

FILED
26 MAR 2019



SUMMONS

COURT DETAILS

Court Supreme Court
Division Equity
List Commercial
Registry Sydney
Case number 2019 / 94443

TITLE OF PROCEEDINGS

First plaintiff Barry Jones
Number of plaintiffs (if more than two) Four

First defendant RCR Tomlinson Limited ACN 008 898 486
(Administrators Appointed)

Number of defendants (if more than two) Three

FILING DETAILS

Filed for Barry Jones, Karen Jones, Jorge Mayer and Elisabeth Mayer, Plaintiffs
Legal representative Craig Allsopp, Shine Lawyers
Contact name and telephone Craig Allsopp, (02) 8754 7270

HEARING DETAILS

This summons is listed at

9:45am 5/4/2019

TYPE OF CLAIM

Commercially misleading conduct.

Representative Action

This proceeding is commenced as a representative proceeding pursuant to Part 10 of the *Civil Procedure Act 2005* (NSW) by the Plaintiffs on their own behalf and on behalf of persons who:

- 1 acquired:
 - a. an interest in ordinary shares (**RCR Shares**) in the First Defendant (**RCR**) during the period from 11 August 2017 to 12 November 2018 (**Relevant Period**); or
 - b. long exposure to RCR Shares by entering into equity swap confirmations in respect of the RCR Shares during the Relevant Period (**RCR Equity Swaps**);
- 2 are alleged to have suffered loss or damage by reason of the matters pleaded in the accompanying Commercial List Statement; and
- 3 are not any of the following:
 - a. a related party (as defined by s 228 of the *Corporations Act 2001* (Cth) (**Corporations Act**)) of RCR;
 - b. a related body corporate (as defined by s 50 of the *Corporations Act*) of RCR;
 - c. an associated entity (as defined by s 50AAA of the *Corporations Act*) of RCR; or
 - d. the Chief Justice, or a Justice of Supreme Court of New South Wales, or the Chief Justice or a Justice of the High Court of Australia.

Interim Relief

The Plaintiffs seek the following interim relief:

- 1 An order nunc pro tunc granting leave to the Plaintiffs to commence these proceedings against the First Defendant.
- 2 An order authorising the Plaintiffs, their legal representatives, and the experts retained by them, to inspect and make copies of:
 - a. all policies of insurance and policy schedules entered into during the Relevant Period (as defined in the Commercial List Statement) in which the First Defendant or any of its directors or officers are named as insured or may have the benefit of insurance cover but excluding any policies of insurance providing indemnity for any personal injury or any property loss or damage, workers compensation, public liability or crime (**Relevant Policies**); and

- b. all notifications of claims or any facts and circumstances which may give rise to claims given to any brokers or insurers by or on behalf of the First Defendant and/or its directors and officers under any of the Relevant Policies.

Final Relief

On the grounds stated in the accompanying Commercial List Statement, the Plaintiffs claim, on their own behalf and on behalf of Group Members (as defined below):

- 1 An order, pursuant to s 1317HA of the *Corporations Act 2001* (Cth) (**Corporations Act**), that the First Defendant compensate the Plaintiffs and Group Members for the damage suffered by them which resulted from the First Defendant's contraventions of s 674(2) of the Corporations Act.
- 2 An order that the First to Third Defendants pay to the Plaintiffs and Group Members statutory compensation pursuant to:
 - a. s 1041I of the Corporations Act;
 - b. s 12GF of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**); and/or
 - c. s 236 of the *Australian Consumer Law* (**ACL**)
 for the damage suffered by them which resulted from the First to Third Defendant's conduct which was misleading or deceptive or likely to mislead or deceive.
- 3 An order that the First Defendant pay the Third and Fourth Plaintiffs and Group Members compensation pursuant to s 1325 for the damage suffered by them which resulted from the First Defendant's contravention of s 727 of the Corporations Act.
- 4 An order that the First and Third Defendants pay Group Members statutory compensation pursuant to ss 729 and/or 1325 of the Corporations Act for the damage suffered by them which resulted from the contravention of s 728 of the Corporations Act.
- 5 Interest.
- 6 Costs.

Questions common to claims of Group Members

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

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

- 1 Whether the First Defendant and/or the Second Defendant made and/or failed to correct or qualify the:

- a. 11 August 2017 Representations;
- b. 11 August 2017 Basis Representations
- c. 24 August 2017 Representations;
- d. 22 February 2018 Representations; and/or
- e. 22 February 2018 Basis Representations.
- f. 28 August 2018 Representations; and/or
- g. 28 August 2018 Basis Representations;

and if so, whether, by doing so, they contravened s 1041E or s 1041H of the Corporations Act, s 12DA of the ASIC Act and/or s 18 of the ACL.

- 2 Whether the First Defendant and/or the Third Defendant made and/or failed to correct or qualify the:

- a. 28 August 2018 Representations; and/or
- b. 28 August 2018 Basis Representations.

and if so, whether, by doing so, they contravened s 1041E or s 1041H of the Corporations Act, s 12DA of the ASIC Act and/or s 18 of the ACL.

