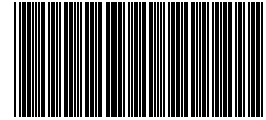




Filed: 20 August 2019 4:05 PM



D000167683

Form 3

INTERLOCUTORY PROCESS – COVERSHEET AND ACKNOWLEDGEMENT

IN THE MATTER OF RCR Tomlinson Ltd (administrators appointed) & ORS

COURT DETAILS

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

FILING DETAILS

Filed for	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, Applicant 1
Legal representative	Timothy Michael Klineberg
Legal representative reference	
Telephone	02 9296 2493
Your reference	602-0039211

HEARING DETAILS

This application will be heard at Supreme Court Sydney on 26 August 2019 at 09:45 AM

ATTACHMENT DETAILS

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

Corporations Law Interlocutory Process (Form 3) (RCR - Interlocutory Process - threshold issues directions application (signed 20.08.19).pdf)

Other supporting documentation (RCR - Affidavit of Jason Preston - threshold issues directions application (sworn 20.08.19).pdf)

[attach.]

IN THE SUPREME COURT OF NEW SOUTH WALES

No 361179 of 2018

DIVISION: EQUITY

REGISTRY: SYDNEY

IN THE MATTER OF **RCR TOMLINSON LTD (IN LIQUIDATION) & ORS**

ACN: **008 898 486**

**JASON PRESTON, WILLIAM JAMES HARRIS, ROBERT CONRY BRAUER AND
MATTHEW WAYNE CADDY IN THEIR CAPACITY AS JOINT AND SEVERAL
LIQUIDATORS OF RCR TOMLINSON LTD (IN LIQUIDATION) ACN 008 898 486**

(AND THE COMPANIES LISTED IN SCHEDULE 1)

Plaintiffs

INTERLOCUTORY PROCESS

A. DETAILS OF INTERLOCUTORY PROCESS

This interlocutory process is made under the Court's inherent jurisdiction as well as rule 6.29 of the *Uniform Civil Procedure Rules 2005* (NSW) (UCPR) and section 90-15 of the *Insolvency Practice Schedule (Corporations)* set out in Schedule 2 of the Act (IPS).

On the facts stated in the supporting affidavit of Jason Preston, the Plaintiffs apply for the following relief:

Removal of parties

1 An order pursuant to rule 6.29 of the UCPR that:

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

Filed on behalf of the Plaintiffs by:
KING & WOOD MALLESONS
Level 61 Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000

DX 113 SYDNEY
T+ 61 2 9296 2000
F+ 61 2 9296 3999
Ref: TMK/GGR
Matter no: 602-0038853

“Snapshot” Date Issue

- 2 A direction pursuant to section 90-15 of the IPS that:
- (a) the Plaintiffs are justified in treating an Asset which was the subject of a Circulating Security Interest as at the Appointment Date as property available for the payment of Priority Employee Entitlements, notwithstanding that post-Appointment Date the Asset becomes the subject of a Non-Circulating Security Interest;
 - (b) the Plaintiffs are justified in treating an Asset which was the subject of a Non-Circulating Security Interest as at the Appointment Date as not being property available for the payment of Priority Employee Entitlements, notwithstanding that post-Appointment Date the Asset becomes the subject of a Circulating Security Interest; and
 - (c) the Plaintiffs are justified in treating a New Asset as not being property available for the payment of Priority Employee Entitlements.

Surplus Proceeds Issue

- 3 A direction pursuant to section 90-15 of the IPS that the Plaintiffs are justified in treating the Surplus Proceeds as Circulating Assets available to pay Priority Employee Entitlements.

WIP Issue

- 4 A direction, pursuant to section 90-15 of the IPS that the Plaintiffs are justified in treating the proceeds of WIP as Circulating Assets available to pay Priority Employee Entitlements.

Subcontractor Proceeds Issue

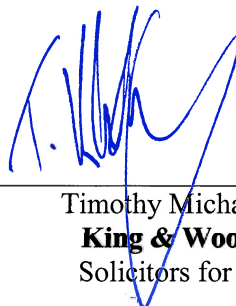
- 5 A direction, pursuant to section 90-15 of the IPS that the Plaintiffs are justified in not treating the Subcontractor Proceeds as Circulating Assets available to pay Priority Employee Entitlements.

