

Federal Court of Australia

District Registry: New South Wales

Division: General

No: NSD602/2020

ANDREW PARKIN

Applicant

BORAL LIMITED (ACN 008 421 762)

Respondent

No: NSD935/2020

**MARTINI FAMILY INVESTMENTS PTY LTD ACN 606 000 944 ATF MARTINI
FAMILY INVESTMENTS SUPER FUND**

Applicant

BORAL LIMITED ACN 008 421 761

Respondent

ORDER

JUDGE: JUSTICE LEE

DATE OF ORDER: 1 February 2024

WHERE MADE: Sydney

THE COURT ORDERS THAT:

Pleadings

1. The applicant in the Parkin Proceeding be granted leave:
 - (a) pursuant to s 33K of the *Federal Court of Australia Act 1976* (Cth) (**FCA Act**) to amend the description of the group in the form set out in **Schedule A** to these orders; and
 - (b) to file and serve a second further amended statement of claim by 12 February 2024.
2. The applicant in the Martini Proceeding be granted leave:
 - (a) pursuant to s 33K of the FCA Act to amend the description of the group; and

- (b) to file and serve a fifth further amended statement of claim by 12 February 2024.
3. The applicants in the Parkin Proceeding and the Martini Proceeding pay the respondents costs thrown away as a result of the amendments referred to in Orders 1 and 2 of these Orders.
4. By 15 March 2024, the respondent file:
 - (a) its defence to the second further amended statement of claim filed in the Parkin Proceeding; and
 - (b) its defence to the fifth further amended statement of claim filed in the Martini Proceeding.
5. By 5 April 2024, the respondent file and serve any additional lay evidence on which it relies consequent on the amended statements of claim referred to in Orders 1 and 2 and/or the expert evidence filed by the applicants in the Parkin Proceeding and the Martini Proceeding.

Notices to group members

6. Pursuant to s 33X(5) of the FCA Act, and subject to Order 8, notice is to be given to group members in respect of the amended statements of claim referred to in Orders 1 and 2.
7. The form and content of the notices to group members as set out at **Annexure A** (the **Parkin Notice**) and **Annexure B** (the **Martini Notice**) to these Orders be approved for the purpose of ss 33X and 33Y(2) of the FCA Act.
8. The Notices referred to in Order 7 be given to the following group members according to the following procedure:
 - (a) by 16 February 2024, Maurice Blackburn shall cause the Parkin Notice to be sent by email to all Registered Group Members and Existing Registered Group Members (as those terms are defined in the orders made on 27 October 2023);
 - (b) by 16 February 2024, Phi Finney McDonald shall cause the Martini Notice to be sent by email to all group members in the Martini Proceeding;
 - (c) to the extent any persons referred to in sub-paragraph (a) or (b) does not have a current email address held by Maurice Blackburn or Phi Finney McDonald,

Maurice Blackburn and Phi Finney McDonald must take reasonable steps to ensure the relevant Notice is brought to the attention of those persons by 17 February 2024;

- (d) by 16 February 2024, the applicants in the Parkin Proceeding shall cause a copy of the Parkin Notice, together with a copy of the second further amended statement of claim and these orders to be displayed on the website of Maurice Blackburn, <https://www.mauriceblackburn.com.au>, and remain continuously displayed at least to the conclusion of the proceedings; and
- (e) the District Registrar of the New South Wales District Registry of the Federal Court of Australia shall cause a copy of the Parkin Notice to be displayed on the Federal Court website and remain continuously displayed up to and including the conclusion of the proceedings.

Agreed Facts and questions and further case management

- 9. By 3pm on 23 February 2024, the parties are to provide to the Associate to Justice Lee a copy of:
 - (a) a document titled “Agreed facts” which, in narrative form, identifies relevant facts in respect of which there is agreement; and
 - (b) a document which identifies the questions to be determined at the initial trial that the parties contend should be the subject of expert evidence.
- 10. If there are any areas of disagreement between the parties in relation to the documents in Order 9, the documents are to identify in mark up the parts not agreed.
- 11. The matter be listed for further case management at 12 noon on 26 February 2024.

Electronic trial

- 12. The trial of the Proceedings be conducted together as an electronic trial (**eTrial**), using documents in electronic format in accordance with an Electronic Hearing Protocol (**Protocol**) to be agreed by the parties.
- 13. By 22 April 2024, the parties confer and appoint a service provider to facilitate the eTrial (**eTrial Provider**), or in default of agreement as ordered by the Court.