- 3 At what time did the First Defendant become aware, within the meaning of the ASX Listing Rules, of:

- a. the FY18 Financial Information;
- b. the EPC Solar Contract Information;
- c. the FY19 Financial Information; and/or
- d. the Systemic EPC Solar Contract Information.

- 4 Whether the First Defendant, throughout all or part (and if so, which part) of the Relevant Period, contravened s 674(2) of the Corporations Act by not immediately telling the ASX:

- a. the FY18 Financial Information;
- b. the EPC Solar Contract Information;
- c. the FY19 Financial Information; and/or
- d. the Systemic EPC Solar Contract Information.

- 5 Whether the First Defendant contravened s 727 of the Corporations Act by reason of the Cleansing Notice Statements and/or the Cleansing Notice Omissions.

- 6 Whether the First Defendant contravened s 728 of the Corporations Act by reason of the Prospectus Statements and/or the Prospectus Omissions.
- 7 Whether any and, if so, what conduct of the First to Third Defendants had the effect that prices for RCR Shares were, during the Relevant Period, higher than their true value and/or what the prices would otherwise have been, and if so to what extent.
- 8 If the conduct of the First to Third Defendants had that effect, whether compensation is recoverable by the Plaintiffs and Group Members.
- 9 The correct measure of the compensation for which the First to Third Defendants may be liable to the Plaintiffs and Group Members.

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 plaintiffs that court fees may be payable during these proceedings. These fees may include a hearing allocation fee.

Signature



Capacity

Solicitor for the Plaintiffs

Date of signature

26 March 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	Level 5, Law Courts Building 184 Phillip Street Sydney NSW 2000
Postal address	Supreme Court of NSW GPO Box 3 Sydney NSW 2001
Telephone	1300 679 272

PARTY DETAILS

Plaintiffs

Barry Jones
First Plaintiff

Karen Jones
Second Plaintiff

Jorge Mayer
Third Plaintiff

Elisabeth Mayer
Fourth Plaintiff

Defendants

RCR Tomlinson Limited ACN 008 898 486
(Administrators Appointed)
First Defendant

Paul Joseph Dalgleish
Second Defendant

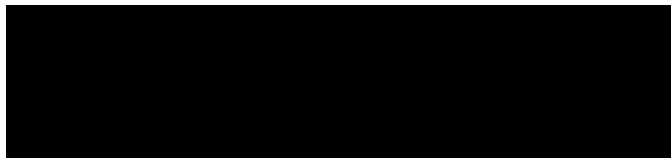
Bruce Maxwell James
Third Defendant

FURTHER DETAILS ABOUT PLAINTIFFS

First Plaintiff

Name Barry Jones

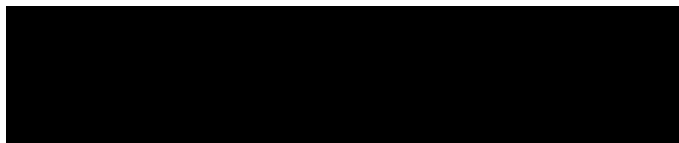
Address
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Second Plaintiff

Name Karen Jones

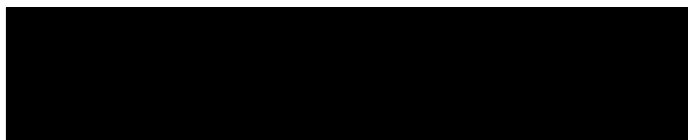
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Third Plaintiff

Name Jorge Mayer

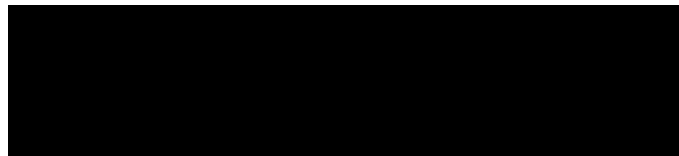
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Fourth Plaintiff

Name Elisabeth Mayer

Address
[The filing party must give the party's address.]



Legal representative for plaintiffs

Name Craig Richard Allsopp
 Practising certificate number 41178
 Firm Shine Lawyers
 Address Level 6
 299 Elizabeth Street
 Sydney NSW 2000
 DX address DX 236 Sydney NSW 2000
 Telephone 02 8754 7200
 Fax 02 9267 5650
 Email callsopp@shine.com.au
 Electronic service address callsopp@shine.com.au

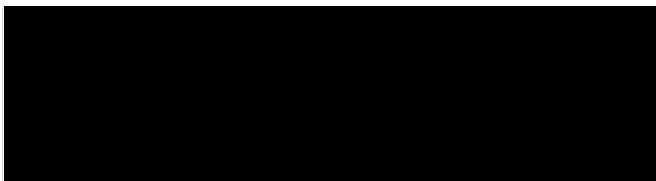
DETAILS ABOUT DEFENDANTS**First defendant**

Name **RCR Tomlinson Limited ACN 008 898 486
(Administrators Appointed)**
 Address Level 23 Gateway
 1 Macquarie Place
 Sydney NSW 2000

Second defendant

Name **Paul Joseph Dagleish**

Address

**Third defendant**

Name **Bruce Maxwell James**

Address

