



Issued: 20 August 2018 3:51 PM

## JUDGMENT/ORDER

### COURT DETAILS

Court	Supreme Court of NSW
Division	Equity
List	Commercial
Registry	Supreme Court Sydney
Case number	2018/00052431

### TITLE OF PROCEEDINGS

First Plaintiff	Epaminondas Mastoris
Second Plaintiff	Lena Mastoris
First Defendant	DSHE Holdings Limited
Second Defendant	Nicholas Abboud
Number of Defendants	3

### DATE OF JUDGMENT/ORDER

Date made or given	20 August 2018
Date entered	20 August 2018

### TERMS OF JUDGMENT/ORDER

This matter is listed for Hearing on 30 November 2018 10:00 AM before the Supreme Court - Civil at Supreme Court Sydney.

1. HH vacates order 1 made on 5 June 2018 and in its place directs that the parties attend a mediation to commence not later than 23 November 2018.
2. HH directs that the plaintiffs in the two class actions (2018/52431 and 2017/294069) file any application to amend their respective statements of claim by no later than 21 September 2018.
3. HH makes orders in terms of short minutes of order as amended, initialled and dated today's date.
4. HH directs that any party other than the first defendant who seeks to file a cross claim against Deloitte serve that cross-claim on all parties to any of the proceedings by 28 September 2018. HH directs the first defendant to serve its cross-claim against Deloitte by until 5 October 2018.
5. HH directs that the receivers provide the first defendant with the Deloitte documents by 4.00pm tomorrow, Tuesday 21 August 2018.
6. HH lists the hearing of any application to strike out or oppose the filing of any cross-claim against Deloitte on Friday 30 November 2018.

Short Minutes of Order

Terms of Order

1. Pursuant to section 162 of the Civil Procedure Act 2005 (NSW) (Act), 4.00pm on 8 October 2018 (the Class Deadline) be fixed as the date on or before which a Group Member may opt-out

of Supreme Court of New South Wales proceedings 2017/294069 (Findlay Proceeding) and 2018/52431 (Mastoris Proceeding) (together, the Dick Smith Proceedings).

2. Pursuant to sections 162 of the Act, any Group Member who wishes to opt-out of either of the Dick Smith Proceedings must, on or before the Class Deadline, deliver an Opt-Out Notice to the registry of the Supreme Court of New South Wales.

3. If, on or before the Class Deadline, the solicitors for any party receive a notice purporting to be an opt-out form referable to either of the Dick Smith Proceedings, the solicitors must file the notice in the Supreme Court of New South Wales within two days after receipt, and the notice shall be treated as an Opt-Out Notice received by the Court at the time it was received by the solicitors.

4. Pursuant to section 183 of the Act, any Group member who wishes to participate in any distribution of any amount agreed in an in-principle settlement at the mediation of either of the Dick Smith Proceedings proposed to be held in the two weeks prior to 23 November 2018 (Mediation), or within 2 months after the first day of the Mediation (Settlement Period) be obliged, before the Class Deadline, to register their claim, by:

(a) completing an online Dick Smith Class Action Registration Form, which is substantially in the form of Annexure A to these orders, and made available at address [www.dshclaim.com.au](http://www.dshclaim.com.au) (Group Member Registration Form); or

(b) completing a hard-copy Group Member Registration Form, which is Annexure A to these orders, and returning it to ICP Capital Pty Limited and Investor Claim Partner Pty Ltd (collectively, ICP) and Vannin Capital Operations Limited and Vannin Capital (Australia) Pty Ltd (collectively Vannin) at level 13, 115 Pitt Street SYDNEY NSW 2000.

5. Vannin and ICP are permitted access to all information provided by Group Members in their Group Member Registration Forms or otherwise provided by Group Members to substantiate their claims.

6. A Group Member will be deemed to have complied with Order [4] if it has entered into a litigation funding agreement with ICP and/or Vannin in respect of its claim against the Defendants by the Class Deadline.

7. Pursuant to section 183 of the Act, and subject to any further order of the Court, any Group Member of the Findlay Proceeding who neither opts-out nor registers as a Group member on or before the Class Deadline:

(a) shall remain a Group Member for all purposes, including for the purpose of being bound by any judgment in the Findlay Proceeding and being entitled to participate in any award of damages by the Court if the proceeding does not settle; but

(b) will not be entitled to receive a distribution from any in-principle settlement (subject to the approval of the Court) of the Findlay Proceeding reached at the Mediation or during the Settlement Period and will otherwise be bound by any in-principle settlement reached at Mediation or during the Settlement Period of the Findlay Proceeding approved by the Court.

