

OUTCOME DETAILS

**Supreme Court - Civil
at Supreme Court Sydney
on 2 March 2020**

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

Justice Hammerschlag makes the following Orders:

I make the orders in the document entitled Short Minutes of Order which I have initialled, dated today's date and placed with the papers.

The proceedings are stood over to the directions list on 25th October 2019.

Parties have liberty to apply on three days' notice.

The exhibits on the Motion are returned.

Short Minutes of Order

Consolidation

1. Upon the terms stated in Order 2 below, the following proceedings in this Division are consolidated to become the Consolidated Proceeding: No 2018/00353304 (Ashita Proceeding), No 2019/178541 (CJMcG Proceeding) and No 2019/94443 (Jones Proceeding).

2. Order 1 is made upon the following terms:

2.3 the Consolidated Proceeding is to bear the number No 2018/00353304;

2.4 the Plaintiff(s) in the Consolidated Proceeding are:

(a) the Plaintiff in the Ashita Proceeding; and

(b) any Plaintiff in the CJMcG Proceeding or Jones Proceeding who or which wishes to be a Plaintiff in the Consolidated Proceeding and, by no later than one week from the date of these orders, enters into a retainer with Quinn Emanuel Urquhart & Sullivan in respect of the Consolidated Proceeding;

2.5 the Defendants in the Consolidated Proceeding are:

(a) RCR Tomlinson Pty Ltd (First Defendant);

(b) Paul Joseph Dalglish (Second Defendant); and

(c) Bruce Maxwell James (Third Defendant);

2.6 the Plaintiffs in the Consolidated Proceeding have leave to proceed against the First Defendant on conditions that:

(a) the Plaintiffs will not seek to enforce any judgment without the leave of the Court; and

(b) the First Defendant has liberty to make an application to stay the Consolidated Proceeding against it if the claims made against it are uninsured or for any other reason.

2.7 the Plaintiff(s) in the Consolidated Proceeding are to be represented by one firm of solicitors, being, subject to further order of the Court, Quinn Emanuel Urquhart & Sullivan;

2.8 the Summons and Commercial List Statement in the Consolidated Proceeding are to be substantially in the form of the proposed Amended Summons and proposed Amended Commercial List Statement annexed to the application filed by the Plaintiff in the Ashita Proceeding on 7 June 2019, subject to any further amendments necessary to give effect to

the consolidation, and provided that the Summons and Commercial List Statement in the Consolidated Proceeding are not to contain any mark-up;

2.9 for the purposes of the Consolidated Proceeding, claims are to be taken to have been first filed at the time and in the manner in which they were first filed in any of the three unconsolidated proceedings;

2.10 the costs to date of each of the Ashita Proceeding, the CJMcG Proceeding and the Jones Proceeding be costs in the Consolidated Proceeding (being Pre-Consolidation Costs, as defined in the Funding Terms); and

2.11 the Plaintiff(s) in the Consolidated Proceeding have liberty to seek, on any application for approval of a settlement of the Consolidated Proceeding or for approval of costs following judgment in the Consolidated Proceeding, orders for approval of the Pre-Consolidation Costs.

Security for costs

3. By no later than 7 days from the date of these Orders, the Plaintiff(s) provide an initial tranche of security for the Defendant's costs by payment into Court of the sum of \$4 million, to be held in an interest bearing account.

4. If the security the subject of Order 3 is not paid strictly within the time provided for in that order:

4.1 the Associate to Hammerschlag J be notified of the non-payment;

4.2 the Consolidated Proceeding be stayed; and

4.3 the Defendants have liberty to apply for the Consolidated Proceeding to be permanently stayed or dismissed.

5. Orders 3 and 4 above are made without prejudice to the right of the Defendants to seek an order from the Court for further security for costs.

Pleadings in the Consolidated Proceeding

7. By 30 August 2019, the Plaintiffs file and serve a Summons and Commercial List Statement.

8. By 4 October 2019, the Defendants file and serve their Commercial List Responses.

9. By 18 October 2019, the Plaintiff(s) file and serve their Replies, if any.

Costs

10. The Plaintiffs in the Consolidated Proceeding pay the Defendants' costs thrown away by reason of the preparation of Commercial List Responses in the Jones Proceeding.

11. The defendant's costs of and incidental to the notices of motion filed on 12 July 2019 will be their costs in the cause.

Further directions

12. The matter be listed for further directions on 25 October 2019.

Justice D Hammerschlag

Signed

Date