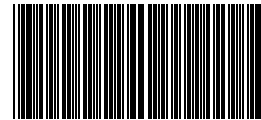




Filed: 20 June 2019 5:30 PM



D00015BXDY

Commercial List Response

COURT DETAILS

Court	Supreme Court of NSW
Division	Equity
List	Commercial
Registry	Supreme Court Sydney
Case number	2019/00094443

TITLE OF PROCEEDINGS

First Plaintiff	Barry Jones
Second Plaintiff	Karen Jones
Number of Plaintiffs	4
First Defendant	RCR Tomlinson Limited ACN 008898486
Second Defendant	Paul Joseph Dagleish
Number of Defendants	3

FILING DETAILS

Filed for	RCR Tomlinson Limited, Defendant 1
Legal representative	Michael Russell
Legal representative reference	
Telephone	8281 4555
Your reference	1806866

ATTACHMENT DETAILS

In accordance with Part 3 of the UCPR, this coversheet confirms that both the Lodge Document, along with any other documents listed below, were filed by the Court.

Commercial List Response (RCR Commercial List Response 20 June 2019.pdf)

[attach.]

Form 1 (version 4)
Practice Note No. SC Eq 3

FIRST DEFENDANT'S COMMERCIAL LIST RESPONSE

COURT DETAILS

Court	Supreme Court of New South Wales
Division	Equity Division
List	Commercial List
Registry	Sydney
Case number	2019/94443

TITLE OF PROCEEDINGS

First plaintiff	Barry Jones
Number of plaintiffs	4
First defendant	RCR Tomlinson Limited ACN 008 898 486 (In Liquidation)
Number of defendants	3

FILING DETAILS

Filed for	RCR Tomlinson Limited ACN 008 898 486 (In Liquidation) , first defendant
Filed in relation to	Plaintiffs' claim
Legal representative	Michael Edward Russell of Colin Biggers & Paisley Pty Ltd
Legal representative reference	MER:1806866
Contact name and telephone	Michael Russell (02) 8281 4555
Contact email	Michael.Russell@cbp.com.au

COMMERCIAL LIST RESPONSE

A. NATURE OF DISPUTE

1. The First Defendant (**RCR**) agrees that the Plaintiffs' statement of the nature of the dispute reflects the plaintiff's contentions in the Commercial List Statement.
2. RCR is in liquidation. Until recently, the liquidators of RCR (**Liquidators**) have not had funding to investigate the subject matter of these proceedings and their investigations of those matters are on-going. The Liquidators reserve their rights to apply to amend this Commercial List Response, including by but not limited to identifying additional or affirmative defences and any concurrent wrongdoers.

B. ISSUES LIKELY TO ARISE

1. RCR agrees that paragraphs 1 to 3 identify issues that are likely to arise in the proceedings.

2. RCR agrees that, depending on the determination of the issues in paragraphs 1 to 3, paragraph 4 identifies an issue that may arise, but says if it arises that issue may not be common to all Group Members and it may be necessary for its determination to be dealt with on a sub-group or individual basis.

C. DEFENDANT'S RESPONSES TO CONTENTIONS

A The Plaintiffs and Group Members

1. In response to paragraph 1 of the Commercial List Statement, RCR:
 - (a) admits that the proceedings have been commenced as a representative proceeding; and
 - (b) otherwise does not admit the paragraph.
2. RCR does not admit paragraph 2 of the Commercial List Statement.
3. RCR does not admit paragraph 3 of the Commercial List Statement.
4. RCR does not admit paragraph 4 of the Commercial List Statement.

B The Defendants

B.1 RCR

5. RCR admits paragraph 5 of the Commercial List Statement.

B.2 Dalgleish

6. RCR admits paragraph 6 of the Commercial List Statement.

B.3 James

7. In response to paragraph 7 of the Commercial List Statement, RCR:
 - (a) says that James commenced as Interim Chief Executive Officer on 7 August 2018, not 6 August 2018 as contended; and
 - (b) otherwise admits the paragraph.

B.4 Prohibition on misleading and deceptive conduct

8. In response to paragraph 8 of the Commercial List Statement, RCR:

- (a) relies on s 1041H of the Corporations Act, s 12DA of the ASIC Act and s 18 of the Australian Consumer Law for their force and effect; and
- (b) otherwise does not admit the paragraph.

9. In response to paragraph 9 of the Commercial List Statement, RCR:

- (a) relies on s 1041E of the Corporations Act for its force and effect; and
- (b) otherwise does not admit the paragraph.