8. Pursuant to section 183 of the Act, and subject to any further order of the Court, any Group Member of the Mastoris Proceeding who neither opts-out nor registers as a Group Member on or before the Class Deadline:

(a) shall remain a Group Member for all purposes, including for the purpose of being bound by any judgment in the Mastoris Proceeding and being entitled to participate in any award of damages by the Court if the proceeding does not settle; but

(b) will not be entitled to receive a distribution from any in-principle settlement (subject to the approval of the Court) of the Mastoris proceeding reached at the Mediation or during the settlement

period and will otherwise be bound by any in-principle settlement reached at Mediation or during the Settlement Period of the Mastoris Proceeding approved by the Court.

9. By 4.00pm AEDT on 30 October 2018, the Plaintiffs in the Findlay Proceedings must:

(a) Deliver to the solicitors for the Defendants, the solicitors for the Cross-Defendants and the solicitors for the parties in proceedings 2017/81927 and 2017/81938 on a de-identified basis, a list of the person who registered pursuant to Order [4] and who may fall into the Group member definition in the Findlay Proceeding (Findlay Registered Group Members), which list shall contain:

i. a unique identification number for each Findlay Registered Group Member; and  
ii. an estimate of each Findlay Registered Group Members' loss based on the information supplied by that Findlay Registered Group Member pursuant to Order [4], above, and the underlying data on which it is based.

(b) File, in a sealed envelope marked "Confidential List of Group Members - Not to be Opened without leave of the Court or a Judge", a list of Findlay Registered Group Members which list shall contain:

i. a unique identification number for each Findlay Registered Group Member; and  
ii. an estimate of each Findlay Registered Group Members' loss based on the information supplied by that Findlay Registered Group Member pursuant to Order [4], above.

10. By 4:00pm AEDT on 30 October 2018, the Plaintiffs in the Mastoris Proceedings must:

(a) Deliver to the solicitors for the Defendants, the solicitors for the Cross-Defendants and the solicitors for the parties in proceedings 2017/81927 and 2017/81938 on a de-identified basis, a list of the person who registered pursuant to Order [4] and who may fall into the Group member definition in the Mastoris Proceeding (Mastoris Registered Group Members), which list shall contain:

i. a unique identification number for each Mastoris Registered Group Member; and  
ii. an estimate of each Mastoris Registered Group Members' loss based on the information supplied by that Mastoris Registered Group Member pursuant to Order [4], above, and the underlying data on which it is based.

(b) File, in a sealed envelope marked "Confidential List of Group Members - Not to be Opened without leave of the Court or a Judge", a list of Mastoris Registered Group Members which list shall contain:

i. a unique identification number for each Mastoris Registered Group Member; and  
ii. an estimate of each Mastoris Registered Group Members' loss based on the information supplied by that Mastoris Registered Group Member pursuant to Order [4], above.

11. The lists of Registered Group Members provided in accordance with Orders [9(a)] and [10(a)], and any information contained therein, is to be kept confidential to:

(a) the Plaintiff, ICP and Vannin;

(b) the Defendants' and the Cross-Defendant's legal advisors and their insurer;

(c) those officers and employees of the First Defendant and the Cross-Defendant in the Dick Smith Proceedings who have the conduct of this proceeding on behalf of the First Defendant;

(d) experts retained by the Plaintiff, the Defendants and the Cross-Defendants in the Dick Smith Proceedings; and

(e) the parties to proceedings 2017/81927 and 2017/81938.

12. Pursuant to section 175 of the Act, notice (Notice) be given to the Group Members of:

(a) their right to opt-out of the proceeding; and

(b) the requirement that they register their claim in order to participate in any distribution of any amount agreed in an in-principle settlement of the Dick Smith Proceedings at the Mediation or during the Settlement Period.

13. The form and content of the Notice attached as Annexure B be approved for the purposes of section 176(1) of the Act.

14. The form and content of the following communications to Group Members to accompany the Notice is approved by the Court:

(a) the text attached as Annexure C to be included in a covering email to the Notice to all persons and entities who have signed a funding agreement with ICP in respect of claims against the Defendants and who have been identified by ICP as institutional investors;

(b) the text attached as Annexure D to be included in a covering email to the Notice to all persons and entities who have signed a funding agreement with ICP in respect of claims against the Defendants and who have been identified by ICP as retail investors;

(c) the text attached as Annexure E to be included in a covering email or letter to the Notice to all persons and entities who have signed a funding agreement with Vannin in respect of claims against the Defendants and who have been identified by Vannin as institutional investors;

(d) the text attached as Annexure F to be included in a covering email or letter to the Notice to all persons and entities who have signed a funding agreement with Vannin in respect of claims against the Defendants and who have been identified by Vannin as retail investors;

(e) the text attached as Annexure G to be included in a covering email or letter to the Notice to be sent to those identified by Vannin and/or ICP as institutional investors who have not signed a funding agreement with Vannin or ICP in respect of claims against the Defendants;

(f) the text attached as Annexure H to be included in a covering email or letter to the Notice to all recipients of the Notice who do not fall into the categories in sub-paragraphs (a) to (e), above.

