



Issued: 2 September 2019 4:54 PM

JUDGMENT/ORDER

COURT DETAILS

Court	Supreme Court of NSW
Division	Equity
List	Corporations List
Registry	Supreme Court Sydney
Case number	2018/00361179

TITLE OF PROCEEDINGS

First Applicant	Jason Preston, William J Harris, Robert C Brauer & Matthew W Caddy in their capacity as joint & several administrators of RCR Tomlinson Ltd (administrators appointed) & COMPANIES LISTED IN SCHEDULE 1
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Corporation subject of the proceeding	RCR Tomlinson Ltd (administrators appointed) & ORS
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DATE OF JUDGMENT/ORDER

Date made or given	26 August 2019
Date entered	2 September 2019

TERMS OF JUDGMENT/ORDER

VERDICT, ORDER OR DIRECTION:

Hearing as to directions.

- Black J grants leave to CBA Corporate Services (NSW) Pty Ltd to appear as an interested person for today only under s 2.13 of the Supreme Court (Corporations) Rules.
- Black J grants leave to the Commonwealth of Australia represented by the Attorney-General's Department to be heard under r 2.13 of the Supreme Court (Corporations) Rules for today only.
- Black J grants leave to the Deputy Commissioner of Taxation to be heard under r 2.13 of the Supreme Court (Corporations) Rules for today only.

Black J makes orders in accordance with paragraphs 1 – 5 of the Short Minutes of Order in the form initialled by him and placed in the file, as amended nunc pro tunc on 28 August 2019 to insert the word “substantially” before the words “in the form set out at Annexure A” in Order 2.

TERMS OF ORDER MADE BY THE COURT

1 Pursuant to rule 6.29 of the Uniform Civil Procedure Rules 2005 (NSW):

(a) Jason Preston, William James Harris, Robert Conry Brauer and Matthew Wayne Caddy in their capacity as joint and several liquidators of the entities listed in Schedule 2 to the interlocutory process filed in these proceedings on 20 August 2019 (Interlocutory Process) be removed as parties;

(b) William James Harris and Robert Conry Brauer in their capacity as joint and several liquidators of the entities listed in Schedule 3 to the Interlocutory Process be removed as parties;

(c) William James Harris in his capacity as joint and several liquidator of the entities listed in Schedule 4 to the Interlocutory Process be removed as a party; and

(d) Robert Conry Brauer in his capacity as joint and several liquidator of the entities listed in Schedule 5 to the Interlocutory Process be removed as a party.

2 On or before 31 August 2019, the Plaintiffs to provide a copy of a notice substantially in the form set out at Annexure A to these orders (Notice) to the creditors of the companies listed in Schedule 6 to the Interlocutory Process (Residual Appointment Entities) by:

(a) where an email address is recorded in the books and records of the Residual Appointment Entities, sending the Notice to each creditor via email, using the email address of each creditor at such email address as is recorded in the books and records of the Residual Appointment Entities or as otherwise notified to the Liquidators;

(b) where an email address is not recorded in the books and records of the Residual Appointment Entities but a postal address is recorded, sending to those creditors a copy of the Notice by ordinary prepaid post, using the postal address for each creditor as is recorded in the books and records of the Residual Appointment Entities or as otherwise notified to the Liquidators; and

(c) placing the Notice on the website maintained by the Plaintiffs at <http://www.mcgrathnicol.com>.

3 Any person or entity granted leave today may issue to the plaintiffs, by not later than 4pm on 6 September 2019, an information request setting out:

(a) with particularity, the information requested; and

(b) in respect of that request, a brief explanation of why that information is necessary for the resolution of the real issues in the proceedings, and for the Court to consider the directions sought by the plaintiffs.

4 The parties to confer in respect of any request made pursuant to order 3 above by 13 September 2019.

5 The proceedings be listed for directions on 16 September 2019 at 2 pm.

SEAL AND SIGNATURE



Signature	Mark Lacey
Capacity	Chief Clerk
Date	2 September 2019

If this document was issued by means of the Electronic Case Management System (ECM), pursuant to Part 3 of the Uniform Civil Procedure Rules (UCPR), this document is taken to have been signed if the person's name is printed where his or her signature would otherwise appear.