14. By 24 May 2024, the parties agree upon the Protocol, prepared in consultation with the eTrial Provider, which should have regard to the matters set out in the Technology and the Court Practice Note (GPN-TECH).
15. Leave be granted for a real-time live transcript service to be used by the parties on each day of the hearing.
16. The costs of the eTrial Provider be costs in the cause, but borne in the first instance as follows:
 - (a) half of the shared costs, being the costs of providing the eTrial facilities and the eTrial Provider's support staff (including court operator and transcript, live stream and/or broadband facilities), be borne by the respondent, with the other half to be borne jointly by the applicants in the Proceedings; and
 - (b) individual costs be borne by the parties on the basis of each individual party's use of services, including the cost of:
 - (i) supplying computers, screens and standard software;
 - (ii) subscribing to a hardcopy transcript or electronic transcript service;
 - (iii) an in-court connection to a real-time/progressive transcript service;
 - (iv) remote access to the electronic courtroom; and
 - (v) technical support for the individual benefit of a party.

Electronic court book

17. The Electronic Court Book comprise:
 - (a) *Part A*: The final versions of the pleadings, particulars and common questions for the Proceedings;
 - (b) *Part B*: The expert reports, and all lay affidavits served by the parties;
 - (c) *Part C*: All documents annexed, exhibited or referred to in all pleadings, expert reports and affidavits served by the parties; and
 - (d) *Part D*: Any additional documents on which the parties propose to rely at trial.
18. By 24 May 2024, the applicants:

- (a) serve upon the respondent, a single electronic index of the documents referred to in Order 17, as well as copies of any documents referred to in the index that had not previously been produced; and
 - (b) provide the eTrial Provider with copies of all documents referred to in the electronic index in accordance with the Protocol.
19. By 7 June 2024, the respondent confirms to the applicants any aspects of those documents identified in accordance with Order 18 over which it intends to seek a non-publication order.
20. By 14 June 2024, the respondent:
- (a) serve upon the applicants, an electronic index of any further documents referred to in Order 17 that were not included in the applicants' list, as well as copies of any documents referred to in the index that had not previously produced;
 - (b) provide to the eTrial provider substitute copies of any documents over which the respondent intends to seek a non-publication order, which substitutes identify those parts over which such order is sought; and
 - (c) provide the eTrial Provider with copies of all documents referred to in that electronic index in accordance with the Protocol.
21. By 21 June 2024, the applicants are to provide the eTrial provider with copies of:
- (a) The filed versions of the documents referred to in order 9, which are to be included in Part A; and
 - (b) The Joint Reports, which are to be included in Part B.
22. By 26 June 2024, the eTrial Provider provide the applicants and the respondent with a consolidated electronic index to the Electronic Court Book identifying all documents set out in Orders 17 to 20 above (**the Consolidated Index**).
23. Each of the applicants' Part C and Part D Index, the respondent's Part C and Part D Index, and Part C and Part D of the Consolidated Index must contain the following fields:
- (a) document date;
 - (b) unique document identification number;

- (c) document type;
 - (d) document title;
 - (e) author/from;
 - (f) recipient/to;
 - (g) host reference;
 - (h) attachment ID;
 - (i) whether suppression non-publication orders have been made or are to be applied for in respect of the document or part thereof;
 - (j) where applicable, the material (eg. pleading, affidavit, or report) that the proposed tender document is referenced within; and
 - (k) the party which proposes the tender.
24. The Electronic Court Book be a library of documents potentially to be tendered or put to any witness, and a document shall not be taken as admitted into evidence by reason of its inclusion in the Electronic Court Book.
25. Following the close of evidence, the solicitors for the parties shall liaise with the Associate to Lee J to remove from the Electronic Court Book any document not admitted into evidence.

Late registrations and opt out forms

26. Pursuant to s 33ZF of the FCA Act, and notwithstanding the Class Deadline (as defined in Order 1 of the Orders of 27 October 2023) has passed, the Court grants leave for group members identified in the spreadsheet provided to the Court under cover of email dated 8 February 2024 to opt out as group members.
27. Pursuant to s 33ZF of the FCA Act, and notwithstanding the Class Deadline has passed, the Court grants leave for group members identified in the spreadsheet provided to the Court under cover of email dated 8 February 2024 to be treated as being registered for the purposes of seeking any benefit pursuant to any settlement of this proceeding.
28. Pursuant to s 33ZF of the FCA Act, and notwithstanding the Class Deadline has passed, the Court grants leave for group members identified in the spreadsheet

provided to the Court under cover of email dated 8 February 2024 to withdraw their filed opt out forms and be treated as being registered for the purposes of seeking any benefit pursuant to any settlement of this proceeding.

