

LAWYERLY

Shareholder class action targets Fletcher Building for ‘misleading’ FY17 forecasts



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Shareholders have brought a class action in Australia against New Zealand-based Fletcher Building, alleging the company failed to disclose material information related to its construction division.

Fletcher, which is listed on the Australian and New Zealand stock exchanges, acknowledged the case in a statement on the NZX on Monday and said it would defend itself against the proceedings.

“The claim is brought by persons who acquired shares on the New Zealand Main Board and the Australian Stock Exchange between 17 August 2016 and 23 October 2017 and relates to FBL’s disclosures regarding its Building + Interiors business in that period. FBL intends to defend the proceedings,” the company said.

In a statement of claim filed in the Victoria Supreme Court this month, the class action alleges Fletcher failed to correct an August 17, 2016 revenue forecast for the 2017 financial year until the following March.

The guidance, first made in its 2016 annual report and repeated on an earnings call, predicted earnings before income tax of between NZD \$720 million to \$760 million.

On March 17, 2017 Fletcher’s shares were placed on a trading halt pending an internal review of its construction division, in particular the building and interiors unit, and its impact on previous earnings forecasts.

Three days later Fletcher corrected its guidance, predicting an EBIT result for the 2017 financial year in the range of NZD\$610 million to \$650 million.

The company attributed the revision to an increase in the estimated loss on an unnamed major construction project and downside risk on other building and interiors projects.

Fletcher’s share price on the ASX and the NZX took a slide in subsequent days.

The company revised its guidance a second time on July 20 2017, saying it expected an EBIT result for the financial year of about NSD\$525 million.

On August 16, 2017 Fletcher’s annual report was released, revealing earnings of NSD\$525 million, which was 23 per cent lower than the previous financial year. The report said that total company performance was materially impacted by losses of \$292 million reported in the building and interiors business.

“From 17 August 2016, 22 February 2017, or alternatively prior to 20 March 2017, Fletcher ought reasonably to have known ... that the FY17 guidance representations were false in a material particular or were materially misleading,” the statement of claim says.

According to the statement of claim, the company was aware of the matters affecting the Christchurch Justice and Emergency Services Precinct project, which it was commissioned to undertake for the New Zealand Ministry of Justice.

The class action refers to correspondence from the NZ Minister of Justice to Fletcher Construction CEO Graham Darlow, dated 7 August, 2015, seeking assurance on steps taken to address “programme slippage and, of more concern, a persistently troubled design management process”.

Darlow allegedly assured the minister in reply correspondence that he was “well aware of the challenges facing this project both in terms of maintaining the construction programme, and the related management of the design to meet out construction milestones” and “the project is now holding at approximately 9 weeks behind its original completion date”.

Fletcher is accused of making misleading representations in breach of section 1041E of the Corporations Act, resulting in an inflated share value.

“By reason of the conduct the subject of the misleading or deceptive contraventions and/or
Section 1041E contraventions the market price for the Fletcher shares on the ASX and
NZSX during the relevant period was substantially higher than their true value and/or the
market price that would have prevailed but for that conduct,” the statement of claim says.sh

The class action is represented by William Edwards SC and Alexander Edwards, instructed by Mayweathers.

The case is Gerald Fuller v Fletcher Building Limited.