ATTACHMENTS TO ORDERS

(Schedule 1 to Orders 26.8.19.pdf)
(Annexure A to Orders - 26.8.19.pdf)

[attach.]

SCHEDULE 1

No.	Name	ACN
1	RCR Tomlinson Limited (in liquidation)	008 898 486
2	RCR Tomlinson (Custodian) Pty Ltd (in liquidation)	060 012 419
3	RCR Corporate Pty. Ltd. (in liquidation)	009 246 182
4	A.C.N. 063 053 814 Pty Ltd (in liquidation) (formerly known as RCR Resources Pty Ltd)	063 053 814
5	RCR Energy (Gladstone) Pty Ltd (in liquidation)	010 941 054
6	RCR Resources (Tripower) Pty Ltd (in liquidation)	075 567 734
7	A.C.N. 060 002 940 Pty Ltd (in liquidation) (formerly known as RCR Mining Pty Ltd)	060 002 940
8	RCR Energy Pty Ltd (in liquidation)	080 753 680
9	RCR Energy Service Pty Ltd (in liquidation)	009 133 475
10	Positron Group Pty Ltd (in liquidation)	053 751 009
11	RCR Power Pty Ltd (in liquidation)	106 084 879
12	RCR Laser Pty Ltd (in liquidation)	116 641 144
13	RCR Oil & Gas Pty Ltd (in liquidation)	121 838 702
14	RCR Infrastructure Pty Ltd (in liquidation)	060 002 959
15	RCR Infrastructure Group (XNFK) Pty Ltd (in liquidation)	125 709 971
16	A.C.N. 003 905 093 Pty Ltd (in liquidation) (formerly known as RCR O'Donnell Griffin Pty Ltd)	003 905 093
17	RCR Haden Pty Ltd (in liquidation)	000 694 173
18	RCR Haden (Telco) Pty Ltd (in liquidation)	086 284 871
19	RCR Haden (Holdings) Pty Ltd (in liquidation)	111 148 844
20	A.C.N. 054 527 865 Pty Ltd (in liquidation) (formerly known as RCR Resolve FM Pty Ltd)	054 527 865
21	A.C.N. 111 148 862 Pty Ltd (in liquidation) (formerly known as RCR Resolve FM (Holdings) Pty Ltd)	111 148 862
22	RCR Infrastructure (Corporate) Pty Ltd (in liquidation)	126 817 883
23	A.C.N. 606 869 005 Pty Ltd (in liquidation) (formerly known as RCR Water Pty. Ltd.)	606 869 005
24	RCR Water (WA) Pty Ltd (in liquidation)	134 043 815
25	A.C.N. 111 148 835 Pty Ltd (in liquidation) (formerly known as RCR O'Donnell Griffin (Holdings) Pty Ltd)	111 148 835
26	A.C.N. 151 990 573 Pty Ltd (in liquidation) (formerly known as RCR O'Donnell Griffin (Projects) Pty Ltd)	151 990 573
27	Applied Laser Pty Ltd (in liquidation)	123 597 991
28	RCR Energy (Stelform) Pty Ltd (in liquidation)	003 416 564
29	RCR Energy (Stelform VRBT) Pty Ltd (in liquidation)	099 683 584
30	Stelform Piping Systems Pty Ltd (in liquidation)	099 683 566
31	Sartap Pty Ltd (in liquidation)	003 412 628
32	A.C.N. 060 002 968 Pty Ltd (in liquidation) (formerly known as RCR Resources (Heat Treatment) Pty Ltd)	060 002 968
33	Positron Power Pty. Ltd. (in liquidation)	100 647 756
34	RCR Asset Maintenance Pty Ltd (in liquidation)	123 094 735
35	RCR Building Products (Holdings) Pty Ltd (in liquidation)	111 148 853
36	A.C.N. 076 421 755 Pty Limited (in liquidation)	076 421 755
37	RCR Trafalgar Building Products Pty Ltd (in liquidation)	004 924 252
38	RCR Building Services (Egan Bros) Pty Ltd (in liquidation)	056 237 006
39	A.C.N. 064 596 854 Pty Ltd (in liquidation) (formerly known as RCR Resolve FM (Engineering) Pty Ltd)	064 596 854
40	RCR Rel Corp Management Services Pty Ltd (in liquidation)	080 877 756
41	RCCreate Pty Ltd (in liquidation)	614 291 879

