

# OUTCOME DETAILS

**Supreme Court - Civil  
at Supreme Court Sydney  
on 11 November 2022**

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

HH makes orders in terms of short minutes of order initialled and dated today's date.

Short Minutes of Order

Notice of a Voluntary Registration Process

1. Pursuant to section 176(1) of the Civil Procedure Act 2005 (NSW) (the Act), the form and content of the:

(a) covering email to Group Members set out at Annexure A to these orders (Covering Email);  
and

(b) registration notice set out at Annexure B to these orders (Registration Notice)

are approved for the purposes of section 175(5) of the Act (the Registration Notices).

2. The Registration Notices as approved pursuant to Order 1 above may be amended before they are emailed, posted, displayed or published in order to correct any website or email address or telephone number or other non-substantive error.

Group Member contact information

3. Pursuant to sections 61, 176(2) and/or 183 of the Act, for the purposes of facilitating distribution of the Registration Notice the plaintiffs and defendants are to engage Computershare Limited to act as the independent distribution agent (the Mail House) in respect of the distribution of the Registration Notice.

Distribution of the Registration Notice

4. Pursuant to sections 175(5) and 176(2) of the Act, notice is to be provided to Group Members in accordance with the procedure set out in Orders 5 to 9 below.

5. By no later than 15 November 2022, the first defendant shall cause the Mail House to send to each Group Member:

(a) by email, a copy of the Registration Notices; or

(b) if an email address is not available, a copy of the Registration Notices, by ordinary prepaid post if a postal address is available in respect of any such person.

6. To the extent that any email sent in accordance with order 5(a) above experiences a delivery failure, the Mail House is to notify the first defendant within five (5) business days of becoming aware of any such delivery failure (email delivery failure).

7. In the event of an email delivery failure described in order 6 above, the Mail House is to send a copy of the Registration Notice by ordinary prepaid post to the person who was the intended recipient of the email, if a postal address is available in respect of such person.

8. Continuously throughout the period from 15 November 2022 to 21 December 2022, the Registration Notice shall be:

(a) available on the Omni Bridgeway website <https://www.omnibridgeway.com/rcr>;

(b) posted on the “Solar Farms (RCR Tomlinson) Class Action” section of the class actions page of the website of the Supreme Court of New South Wales (Court Website).

9. Pursuant to s 176(3)(b) of the Act, the costs of and incidental to distributing the Registration Notices are initially to be paid by the plaintiffs, on the basis that those costs will subsequently fall to be dealt with by the Court as part of the costs of the Proceeding.

#### Claim registration

10. Unless otherwise ordered, any Group Member who wishes to register their claim must do so by, on or before 4.00pm (AEDT) on 21 December 2022:

(a) completing and submitting the online registration form at <https://www.omnibridgeway.com/rcr> (in the form of Schedule A to the Registration Notice); or

(b) if they are unable to register online, contacting Omni Bridgeway’s Client Liaison Team, using the contact details provided on the Registration Notice,

(the Registered Group Members).

#### Claimant Registration information

11. By 27 January 2023, the plaintiffs shall provide to the solicitors for the defendants a deidentified list of Registered Group Members who have submitted a registration form in accordance with Order 10 above, which list shall set out the following details (if available) in respect of each Registered Group Member:

(a) the relevant Holder Identification Number/s (HIN) or Security Reference Number/s (SRN) provided by the Registered Group Member;

(b) the number of RCR Shares held by the Registered Group Member as at the commencement of trading on 28 December 2016;

(c) for each acquisition of RCR Shares from 28 December 2016 to 12 November 2018 (inclusive):

(i) the date of acquisition;

(ii) the quantity of securities acquired;

(iii) the price per security paid or the total consideration paid;

(d) for each sale of RCR Shares from 28 December 2016 to 12 November 2018 (inclusive):

(i) the date of sale;

(ii) the quantity of securities sold;

(iii) the price per security or the total consideration received.

12. Liberty to apply.

Justice M Ball

Signed

Date

## **ANNEXURE A**

**This is not a scam. The notice below is issued to you pursuant to orders made by the Supreme Court of New South Wales on 11 November 2022. It provides important information about a shareholder class action against RCR Tomlinson Limited (ASX:RCR)**

Dear Sir/Madam,

You are receiving this correspondence because you may be a Group Member in a shareholder class action against RCR Tomlinson Limited (**RCR Class Action**).

