



Federal Court of Australia

District Registry: Victoria

Division: General

No: VID1390/2017

CLIME CAPITAL LIMITED (ACN 106 282 777)

Applicant

UGL PTY LIMITED (ACN 009 180 287)

Respondent

ORDER

JUDGE: JUSTICE MURPHY

DATE OF ORDER: 24 October 2019

WHERE MADE: Melbourne

THE COURT ORDERS THAT:

1. The application pursuant to s 33V of the *Federal Court of Australia Act 1976* (Cth) (**Act**) for orders approving the proposed settlement (**Approval Application**), be listed for hearing before Justice Anastassiou (**Approval Judge**), on 4 December 2019 at 10.15 am (**Approval Hearing**).

Notice to Group Members

2. Group Members be given notice of the proposed settlement pursuant to s 33X of the Act:
 - (a) of the date, time and place of the Approval Hearing on the date specified in paragraph 1 of these orders; and
 - (b) of the fact that they may oppose the proposed settlement.
3. The form and content of the notice of proposed settlement to group members set out in Annexure A to these orders (**Notice**) be approved pursuant to s 33Y of the Act.
4. Pursuant to sections 33X and 33Y of the Act, the Notice shall be distributed to group members within seven business days from the date of these orders according to the following procedure:



- (a) the Respondent shall instruct its share registry to prepare a list of contact details (including the last known postal address and/or email address) for all security holdings for which securities in UGL were recorded on the UGL Ltd share register as acquired between 16 April 2014 and 5 November 2014 inclusive (**Register list**);
- (b) to the extent practicable the Respondent shall cause the removal from the Register list of the contact details of any group members who opted out of the class action in accordance with orders 15 and 16 of the orders made by Justice Murphy on 23 October 2018 as varied by order 2 of the orders made on 20 December 2018 (**Amended Register list**);
- (c) the Respondent shall cause the Notice to be sent by email to any of the security holders that have email addresses recorded on the Amended Register list, within seven business days from the date these orders are made;
- (d) for any security holder who does not have an email address recorded on the Amended Register list, the Respondent shall, within seven business days from the date these orders are made, or such other time as the Court orders, cause the Notice to be sent by prepaid ordinary post to that security holder at the address recorded for that person on the Amended Register list;
- (e) to the extent that any email sent to a security holder on the Amended Register list experiences a delivery failure, the Respondent shall cause the Notice to be sent by prepaid ordinary post to that security holder at the address recorded for that person on the Amended Register list, within two business days of receiving that delivery failure notice; and
- (f) the Applicant shall cause a copy of the Notice to be sent by email to each group member who has:
 - (i) entered into a funding agreement with IMF Bentham Limited (**IMF**);
or
 - (ii) registered in accordance with orders 18 and 19 of the orders made by his Honour Justice Murphy on 23 October 2018 (as varied by order 2 of the orders made on 20 December 2018 and order 2 of the orders made



on 16 July 2019, and including group members listed in confidential Annexure A to the orders made on 22 March 2019 and confidential Annexure A to the orders made on 16 July 2019).

(Registered Group Members).

- (g) the Applicant and IMF, shall cause a copy of the Notice to be displayed on the website of the Applicant's solicitors (at <http://phifinney-mcdonald.com/projects/>) and IMF (at <http://www.imf.com.au/ugl>), and to remain continuously so displayed up to and including the hearing of the Approval Application.
5. The costs charged by the share registry in distributing the Notice in accordance with order 3 above shall be paid in the first instance by the Applicant within seven days of the share registry issuing its invoice, but otherwise the costs of and incidental to that procedure set out in order 4 are to be costs in the proceeding.

Costs Reference

6. Pursuant to s 33ZF(1) and/or s 37P(2) and/or s 54A of the Act, and Division 28.6 of the *Federal Court Rules 2011* (Cth) (**FCR**), Ian Ramsey-Stewart of 81 Woodland Street, Balgowlah Heights, New South Wales (**Referee**) is appointed for the purpose of conducting an inquiry (**Reference**) and making a report in writing to the Court (**Report**) stating, with reasons, the Referee's opinion on the following two issues:
- (a) the reasonableness of the Applicant's legal costs for work done up to the date of the hearing of the Approval Application (including costs anticipated but yet to be incurred as at the date of the Report); and
- (b) the reasonableness of the sum proposed for the settlement administration costs, and whether the Referee can propose a cheaper and equally efficient way of conducting the administration.
7. The Referee is to submit the Report to the Court in accordance with r 28.66, addressed to the chambers of the Approval Judge on or before 18 November 2019 or such further date as the Court may determine. Unless the Approval Judge so orders, the Referee's fees shall not exceed \$18,000 plus GST.



