

IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMON LAW DIVISION

No. S CI 2010 5318

BETWEEN

ERIN DOWNIE

Plaintiff

and

SPIRAL FOODS PTY LTD (ACN 006 292 780) and others
according to the attached Schedule of Parties

Defendants

JUDGE:

The Honourable Justice J Forrest

DATE MADE:

8 May 2015

ORIGINATING PROCESS:

Amended Writ dated 21 December 2012

HOW OBTAINED:

Plaintiff's summons of 19 February 2015 and on return of the orders of the Honourable Justice J Forrest dated 22 January 2015

ATTENDANCE:

Mr D Curtain QC with Ms L Nichols and Ms K Burke of counsel for the Plaintiff

No appearance for the Defendants

OTHER MATTERS:

Nil

THE COURT ORDERS THAT:

Settlement approval

- 1 Subject to paragraphs 4 and 5 of these orders, pursuant to section 33ZF of the Supreme Court Act 1986 (**Act**), the Court authorises the plaintiff *nunc pro tunc*, for and on behalf of the group members and each of them, to enter into and give effect to the Deed of Settlement, a copy of which is Exhibit IL-1 of the 'open' Affidavit of Irina Lubomirska dated 19 February 2015 (**Deed**), as a deed duly executed by the parties according to its terms, and enter into and give effect to the transactions contemplated by the Deed.
- 2 Subject to paragraphs 4 and 5 of these orders, pursuant to sections 33V, 33ZF and 33ZG of the Act, settlement of the proceeding on the terms set out in the Deed be approved.

3 Subject to paragraphs 4 and 5 of these orders, pursuant to sections 33V, 33ZF and 33ZG of the Act, the terms set out in the document titled 'Settlement Scheme' as amended and filed on 10 April 2015, a copy of which forms Annexure A to my reasons for judgment [2015] VSC 190 (7 May 2015) (**Scheme**), be approved as the procedure for distributing among the plaintiff and group members the settlement sum payable by the defendants pursuant to the Deed.

Plaintiff's Costs and Scheme Administration Costs

4 Pursuant to section 33ZF of the Act:

(a) Judicial Registrar Gourlay, or such other Costs Registrar as is nominated by the Court, be appointed to conduct a general level review of the report of Ms Dealehr dated 16 February 2015 and to report to the supervising judge whether the costs claimed are reasonable, including consideration of;

- i. the reasonableness of the terms of the fee and retainer agreements (including the provisions for ancillary services, interest and an uplift factor);
- ii. whether the fees and disbursements actually charged by Maurice Blackburn have been calculated in accordance with the fee and retainer agreement; and
- iii. confirming so far as the Judicial Registrar or Costs Registrar can determine, no significant portion of the fees and disbursements charged by Maurice Blackburn has been inappropriately or unnecessarily incurred in conducting the proceedings on behalf of the plaintiff and the group members;

(b) if, pursuant to paragraph [4](a) of these orders, the Judicial Registrar or Costs Registrar opines that the costs claimed are reasonable, those costs are to be paid by the group members who become entitled to a payment of compensation in consequence of the Deed and the Scheme, according to the procedure set out in the Scheme;

(c) any differences of opinion raised by the report of the Costs Registrar or Judicial Registrar be resolved in accordance with direction of the supervising judge.

5 Pursuant to sections 33V and 33ZF of the Act, alternatively section 33ZG, alternatively the inherent jurisdiction of the Court:

(a) the Administrator, at such times as it considers appropriate, file with the Court its



claims for payment of Administration Costs for the purposes of the Scheme, including costs of this application;

- (b) Judicial Registrar Gourlay, or such other Costs Registrar as is nominated by the Court, be appointed to conduct a general level review of any claim for Administration Costs and to report to the supervising judge whether the costs claimed are reasonable;
- (c) subject to any further orders made by the supervising judge – if, pursuant to paragraph [5](b) of these orders, the Judicial Registrar or Costs Registrar opines that the Administration Costs claimed are reasonable, those costs are to be paid by the group members who become entitled to a payment of compensation in consequence of the Deed and the Scheme, according to the procedure set out in the Scheme;
- (d) any differences of opinion raised by the report of the Costs Registrar or Judicial Registrar be resolved in accordance with direction of the supervising judge.

Persons under a disability

6 Pursuant to sections 33V, 33ZF, 33ZG and 33ZJ of the Act, and Rule 2.04 of the *Supreme Court (General Civil Procedure) Rules 2005 (Rules)*:

- (a) Compliance with Rule 15.08(2) of the Rules be dispensed with, in respect of the application for approval of the proposed settlement of the proceeding; and
- (b) Until further order, compliance with Rule 15.08(3) of the Rules be dispensed with in respect of any compromise of a claim by a person under a disability, effected pursuant to the Scheme.

Plaintiff's reimbursement payment

7 Pursuant to sections 33V and 33ZF of the Act, alternatively section 33ZJ, alternatively the inherent jurisdiction of the Court, the Plaintiff's Reimbursement Payment for the purposes of the Scheme is approved in the amount of \$13,470.46.

Confidential documents

8 Pursuant to section 33ZF of the Act, alternatively the inherent jurisdiction of the Court, and Rule 28.05 of the Rules, the Confidential Affidavit of Irina Lubomirska dated 19 February 2015 (**Confidential Affidavit of Irina Lubomirska**) and its exhibits be:



- (a) confidential and not to be disclosed to any person or party;
 - (b) placed on Court file in a sealed envelope marked “Not to be opened except by leave of the Court or a Judge”; and
 - (c) held on Court file in accordance with (a) and (b);
- until further order of the Court.


9 Pursuant to section 33ZF of the Act, alternatively the inherent jurisdiction of the Court, and Rule 28.05 of the Rules, Maurice Blackburn file a version of the Confidential Affidavit of Irina Lubomirska and its exhibits, redacted as consistent with my reasons for judgment [2015] VSC 190 (7 May 2015), such redacted affidavit to be placed on the Court file and be available for inspection.

Other matters

- 10 Pursuant to section 33ZF of the Act, the Administrator as defined in the Scheme have liberty to apply to the supervising judge for orders in respect of any issue arising in relation to the administration of the Scheme, on not less than 5 clear business days’ notice to any party affected by the issue.
- 11 All orders for costs made in the proceeding, including orders for reserved costs, be vacated, with the exception of the orders dated 19 May 2014 apportioning costs of placing the newspaper advertisements referred to in those orders.
- 12 Upon completion of distribution pursuant to the Scheme, the proceeding, including any third party and contribution proceedings or claims, be dismissed with no order as to costs.
- 13 The Honourable Justice J Forrest (or, in his absence, Daly AsJ or such other Judge or Associate Judge as is nominated by the Court) be nominated as supervising judge with respect to the Scheme until further order of the Associate Judge in charge of Listings.



DATE AUTHENTICATED: 8 May 2015



THE HON. JUSTICE J FORREST

SCHEDULE OF PARTIES

ERIN DOWNIE

Plaintiff

and

SPIRAL FOODS PTY LTD (ACN 006 292 780)

First Defendant

MUSO CO. LTD.

Second Defendant/
First Third Party

MARUSAN-AI CO. LTD.

Third Defendant/
Second Third Party