Definitions

- 6 The following definitions apply in this interlocutory process:
- (a) “**Act**” means the *Corporations Act 2001* (Cth).
 - (b) “**Appointment Entity**” means a company listed in Schedule 1.
 - (c) “**Asset**” means any legal or equitable estate or interest in real or personal property of a Residual Appointment Entity and includes the Proceeds but does not include a New Asset.
 - (d) “**Appointment Date**” means 21 November 2018, being the date of appointment of voluntary administrators to the Appointment Entities.
 - (e) “**Bonds**” means bonds, bank guarantees or similar instruments provided pre-Appointment Date to a contractual counterparty by a Residual Appointment Entity’s financier or similar institution.

- (f) **“Circulating Asset”** has the meaning ascribed in section 340 of the *Personal Property Securities Act 2009* (Cth).
- (g) **“Circulating Security Interest”** has the meaning ascribed under section 51C of the Act.
- (h) **“New Asset”** means any legal or equitable estate or interest in real or personal property acquired by a Residual Appointment Entity post-Appointment Date and which is not cash at bank or equivalent derived from the sale of an Asset in existence as at the Appointment Date.
- (i) **“Non-Circulating Security Interest”** means a Security Interest which is not a Circulating Security Interest.
- (j) **“Priority Employee Entitlements”** means the debts and amounts referred to in section 561 of the Act which must be paid in priority over the claims of a secured party in relation to a Circulating Security Interest created by a Residual Appointment Entity.
- (k) **“Proceeds”** means any cash at bank or equivalent derived from the sale of an Asset.
- (l) **“Residual Appointment Entity”** means a company listed in Schedule 6.
- (m) **“Security Interest”** the meaning ascribed under section 51A of the Corporation Act.
- (n) **“Subcontractor Proceeds”** means the proceeds of bonds, bank guarantees or similar instruments which are payable up to a specified maximum amount and were provided to a Residual Appointment Entity pre-Appointment Date and which were called upon post-Appointment Date.
- (o) **“Surplus Proceeds”** means, in circumstances where post-Appointment Date the contractual counterparty of a Residual Appointment Entity calls upon a Bond in accordance with the contract between the parties, the surplus proceeds from that Bond paid to the Residual Appointment Entity by the contractual counterparty.
- (p) **“WIP”** means work done, services rendered or goods produced by a Residual Appointment Entity in performance of a contract, but in respect of which no invoice or demand or request for payment has been issued to the relevant contractual counterparty as at the Appointment Date.

Date: 20/08/19



Timothy Michael Klineberg
King & Wood Mallesons
Solicitors for the Plaintiffs

This application will be heard by _____ at the Supreme Court, Law Courts Building,
Queens Square Sydney at _____ on _____ 2019.

B. NOTICE TO RESPONDENT(S)

THERE ARE NO RESPONDENTS TO THIS APPLICATION

C. APPLICATION FOR WINDING UP ON GROUNDS OF INSOLVENCY

NOT APPLICABLE

D FILING

This interlocutory process is filed by Timothy Michael Klineberg of King & Wood Malleons, solicitor for the Plaintiffs.

E SERVICE

The Plaintiffs' address for service is

Tim Klineberg
King & Wood Malleons
Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000
(ref: TMK/GGR)

It is not intended to serve a copy of this interlocutory process on any person.

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	RCReate Pty Ltd (in liquidation)	614 291 879