Date that entry is stamped: 15 February 2024


Registrar

SCHEDULE A

The group members to whom this proceeding relates are persons who or which:

- (a) acquired:
 - (i) an interest in ordinary shares in the Respondent (**Boral Shares**);
 - (ii) an interest in American Depositary Receipts that represent Boral Shares (**Boral ADRs**); and/or
 - (iii) long exposure to Boral Shares by entering into equity swap confirmations in respect of Boral Shares (**Boral Equity Swaps**),
during the period between 21 November 2016 and 10 February 2020 (**Relevant Period**);
- (b) suffered loss or damage by reason of the conduct of the Respondent (**Boral**) pleaded in this Second Further Amended Statement of Claim;
- (c) were not during the Relevant Period, and are not as at the date of this Second Further Amended Statement of Claim, any of the following:
 - (i) a related party (as defined by s 228 of the *Corporations Act 2001* (Cth) (**Corporations Act**) of Boral;
 - (ii) a related body corporate (as defined in s 50 of the *Corporations Act*) of Boral;
 - (iii) an associated entity (as defined by s 50AAA of the *Corporations Act*) of Boral;
 - (iv) an officer or a close associate (as defined by s 9 of the *Corporations Act*) of Boral;
 - (v) a judge or the Chief Justice of the Federal Court of Australia or a Justice or the Chief Justice of the High Court of Australia.

ANNEXURE A (Parkin Notice)

BORAL SHAREHOLDER CLASS ACTION

Further notice regarding case development

This is an important notice that the Federal Court of Australia has ordered to be published to persons who may be group members in the Boral Class Action regarding developments in the case.

A. What has happened – update on developments

1. A class action has been commenced in the Federal Court of Australia by Andrew Parkin (**Parkin Applicant**) against Boral Limited (**Boral Class Action**). This class action relates to the financial irregularities in Boral's North American windows business (**Windows**), resulting in misreporting which impacted the FY2018 and FY2019 financial accounts of Windows, Boral North America and Boral. The solicitors in the Parkin Class Action are Maurice Blackburn. You have registered your interest in the Boral Class Action with Maurice Blackburn.
2. The Parkin Applicant has filed a Second Further Amended Statement of Claim, amending the allegations brought on behalf of himself and group members (including you).
3. The Parkin Applicant no longer makes any allegations of disclosure failures against Boral Limited prior to 30 August 2017.
4. This means that if, during the period 21 November 2016 to 29 August 2017 (inclusive), you acquired an interest in ordinary shares in Boral Limited, or an interest in ADRs, or long exposure to Boral shares by entering into equity swap confirmations in respect of Boral shares, the Parkin Applicant considers that there was no inflation in price of Boral shares during that period.
5. You may nonetheless still be a group member if you suffered losses as a result of the alleged disclosure failures, as set out in the Second Further Amended Statement of Claim.

B. Where to get further information

6. A copy of the Second Further Amended Statement of Claim is enclosed with this notice, and can also be found at <https://www.mauriceblackburn.com.au/boral>.
7. If you are unable to access any of the documents referred to in this notice, or if there is anything about this notice you do not understand or which you are unsure about, you should contact Maurice Blackburn on 1800 519 707 or email BoralClassAction@mauriceblackburn.com.au or seek legal advice.

ANNEXURE B (Martini Notice)

BORAL SHAREHOLDER CLASS ACTION

Further notice regarding case development

This is an important notice that the Federal Court of Australia has ordered to be published to persons who may be group members in the Boral Class Action regarding developments in the case.

A. What has happened – update on developments

8. A class action has been commenced in the Federal Court of Australia by Martini Family Investments Pty Ltd as trustee for Martini Family Investments Super Fund (**Martini Applicant**) against Boral Limited (**Boral Class Action**). This class action relates to the financial irregularities in Boral's North American windows business (**Windows**), resulting in misreporting which impacted the FY2018 and FY2019 financial accounts of Windows, Boral North America and Boral.
9. The Martini Applicant has filed a Fifth Further Amended Statement of Claim, amending the allegations brought on behalf of itself and group members (including you).
10. The Martini Applicant no longer makes any allegations of disclosure failures against Boral Limited prior to 30 August 2017.
11. This means that if, during the period 21 November 2016 to 29 August 2017 (inclusive), you acquired an interest in ordinary shares in Boral Limited, or an interest in ADRs, or long exposure to Boral shares by entering into equity swap confirmations in respect of Boral shares, the Martini Applicant considers that there was no inflation in price of Boral shares during that period.
12. You may nonetheless still be a group member if you suffered losses as a result of the alleged disclosure failures, as set out in the Fifth Further Amended Statement of Claim.

B. Where to get further information

13. A copy of the Fifth Further Amended Statement of Claim is enclosed with this notice, and can also be found on the website of Phi Finney McDonald.
14. If you are unable to access any of the documents referred to in this notice, or if there is anything about this notice you do not understand or which you are unsure about, you should contact Phi Finney McDonald on (03) 9134 7100 or seek legal advice.