

**IN THE HIGH COURT OF NEW ZEALAND
CHRISTCHURCH REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
ŌTAUTAHI ROHE**

CIV-2018-409-361

BETWEEN

BRENDON MILES ROSS AND
COLLEEN ANNE ROSS
Plaintiffs

AND

SOUTHERN RESPONSE EARTHQUAKE
SERVICES LIMITED
Defendant

Hearing: 3 December 2019 (by way of telephone conference)

Appearances: P G Skelton QC, K M Quinn and C B Pearce for Plaintiffs
T C Weston QC, KMM Paterson and O Peers for Defendant

Minute: 3 December 2019

MINUTE OF GENDALL J

[1] Counsel for the plaintiffs and counsel for the defendant have filed memoranda for this directions telephone conference for which I thank them.

[2] Three issues arise here:

- (a) setting a fixture hearing date for the Common Fund Application;
- (b) questions relating to a Non-Publication Order; and
- (c) directions as to service upon class members.

[3] I address each of these issues in turn.

Hearing date for the Common Fund Application

[4] Effectively senior counsel for the plaintiffs and the defendant have agreed that a firm two-day fixture date required for hearing of the Common Fund Application which has been signalled by the Court to be available on 16 and 17 March 2020, is suitable and acceptable.

[5] That said, a direction is now made that the plaintiffs' Common Fund Application is set down for hearing (two days are allowed) in this Court commencing at 10 a.m. on 16 March 2020.

Non-publication order

[6] After discussion with counsel for both parties there appeared to be a measure of agreement that an interim Non-Publication Order should now be made.

[7] That said, the following Interim Non-Publication Order is now made:

Pending further order of this Court, exhibits "A", "B", "C" and "D" annexed to the affidavit of Grant Cameron sworn on 7 November 2019 (and defined by him as the "Confidential Exhibits") are not to be provided to anyone other than a Class Member or the defendant without leave of the Court, and any recipient of the Confidential Exhibits is only to use those documents for the purposes of this proceeding and is not to publish or otherwise disclose the Confidential Exhibits to anyone else without the written consent of the plaintiffs' solicitors or the leave of the Court. For the avoidance of doubt, and

subject to the terms of this Non-Publication Order, the defendant is entitled to provide copies of the Confidential Exhibits to its legal team.

Leave is reserved for either party to apply to vary the above orders.

Directions as to service

[8] Counsel for the plaintiffs in his memorandum has proposed suggested directions to provide a mechanism to bring to the notice of Class Members the forthcoming Common Fund Application. This would involve directions as to service being made to provide details of the Common Fund Order Application being published on the Southern Response Class Action website and elsewhere.

[9] Mr Weston QC for the defendant notes in his memorandum that Southern Response neither consents to, nor opposes, the notification orders which are outlined in the proposed directions as to service sought by the plaintiffs. Before me, however, Mr Weston did note certain concerns over the order sought but he indicated these were matters for the Court. Southern Response, he indicated, did not take any formal position on this at present but, further, that it is likely issues as to process here might be raised by Southern Response at least indirectly in subsequent argument on the hearing of the application itself in March 2020.

[10] Noting those matters, I am satisfied, nevertheless, that the directions as to service of the Common Fund Application sought by the plaintiffs here are appropriate. Accordingly, orders are now made as to these directions as to service as follows:

(a) The plaintiffs' solicitors are to:

(i) publish on the Class Action website www.southernresponseclassaction.co.nz; and

(ii) send by email to all Class Members for whom the plaintiffs' solicitors hold email addresses:

copies of the Application, the Grant Cameron affidavit (public version), the Non-Publication Order, and any Minute issued by the Court following the 26 November 2019 directions conference.

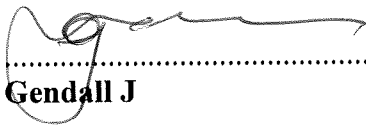
- (b) The plaintiffs' solicitors are to publish once in the Public Notice section of The Press newspaper by 5 December 2019 a notice which gives notice of the plaintiffs' application for a Common Fund Order and which directs potential Class Members to go to the website www.southernresponseclassaction.co.nz for further information including copies of the application and documents referred to in paragraph (a) above.
- (c) Any Class Member who wishes to appear and be heard in relation to the Application is to serve on the plaintiffs' solicitors a "Notice of Intention to Appear", in the form annexed and marked "A" by Thursday 19 December 2019. The Notice must be sent to the plaintiffs' solicitor Grant Cameron, at the email address grant@gcalawyers.com, and must include the Class Member's contact details.
- (d) Mr Cameron is to file with the Court and serve on the defendant, by 20 December 2019 all Notices of Intention to Appear that have been served on him.
- (e) Any Class Member who wishes to review a copy of the "Confidential Exhibits" may do so, subject to the Non-Publication Order, by making a request in writing to the plaintiffs' solicitors.
- (f) Any Class Member who wishes to make submissions to the Court on the Application, and who has given Notice of Intention to Appear, must file their submission in writing with the Court within one week of the hearing date and must provide a copy of their submission to both the solicitors for the plaintiffs and the solicitors for the defendant.

Final matter

[11] One final matter was raised at the telephone conference today, 3 December 2019.

[12] Mr Weston indicated that Southern Response intends to file an opposition and/or a Stay Application in this matter by 6 December 2019 as has been previously directed. He confirms that this will be attended to by 6 December 2019. In the meantime, however, for reasons outlined in his memorandum, Mr Weston indicated there might be some short delay in providing an affidavit in support from an overseas expert in light of a decision he says is relevant to the Common Fund Application which is due for release from the High Court of Australia on Wednesday 4 December 2019.

[13] That noted, and given comments from Mr Skelton QC for the plaintiffs querying the relevance of any such expert evidence in itself, a direction is now made that the defendant, Southern Response, shall have until Friday 13 December 2019 to file and serve any affidavit it decides to provide from an expert as to the law in Australia (as indicated in Mr Weston's memorandum) in support of its opposition and/or Stay Application here.



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Gendall J

Solicitors:
GCA Lawyers, Christchurch
Buddle Findlay, Christchurch

Copies to:
Philip Skelton QC, Barrister, Auckland
Kelly M Quinn, Barrister, Auckland
Thomas Weston QC, Barrister, Tai Tapu