The notice below provides information about how you can register your interest to receive any money to which you may be entitled if a settlement is reached or damages are awarded in the RCR Class Action.

The Court has ordered that there be a mediation of the RCR Class Action by 31 March 2023. Accordingly, if you wish to register your interest, please do so by **4pm (AEDT) on 21 December 2022**.

Quinn Emanuel Urquhart & Sullivan (**Quinn Emanuel**) is the law firm for the Plaintiffs in the RCR Class Action. Omni Bridgeway and Burford Capital (the **Funders**) are funding the RCR Class Action.

If you would like more information about the registration process, please visit [www.omnibridgeway.com/rcr](http://www.omnibridgeway.com/rcr), or contact Omni Bridgeway's Client Liaison Team by email on [rcrclassaction@omnibridgeway.com](mailto:rcrclassaction@omnibridgeway.com), or free call 1800 016 464 or +61 8 9225 2300.

Yours faithfully,

**Quinn Emanuel**

Quinn Emanuel Urquhart & Sullivan

## **ANNEXURE B**

### **NOTICE TO GROUP MEMBERS**

#### **REGISTRATION NOTICE**

#### **SUPREME COURT OF NEW SOUTH WALES**

#### **RCR CLASS ACTION**

THIS NOTICE IS VERY IMPORTANT AND IS ISSUED PURSUANT TO AN ORDER OF THE  
SUPREME COURT OF NEW SOUTH WALES – PLEASE READ IT CAREFULLY

#### **Why is this notice important?**

1. The Supreme Court of New South Wales has ordered that notice be given to Group Members of the matters set out in this notice. You should read this notice carefully.
2. You are being sent this notice because you may be a Group Member in the RCR Class Action.
3. The Court has ordered that a mediation of the RCR Class Action occur by 31 March 2023.
4. To assist the parties at mediation, and in advance of that mediation, Group Members are being asked to register their interest in receiving any money to which they may be entitled if a settlement is reached in the RCR Class Action and to provide details in relation to claims they may have.
5. The registration process will assist the parties to better understand the amount of any losses that Group Members may have suffered, and will allow any settlement discussions to occur on a more informed basis.
6. The deadline for registration is **4pm (AEDT) on 21 December 2022**. If you do not register by the deadline, it is possible that your registration will not be considered in connection with the mediation.
7. If there is anything in this notice that you do not understand, you should contact Omni Bridgeway, whose contact details are set out below or alternatively seek your own legal advice. Any questions you have about this notice should not be directed to the Court.

### How do I register?

8. To register, you need to complete and submit a Registration Form by **4pm (AEDT) on 21 December 2022**.
9. The Registration Form is **now** available to complete online at <https://www.omnibridgeway.com/rcr>. Alternatively, you can submit a hardcopy Registration Form at Schedule A to this notice and submit it:
  - a. by email to [rcrclassaction@omnibridgeway.com](mailto:rcrclassaction@omnibridgeway.com); or
  - b. by post, to the following address:

**Omni Bridgeway**  
**RCR Shareholder Class Action**  
**PO Box Z5106**  
**Perth WA 6831**
10. If you have already signed a Litigation Funding Agreement with one of the Funders in relation to this proceeding, you do not need to register. If you are unsure whether you have signed a Litigation Funding Agreement, please contact Omni Bridgeway at [rcrclassaction@omnibridgeway.com](mailto:rcrclassaction@omnibridgeway.com), or call 1800 016 464.
11. You do **not** need to sign a Litigation Funding Agreement in order to register.

### Why should I register?

12. Although registration is not compulsory, it has a number of advantages:
  - a. it allows Quinn Emanuel to confirm whether or not you are a Group Member and to contact you if you become eligible to receive compensation;
  - b. it enables the parties to gain a better understanding of the amount of any losses that Group Members may have suffered, and, as such, allows any settlement discussions to occur on a more informed basis and may facilitate the settlement of the proceeding at the upcoming mediation;
13. There is **no cost to register** and you will not be required to pay any out of pocket costs if you register.

