

OUTCOME DETAILS

**Supreme Court - Civil
at Supreme Court Sydney
on 13 June 2024**

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

The Court NOTES that:

In these orders:

“Funders” means Omni Bridgeway Limited (ACN 067 298 088) in its capacity as appointed agent and investment manager for each of Omni Bridgeway (Fund 2) Pty Ltd (ACN 621 682 504) and Omni Bridgeway (Fund 3) Pty Ltd (ACN 621 682 460), and Burford Asia Investments Pte Ltd.

“Group Members” has the meaning given to it in the Further Amended Commercial List Statement filed by the Plaintiffs on 6 July 2023.

“The Advisory Company” means Sonority Pty Ltd (ACN 660 124 167) trading as The Advisory Company.

The Court ORDERS that:

Settlement Approval

(1) Pursuant to section 173 of the Civil Procedure Act 2005 (NSW) (the Act), the settlement of this proceeding against the First Defendant be approved on the terms set out in:

(a) the Deed of Release and Settlement dated 12 September 2023 (Settlement Deed), which appears at Confidential Exhibit DS-2 to the affidavit of Damian Scattini affirmed 13 May 2024 (Scattini Affidavit); and

(b) the Settlement Distribution Scheme dated 3 May 2024 (SDS), which appears at pages 4 to 20 of Exhibit DS-1 to the Scattini Affidavit.

(2) Pursuant to section 183 of the Act, the Plaintiffs are authorised, nunc pro tunc, to enter into and give effect to the Settlement Deed for, and on behalf of, all Group Members other than those Group Members who have opted out of the proceeding.

(3) Pursuant to section 179 of the Act, these orders are binding upon all Group Members other than those Group Members who have opted out of the proceeding.

Administration of Settlement

(4) Pursuant to sections 173 and/or 183 of the Act, The Advisory Company be appointed as administrator of the SDS (Settlement Administrator) to act in accordance with the SDS subject to any direction from the Court, and to have the powers and immunities conferred by the SDS on the administrator, subject to any direction of the Court.

(5) The Settlement Administrator is granted liberty to apply to relist this Proceeding for the purpose of seeking orders consequential to or in connection with the SDS upon not less than three clear business days' notice to each of the parties to this Proceeding, and the Court.

Deductions from settlement sum for the purpose of the SDS

(6) Pursuant to ss 173(2) and/or 183 of the Act, and for the purposes of the SDS, the Court approves the following settlement deductions under the SDS (utilising defined terms from it):

(a) the amount of \$8,000,000 payable to the Funders by way of funding commission (referred to in the SDS as the 'Funding Commission');

(b) the amount of \$11,010,155.84 (inclusive of GST), for the Plaintiffs' legal costs (referred to in the SDS as the 'Plaintiffs' Reasonable Costs'), comprised of:

(i) \$115,956.01 (inclusive of GST) to be paid to Piper Alderman for costs incurred prior to this Court's consolidation order on 15 August 2019 but not yet paid;

(ii) \$80,400.80 (inclusive of GST) to be paid to Omni Bridgeway (Fund 2) Pty Ltd for costs incurred by CJMcG Pty Ltd as trustee for the CJMcG Superannuation Fund prior to this Court's consolidation order on 15 August 2019;

(iii) \$241,202.41 (inclusive of GST) to be paid to Omni Bridgeway (Fund 3) Pty Ltd for costs incurred by CJMcG Pty Ltd as trustee for the CJMcG Superannuation Fund prior to this Court's consolidation order on 15 August 2019;

(iv) \$908,879.07 (inclusive of GST) to be paid to Burford Asia Investments Pte Ltd for costs incurred by Ashita Tomi Pty Ltd as trustee for the Esskay Super Fund prior to this Court's consolidation order on 15 August 2019;

(v) \$249,942.18 (inclusive of GST) to be paid to ICP Capital Pty Limited for costs incurred by Mr Jorge Mayer prior to this Court's consolidation order on 15 August 2019;

(vi) \$9,066,103.87 (inclusive of GST) to be paid to the Funders, in equal shares, for costs incurred by the Plaintiffs and paid or payable by the Funders up to 31 March 2024;

(vii) up to \$299,233.00 (inclusive of GST) to be paid to the solicitors for the Plaintiffs for costs incurred, or estimated to be incurred, between 1 April 2024 and the date of the hearing of this motion;

(viii) up to \$48,438.50 (inclusive of GST) to be paid to the solicitors for the Plaintiffs for costs incurred, or estimated to be incurred in respect of the SDS;

(c) the amount of \$60,000 to be paid to the Plaintiffs, in equal shares, as compensation for the time expended by each of the Plaintiffs in carrying out their role as representative plaintiffs (referred to in the SDS as the 'Plaintiffs' Reimbursement Payments'); and

(d) the amount of \$269,940.00 (inclusive of GST) payable to the Settlement Administrator for its role in administering the SDS (referred to in the SDS as the "Administration Costs")

(together, the Settlement Deductions).

Late Registrants

(7) The persons identified at page 149 of Exhibit DS-1 to the Scattini Affidavit are deemed to have registered by the registration deadline, being 4.00pm AEDT on 19 January 2024.

Dismissal and costs

(8) All existing costs orders in this Proceeding are vacated.

(9) The Settlement Administrator is to notify the Court and the parties to this Proceeding once the administration of the SDS has been completed, seven days after which notification this Proceeding is to be dismissed with no order as to costs (without the need for any further order).

Return of security

(10) The Court to release the funds (including any interest or other amounts which have accrued on such funds) held by it as security for costs (Security Amount), by way of bank transfer to the Funders in equal shares.

(11) Liberty to apply on three days' notice.

2018/00353304-008 / Notice of Motion Civil - Ashita Tomi Pty Ltd as trustee for Esskay Super Fund v RCR TOMLINSON LTD trading as RCR Tomlinson Ltd

Notice of Motion granted

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Justice S Nixon

Signed

Date