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Form 4A, 4B/ 84
Rule 6.2, 50.4, 50.12

SUMMONS

COURT DETAILS

Court	Supreme Court of NSW
Division	Equity
List	Commercial
Registry	Supreme Court Sydney
Case number	2018/00353304

TITLE OF PROCEEDINGS

First Plaintiff	Ashita Tomi Pty Ltd as trustee for Esskay Super Fund ABN 79582038569
First Defendant	RCR TOMLINSON LTD trading as RCR Tomlinson Ltd ACN 008898486

FILING DETAILS

Filed for	Plaintiff[s]
Legal representative	Damian Scattini
Legal representative reference	
Telephone	(02)91463888
Your reference	08660-00001

HEARING DETAILS

Listed at Supreme Court Sydney on 30 November 2018 at 09:45 AM.

ATTACHMENT DETAILS

In accordance with Part 3 of the UCPR, this coversheet confirms that both the Summons (e-Services), along with any other documents listed below, were filed by the Court.

Summons (UCPR 4A/4B/84/85) (2018.11.16 RCR Tomlinson - Summons.pdf)

[attach.]

SUMMONS**COURT DETAILS**

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

TITLE OF PROCEEDINGS

Plaintiff	Ashita Tomi Pty Ltd as trustee for Esskay Super Fund
Defendant	RCR Tomlinson Limited ACN 008 898 486

FILING DETAILS

Filed for	Ashita Tomi Pty Ltd as trustee for Esskay Super Fund, plaintiff
Legal representative	Damian Scattini Quinn Emanuel Urquhart & Sullivan
Legal representative reference	08660-00001
Contact name and telephone	Meagan Bertolatti, +61 2 9146 3500 meaganbertolatti@quinnemanuel.com

HEARING DETAILS

Pursuant to paragraph 4.2(e) of Practice Note SC Gen 17, this proceeding is to be listed for an initial case management conference at 9:00am on the Wednesday after the expiration of 42 days following the filing of this summons.

This summons is listed at

TYPE OF CLAIM

Commercially misleading conduct

RELIEF CLAIMED

On the grounds stated in the accompanying Commercial List Statement (**CLS**), the Plaintiff claims, on its 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 Defendant pay compensation for the loss and damage caused by its contravention of section 674 of the *Corporations Act*.
2. An order for damages pursuant to:
 - 1.1 section 1041I(1) of the *Corporations Act*;
 - 1.2 section 12GF(1) of the *Australian Securities and Investment Commission Act 2001* (Cth) (**ASIC Act**); and/or
 - 1.3 section 236 of the Australian Consumer Law (**ACL**) set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth).
3. Interest.
4. Costs.
5. 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:
 - 5.1 during the period from 11 August 2017 to 27 July 2018 inclusive (**Relevant Period**), acquired an interest in ordinary shares in the Defendant, RCR Tomlinson Limited (**RCR**), (**RCR Shares**) on the financial market operated by the Australian Securities Exchange Limited (**ASX**);
 - 5.2 suffered loss or damage by or resulting from the contraventions by RCR pleaded in this Commercial List Statement (**CLS**); and
 - 5.3 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 Plaintiff on behalf of itself and Group Members are set out in Part A of the CLS.
- 3. The relief sought by the Plaintiff on behalf of itself 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 CLS):
 - 1.1 When did RCR become aware, within the meaning of Rule 19.12 of the Listing Rules, of the Ground Conditions Information, the Project Issues Information and/or the Cost Overruns Information?
 - 1.2 Whether RCR made the Continuous Disclosure Representation, the Risk Management Representation, the First Earnings Guidance Representation and/or the Second Earnings Guidance Representation, and if so whether its conduct in making, maintaining and/or failing to correct or qualify each such representation was misleading or deceptive conduct in contravention of section 1041H of the Corporations Act, section 12DA(1) of the ASIC Act and/or section 18 of the ACL.

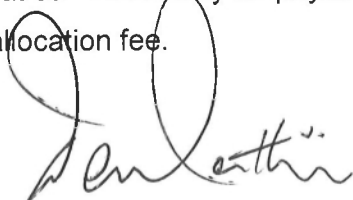
- 1.3 Whether, during the Relevant Period, the Market Contraventions (or any one or combination of them) caused the market price of RCR Shares to be, or materially contributed to the market price of RCR Shares being, substantially greater than their true value and/or the market price that would otherwise have been paid at the time of acquisition but for those Market Contraventions (or any one or combination of them).
- 1.4 Whether the decline in the price of RCR Shares pleaded in paragraph 22 of Part C of the CLS was caused or materially contributed to by the information communicated to the Affected Market by RCR in respect of the Market Contraventions.
- 1.5 What is the proper methodology for assessing the quantum of the loss or damage suffered by the Plaintiff 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 plaintiff that court fees may be payable during these proceedings. These fees may include a hearing allocation fee.

Signature



Capacity

Solicitor on the Record

Date of signature

16 November 2018

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 Australia
Postal address	Supreme Court of New South Wales GPO Box 3 Sydney NSW 2001 Australia
Telephone	1300 679 272

FURTHER DETAILS ABOUT PLAINTIFF**Plaintiff**

Name Ashita Tomi Pty Ltd as trustee for Esskay Super Fund
Address C/- Quinn Emanuel Urquhart & Sullivan
Level 15, 111 Elizabeth Street
Sydney NSW 2000

Legal representative for plaintiff

Name Damian John Scattini
Practising certificate number 83237
Firm Quinn Emanuel Urquhart & Sullivan
Contact solicitor Meagan Bertolatti
Address Level 15, 111 Elizabeth Street
Sydney NSW 2000
Telephone +61 2 9146 3500
Email meaganbertolatti@quinnemanuel.com
Electronic service address meaganbertolatti@quinnemanuel.com

DETAILS ABOUT DEFENDANT**Defendant**

Name RCR Tomlinson Ltd ACN 008 898 486
Address Level 23, Gateway, 1 Macquarie Place
Sydney, New South Wales, 2000