## **What is the RCR Class Action?**

14. The RCR Class Action was commenced in the Supreme Court of New South Wales by the lead plaintiffs (**Plaintiffs**) against RCR Tomlinson Ltd (in liquidation) (**RCR**) and two of its former directors and Chief Executive Officers, namely Paul Dalglish and Bruce James (collectively, the **Defendants**) on behalf of persons who, during the “Relevant Period”, acquired:
  - a. an interest in RCR shares, including as part of the 2017 Capital Raising and/or 2018 Capital Raising; and/or
  - b. long exposure to RCR Shares by entering into equity swap confirmations in respect of the RCR Shares for a period extending beyond 28 August 2018.
15. The “Relevant Period” is currently 28 December 2016 to 12 November 2018.
16. The Plaintiffs intend to seek an order from the Court permitting them to make changes to the pleadings in the RCR Class Action, to bring them into line with the evidence that has been served in the RCR Class Action. One of the changes that the Plaintiffs seek to make is to change the Relevant Period to 24 August 2017 to 12 November 2018.
17. The Plaintiffs allege that, during the Relevant Period, RCR breached its continuous disclosure obligations, and the Defendants engaged in misleading or deceptive conduct. Further, the Plaintiffs allege that a Prospectus issued by RCR on 28 August 2018 contained misleading and deceptive statements. The misleading conduct that is the subject of the proceeding concerns disclosures made about the performance and prospects of RCR’s solar projects business.
18. The Plaintiffs are seeking to recover damages and compensation from the Defendants for themselves and on behalf of Group Members for losses they claim were caused by the alleged misconduct. The Defendants deny the Plaintiffs’ allegations and are defending the claims.
19. The Plaintiffs have agreed to settle the proceeding against the Third Defendant, Mr James, on the basis that the proceeding against Mr James will be dismissed. The settlement is subject to Court approval. Further information about the settlement of those claims will be provided to Group Members in due course. Settlement of the proceeding against the Third Defendant (Mr James) will not impact upon the claims against either the First Defendant (RCR), or the Second Defendant (Mr Dalglish).

## **Am I a Group Member?**

20. If a settlement is reached or damages are awarded in relation to the RCR Class Action, only persons who are Group Members will be eligible to participate in the distribution of any settlement or damages award.

21. You are a Group Member in the RCR Class Action if, during the “Relevant Period”:
  - a. you acquired an interest in RCR shares, including as part of the 2017 Capital Raising and/or 2018 Capital Raising; and/or
  - b. you acquired long exposure to RCR Shares by entering into equity swap confirmations in respect of the RCR Shares for a period extending beyond 28 August 2018; and
  - c. you suffered loss or damage by, or which resulted from, the alleged conduct of the Defendants described above; and
  - d. you did **not** opt out of the RCR Shareholder Class Action, by completing and submitting an opt out notice which was distributed to Group Members in February 2021, (the **Group Member Criteria**).
22. The “Relevant Period” is currently 28 December 2016 to 12 November 2018.
23. As explained above, the Plaintiffs intend to seek an order from the Court permitting them to change the “Relevant Period” to 24 August 2017 to 12 November 2018. If that change is permitted, then only persons who acquired an interest in RCR shares or a relevant equity swap confirmation *during that narrower Relevant Period* will be Group Members.
24. If you are unsure as to whether or not you are a Group Member, you should contact Omni Bridgeway, whose contact details are set out at paragraph [32] of this notice, or alternatively seek your own legal advice.

### **What if I opted out of the RCR Class Action?**

25. If you opted out of the RCR Class Action (by completing and submitting an Opt Out Notice between the period February and March 2021 , you are no longer a Group Member in the RCR Class Action. This means that, in the event of a settlement or successful judgment, you will not be permitted to participate in the distribution of any settlement monies or judgment sum. You retain your right to commence separate legal proceedings in relation to the matters the subject of the RCR Class Action on your own behalf, if you wish, subject to any applicable limitation period.
26. If you opted out by mistake and in fact intended to register your claim for the RCR Class Action, please contact Omni Bridgeway at [rcrclassaction@omnibridgeway.com](mailto:rcrclassaction@omnibridgeway.com), or call 1800 016 464.