15. The Notice under cover of the communications in order [14], above, be given to the Group Members on or before 3 September 2018 according to the following procedure:

(a) by 3 September 2018, ICP and Vannin shall cause the Notice to be sent by email to all of the security holders that have email addresses recorded on the Dick Smith share register for the period from 14 November 2013 to 3 January 2016;

(b) to the extent that any security holder does not have an email address recorded on the share register, ICP and Vannin shall instruct a distribution agent to, by 3 September 2018, cause the Notice to be sent by prepaid ordinary post to that security holder at the address recorded for that person on the Dick Smith share register;

(c) to the extent that any email sent to a security holder referred to in Order [15(a)] above experiences a delivery failure, ICP and Vannin shall instruct the distribution agent to cause the Notice to be sent by prepaid ordinary post to that security holder at the address recorded for that

person on the First Defendant's share register, within two business days of receiving that delivery failure notice;

(d) Vannin shall cause a copy of the Notice to be sent by email or letter to each Group Member who has, at the date of this order, entered into a funding agreement with Vannin or identified herself, himself or itself to Vannin or the solicitors for the Plaintiffs in the Findlay Proceeding as a potential Group Member (even if they have not entered into a funding agreement with Vannin), and for whom Vannin holds a current email address or current address;

(e) ICP shall cause a copy of the Notice to be sent by email to each Group Member who has, at the date of this order, entered into a funding agreement with ICP or identified herself, himself or itself to ICP or the solicitors for the Plaintiffs in the Mastoris Proceeding as a potential Group Member (even if they have not entered into a funding agreement with ICP), and for whom the Plaintiffs' solicitors or ICP hold a current email address; and

(f) ICP and Vannin shall cause a copy of the Notice, together with a copy of the pleadings in the Dick Smith Proceedings and these orders to be displayed on the Dick Smith Class Action website, [www.dshclaim.com.au](http://www.dshclaim.com.au), and to remain continuously so displayed up to and including the Class Deadline.

16. The Plaintiffs in the Mastoris Proceeding have leave to file an Amended Statement of Claim in the form annexed as Annexure I.

17. The Notice, the Group Member Registration Form and the communications approved pursuant to order 14, above, may be amended by the Plaintiffs before they are emailed, posted, displayed or published in order to correct any website or email address or telephone number or other non-substantive error.

18. Nothing in these orders precludes any Group Member who has not registered in accordance with orders 7 and/or 8 above from having their claims in relation to a Dick Smith Proceeding considered at any mediation or settlement that takes place at some future time, if no in-principle settlement of that particular Dick Smith Proceeding is reached at the Mediation or during the Settlement Period.

19. Such further or other orders as the Court deems appropriate.

## SEAL AND SIGNATURE



Signature                      Chris D'Aeth  
Capacity                      Principal Registrar  
Date                              20 August 2018

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.

## FURTHER DETAILS ABOUT Plaintiff(s)

First Plaintiff  
Name                              Epaminondas Mastoris  
Address                            16 Balliol Common

SUNBURY VIC 3429

Telephone  
Fax  
E-mail  
Client reference

**Second Plaintiff**

Name Lena Mastoris  
Address 16 Balliol Common  
SUNBURY VIC 3429

Telephone  
Fax  
E-mail  
Client reference

**Legal representative for plaintiffs**

Name Robert Guy Johnston  
Practicing certificate number 9240  
Address Level 25  
20 Bond Street  
SYDNEY NSW 2000

DX address  
Telephone 02 8274 9581  
Fax 02 8274 9500  
Email robert.johnston@jws.com.au  
Electronic service address robert.johnston@jws.com.au

**FURTHER DETAILS ABOUT Defendant(s)**

**First Defendant**

Name DSHE Holdings Limited  
Address 2 Davidson Street  
CHULLORA NSW 2190

**Second Defendant**

Name Nicholas Abboud  
Address 15 Hopetoun Avenue  
MOSMAN NSW 2088

**Third Defendant**

Name Michael Thomas Potts  
Address 1 Norman Street  
FIVE DOCK NSW 2046