

OUTCOME DETAILS

**Supreme Court - Civil
at Supreme Court Sydney
on 17 March 2021**

2018/00052431-001 / Summons: Epaminondas Mastoris v DSHE Holdings Limited

The Court orders:

(1) Pursuant to s 173 of the Civil Procedure Act 2005 (NSW) (Act):

(a) the terms of the settlement of proceeding no 2017/294069 (Findlay Proceeding), proceeding no 2018/52431 (Mastoris Proceeding) and proceeding no 2019/209326 (Insurance Proceeding) (together the Class Action Proceedings) (Settlement) as recorded in the Deed of Settlement and Release dated 5 March 2021 and contained at Tab 1 of Confidential Exhibit RGJ-11 to the affidavit of Robert Guy Johnston sworn on 4 March 2021 (Settlement Deed) is approved; and

(b) the terms of the Settlement Distribution Scheme contained at Tab 2 of Confidential Exhibit RGJ-11 to the affidavit of Robert Guy Johnston sworn on 4 March 2021 (SDS) is approved.

(2) Pursuant to s 183 of the Act, the Plaintiffs are authorised, nunc pro tunc, to enter into the Heads of Agreement dated 7 December 2020 and the Settlement Deed for and on behalf of all group members (excluding those persons who opted out of the proceeding by 19 November 2018 or after that date with the approval of the Court) (Group Members).

(3) Pursuant to s 179 of the Act, the persons affected and bound by the Settlement are the Plaintiffs, the Defendants, the Group Members, the D&O Insurers (as defined in the Settlement Deed) and the Funders (as defined in the Settlement Deed).

Administration of settlement

(4) Pursuant to ss 173 and/or 183 of the Act, Mr John Richard Park of FTI Consulting (Australia Pty Ltd) is appointed as administrator of the SDS (Settlement Administrator).

(5) The Settlement Administrator is granted liberty to relist the proceeding for the purpose of seeking orders consequential to or in connection with the Settlement and/or the SDS.

(6) The Settlement Administrator is joined as a party to the proceeding pursuant to r 6.24 of the Uniform Civil Procedure Rules 2005 (NSW) for the limited purpose of exercising the liberty granted under order 5 above.

(7) Pursuant to s 173(2) of the Act and for the purposes of the SDS, payments of the following amounts out of the Distribution Fund Account are approved:

(a) the Plaintiffs' Legal Costs in the amount of up to \$19,590,125 inclusive of GST comprising the Plaintiffs' reasonable costs and disbursements incurred or estimated to be incurred in conducting the proceeding, including:

(i) \$18,750,000 inclusive of GST in costs incurred up to 3 December 2020 to be paid to Vannin Capital Operations Limited and Vannin Capital (Australia) Pty Ltd (together, Vannin) and ICP Capital Pty Ltd and Investor Claim Partner Pty Ltd (together, ICP) (collectively, the Funders) (on the basis that 50% of this amount be paid to Vannin and 50% of this amount be paid to ICP); and

(ii) up to \$840,125 inclusive of GST in costs incurred, or estimated to be incurred, between 4 December 2020 and the date of this judgment in obtaining approval of the Settlement to be paid to the Plaintiffs' legal representatives provided that the amount to be deducted on account of the unbilled and estimated costs of Johnson Winter & Slattery and Corrs Chambers Westgarth is to be no more than is certified by Ms Elizabeth Harris to be reasonable and that the costs of such certification is not be paid out of the Distribution Fund Account and is to be paid by the Funders;

(b) the following amounts to the Plaintiffs for the time spent and expenditure reasonably incurred in the proceedings for the benefit of the Group Members:

- (i) \$20,000 to Mr Epaminondas Mastoris;
- (ii) \$10,000 to Mr Haliburton Charles David Findlay; and
- (iii) \$10,000 to Mrs Marian Jennifer Findlay;

(c) up to \$282,000 inclusive of GST to the Settlement Administrator, the Plaintiffs and their legal representatives, the Funders or The Advisory Company Pty Ltd (as the case may be) for costs and disbursements incurred in connection with the administration of the SDS.

Registrants

(8) The following persons are deemed to have registered to receive a distribution from the proceeds of the Settlement pursuant to paragraphs 10 and 11 of the orders made on 17 December 2020:

- (a) Stephen Anthony Bosse;
- (b) Rodney Alexander Willis;
- (c) Rodney Alexander Willis and Roslyn Lister Willis;
- (d) Kingsley Woods Pty Ltd atf Kennedy Family Super Fund;
- (e) Leon Brett Andrew;
- (f) Stephen Patrick Kameniar;
- (g) Brian Leslie Garrington;
- (h) Graeme Robert Stevens;
- (i) Siew Hsia Chu;
- (j) Flora Yu;
- (k) Terence Reginald Cook;
- (l) Kevin Wong;
- (m) Charbel Elhage; and
- (n) Christopher Paul Sierink.

Discontinuance

(9) The Class Action Proceedings are discontinued with no order as to costs, with such discontinuance to take effect upon completion of administration of the SDS, being the date of receipt by the Court of a report under clause 9.1 of the SDS.

(10) All previous costs orders made in the Class Action Proceedings are vacated.

Return of security for costs

(11) The security provided by the Funders in the form of Deeds of Indemnity in favour of each of the Defendants and payment into Court of security for the costs of enforcing the Deeds of Indemnity, and any interest accrued on that amount, pursuant to orders made on 10 May 2019 (in the case of Deloitte), 20 June 2019 (in the case of the Company, Abboud and Potts) and 15 October 2019 and 20 December 2019 (in the case of the defendants to the Insurance Proceeding) be returned to the Funders.

Suppression order

(12) Pursuant to s 183 of the Act and/or ss 7 and 8(1)(a) of the Court Suppression and Non-publication Orders Act 2010 (NSW), until further order, in order to prevent prejudice to the proper administration of justice, the Court orders that:

- (a) Tab 1 of Confidential Exhibit RGJ-8 to the affidavit of Robert Guy Johnston sworn 16 December 2020;
- (b) Tabs 1, 9, 10 and 11 of Confidential Exhibit RGJ-10 to the affidavit of Robert Guy Johnston sworn 25 February 2021;
- (c) Confidential Exhibit ILD-2 to the affidavit of Ian Leslie Dallen sworn 25 February 2021;
- (d) Confidential Exhibit ILD-3 to the affidavit of Ian Leslie Dallen sworn 1 March 2021;
- (e) pages 37-42 of Confidential Exhibit SRW-3 to the affidavit of Simon Richard Weeks sworn 5 March 2021;
- (f) the confidential opinion of trial counsel concerning the proposed settlement dated 26 February 2021; and

(g) the supplementary confidential opinion of trial counsel concerning the amended Settlement Distribution Scheme dated 4 March 2021, are not to be disclosed (by publication or otherwise) to any person or entity, except to:

- (h) the judge case-managing and/or hearing the Settlement Approval Application or any appeal therefrom;
- (i) the Plaintiffs and their legal representatives; and
- (j) the Funders.

(Reasons published)

Justice J Stevenson

Signed

Date