### **Will I need to pay legal costs if I register?**



27. Whether you register or not, you will **not** need to pay any out of pocket costs incurred by the Plaintiffs with respect to the RCR Class Action (whether to the Funders, or Quinn Emanuel, or otherwise).
28. All legal costs payable to Quinn Emanuel and/or fees and funding commission owed to the Funders can only be paid from any settlement or judgment amount. That means that if no money is recovered from the Defendants, the Funders will not be paid their commission, nor be repaid any amounts they have incurred in funding the RCR Class Action. There are no circumstances in which you, as a Group Member, can be required to pay those amounts from your own pocket.
29. In the event the RCR Class Action settles, or a judgment is awarded in favour of the Plaintiffs:
- a. the Plaintiffs intend to apply to the Court for an order having the effect that the costs incurred (and to be incurred) by the Plaintiffs in conducting the RCR Class Action for the benefit of all Group Members (which includes the costs of funding by the Funders) will be paid out of any settlement or judgment sum received by all Group Members, and will therefore be deducted proportionately from your share of that settlement or judgment amount;
  - b. the Funders intend to apply to the Court for an order that the Funders be paid a funding commission from any settlement or judgment sum received by all Group Members of between 22.5% to 30% (depending on the timing of any final resolution of the litigation). The purpose of this type of order (known as a 'common fund order') is to compensate the Funders for funding the investigation and prosecution of the RCR Class Action and for the payment of security for the Defendants' costs. The Court will decide whether it considers a 'common fund order' to be appropriate and, if so, the amount to be paid to the Funders. This amount will be deducted from the settlement or judgment sum, prior to settlement payments being distributed to eligible Group Members.
30. In litigation, the Court will typically order the losing party to pay a proportion of the legal costs of the successful party. If the RCR Class Action is unsuccessful, the Funders have agreed to indemnify the Plaintiffs and each Group Member who has entered into a Litigation Funding Agreement against any adverse costs order. This means that the Funders will pay any adverse costs order that may be made against the Plaintiffs and/or those Group Members.
31. Even if you have not signed a Litigation Funding Agreement, you cannot be required to pay adverse costs as a Group Member, unless there are individual issues specific to you that result in costs being incurred. This cannot occur without your consent.

**What if I have further questions?**

32. If you have further questions about this notice, or the RCR Class Action, or how to register, please contact Omni Bridgeway (one of the Funders) using the following contact details:

**Website:** [www.omnibridgeway.com/rcr](http://www.omnibridgeway.com/rcr)

**Email:** [rcrclassaction@omnibridgeway.com](mailto:rcrclassaction@omnibridgeway.com)

**Tel:** 1800 016 464

**Post:** Omni Bridgeway  
RCR Shareholder Class Action  
PO Box Z5106  
Perth WA 6831

33. You can also direct any questions you may have about the RCR Class Action to Quinn Emanuel, by email, [rcrclassaction@quinnemanuel.com](mailto:rcrclassaction@quinnemanuel.com), or by phone +61 2 9146 3571.

**SCHEDULE A**  
**REGISTRATION FORM – RCR TOMLINSON LTD CLASS ACTION**

Information on how to complete the Group Member Details Section

- Please use BLOCK LETTERS
- Complete Parts 1 to 6 below in their entirety
- Please ensure all share trading information is recorded correctly in Parts 4 and 5. Please also provide Omni Bridgeway with copies of your contract notes.
- Return this form and any additional documents, including any attached pages or annexures, to Omni Bridgeway (*you should retain a copy for your records*) to:

Omni Bridgeway Client Liaison Team

Email: [rcrclassaction@omnibridgeway.com](mailto:rcrclassaction@omnibridgeway.com)

Post:

**Omni Bridgeway Limited**  
**PO Box 5106**  
**PERTH WA 6831**  
**AUSTRALIA**

The Group Member named below provides the following information in respect of their claim in the RCR Shareholder Class Action. You must use your best efforts to provide all of the requested information.

Part 1. Contact Information

To ensure you receive all important correspondence, please ensure you keep your contact details up to date with us throughout the duration of the matter. Our preferred method of correspondence is by email.

Title	<input type="text"/>	First Name	<input type="text"/>	Middle Name	<input type="text"/>	Last Name	<input type="text"/>
Company	<input type="text"/>			Position	<input type="text"/>		
Landline Phone	<input type="text"/>			Mobile Phone	<input type="text"/>		
Email Address	<input type="text"/>						

Mailing Address							
Suburb		State		Postcode		Country	

## Part 2. Group Member Details

The Group Member must have acquired RCR shares as specified in Part 5.  
 If you are unsure who the owner of the shares is, please check your trade confirmations or holding statements.  
 If you are submitting a form for more than one Group Member, you will be required to complete Parts 2, 3, 4 and 5 for each Group Member.