ANNEXURE A

NOTICE TO CREDITORS

xxx August 2019

RCR Tomlinson Ltd (In Liquidation) ACN 008 898 486 and subsidiaries as listed in Annexure A (collectively, the RCR Group or the Companies)

As previously advised, on 21 November 2018 Jason Preston, Jamie Harris, Matthew Caddy and Rob Brauer, all Partners of McGrathNicol, were appointed Joint and Several Voluntary Administrators ("**Administrators**") of the RCR Group and were appointed joint and several liquidators on 26 March 2019 at the second meeting of creditors of the RCR Group. On 28 June 2019 Jason Preston, Jamie Harris, Matthew Caddy and Rob Brauer resigned from certain dormant entities that are in the process of being deregistered and Jamie Harris and Rob Brauer from certain other entities. The current appointments are shown in Annexure A.

Directions Application

We are writing to creditors of the RCR Group to notify them that we have filed a directions application to the Supreme Court of NSW to seek the Court's guidance as to how the proceeds of various assets owned by the entities within the RCR Group are to be distributed. The outcome of the application will have a material bearing on the distribution of funds realised throughout the insolvency process.

A copy of the interlocutory application is available on the McGrathNicol website:

<http://www.mcgrathnicol.com/creditors/rcr-group/>

If you require a copy of the supporting affidavit of Jason Preston, please contact us on the details below.

Significance

The directions application concerns the correct application of the law to the classification of assets of the RCR Group as either circulating or non-circulating, including the relevant date at which that classification is to be made. These matters are significant in that they affect the priorities in the distribution of funds in the insolvency process between employees with outstanding entitlements and the RCR Group's secured creditors.

The outcome of the application will be of direct relevance to:

- the Commonwealth of Australia; represented by the Attorney General's Department in relation to the administration of the Fair Entitlements Guarantee scheme ("**FEG**") and the DCT in respect of SGC;
- employees who still have unsatisfied claims against the RCR Group (ie unsatisfied by FEG);
- CBA Corporate Services (NSW) Pty Ltd ("**CBA**") as trustee for various banks in relation to the General Security Agreements dated 10 December 2013 and 21 October 2015; and
- secured creditors which rank **ahead** of CBA's registered security interests.

We note that:

- FEG stands in the shoes of employee creditors whose entitlements it has paid and enjoys the rights and statutory priorities which those employees would have had against their employer company. While FEG does not formally represent all employee creditors in the proceedings, it can be expected that FEG may or will advance arguments in furtherance of the rights of employees as priority unsecured creditors in relation to the proceedings;
- the DCT stands in the shoes of employee creditors in respect of unpaid superannuation entitlements (**Superannuation Guarantee Charges**);
- other than as to unpaid Superannuation Guarantee Charges, employees who have had their claims paid in full via the Fair Entitlements Guarantee process will **not be impacted** by the application; and

- the application is **not of relevance to ordinary unsecured creditors**, who are not required to take any action in response to this notice, in that there is unlikely to be sufficient funds for a distribution to them after priority creditors have been paid.

Current status

The first directions hearing in the application was held on Monday, 26 August 2019 before Justice Black.

At that hearing His Honour ordered that this notice be sent to creditors of the RCR Group.

A copy of the orders is available for download at: <http://www.mcgrathnicol.com/creditors/rcr-group/>.

Next steps

The matter is listed for a further directions hearing at [xxxxxx] on [xxxxxx] September 2019. It is expected that at that directions hearing, the Court will fix the final hearing date for the matter.

If you require any further information in relation to the directions application, please urgently contact McGrathNicol on (02) 9338 2600 or by email rcrtomgeneral@mcgrathnicol.com.

