



R.H Kenna (L.S.)
Principal Registrar &
Chief Executive Officer

Form 2 Originating process

(rule 2.2 and 15A.3)

IN THE SUPREME COURT OF NEW SOUTH WALES
EQUITY DIVISION: CORPORATIONS LIST
REGISTRY: SYDNEY

No 00459470 of 2024

**IN THE MATTER OF REGIONAL EXPRESS HOLDINGS LIMITED (ADMINISTRATORS
APPOINTED) ACN: 099 547 270**

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

Plaintiff

**REGIONAL EXPRESS HOLDINGS LIMITED (ADMINISTRATORS APPOINTED) (ACN 099
547 270) and others according to the schedule**

Defendants

A. DETAILS OF APPLICATION

The plaintiff (**ASIC**) seeks declarations of contraventions of ss 180, 674, 674A(2), 674A(3) and 1041H of the *Corporations Act 2001* (Cth) (**Corporations Act**) and s 12DA of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**).

The declarations are sought against Regional Express Holdings Limited (Administrators Appointed) (**Rex**) and four directors of that company in the period February 2023 to May 2023 in relation to the profit guidance issued by Rex on 28 February 2023. ASIC also seeks orders that the four directors pay pecuniary penalties and that they be disqualified from managing corporations.

The 28 February 2023 profit guidance stated that "Rex is optimistic that the [Rex] Group will have positive operating profits for the full FY23 barring any further external shocks". Rex made that statement without having prepared a financial forecast for the 2023 financial year. Rex had made an operating loss of \$30.4 million in the first half of the year and a further operating

Filed on behalf of the plaintiff
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loss of \$5.3 million in January 2023. ASIC claims that Rex did not have reasonable grounds to publish that guidance, and Rex therefore engaged in misleading or deceptive conduct in contravention of s 1041H of the Corporations Act and/or s 12DA of the ASIC Act. ASIC also claims that the then executive chairman, Mr Lim Kim Hai, contravened his duty as a director under s 180 of the Corporations Act by failing to take reasonable steps to ensure Rex complied with its obligations when issuing the 28 February 2023 profit guidance.

Despite the Rex group continuing to make millions of dollars of further monthly losses in each of February, March and April 2023, Rex did not make an announcement to the market correcting or revising its 28 February 2023 profit guidance until 20 June 2023, when it announced a forecast operational loss for the full financial year of \$35 million.

ASIC claims that the information that the Rex Group would not (or would not likely) have positive operating profits for the full 2023 financial year, that it would (or was likely to) have an operating loss, and/or that Rex did not have reasonable grounds to say that it would have positive operating profits, was information that a reasonable person would have expected to have a material effect on Rex's share price, and that Rex's failure to disclose that information between 28 February 2023 and 20 June 2023 contravened its continuous disclosure obligations under r 3.1 of the ASX Listing Rules and ss 674(2) and/or 674A(2) of the Corporations Act. ASIC further claims that Mr Lim was involved in that contravention, in contravention of s 674A(3) of the Corporations Act, and that each of the director defendants contravened their duties as directors under s 180 of the Corporations Act by failing to take reasonable steps to ensure that Rex complied with its continuous disclosure obligations.

On the grounds stated in the statement of claim exhibited to the supporting affidavit, the plaintiff claims:

- 1 An order that the plaintiff have leave, *nunc pro tunc*, to proceed against the first defendant under s 440D(1)(b) of the Corporations Act.
- 2 A declaration pursuant to s 75 of the *Supreme Court Act 1970* (NSW) that, by representing on 28 February 2023 that:
 - (a) the Rex Group would have positive operating profits for the financial year ending 30 June 2023;
 - (b) further or alternatively, it was likely that the Rex Group would have positive operating profits for the financial year ending 30 June 2023;

- (c) further or alternatively, there were reasonable grounds to expect that the Rex Group would have positive operating profits for the financial year ending 30 June 2023,

Rex engaged in conduct that was misleading or deceptive, in contravention of s 1041H of the Corporations Act and s 12DA of the ASIC Act.

- 3 A declaration pursuant to s 1317E of the Corporations Act that Rex contravened s 674A(2) of the Corporations Act, alternatively a declaration pursuant to s 75 of the *Supreme Court Act 1970* (NSW) that Rex contravened s 674(2) of the Corporations Act, in the period on and from 28 February 2023, alternatively 21 March 2023, 14 April 2023, 24 April 2023, 4 May 2023, 11 May 2023 or 16 May 2023, continuing until 20 June 2023, by failing to notify the ASX that:

- (a) the Rex Group would not, or was not likely to, have positive operating profits for the financial year ending 30 June 2023;
- (b) further or alternatively, the Rex Group would have, or was likely to have, an operating loss for the financial year ending 30 June 2023;
- (c) further or alternatively, the Rex Group did not have reasonable grounds to forecast an operating profit for the financial year ending 30 June 2023.

- 4 A declaration pursuant to s 1317E of the Corporations Act that Lim Kim Hai (**Lim**) contravened s 180 of the Corporations Act in respect of the contravention referred to in 2 above.

- 5 A declaration pursuant to s 1317E of the Corporations Act that Lim was involved in the contravention referred to in 3 above and thereby contravened s 674A(3) of the Corporations Act.

- 6 A declaration pursuant to s 1317E of the Corporations Act that Lim contravened s 180 of the Corporations Act in respect of the contravention referred to in 3 above.

