



Issued: 23 November 2018 4:46 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 Plaintiff	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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First

### DATE OF JUDGMENT/ORDER

Date made or given	23 November 2018
Date entered	23 November 2018

### TERMS OF JUDGMENT/ORDER

Filed in Court for Plaintiff: Originating Process dated 23 November 2018; Affidavit of Jason Preston dated 23 November 2018.

### VERDICT, ORDER OR DIRECTION:

- Black J grants leave to file in Court Originating Process dated 23 November 2018 on the undertaking of the solicitor for the Plaintiffs to pay applicable filing fee.
- Black J grants leave to file in Court affidavit of Jason Preston dated 23 November 2018.

Ex tempore judgment delivered on suppression orders.

Black J makes orders in accordance with Orders 10 and 11 of the Short Minutes of Order initialled by him and placed in the file.

Ex tempore judgment delivered on other orders sought by Administrators.

Black J makes orders in accordance with the Short Minutes of Order initialled by him and placed in the file.

### TERMS OF ORDER MADE BY THE COURT

#### Funding Arrangement

1. Pursuant to section 90-15 of the IPS, the Plaintiffs (in their capacity as administrators of each of the Appointment Entities other than Applied Laser Pty Ltd (Administrators Appointed), RCR Energy (Stelform) Pty Ltd (Administrators Appointed), RCR Energy (Stelform VRBT) Pty Ltd (Administrators

Appointed), Stelform Piping Systems Pty Ltd (Administrators Appointed) and RCReate Pty Ltd (Administrators Appointed) (Non-Borrowing Entities)) are justified in procuring the Appointment Entities other than the Non-Borrowing Entities (Borrowing Entities), jointly and severally, to borrow loan monies not exceeding the sum of \$29 million from the Commonwealth Bank of Australia (Bank) pursuant to the facility agreement substantially in the form of Exhibit P2 (Facility Agreement).

2. Pursuant to section 447A(1) of the Act, Part 5.3A of the Act is to operate so that if the indemnity of the Plaintiffs (in their capacity as administrators of each of the Borrowing Entities) under section 443D of the Act out of the property of the relevant Borrowing Entity is insufficient to satisfy any debt or liability incurred by the Plaintiffs (in their capacity as administrators of the relevant Borrowing Entity) in respect of the Facility Agreement, then the Plaintiffs will not be personally liable to repay any such debt or liability to the extent of that insufficiency.

3. Pursuant to section 447A(1) of the Act, Part 5.3A of the Act is to operate so that the indemnity of the Plaintiffs (in their capacity as administrators of each of the Borrowing Entities) under section 443D of the Act out of the property of the relevant Borrowing Entity is, in the case of each of the Borrowing Entities, to cover all debts and liabilities incurred by each Borrowing Entity in respect of the Facility Agreement.

#### Intercompany Administration Loans

4. Pursuant to section 447A(1) of the Act, Part 5.3A of the Act is to operate so that if the indemnity of the Plaintiffs (in their capacity as administrators of each of the Appointment Entities) under section 443D of the Act out of the property of the relevant Appointment Entity is insufficient to satisfy any debt or liability incurred by the Plaintiffs (in their capacity as administrators of the relevant Appointment Entity) in respect of any loan monies borrowed by the relevant Appointment Entity from another Appointment Entity, then the Plaintiffs will not be personally liable to repay any such debt or liability to the extent of that insufficiency.

#### Bank account

5. Pursuant to section 65-45 of the IPS, the Plaintiffs (in their capacity as administrators of the Appointment Entities) are not required to maintain a separate administration account in relation to each of the Appointment Entities as otherwise required by the operation of Division 65 of the IPS.

#### Liberty to apply

6. Liberty to apply on 2 business days' notice is granted to any person who can demonstrate sufficient interest to apply to the Court for an order discharging or varying any of Orders 1 to 5 above.

#### Notification of application and orders

7. The Plaintiffs must cause notice of these orders to be given to the creditors of the Appointment Entities by, on or before 26 November 2018:

- i. notifying each creditor via email of the making of the orders and providing a link to a website where the creditor may download the orders, using the email address of each creditor at such email address as is recorded in the books and records of the Appointment Entities;
- ii. where an email address is not recorded in the books and records of the Appointment Entities but a postal address is recorded, notifying each such creditor in writing of the making of the orders and providing a link to a website where the creditor may download the orders, using the postal address for each creditor recorded in the books and records of the Appointment Entities; and
- iii. placing the orders on the websites maintained by the Plaintiffs at <http://www.mcgrathnicol.com> and the RCR website at <https://www.rcrtom.com.au>.

#### Notification of the first meeting of creditors

8. Pursuant to section 447A(1) of the Act, Part 5.3A of the Act is to operate in relation to each of the Appointment Entities such that notice of the first meetings of the Appointment Entities (First Meetings) required to be given pursuant to section 436E(3) of the Act and 75-15(1) of the Insolvency Practice Rules (Corporations) 2016 (IPR) (the Notice) and the declaration required to be pursuant to s 436DA(3) of the Act ("DIRRI") will be validly given to creditors of the Appointment Entities by, on or before 26 November 2018:

- i. sending the Notice and the DIRRI by email to the email address of each creditor at such email address as is recorded in the books and records of the Appointment Entities;
- ii. where an email address is not recorded in the books and records of the Appointment Entities but a postal address is recorded, sending by post the Notice and the DIRRI to the postal address of each creditor at such postal address as is recorded in the books and records of the Appointment Entities ;
- iii. causing the Notice and the DIRRI to be published on the ASIC published notices website at <https://insolvencynotices.asic.gov.au/> ;
- iv. publishing the Notice and the DIRRI on the website maintained by the Plaintiffs at <http://www.mcgrathnicol.com> ; and
- v. publishing the Notice and the DIRRI on the website of RCR at <https://www.rcrtom.com.au/> .

