

SUMMONS

COURT DETAILS

Court Supreme Court of NSW
Division Equity
List Commercial
Registry Sydney
Case number 2019/178541

FILED

7 JUN 2019

(N.A.)



TITLE OF PROCEEDINGS

Plaintiff **CJMcG Pty Ltd (ACN 169 952 096)
as trustee for the CJMcG Superannuation Fund**

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

FILING DETAILS

Filed for CJMcG Pty Ltd (ACN 169 952 096) as trustee for the
CJMcH Superannuation Fund, the plaintiff

Legal representative Simon Jacob Morris, Piper Alderman

Legal representative reference 414401

Contact name and telephone Simon Morris (02) 9253 9909

HEARING DETAILS

This summons is listed at

9:45am on 28/6/19

TYPE OF CLAIM

Commercially misleading conduct

REPRESENTATIVE ACTION

- 1 This proceeding is commenced as a representative proceeding pursuant to Part 10 of the *Civil Procedure Act 2005* (NSW) by the Plaintiff on its own behalf and on behalf of persons who:
- a. acquired an interest in ordinary shares in the defendant, RCR Tomlinson Limited (In Liquidation) (the **Company**):
 - i. pursuant to the Entitlement Offer (the **Entitlement Offer**) set out in the prospectus lodged with the Australian Securities Exchange Limited (**ASX**) on 28 August 2018 (the **Prospectus**); and/or
 - ii. during the period from 31 August 2018 to 12 November 2018 inclusive (the **Relevant Period**), on the financial market operated by the ASX;
 - b. suffered loss or damage by or resulting from the contraventions by the Company pleaded in Sections V to VII of the accompanying Commercial List Statement; and
 - c. are not any of the following:
 - i. a related party (as defined by section 228 of the *Corporations Act 2001* (Cth) (**Corporations Act**) of the Company;
 - ii. a related body corporate (as defined by section 50 of the *Corporations Act*) of the Company;
 - iii. an associated entity (as defined by section 50AAA of the *Corporations Act*) of the Company;
 - iv. a former officer or close associate (as defined by section 9 of the *Corporations Act*) of the Company;
 - v. a Chief Justice, Justice or Registrar of the Supreme Court of New South Wales or the High Court of Australia; or
 - vi. a partner or employee of, or other legal practitioner engaged by, the law firm Piper Alderman,

(collectively, **Group Members**).

FINAL RELIEF

- 1 On the grounds stated in the accompanying Commercial List Statement, the Plaintiff claims, on its own behalf and on behalf of Group Members:
- a. An order, pursuant to section 1317HA of the Corporations Act, that the Company compensate the Plaintiff and Group Members for the damage suffered by them which resulted from the Company's contraventions of section 674(2) of the Corporations Act.
 - b. An order that the Company pay the Plaintiff and Group Members compensation pursuant to:
 - i. section 1041I of the Corporations Act;
 - ii. section 12GF of the *Australian Securities and Investments Commission Act 2001 (Cth)*;
 - iii. section 236 of the Australian Consumer Law (being Schedule 2 of the *Competition and Consumer Act 2010 (Cth)*).
 - c. An order that the Company pay the Plaintiff and Group Members compensation pursuant to section 729 of the Corporations Act by reason of the Company's contraventions of section 728 of the Corporations Act.
 - d. Interest.
 - e. Costs.
 - f. Such further or other relief as the Court determines appropriate.

COMMON QUESTIONS

Capitalised terms have the same meaning as in the Commercial List Statement.

The questions of law or fact common to the claims of the Plaintiff and Group Members are:

- 1 Whether the Company contravened its continuous disclosure obligations in relation to its failure to inform the market about:
 - (a) the Solar Project Information;
 - (b) the Cash Flow Information;
 - (c) the Insufficiency of Entitlement Offer Information.
- 2 Whether the Company engaged in conduct that was misleading or deceptive or likely to mislead or deceive:

(a) in respect of its failure to inform the market about :

- i. the Solar Project Information;
- ii. the Cash Flow Information;
- iii. the Insufficiency of Entitlement Offer Information;

(b) by making the 28 August 2018 Representations.

3 Whether the Company contravened section 728 of the Corporations Act by:

(a) its omission to include in the Prospectus for the Entitlement Offer:

- i. the Solar Project Information;
- ii. the Cash Flow Information;
- iii. the Insufficiency of Entitlement Offer Information;

(b) including the 28 August 2018 Representations in the Prospectus.

4 Whether the Company's contraventions caused the Plaintiff and Group Members to suffer loss and damage.

5 The correct measure of compensation for which the Company may be liable to the Plaintiff and Group Members?

INTERIM RELIEF

1 The Plaintiff be granted leave to commence these proceedings against the first defendant pursuant to section 500(2) of the *Corporations Act 2001* (Cth).

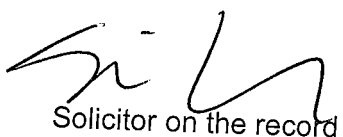
2 Any other order the Court thinks fit.

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 plaintiff[s] that court fees may be payable during these proceedings. These fees may include a hearing allocation fee.

Signature



Solicitor on the record

Capacity

Date of signature

7 June 2019

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.
- The court registry for limited procedural information.

Court forms are available on the UCPR website at 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

Postal address

GPO Box 3, Sydney NSW 2001

Telephone

1300 679 272

PARTY DETAILS

PARTIES TO THE PROCEEDINGS

Plaintiff

CJMcG Pty Ltd (ACN 169 952 096) as
trustee for the CJMcG Superannuation Fund

Defendant

RCR Tomlinson Limited ACN 008 898 486
(In Liquidation)

FURTHER DETAILS ABOUT PLAINTIFF

Plaintiff

Name	CJMcG Pty Ltd (ACN 169 952 096) as trustee for the CJMcG Superannuation Fund		
Address	Unit 2	Charring Court	
	35	Old Northern	Road
	Baulkham Hills	NSW	2153

Legal representative for plaintiff

Name	Simon Jacob Morris
Practising certificate number	30490
Firm	Piper Alderman
Contact solicitor	Simon Morris
Address	Level 23 Governor Macquarie Tower 1 Farrer Place Sydney NSW 2000
DX address	10216 Sydney Stock Exchange
Telephone	(02) 9253 9999
Fax	(02) 9253 9900
Email	smorris@piperalderman.com.au
Electronic service address	smorris@piperalderman.com.au

DETAILS ABOUT DEFENDANT

Defendant	
Name	RCR Tomlinson Limited ACN 008 898 486 (In Liquidation)
Address	Level 23 Gateway 1 Macquarie Place Sydney NSW 2000