8. Without affecting the power of the Court as to costs, the Applicant is to be liable to the Referee for the Referee's fees.
9. The costs of the Reference shall form part of the Applicant's costs and shall be deducted from the settlement sum prior to any distribution of the settlement sum to eligible group members, if the settlement is approved.
10. The Referee shall provide a copy of the Report to the Applicant and the Applicant's solicitors.
11. The Referee is not bound to conduct the Reference in accordance with the rules of evidence; and in the Report shall, to the extent it was necessary for the Referee to make any findings of fact in order to express her opinion on the issues:
 - (a) make a statement on the facts found by the Referee from which the Court may draw such inferences as it thinks fit, and/or
 - (b) submit any matter arising on the Reference for the decision of the Court, and provide alternative opinions on the issue, depending on how the Court determines the matter submitted to the Court.
12. If, for any reason, the Referee is unable to comply with the order for delivery of the Report to the Court by 18 November 2019, the Referee is to communicate that fact to the Chambers of the Approval Judge as soon as it becomes apparent to the Referee that he will be unable to do so.
13. The Referee has liberty to seek directions with respect to any matter arising in the Reference.

The Approval Application

14. By 4.00 pm on 27 November 2019 the Applicant file and serve any evidence upon which it intends to rely in support of the approval of settlement. The evidence shall include:
 - (a) material going to whether the settlement is fair and reasonable in the interests of group members, including as between group members:
 - (b) the proposed scheme for distribution of the settlement sum (**Settlement Distribution Scheme**);



- (c) evidence regarding the Applicant's costs and disbursements in conducting the proceeding and of obtaining settlement approval (including by report of the Referee);
 - (d) evidence regarding the Applicant's claim for compensation for the time and expenses incurred in the interests of prosecuting the proceeding on behalf of group members as a whole. This shall include materials showing the approximate value of IMF's waiver of the Applicant's proportionate contribution to IMF's funding commission; and
 - (e) evidence regarding the costs of administering the proposed Settlement Distribution Scheme.
15. Leave be granted to the Applicant to file any affidavit or exhibit or part thereof in respect of which confidentiality orders are to be sought (**Claimed Confidential Material**) in a sealed envelope marked "*Confidential Affidavit – Not to be Opened Except by Direction of a Judge of the Court*" and the Applicant be excused from any requirement to serve any such affidavit or exhibit on any party.
 16. By 4.00 pm on 27 November 2019 the Applicant shall file and serve an outline of submissions in relation to the Approval Application.
 17. By 12.00 pm on Monday, 2 December 2019 the Respondent file and serve any affidavit material and any outline of submissions in relation to the Approval Application.
 18. By 4.00 pm on Monday, 18 November 2019 any person who wishes to oppose any aspect of the proposed settlement shall file a completed objection form (in the form that appears in the last two pages of the Notice) by sending it by email to cameron.myers@phifinney-mcdonald.com and to the Chambers of the Approval Judge.
 19. By 4.00 pm on 22 November 2019 any group member who has provided written notice of an objection to the proposed settlement of the proceeding shall file and serve
 - (a) any evidence upon which the group member relies; and
 - (b) any written submissions upon which the group member relies, in support of the group member's objection.



20. The parties' solicitors to file any notices they receive purporting to be an objection notice referable to this proceeding, in the Victorian District Registry of the Federal Court of Australia within two days after receipt, and the notice shall be treated as an objection notice received by the Court at the time it was received by the solicitors.
21. The parties have leave to inspect the Court file and to copy any objection forms and any evidence or submissions in support filed with the Court in accordance with Orders 18 and 19.
22. If settlement approval is granted the parties can then make an application for any continuing confidentiality order they seek pursuant to ss 37AF and 37AG of the Act.

Miscellaneous

23. Within 7 days of the Court making orders giving effect to settlement approval (if at all), the Applicant provide to the Respondent's insurers (but not the Respondent) via email to Naomi.Lin@allianz.com.au a confidential excel spreadsheet with the details set out in Annexure C to these orders of each Registered Group Member (**Review list**) for the sole purpose of the Respondent's insurers' compliance with legal obligations concerning the prevention of payment to persons or entities associated with terrorism and/or money laundering (**Prohibited Person**).
24. The Respondent's insurers to disclose to the Applicant's solicitors on a confidential basis the names of any person or entity identified by them to be on the Review list and be a Prohibited Person.
25. Liberty to apply.

Date that entry is stamped: 24 October 2019


Registrar