SCHEDULE 2

No.	Name	ACN
1	Applied Laser Pty Ltd (in liquidation)	123 597 991
2	RCR Energy (Stelform) Pty Ltd (in liquidation)	003 416 564
3	RCR Energy (Stelform VRBT) Pty Ltd (in liquidation)	099 683 584
4	Stelform Piping Systems Pty Ltd (in liquidation)	099 683 566
5	Sartap Pty Ltd (in liquidation)	003 412 628
6	Positron Power Pty. Ltd. (in liquidation)	100 647 756
7	A.C.N. 076 421 755 Pty Limited (in liquidation)	076 421 755
8	RCR Trafalgar Building Products Pty Ltd (in liquidation)	004 924 252
9	RCR Building Services (Egan Bros) Pty Ltd (in liquidation)	056 237 006
10	A.C.N. 064 596 854 Pty Ltd (in liquidation) (formerly known as RCR Resolve FM (Engineering) Pty Ltd)	064 596 854
11	RCR Rel Corp Management Services Pty Ltd (in liquidation)	080 877 756
12	RCReate Pty Ltd (in liquidation)	614 291 879

SCHEDULE 3

No.	Name	ACN
1	RCR Tomlinson (Custodian) Pty Ltd (in liquidation)	060 012 419
2	RCR Corporate Pty. Ltd. (in liquidation)	009 246 182
3	RCR Resources (Tripower) Pty Ltd (in liquidation)	075 567 734
4	Positron Group Pty Ltd (in liquidation)	053 751 009
5	RCR Power Pty Ltd (in liquidation)	106 084 879
6	RCR Oil & Gas Pty Ltd (in liquidation)	121 838 702
7	RCR Infrastructure Pty Ltd (in liquidation)	060 002 959
8	RCR Infrastructure Group (XNFK) Pty Ltd (in liquidation)	125 709 971
9	RCR Haden Pty Ltd (in liquidation)	000 694 173
10	RCR Haden (Telco) Pty Ltd (in liquidation)	086 284 871
11	RCR Haden (Holdings) Pty Ltd (in liquidation)	111 148 844
12	A.C.N. 054 527 865 Pty Ltd (in liquidation) (formerly known as RCR Resolve FM Pty Ltd)	054 527 865
13	A.C.N. 111 148 862 Pty Ltd (in liquidation) (formerly known as RCR Resolve FM (Holdings) Pty Ltd)	111 148 862
14	RCR Infrastructure (Corporate) Pty Ltd (in liquidation)	126 817 883
15	A.C.N. 606 869 005 Pty Ltd (in liquidation) (formerly known as RCR Water Pty. Ltd.)	606 869 005
16	A.C.N. 111 148 835 Pty Ltd (in liquidation) (formerly known as RCR O'Donnell Griffin (Holdings) Pty Ltd)	111 148 835
17	A.C.N. 151 990 573 Pty Ltd (in liquidation) (formerly known as RCR O'Donnell Griffin (Projects) Pty Ltd)	151 990 573
18	RCR Building Products (Holdings) Pty Ltd (in liquidation)	111 148 853

SCHEDULE 4

No.	Name	ACN
1	A.C.N. 063 053 814 Pty Ltd (in liquidation) (formerly known as RCR Resources Pty Ltd)	063 053 814
2	A.C.N. 060 002 940 Pty Ltd (in liquidation) (formerly known as RCR Mining Pty Ltd)	060 002 940
3	RCR Water (WA) Pty Ltd (in liquidation)	134 043 815
4	A.C.N. 060 002 968 Pty Ltd (in liquidation) (formerly known as RCR Resources (Heat Treatment) Pty Ltd)	060 002 968
5	RCR Asset Maintenance Pty Ltd (in liquidation)	123 094 735

SCHEDULE 5

No.	Name	ACN
1	RCR Energy (Gladstone) Pty Ltd (in liquidation)	010 941 054
2	RCR Energy Pty Ltd (in liquidation)	080 753 680
3	RCR Energy Service Pty Ltd (in liquidation)	009 133 475
4	RCR Laser Pty Ltd (in liquidation)	116 641 144

SCHEDULE 6

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
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25	A.C.N. 111 148 835 Pty Ltd (in liquidation) (formerly known as RCR O'Donnell Griffin (Holdings) Pty Ltd)	111 148 835
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27	A.C.N. 060 002 968 Pty Ltd (in liquidation) (formerly known as RCR Resources (Heat Treatment) Pty Ltd)	060 002 968
28	RCR Asset Maintenance Pty Ltd (in liquidation)	123 094 735
29	RCR Building Products (Holdings) Pty Ltd (in liquidation)	111 148 853