



Federal Court of Australia

District Registry: Victoria

Division: General

No: VID413/2020

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

Applicant

MEGASAVE COURIERS PTY LTD and another named in the schedule

Respondent

ORDER

JUDGE: JUSTICE O'CALLAGHAN

DATE OF ORDER: 29 April 2021

WHERE MADE: Melbourne

PENAL NOTICE

**TO: MEGASAVE COURIERS AUSTRALIA PTY LTD ACN 629 513 828 AND
GARY BOURNE**

IF YOU (BEING THE PERSON BOUND BY THIS ORDER):

- (A) REFUSE OR NEGLECT TO DO ANY ACT WITHIN THE TIME
SPECIFIED IN THIS ORDER FOR THE DOING OF THE ACT; OR**
- (B) DISOBEY THE ORDER BY DOING AN ACT WHICH THE ORDER
REQUIRES YOU NOT TO DO,**

**YOU WILL BE LIABLE TO IMPRISONMENT, SEQUESTRATION OF PROPERTY
OR OTHER PUNISHMENT.**

**ANY OTHER PERSON WHO KNOWS OF THIS ORDER AND DOES ANYTHING
WHICH HELPS OR PERMITS YOU TO BREACH THE TERMS OF THIS ORDER
MAY BE SIMILARLY PUNISHED.**



THE COURT ORDERS THAT:

Redress orders

1. Pursuant to s 239 of the Australian Consumer Law (ACL), the first and second respondents jointly and severally pay to the trust account of the Australian Government Solicitor (AGS), by 30 June 2021, the total amount of \$500,000 (Funds) by way of non-party consumer redress.
2. The Funds are to be applied by AGS in accordance with the following (Redress Scheme):
 - 2.1. the Funds received are to be distributed equally between the Franchisees listed in paragraph 5 of the Confidential Supplementary Statement of Agreed Facts (the Nominated Franchisees), excluding those Nominated Franchisees who do not elect to accept the payment pursuant to paragraph 2.2 below;
 - 2.2. subject to the Funds having been received into its trust account exceeding a minimum amount of \$1000 by 30 June 2021, the AGS is to contact each of the Nominated Franchisees in writing by 21 July 2021:
 - (a) advising them of these orders, the amount of Funds received pursuant to order 1, and the minimum amount of the Funds to be paid to them by way of partial redress;
 - (b) inviting their written acceptance of the partial redress amount by 4 August 2021; and
 - (c) seeking their payment account details.
 - 2.3. by 20 August 2021, the AGS is to distribute to each of the Nominated Franchisees who has provided an acceptance pursuant to paragraph 2.2 an equal amount of the Funds;
 - 2.4. by 3 September 2021, the AGS is to notify the respondents in writing of the distributions of the Funds that have been made.
3. Order 1 is an order for partial redress for loss and damage suffered in relation to the contravening conduct only to the extent provided for by these orders, and any person accepting payment shall be at liberty to exercise such other rights that they may have, including any claim to loss or damage that exceeds any amount received from the Funds by way of partial redress.



4. The parties have liberty to apply to the Court to vary the requirements of the Redress Scheme if they become impracticable to comply with.

Penalty

5. The first respondent pay to the Commonwealth of Australia a pecuniary penalty in the amount of \$1,900,000 in respect of its contraventions of the ACL declared by the Court at paragraphs 1 and 2 of the Court's orders of 1 March 2021.
6. The second respondent pay to the Commonwealth of Australia a pecuniary penalty in the amount of \$120,000 in respect of his involvement in contraventions of the ACL declared by the Court at paragraph 3 of the Court's orders of 1 March 2021.
7. The penalties in orders 5 and 6 are due and payable:
 - 7.1 if the payment in order 1 above is paid within the time required by that order, by 30 June 2022, so as to ensure preference for the redress in Order 1 in accordance with s 227 of the ACL; or
 - 7.2 otherwise, by the date which is 120 days after the date of these orders.

Costs

8. An order pursuant to FCR 40.02 that the respondents pay the applicant's costs of and incidental to the proceeding in the lump sum amount of \$200,000, within 120 days of the date of these orders.

Non-disclosure order

9. Pursuant to s 37AF(1) of the *Federal Court of Australia Act 1976* (Cth), in order to prevent prejudice to the proper administration of justice, the personal and company names contained in the Supplementary Statement of Agreed Facts dated 31 March 2021, and affidavits filed on 18 December 2020, 21 December 2020, 22 December 2020, 26 March 2021, and 31 March 2021 (as listed in confidential Annexure A to these orders), and submissions dated 16 April 2021 be kept confidential and:
 - 9.1 are not to be accessed by any person other than by the Court and the parties to this proceeding;
 - 9.2 their contents are prohibited from being disclosed (save as between the parties) by publication or otherwise.

Undertaking obligations

10. The following orders of O'Callaghan J in this proceeding be vacated:
 - 10.1 Orders dated 25 June 2020 as they relate to undertakings 1, 2, 3 and 4;



- 10.2 Orders dated 16 July 2020 as they related to undertakings A and B; and
- 10.3 Orders 2 and 3 of the Orders dated 14 August 2020.

Date that entry is stamped: 29 April 2021

Sia Lagos
Registrar



CONFIDENTIAL ANNEXURE A

1. Affidavit of [REDACTED] filed on 18 December 2020;
2. Affidavit of [REDACTED] filed on 18 December 2020;
3. Affidavit of [REDACTED] filed on 18 December 2020;
4. Affidavit of [REDACTED] filed on 18 December 2020;
5. Affidavit of [REDACTED] filed on 18 December 2020;
6. Affidavit of [REDACTED] filed on 18 December 2020;
7. Affidavit of [REDACTED] filed on 18 December 2020;
8. Affidavit of [REDACTED] filed on 18 December 2020;
9. Affidavit of [REDACTED] filed on 18 December 2020;
10. Affidavit of [REDACTED] filed on 21 December 2020;
11. Affidavit of [REDACTED] filed on 22 December 2020;
12. Affidavit of [REDACTED] filed on 26 March 2021;
13. Affidavit of [REDACTED] filed on 26 March 2021;
14. Affidavit of [REDACTED] filed on 26 March 2021;
15. Affidavit of [REDACTED] filed on 26 March 2021;
16. Affidavit of [REDACTED] filed on 26 March 2021;
17. Affidavit of [REDACTED] filed on 26 March 2021;
18. Affidavit of [REDACTED] filed on 26 March 2021;
19. Affidavit of [REDACTED] filed on 26 March 2021;
20. Affidavit of [REDACTED] filed on 26 March 2021; and
21. Affidavit of [REDACTED] filed on 31 March 2021.



Schedule

No: VID413/2020

Federal Court of Australia
District Registry: Victoria
Division: General

Second Respondent GARY BOURNE

CONSUMER PROTECTION ACTION

Applicant AUSTRALIAN COMPETITION AND CONSUMER
COMMISSION

Respondent MEGASAVE COURIERS AUSTRALIA PTY LTD