B.5 Other relevant RCR personnel

10. RCR admits paragraph 10 of the Commercial List Statement.

11. RCR does not admit paragraph 11 of the Commercial List Statement.

12. RCR does not admit paragraph 12 of the Commercial List Statement.

B.6 RCR's business

13. RCR admits paragraph 13 of the Commercial List Statement.

14. RCR does not admit paragraph 14 of the Commercial List Statement.

15. In response to paragraph 15 of the Commercial List Statement, RCR:

- (a) admits that from about December 2016 until about April 2018, it entered into various contracts for the engineering, procurement and construction of solar farms; and
- (b) otherwise does not admit the paragraph.

16. RCR does not admit paragraph 16 of the Commercial List Statement.

17. RCR does not admit paragraph 17 of the Commercial List Statement.

18. RCR does not admit paragraph 18 of the Commercial List Statement.

C Relevant Publications, Announcements and Disclosures

C.1 11 August 2017

19. RCR admits paragraph 19 of the Commercial List Statement.

20. In response to paragraph 20 of the Commercial List Statement, RCR:

(a) says that the statement referred to in subparagraph 20(c) referred to support for further growth “into” FY19; and

(b) otherwise admits the paragraph.

C.2 24 August 2017

21. RCR admits paragraph 21 of the Commercial List Statement.

22. In response to paragraph 22 of the Commercial List Statement, RCR:

(a) relies on the said documents for their full terms and effect; and

(b) otherwise does not admit the paragraph.

C.3 22 February 2018

23. RCR admits paragraph 23 of the Commercial List Statement.

24. In response to paragraph 24 of the Commercial List Statement, RCR:

(a) relies on the said documents for their full terms and effect; and

(b) otherwise does not admit the paragraph.

C.4 30 July 2018

25. In response to paragraph 25 of the Commercial List Statement, RCR:

(a) admits that on 30 July 2018, at the request of RCR, its securities were placed in trading halt pending the release of an announcement by RCR;

(b) admits that in requesting the trading halt, RCR stated to the ASX that it expected to make an announcement to the market regarding its earnings for FY18; and

- (c) otherwise does not admit the paragraph.

C.5 1 August 2018

26. In response to paragraph 26 of the Commercial List Statement, RCR:

- (a) admits that on 1 August 2018, at the request of RCR, its securities were suspended from quotation pending the release of an announcement by RCR regarding the impact of its FY18 financial results;
- (b) admits that in requesting the voluntary suspension, RCR stated to the ASX that it was in the process of reviewing cost overruns that were recently discovered on a project and which were expected to have a material negative impact on FY18 earnings; and
- (c) otherwise does not admit the paragraph.

C.6 7 August 2018

27. In response to paragraph 27 of the Commercial List Statement, RCR:

- (a) admits that on 7 August 2018 it requested an extension of the voluntary suspension of its securities from quotation by way of a communication to the ASX entitled 'Business update, leadership change and extension of voluntary suspension'; and
- (b) otherwise does not admit the paragraph.

28. In response to paragraph 28 of the Commercial List Statement, RCR:

- (a) refers to its response to paragraph 27 of the Commercial List Statement;
- (b) admits that its communication to the ASX contained statements as contended in paragraph 28 of the Commercial List Statement; and
- (c) otherwise does not admit the paragraph.

C.7 28 August 2018

29. RCR admits paragraph 29 of the Commercial List Statement.

30. In response to paragraph 30 of the Commercial List Statement, RCR:

- (a) relies on the said documents for their full terms and effect; and
- (b) otherwise does not admit the balance of the paragraph.

31. RCR does not admit paragraph 31 of the Commercial List Statement.

C.8 12 November 2018

32. In response to paragraph 32 of the Commercial List Statement, RCR:

- (a) admits that on 12 November 2018, at the request of RCR, its securities were placed in trading halt pending the release of an announcement by RCR;
- (b) admits that in requesting the trading halt, RCR stated to the ASX that it expected to make an announcement to the market regarding its earnings for FY19 and the associated consequences for its funding; and
- (c) otherwise does not admit the paragraph.

C.9 14 November 2018

33. In response to paragraph 33 of the Commercial List Statement, RCR:

- (a) admits that on 14 November 2018, at the request of RCR, its securities were suspended from quotation pending the release of an announcement by RCR regarding its earnings for FY19 and the associated consequences for its funding;
- (b) admits that in requesting the voluntary suspension, RCR stated to the ASX that it was in the process of further reviewing its earnings for FY19 and the associated consequences for its funding; and
- (c) otherwise does not admit the paragraph.