**Please specify the capacity in which the Group Member owned the RCR shares** (Only select one option)

**As an individual or joint shareholder**  
*The shares were held in person in the name of one individual or in the name of more than one individual, who is making the claim.*

**Full name(s) of individual or joint shareholders**

**As a company**  
*The shares were held directly in the name of the Company that is making the claim.*

**Name of company**

**ABN / ACN / ARSN**  
 (or Registration Number if it is a foreign company)

**As a trustee / Responsible Entity / Investment Manager / Custodian / Agent**  
*The shares were held on trust (e.g. for a superannuation fund or trust account) and the trustee is an individual, joint holder, company or other.*

**Name of Trustee / Responsible Entity / Investment Manager / Agent / Custodian**

- Select one:**
- as trustee for
  - as investment manager for
  - as responsible entity for
  - as agent for
  - as custodian for

**Name of beneficial owner:**  
 (i.e. name of trust, account, superannuation fund or portfolio)

**ABN / ACN / ARSN**  
 (or Registration Number if it is a foreign company)

Please tick this box if you are signing this form on behalf of and with the authority of more than one beneficial owner. You can attach separate pages or a Microsoft Excel spreadsheet setting out the details required in Parts 2, 3, 4 and 5 for each beneficial owner

**Other, please specify:** \_\_\_\_\_  
If the shares are held in another capacity, please specify and provide the full name of the Group Member below

Please provide the full name of the Group Member

### Part 3. Group Member Address

Please provide the address of the Group Member described in Part 2.

If the address is the same as the contact address in Part 1, please tick this box (Note: If the contact address in Part 1 is a PO Box, the Group Member address **must** be completed below.)

**Group Member Street Address** (Not a PO Box)

**Suburb**

**State**

**Postcode**

**Country**

### Part 4. Shareholder Details

#### 4. a) Registered Owner

*This is the name as it appears on the share register.*

**Select one option:**

The Registered Owner on the share register is the **same** as the name of the Group Member in Part 2 above.

The Registered Owner on the share register is **different** to the name of the Group Member in Part 2 above (e.g. a custodian is listed on the share register) *Provide details below:*

**Full name of Registered Owner:**

#### 4. b) HIN / SRN

*This is the Holder Identification Number (HIN) or the Shareholder Reference Number (SRN) which identifies your registration on the CHESS or Issuer Sponsored Sub-register and may be found on holding statements or trade confirmations.*

**HIN / SRN:**

### Part 5. Trade Details

*Please provide, with this form, any trade confirmations, contract notes or holding statements that demonstrate the transactions recorded below.*

#### 5. a) Opening Balance

*Please provide the number of RCR Tomlinson Limited shares held as at close of trade on 23 August 2017. If you did not hold any shares please write "NONE"*

**Opening Balance:**

*(i.e. number of RCR Tomlinson Limited shares held as at close of trade on 23 August 2017)*

**5. b) Trade Information**

*In the sections below, list all transactions / trades of RCR Tomlinson Limited shares between 24 August 2017 and 12 November 2018 (inclusive) that affect the number of shares held or any equity swap confirmations in respect of RCR Tomlinson Limited shares, during the Relevant Period, for a period extending beyond 28 August 2018 (RCR Equity Swaps).*

*\*If the shares were acquired or disposed of, other than through a regular on-market transaction, please specify the nature of the transaction in the column "Type" below. (e.g. "Off-Market Transfer", "DRP", "Capital Raising", "Short selling", "Equity Swap Confirmation")*

Purchases			
Between 24 August 2017 and 12 November 2018 (inclusive)			
Trade Date (NOT Settlement Date)	Quantity (Number of shares traded)	Total Amount Paid (i.e. Quantity x Price per share + Fees & GST)	Type* (On-Market, DRP, IPO, Swap)

  

Sales			
Between 24 August 2017 and 12 November 2018 (inclusive)			
Trade Date (NOT Settlement Date)	Quantity (Number of shares traded)	Total Amount Received (i.e. Quantity x Price per share + Fees & GST)	Type* (On-Market, DRP, IPO, Swap)

**Part 6. Signing by the Group Member**

By signing below, I confirm that:

1. I am the Group Member, or I am duly authorised to act on the Group Member's behalf; and
2. the information I have provided in this form is true and complete.

Signature		Signature	
Print Name		Print Name	

Position

Position

Date