



Federal Court of Australia

District Registry: Western Australia

Division: General

No: WAD84/2022

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Plaintiff

AUSTRALIAN MINES LIMITED ACN 073 914 191 and another named in the schedule
Defendant

ORDER

JUDGE: JUSTICE COLVIN

DATE OF ORDER: 12 May 2023

WHERE MADE: Perth

BY CONSENT BETWEEN THE PLAINTIFF AND THE SECOND DEFENDANT

THE COURT DECLARES THAT:

1. Pursuant to s 1317E(1) of the *Corporations Act 2001* (Cth) (**Corporations Act**), the second defendant contravened s 180(1) by failing to exercise his powers and discharge his duties with the degree of care and diligence that a reasonable person would exercise if they were a director of a corporation in the first defendant's circumstances; and occupied the office held by, and had the same responsibilities within the corporation as, the second defendant:
 - (a) by making the following representations, while he was aware, or ought reasonably to have been aware, that the representations were false in a material particular or were materially misleading:
 - (i) at presentations given at conferences in Hong Kong on 23 April 2018 and London on 17 May 2018:
 - A. that the first defendant had secured finance for the construction of its processing plant (**Plant**) for the **Sconi Project**, a cobalt, nickel and scandium resource in North Queensland; and



- B. that SK Innovation Co Ltd (**SKI**) had committed to funding construction of the Plant (**Funding Commitment Representations**);
- (ii) at presentations given at conferences in Hong Kong on 23 April 2018 and London on 17 May 2018, that the value of the Term Sheet for an Offtake Agreement with SKI dated 9 February 2018 (**Offtake Agreement**) to the first defendant, based upon the tonnes per annum of nickel sulphate and cobalt sulphate to be supplied under the Offtake Agreement, was \$5 billion (**Value Representation**); and
 - (iii) at a presentation given in London on 17 May 2018, that it was a condition of the Offtake Agreement that SKI commit to funding construction of the Plant (**Offtake Condition Representation**),
(collectively, the Representations);
- (b) having made the Funding Commitment Representations and Offtake Condition Representation, by failing to cause the first defendant to correct those representations, or to tell the Australian Securities Exchange (ASX) that:
- (i) the first defendant had not secured finance for the construction of the Plant, and SKI had not committed to funding construction of the Plant; and
 - (ii) it was not a condition of the Offtake Agreement that SKI commit to funding construction of the Plant, and SKI did not have any other obligation to fund construction of the Plant,
(together, the **SKI Funding Information**);
- (c) by making the Value Representation notwithstanding that he was aware that the making of similar \$5 billion statements by the first defendant on the ASX Market Announcement Platform on 21 February 2018, had resulted in the ASX making inquiries of the first defendant as to its compliance with the Australasian Code for Reporting of Exploration Results, Mineral Resources and Ore Reserves (**JORC Code**) and led to the first defendant issuing a retraction via the ASX Market Announcement Platform on 28 February 2018;



- (d) by failing to take reasonable steps to determine or ensure that the Value Representation would not lead to the ASX again requiring the first defendant to make corrective statements and issue retractions in respect of its compliance with the JORC Code;
- (e) having made the Value Representation, by failing to cause the first defendant to correct that representation, or to inform the ASX of:
 - (i) the modifying factors and other matters required by the JORC Code; and
 - (ii) the value of the Offtake Agreement to the first defendant was reduced by a buyer's discount of 15% on the base price to be paid for cobalt and nickel; and
- (f) by causing the first defendant to contravene s 674(2) of the Corporations Act by:
 - (i) between 23 April 2018 and 27 June 2018, failing to notify the ASX that the first defendant:
 - A. had not secured finance for the construction of its processing plant for the Sconi Project; and
 - B. SKI had not committed to funding construction of the processing plant,where this was information that was material and not generally available, within the meaning of ASX Listing Rule 3.1 and Chapter 6CA of the Corporations Act, in circumstances where, at presentations given at conferences in Hong Kong on 23 April 2018 and London on 17 May 2018, the first defendant and second defendant made the Funding Commitment Representations.
 - (ii) between 17 May 2018 and 27 June 2018, by failing to notify the ASX that:
 - A. it was not a condition of the Offtake Agreement that SKI commit to funding construction of the Plant; and
 - B. SKI did not have any other obligation to fund construction of the Plant,



where that information was material and not generally available, within the meaning of ASX Listing Rule 3.1 and Chapter 6CA of the Corporations Act in circumstances where, at a presentation given at a conference in London on 17 May 2018, the first defendant and second defendant made the Offtake Condition Representation.

- (iii) between 23 April 2018 and 27 June 2018 by failing to notify the ASX that the value of the Offtake Agreement was reduced by the quantum of the Buyer's Discount where this was information that was material and not generally available, within the meaning of ASX Listing Rule 3.1 and Chapter 6CA of the Corporations Act in circumstances where, at presentations given at conferences in Hong Kong on 23 April 2018 and London on 17 May 2018, the first defendant and second defendant made the Value Representation,

and thereby exposing the first defendant to the risk of proceedings for contraventions of the Corporations Act, legal costs and penalties, which were in fact commenced.

- 2. The contravention referred to in paragraph 1 was serious within the meaning of s 1317G(1)(b)(iii) of the Corporations Act.

THE COURT ORDERS THAT:

- 3. Pursuant to s 1317G of the Corporations Act, the second defendant pay to the Commonwealth of Australia a pecuniary penalty in the amount of \$70,000.
- 4. Pursuant to s 206C of the Corporations Act the second defendant be disqualified from managing a corporation for a period of two years commencing on 12 May 2023.
- 5. The second defendant contribute to the plaintiff's costs of these proceedings in the agreed amount of \$60,000.

THE COURT DIRECTS THAT:

- 6. An officer of the Registry provide an electronic copy of the joint submissions upon request by any person.

Date that entry is stamped: 12 May 2023



Sia Lagos
Registrar



Schedule

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Second Defendant BENJAMIN JOHN BELL