C.10 22 November 2018

34. RCR admits paragraph 34 of the Commercial List Statement.

35. RCR admits paragraph 35 of the Commercial List Statement.

36. RCR admits paragraph 36 of the Commercial List Statement.

D Representations Made by RCR, Dalglish and James

D.1 Representations made on 11 August 2017

37. In response to paragraph 37 of the Commercial List Statement, RCR:

- (a) does not admit the paragraph; and
- (b) says that the 11 August 2017 Announcement is to be understood as containing a representation of opinion that if RCR became the contractor on the additional renewable energy projects for which it was currently preferred contractor, that would support its further growth in FY18 and into FY19.

38. RCR does not admit paragraph 38 of the Commercial List Statement.

39. RCR does not admit paragraph 39 of the Commercial List Statement.

D.2 Representations made on 24 August 2017

40. In response to paragraph 40 of the Commercial List Statement, RCR:

- (a) admits that by the 24 August 2017 Announcement, it represented:
 - (i) an opinion that it was on track to deliver further earnings growth in FY18; and
 - (ii) that the represented opinion and all other forward-looking statements, opinions or estimates contained therein were:
 - (A) based on assumptions and contingencies that were subject to change without notice;
 - (B) not a guarantee of future performance;
 - (C) subject to a variety of risks and uncertainties beyond RCR's ability to control or predict, which could cause actual events or results to differ materially from those anticipated; and
- (b) otherwise does not admit the paragraph.

41. In response to paragraph 41 of the Commercial List Statement, RCR:

- (a) refers to its response to paragraph 40 of the Commercial List Statement;
 - (b) admits that by the 24 August 2017 Announcement, it impliedly represented that the said opinion was based on reasonable grounds; and
 - (c) otherwise does not admit the paragraph.
42. RCR does not admit paragraph 42 of the Commercial List Statement.
43. RCR does not admit paragraph 43 of the Commercial List Statement.
44. RCR does not admit paragraph 44 of the Commercial List Statement.
45. RCR does not admit paragraph 45 of the Commercial List Statement.
46. In response to paragraph 46 of the Commercial List Statement, RCR:
- (a) admits that by the 24 August 2017 Announcement, it represented:
 - (i) an opinion that it was in a strong position to capitalise on the substantial growth across its end-markets, particularly the solar market;
 - (ii) that it expected to experience continued strong growth through FY18;
 - (iii) that the represented opinion and expectation and all other forward-looking statements, opinions or estimates contained therein were:
 - (A) based on assumptions and contingencies that were subject to change without notice;
 - (B) not a guarantee of future performance;
 - (C) subject to a variety of risks and uncertainties beyond RCR's ability to control or predict, which could cause actual events or results to differ materially from those anticipated; and
 - (b) otherwise does not admit the paragraph.
47. In response to paragraph 47 of the Commercial List Statement, RCR:
- (a) refers to its response to paragraph 46 of the Commercial List Statement;

- (b) admits that by the 24 August 2017 Announcement, it impliedly represented that the said opinion and expectation were based on reasonable grounds; and
 - (c) otherwise does not admit the paragraph.
- 48. RCR does not admit paragraph 48 of the Commercial List Statement.
- 49. In response to paragraph 49 of the Commercial List Statement, RCR:
 - (a) admits that by the 24 August 2017 Announcement, it represented:
 - (i) an opinion that it was favourably positioned to invest capital, alongside its development partners, in projects in the solar energy sector;
 - (ii) that the represented opinion and all other forward-looking statements, opinions or estimates contained therein were:
 - (A) based on assumptions and contingencies that were subject to change without notice;
 - (B) not a guarantee of future performance;
 - (C) subject to a variety of risks and uncertainties beyond RCR's ability to control or predict, which could cause actual events or results to differ materially from those anticipated; and
 - (b) otherwise does not admit the paragraph.
- 50. In response to paragraph 50 of the Commercial List Statement, RCR:
 - (a) refers to its response to paragraph 49 of the Commercial List Statement;
 - (b) admits that by the 24 August 2017 Announcement, it impliedly represented that the said opinion was based on reasonable grounds; and
 - (c) otherwise does not admit the paragraph.
- 51. RCR does not admit paragraph 51 of the Commercial List Statement.

D.3 Representations made on 22 February 2018

- 52. RCR does not admit paragraph 52 of the Commercial List Statement.

