

Rural Funds triumphs over short seller Bonitas in Supreme Court



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The Supreme Court of New South Wales has handed down a judgement in favour of Rural Funds Group (ASX: RFF), finding US-based short seller Bonitas made false and misleading statements.

The proceedings, launched in September 2019, relate to a short selling report published by Bonitas in August of the same year which saw the shares in Rural Funds drop by 43 per cent.

Bonitas made some particularly heavy statements in the report, describing Rural Funds Management (RFM) as an "ASX listed fraud" and "worthless".

In its report, Bonitas calculated RFM's net assets should be worth half that at \$268 million, a value which would be in breach of its \$400 million net asset loan covenant.

The court gave judgement in favour of RFM today, finding that Bonitas and principal of the firm Matthew Weichert made statements in Australia which "were false in material particulars and materially misleading" and were "deceptive and likely to deceive" in its short selling report.

"Commencing at 9:23am on 6 August 2019, Bonitas and Wiechert engaged upon a concerted course of making statements and disseminating information scathingly critical of RFM and RFF," said Justice Hammerschlag in the judgement.

"They accused RFM and RFF of dishonesty and of being a fraud. Their plain intention was to drive down the price of units for commercial gain.

"Statements which they made and information which they disseminated were false in material particulars and materially misleading. I am satisfied that they knew or ought reasonably to have known that the statements and information were false in material particulars or were materially misleading. They did not care that they were false."

Neither Bonitas nor Wiechert chose to defend the proceedings against them in Court, and instead sent a letter on 1 October detailing how they believed the Australian court held no power over them as they were based in the United States.

"To abrogate and avoid the First Amendment protections we hold, as well as to put up roadblocks toward a full airing of the financial unsoundness of your client through a vibrant discovery process, you have commenced litigation in Australia and invited us to participate," Weichert said in a public letter.

"We respectfully decline the invitation. Australian courts have no jurisdiction over us, and we will contest the enforcement of any orders or judgments you obtain that certainly will be contrary to the discoverable facts, as well as United States and Texas law and policy."

Justice Hammerschlag addressed the question of jurisdiction in the judgement, saying there was no point discussing the impact of the operation of the Constitution of the United States of America nor Texas law and policy as they play no role in the adjudication of Australian legal proceedings.

"There is ample evidence establishing that the first report and the first summary report were published in a manner which made them capable of being accessed and that they were in fact accessed in Australia and that they remain accessible by persons resident in Australia," says Justice Hammerschlag.

"If a statement is directed from one place to another, where it is known or even anticipated that it will be received, the statement is taken to have in substance been made at the place to which it was directed"

"The evidence establishes that not only was Australia an intended destination for the statements and information disseminated by Bonitas and Wiechert but that the statements and information actually reached Australia and were read here."

The Supreme Court will consider the assessment of damages on 6 March.

Shares in Rural Funds Group are up 2.08 per cent to \$1.96 per share at 1.39pm AEDT.

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