Dated: 21 August 2019

Jason Preston
Joint and Several Liquidator

Annexure A

Name	ACN	Appointees / Status
RCR Tomlinson Ltd	008 898 486	Jason Preston, Matthew Wayne Caddy, William James Harris, Robert Conry Brauer
A.C.N. 076 421 755 Pty Limited	076 421 755	None – in process of being deregistered
Applied Laser Pty Ltd	123 597 991	None – in process of being deregistered
Positron Group Pty Ltd	053 751 009	Jason Preston, Matthew Wayne Caddy
Positron Power Pty. Ltd.	100 647 756	None – in process of being deregistered
RCR Asset Maintenance Pty Ltd	123 094 735	Jason Preston, Matthew Wayne Caddy, Robert Conry Brauer
RCR Building Products (Holdings) Pty Ltd	111 148 853	Jason Preston, Matthew Wayne Caddy
RCR Building Services (Egan Bros) Pty Ltd	056 237 006	None – in process of being deregistered
RCR Corporate Pty. Ltd.	009 246 182	Jason Preston, Matthew Wayne Caddy
RCR Energy (Gladstone) Pty Ltd	010 941 054	Jason Preston, Matthew Wayne Caddy, William James Harris
RCR Energy (Stelform VRBT) Pty Ltd	099 683 584	None – in process of being deregistered
RCR Energy (Stelform) Pty Ltd	003 416 564	None – in process of being deregistered
RCR Energy Pty Ltd	080 753 680	Jason Preston, Matthew Wayne Caddy, William James Harris
RCR Energy Service Pty Ltd	009 133 475	Jason Preston, Matthew Wayne Caddy, William James Harris
RCR Haden (Holdings) Pty Ltd	111 148 844	Jason Preston, Matthew Wayne Caddy
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A.C.N. 111 148 835 Pty Ltd (formerly known as RCR O'Donnell Griffin (Holdings) Pty Ltd)	111 148 835	Jason Preston, Matthew Wayne Caddy
A.C.N. 151 990 573 Pty Ltd (formerly known as RCR O'Donnell Griffin (Projects) Pty Ltd)	151 990 573	Jason Preston, Matthew Wayne Caddy
A.C.N. 003 905 093 Pty Ltd (formerly known as RCR O'Donnell Griffin Pty Ltd)	003 905 093	Jason Preston, Matthew Wayne Caddy, William James Harris, Robert Conry Brauer
RCR Oil & Gas Pty Ltd	121 838 702	Jason Preston, Matthew Wayne Caddy
RCR Power Pty Ltd	106 084 879	Jason Preston, Matthew Wayne Caddy
RCR Rel Corp Management Services Pty Ltd	080 877 756	None – in process of being deregistered
A.C.N. 064 596 854 Pty Ltd (formerly known as RCR Resolve FM (Engineering) Pty Ltd)	064 596 854	None – in process of being deregistered
A.C.N. 111 148 862 Pty Ltd (formerly known as RCR Resolve FM (Holdings) Pty Ltd)	111 148 862	Jason Preston, Matthew Wayne Caddy
A.C.N. 054 527 865 Pty Ltd (formerly known	054 527 865	Jason Preston, Matthew Wayne Caddy

Name	ACN	Appointees / Status
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A.C.N. 060 002 968 Pty Ltd (formerly known as RCR Resources (Heat Treatment) Pty Ltd)	060 002 968	Jason Preston, Matthew Wayne Caddy, Robert Conry Brauer
RCR Resources (Tripower) Pty Ltd	075 567 734	Jason Preston, Matthew Wayne Caddy
A.C.N. 063 053 814 Pty Ltd (formerly known as RCR Resources Pty Ltd)	063 053 814	Jason Preston, Matthew Wayne Caddy, Robert Conry Brauer
RCR Tomlinson (Custodian) Pty Ltd	060 012 419	Jason Preston, Matthew Wayne Caddy
RCR Trafalgar Building Products Pty Ltd	004 924 252	None – in process of being deregistered
RCR Water (WA) Pty Ltd	134 043 815	Jason Preston, Matthew Wayne Caddy, Robert Conry Brauer
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