, a copy of the materials referred to in order 8(a).

Other submissions and affidavits

9. By not later than 28 days prior to the hearing of the Settlement Application the plaintiff file and serve its written submissions (not more than 10 pages) and any non-confidential affidavit in support of their Settlement Application.

10. By not later than 14 days prior to the hearing of the Settlement Application the Contradictor, the parties and any creditor of the Defendant wishing to object to any part of the Settlement Application shall file and serve their submissions (not more than 10 pages) and any affidavit upon which they propose to rely.

11. By not later than 7 days prior to the hearing of the Settlement Application the plaintiff file and serve any submissions or affidavit in reply.

12. The Settlement Application, be listed for hearing as a special fixture at 10 am on 20 September 2018, on an estimate of one (1) day.

Other matters

13. The proceeding be listed for further argument before Justice Stevenson at 9.30am on 25 July 2018 if necessary .

14. The parties have liberty to apply on 48 hours' notice.

Justice J Stevenson

Signed

Date