53. RCR does not admit paragraph 53 of the Commercial List Statement.

54. RCR does not admit paragraph 54 of the Commercial List Statement.

D.4 Representations made on 28 August 2018

55. RCR does not admit paragraph 55 of the Commercial List Statement.

56. RCR does not admit paragraph 56 of the Commercial List Statement.

E What RCR Knew or Ought to Have Known

57. RCR does not admit paragraph 57 of the Commercial List Statement.

58. RCR does not admit paragraph 58 of the Commercial List Statement.

59. RCR does not admit paragraph 59 of the Commercial List Statement.

60. RCR does not admit paragraph 60 of the Commercial List Statement.

F Continuous Disclosure Contraventions

F.1 FY18 Financial Information

61. RCR does not admit paragraph 61 of the Commercial List Statement.

62. RCR does not admit paragraph 62 of the Commercial List Statement.

63. RCR does not admit paragraph 63 of the Commercial List Statement.

64. In response to paragraph 64 of the Commercial List Statement, RCR:

(a) refers to its response to paragraph 61 of the Commercial List Statement; and

(b) otherwise does not admit the paragraph.

65. RCR does not admit paragraph 65 of the Commercial List Statement.

F.2 EPC Solar Contract Information

66. RCR does not admit paragraph 66 of the Commercial List Statement.

67. RCR does not admit paragraph 67 of the Commercial List Statement.

68. RCR does not admit paragraph 68 of the Commercial List Statement.

69. In response to paragraph 69 of the Commercial List Statement, RCR:

(a) refers to its response to paragraph 66 of the Commercial List Statement; and

(b) otherwise does not admit the paragraph.

70. RCR does not admit paragraph 70 of the Commercial List Statement.

F.3 FY19 Financial Information

71. RCR does not admit paragraph 71 of the Commercial List Statement.

72. RCR does not admit paragraph 72 of the Commercial List Statement.

73. RCR does not admit paragraph 73 of the Commercial List Statement.

74. In response to paragraph 74 of the Commercial List Statement, RCR:

(a) refers to its response to paragraph 71 of the Commercial List Statement; and

(b) otherwise does not admit the paragraph.

75. RCR does not admit paragraph 75 of the Commercial List Statement.

F.4 Systemic EPC Solar Contract Information

76. RCR does not admit paragraph 76 of the Commercial List Statement.

77. RCR does not admit paragraph 77 of the Commercial List Statement.

78. RCR does not admit paragraph 78 of the Commercial List Statement.

79. In response to paragraph 79 of the Commercial List Statement, RCR:

(a) refers to its response to paragraph 76 of the Commercial List Statement; and

(b) otherwise does not admit the paragraph.

G.3 Misleading contraventions from 22 February 2018

89. In response to paragraph 89 of the Commercial List Statement, RCR:
- (a) refers to its response to paragraphs 23, 24 and 52 to 54 inclusive of the Commercial List Statement;
 - (b) admits that it engaged in conduct in trade or commerce by its publication of the 22 February 2018 Announcement, HY18 Financial Report, 22 February 2018 Presentation and 22 February 2018 Presentation Audio Recording, but does not admit that it was conduct in relation to ordinary shares in RCR; and
 - (c) otherwise does not admit the paragraph.
90. RCR does not admit paragraph 90 of the Commercial List Statement.
91. RCR does not admit paragraph 91 of the Commercial List Statement.
92. RCR does not admit paragraph 92 of the Commercial List Statement.

G.4 Misleading contraventions from 28 August 2018

93. In response to paragraph 93 of the Commercial List Statement, RCR:
- (a) refers to its response to paragraphs 29, 30, 55 and 56 of the Commercial List Statement;
 - (b) admits that it engaged in conduct in trade or commerce by its publication of the 28 August 2018 Announcement, FY18 Financial Report and 28 August 2018 Presentation, but does not admit that it was conduct in relation to ordinary shares in RCR; and
 - (c) otherwise does not admit the paragraph.
94. RCR does not admit paragraph 94 of the Commercial List Statement.
95. RCR does not admit paragraph 95 of the Commercial List Statement.
96. RCR does not admit paragraph 96 of the Commercial List Statement.