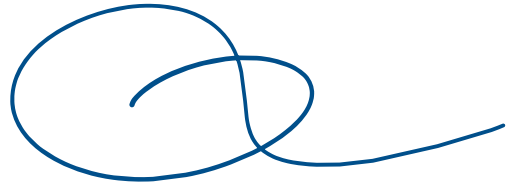
- 7 A declaration pursuant to s 1317E of the Corporations Act that Siddharth Dilip Khotkar (Khotkar) contravened s 180 of the Corporations Act in respect of the contravention referred to in 3 above.

- 8 A declaration pursuant to s 1317E of the Corporations Act that Lincoln Lin Feng Pan (Pan) contravened s 180 of the Corporations Act in respect of the contravention referred to in 3 above.

- 9 A declaration pursuant to s 1317E of the Corporations Act that The Honourable John Randall Sharp AM (Sharp) contravened s 180 of the Corporations Act in respect of the contravention referred to in 3 above.
- 10 Declarations that the contraventions referred to in 3 to 9 above are serious within the meaning of s 1317G(1)(b)(iii) of the Corporations Act.
- 11 In respect of the contraventions referred to in 4 to 6 above, an order pursuant to s 206C and/or s 206E of the Corporations Act that Lim be disqualified from managing corporations for a period that the Court considers appropriate.
- 12 An order pursuant to s 1317G(1) of the Corporations Act that Lim pay to the Commonwealth a pecuniary penalty in respect of the contraventions referred to in 4 to 6 above.
- 13 In respect of the contravention referred to in 7 above, an order pursuant to s 206C of the Corporations Act that Khotkar be disqualified from managing corporations for a period that the Court considers appropriate.
- 14 An order pursuant to s 1317G(1) of the Corporations Act that Khotkar pay to the Commonwealth a pecuniary penalty in respect of the contravention referred to in 7 above.
- 15 In respect of the contravention referred to in 8 above, an order pursuant to s 206C of the Corporations Act that Pan be disqualified from managing corporations for a period that the Court considers appropriate.
- 16 An order pursuant to s 1317G(1) of the Corporations Act that Pan pay to the Commonwealth a pecuniary penalty in respect of the contravention referred to in 8 above.
- 17 In respect of the contravention referred to in 9 above, an order pursuant to s 206C of the Corporations Act that Sharp be disqualified from managing corporations for a period that the Court considers appropriate.
- 18 An order pursuant to s 1317G(1) of the Corporations Act that Sharp pay to the Commonwealth a pecuniary penalty in respect of the contravention referred to in 9 above.
- 19 Costs.

20 Such further or other orders as the Court sees fit.

Date: 10 December 2024



Peter Cash
Solicitor for the plaintiff

This application will be heard by the Supreme Court of New South Wales at Law Courts Building, Queens Square, 184 Phillip Street, Sydney, NSW at am on December 2024.

B. NOTICE TO DEFENDANTS

To: Regional Express Holdings Limited (Administrators Appointed) (ACN 099 547 270)
81-83 Baxter Road, Mascot, NSW 2020

Lim Kim Hai
[REDACTED]

The Honourable John Randall Sharp AM
[REDACTED]

Siddharth Dilip Khotkar
[REDACTED]

Lincoln Lin Feng Pan
[REDACTED]

If you or your legal practitioner do not appear before the Court at the time shown above, the application may be dealt with, and an order made, in your absence. As soon after that time as the business of the Court will allow, any of the following may happen:

- (a) the application may be heard and final relief given;
- (b) directions may be given for the future conduct of the proceeding;
- (c) any interlocutory application may be heard.

Before appearing before the Court, you must file a notice of appearance, in the prescribed form, in the Registry and serve a copy of it on the plaintiff.

Note.

Unless the Court otherwise orders, a defendant that is a corporation must be represented at a hearing by a legal practitioner. It may be represented at a hearing by a director of the corporation only if the Court grants leave.

C. FILING

Date of filing: 10 December 2024

This originating process is filed by Norton Rose Fulbright Australia for the plaintiff.

D. SERVICE

The plaintiff's address for service is:

c/- Norton Rose Fulbright Australia, 60 Martin Place, Sydney NSW 2000; or

peter.cash@nortonrosefulbright.com

It is intended to serve a copy of this originating process on each defendant and on any person listed below:

Samuel John Freeman, c- Ernst & Young, Level 5, 11 Mounts Bay Road,
PERTH WA 6000

Adams Pauls Nikitins, c- Ernst & Young, Level 26, 8 Exhibition Street, MELBOURNE
VIC 3000

Justin Denis Walsh, c- Ernst & Young, Level 48, 111 Eagle Street, BRISBANE QLD
4000

SCHEDULE OF PARTIES

IN THE SUPREME COURT OF NEW SOUTH WALES
EQUITY DIVISION: CORPORATIONS LIST
REGISTRY: SYDNEY

No. of 2024

IN THE MATTER OF REGIONAL EXPRESS HOLDINGS LIMITED (ADMINISTRATORS
APPOINTED) ACN: 099 547 270

Plaintiff: AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

First Defendant: REGIONAL EXPRESS HOLDINGS LIMITED (ADMINISTRATORS
APPOINTED) (ACN 099 547 270)

Second Defendant: LIM KIM HAI

Third Defendant: THE HONOURABLE JOHN RANDELL SHARP AM

Fourth Defendant: SIDDHARTH DILIP KHOTKAR

Fifth Defendant: LINCOLN LIN FENG PAN

Date: 10 December 2024