Other

9. The Plaintiffs' costs of and incidental to this application be costs and expenses in the administration of each of the Appointment Entities, and be paid out of the assets of each of the Appointment Entities.

10. Pursuant to section 7(b) of the Court Suppression and Non-Publication Orders Act 2010 (NSW), disclosure of paragraphs 43, 47(b) and 51, the documents at tabs 5 and 6 of Exhibit P1, Exhibit P2, and paragraphs 24 and 29 of Counsels' submissions be suppressed, on the grounds that the order is necessary to prevent prejudice to the proper administration of justice and it is otherwise necessary in the public interest for the order to be made and that public interest significantly outweighs the public interest in open justice. This order applies throughout the Commonwealth of Australia.

11. The affidavit of Mr Preston be placed in a sealed envelope, marked that access not be permitted without leave of a Judge of the Court on application made with 2 business days' notice to the Plaintiffs.

12. Exhibits be returned on condition they be retained by the Plaintiffs or their solicitor until the completion of the administration and any liquidation.

13. These orders be entered forthwith.

## SEAL AND SIGNATURE

Signature

Capacity

Date

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.

## FURTHER DETAILS ABOUT Plaintiff(s)

First Plaintiff

Name

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

Address

Telephone  
Fax  
E-mail  
Client reference

**Legal representative for plaintiffs**

Name	Timothy Michael Klineberg
Practicing certificate number	38255
Address	Governor Phillip Tower Level 61 1 Farrer Place SYDNEY NSW 2000
DX address	
Telephone	02 9296 2493
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Email	tim.klineberg@au.kwm.com
Electronic service address	tim.klineberg@au.kwm.com

**FURTHER DETAILS ABOUT (s)**

**ATTACHMENTS TO ORDERS**

(Schedule 1.pdf)

[attach.]

## SCHEDULE 1

	<b>Name</b>	<b>ACN</b>
1	RCR Tomlinson (Custodian) Pty Ltd (Administrators Appointed)	060 012 419
2	RCR Corporate Pty. Ltd. (Administrators Appointed)	009 246 182
3	RCR Resources Pty Ltd (Administrators Appointed)	063 053 814
4	RCR Energy (Gladstone) Pty Ltd (Administrators Appointed)	010 941 054
5	RCR Resources (Tripower) Pty Ltd (Administrators Appointed)	075 567 734
6	RCR Mining Pty Ltd (Administrators Appointed)	060 002 940
7	RCR Energy Pty Ltd (Administrators Appointed)	080 753 680
8	RCR Energy Service Pty Ltd (Administrators Appointed)	009 133 475
9	Positron Group Pty Ltd (Administrators Appointed)	053 751 009
10	RCR Power Pty Ltd (Administrators Appointed)	106 084 879
11	RCR Laser Pty Ltd (Administrators Appointed)	116 641 144
12	RCR Oil & Gas Pty Ltd (Administrators Appointed)	121 838 702
13	RCR Infrastructure Pty Ltd (Administrators Appointed)	060 002 959
14	RCR Infrastructure Group (XNFK) Pty Ltd (Administrators Appointed)	125 709 971
15	RCR O'Donnell Griffin Pty Ltd (Administrators Appointed)	003 905 093
16	RCR Haden Pty Ltd (Administrators Appointed)	000 694 173
17	RCR Haden (Telco) Pty Ltd (Administrators Appointed)	086 284 871
18	RCR Haden (Holdings) Pty Ltd (Administrators Appointed)	111 148 844
19	RCR Resolve FM Pty Ltd (Administrators Appointed)	054 527 865
20	RCR Resolve FM (Holdings) Pty Ltd (Administrators Appointed)	111 148 862
21	RCR Infrastructure (Corporate) Pty Ltd (Administrators Appointed)	126 817 883
22	RCR Water Pty. Ltd. (Administrators Appointed)	606 869 005
23	RCR Water (WA) Pty Ltd (Administrators Appointed)	134 043 815
24	RCR O'Donnell Griffin (Holdings) Pty Ltd (Administrators Appointed)	111 148 835
25	RCR O'Donnell Griffin (Projects) Pty Ltd (Administrators Appointed)	151 990 573
26	Applied Laser Pty Ltd (Administrators Appointed)	123 597 991
27	RCR Energy (Stelform) Pty Ltd (Administrators Appointed)	003 416 564
28	RCR Energy (Stelform VRBT) Pty Ltd (Administrators Appointed)	099 683 584
29	Stelform Piping Systems Pty Ltd (Administrators Appointed)	099 683 566
30	Sartap Pty Ltd (Administrators Appointed)	003 412 628
32	RCR Resources (Heat Treatment) Pty Ltd (Administrators Appointed)	060 002 968
32	Positron Power Pty. Ltd. (Administrators Appointed)	100 647 756
33	RCR Asset Maintenance Pty Ltd (Administrators Appointed)	123 094 735
34	RCR Building Products (Holdings) Pty Ltd (Administrators Appointed)	111 148 853
35	A.C.N. 076 421 755 Pty Limited (Administrators Appointed)	076 421 755
36	RCR Trafalgar Building Products Pty Ltd (Administrators Appointed)	004 924 252
37	RCR Building Services (Egan Bros) Pty Ltd (Administrators Appointed)	056 237 006
38	RCR Resolve FM (Engineering) Pty Ltd (Administrators Appointed)	064 596 854
39	RCR Rel Corp Management Services Pty Ltd (Administrators Appointed)	080 877 756
40	RCReate Pty Ltd (Administrators Appointed)	614 291 879