80. RCR does not admit paragraph 80 of the Commercial List Statement.

G Misleading or Deceptive Conduct and Materially Misleading Statements

G.1 Misleading contraventions from 11 August 2017

81. In response to paragraph 81 of the Commercial List Statement, RCR:

- (a) refers to its response to paragraphs 19, 20 and 37 to 39 inclusive of the Commercial List Statement;
- (b) admits that it engaged in conduct in trade or commerce by its publication of the 11 August 2017 Announcement, but does not admit that it was conduct in relation to ordinary shares in RCR; and
- (c) otherwise does not admit the paragraph.

82. RCR does not admit paragraph 82 of the Commercial List Statement.

83. RCR does not admit paragraph 83 of the Commercial List Statement.

84. RCR does not admit paragraph 84 of the Commercial List Statement.

G.2 Misleading contraventions from 24 August 2017

85. In response to paragraph 85 of the Commercial List Statement, RCR:

- (a) refers to its response to paragraphs 21, 22 and 40 to 51 inclusive of the Commercial List Statement;
- (b) admits that it engaged in conduct in trade or commerce by its publication of the 24 August 2017 Announcement, 24 August 2017 Presentation and 24 August 2017 Presentation Audio Recording, but does not admit that it was conduct in relation to ordinary shares in RCR; and
- (c) otherwise does not admit the paragraph.

86. RCR does not admit paragraph 86 of the Commercial List Statement.

87. RCR does not admit paragraph 87 of the Commercial List Statement.

88. RCR does not admit paragraph 88 of the Commercial List Statement.

H Disclosure Document Contraventions

H.1 30 August 2017 Cleansing Notice

97. RCR admits paragraph 97 of the Commercial List Statement.
98. RCR admits paragraph 98 of the Commercial List Statement.
99. RCR does not admit paragraph 99 of the Commercial List Statement.
100. RCR does not admit paragraph 100 of the Commercial List Statement.
101. In response to paragraph 101 of the Commercial List Statement, RCR:
- (a) refers to its response to paragraphs 61 and 66 of the Commercial List Statement; and
 - (b) otherwise does not admit the paragraph.
102. RCR does not admit paragraph 102 of the Commercial List Statement.
103. RCR does not admit paragraph 103 of the Commercial List Statement.

H.2 The Prospectus

104. RCR admits paragraph 104 of the Commercial List Statement.
105. RCR admits paragraph 105 of the Commercial List Statement.
106. RCR does not admit paragraph 106 of the Commercial List Statement.
107. RCR does not admit paragraph 107 of the Commercial List Statement.
108. In response to paragraph 108 of the Commercial List Statement, RCR:
- (a) refers to its response to paragraphs 66, 71 and 76 of the Commercial List Statement; and
 - (b) otherwise does not admit the paragraph.
109. RCR does not admit paragraph 109 of the Commercial List Statement.

110. RCR does not admit paragraph 110 of the Commercial List Statement.

I Market Contraventions Caused Group Members' Loss

I.1 Market based causation

111. RCR does not admit paragraph 111 of the Commercial List Statement.

112. RCR does not admit paragraph 112 of the Commercial List Statement.

113. RCR does not admit paragraph 113 of the Commercial List Statement.

114. RCR does not admit paragraph 114 of the Commercial List Statement.

115. RCR does not admit paragraph 115 of the Commercial List Statement.

116. RCR does not admit paragraph 116 of the Commercial List Statement.

I.2 Reliance

117. RCR does not admit paragraph 117 of the Commercial List Statement.

I.3 Loss and damage

118. RCR does not admit paragraph 118 of the Commercial List Statement.

J Disclosure Document Caused Some Group Members' Loss

J.1 No transaction case in respect of the Prospectus Contraventions

119. RCR does not admit paragraph 119 of the Commercial List Statement.

J.2 Market based causation

120. RCR does not admit paragraph 120 of the Commercial List Statement.

J.3 Reliance

121. RCR does not admit paragraph 121 of the Commercial List Statement.

J.4 Loss and damage

122. RCR does not admit paragraph 122 of the Commercial List Statement.

D. QUESTIONS APPROPRIATE FOR REFERRAL TO A REFEREE

There are no questions appropriate for referral to a referee.

**E. A STATEMENT AS TO WHETHER THE PARTIES HAVE ATTEMPTED MEDIATION;
WHETHER THE PARTY IS WILLING TO PROCEED TO MEDIATION AT AN
APPROPRIATE TIME**

The parties have not attempted to mediate. RCR is willing to proceed to mediation at an appropriate time.

SIGNATURE OF LEGAL REPRESENTATIVE

Signature of legal representative

Capacity

Date of signature



Solicitor for RCR Tomlinson Limited (In Liquidation)

20 June 2019