

IN THE MATTER OF GREAT SOUTHERN MANAGERS AUSTRALIA LIMITED (ACN 083 825 405) (IN LIQUIDATION)

GREAT SOUTHERN MANAGERS AUSTRALIA LIMITED (ACN 083 825 405) (IN LIQUIDATION) IN ITS CAPACITY AS RESPONSIBLE ENTITY OF THE MANAGED INVESTMENT SCHEMES LISTED IN SCHEDULE 2 TO THE AMENDED ORIGINATING PROCESS

First Plaintiff

GREAT SOUTHERN OLIVES COMPANY LIMITED (ACN 121 381 208) (IN LIQUIDATION)

Second Plaintiff

GREAT SOUTHERN OLIVE HOLDINGS PTY LIMITED (ACN 111 092 374) (IN LIQUIDATION)

Third Plaintiff

ANDREW JOHN SAKER

Fourth Plaintiff

MARTIN BRUCE JONES

Fifth Plaintiff

DARREN GORDON WEAVER

Sixth Plaintiff

JAMES HENRY STEWART

Seventh Plaintiff

GREAT SOUTHERN OLIVE PROCESSING PTY LTD (ACN 128 547 437) (IN LIQUIDATION)

Eighth Plaintiff

JAMES GERARD THACKRAY

First Defendant

ANTHONY GREGORY MCGRATH

Second Defendant

COLIN MCINTOSH NICOL AND SIMON ANDREW READ

Third Defendants

THE GROWERS LISTED IN SCHEDULE 8 OF THE AMENDED ORIGINATING PROCESS

Fourth Defendants



**ORDER BEFORE
THE HONOURABLE JUSTICE LE MIERE
27 MAY 2010**

Date of Document: 26 May 2010
Date of Filing: 27 May 2010
Filed on behalf of: The First to Eighth Plaintiffs
Prepared by:

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UPON THE APPLICATION of the First to Seventh Plaintiffs by Amended Originating Process dated 10 May 2010 and UPON HEARING Mr R W Douglas of counsel for the First to Eighth Plaintiffs, Mr G Bigmore SC and Mr S Hopper of counsel for those Fourth Defendants listed in Schedule A to the amended notice of appearance dated 12 May 2010 and listed in Schedule A to the further notice of appearance dated 12 May 2010 and Mr P D Crutchfield SC and Mr J A Thomson of counsel for the 4065th Fourth Defendant on 12 May 2010 AND UPON HEARING Mr R W Douglas of counsel for the First to Eighth Plaintiffs, Mr D Marsh of counsel for those Fourth Defendants listed in Schedule A to the amended notice of appearance dated 12 May 2010 and in Schedule A to the further notice of appearance dated 12 May 2010 and Mr J A Thomson of counsel for the 4065th Fourth Defendant on 13 May 2010 AND UPON HEARING Mr R W Douglas of counsel for the First to Eighth Plaintiffs, Mr D Marsh of counsel for those Fourth Defendants listed in Schedule A to the amended notice of appearance dated 12 May 2010 and in Schedule A to the further notice of appearance dated 12 May 2010, Mr J A Thomson of counsel for the 4065th Fourth Defendant and Ms Z Kelly of counsel for the First to Third Defendants on 21 May 2010 and 25 May 2010, IT IS ORDERED THAT:

Dealing with the Subleases

1. The fourth, fifth, sixth and seventh plaintiffs (**Liquidators**) (in their capacity as liquidators of the first plaintiff) are justified in causing the first plaintiff as responsible entity of the managed investment schemes listed in Schedule 2 to the Amended Originating Process (**Schemes**) to:
 - (a) amend the constitution of each Scheme pursuant to section 601GC(1)(b) of the Corporations Act 2001 (Cth) (**Act**) by executing a deed in the form contained in schedule 1 to this Order for each constitution; and
 - (b) cause each fourth defendant's sublease listed in schedule 9 of the Amended Originating Process (**Subleases**) to be assigned, terminated, surrendered or otherwise dealt with in return for a right of each fourth defendant (each a **Grower**) to assert a claim under the applicable Scheme against the fund provided for in Order 6.

Dealing with the Head Leases

2. The Liquidators (in their capacity as liquidators of the first plaintiff) are justified in causing the first plaintiff including in its capacity as responsible entity of the Schemes to:
 - (a) assign, terminate, surrender or otherwise deal with the leases listed in Schedule 5 to the Amended Originating Process (**Head Leases**) in return for a right of the first plaintiff including under any Scheme to assert a claim against the fund provided for in Order 6; and
 - (b) upon any termination of, assignment of, surrender of, or dealing with the Head Leases by the second or third plaintiff, give vacant possession of those properties

listed in Schedule 3 Parts 2 and 3 and Schedule 3 Part 1 of the Amended Originating Process to the second plaintiff and the third plaintiff respectively.

Approval of Sale of Olive Properties

3. Great Southern Olive Processing Pty Ltd (in liquidation) ACN 128 547 437 be joined to these proceedings as an eighth plaintiff.
4. The Liquidators (in their capacities as liquidators of the second, third and eighth plaintiffs) are justified in entering into and performing:
 - (a) the Kailis Asset Sale Agreement between the Liquidators, the second, third and eighth plaintiffs and Kailis Organic Olive Groves Pty Ltd ACN 095 927 969 (**Kailis**), in terms which are substantially the same as the agreement set out in Annexure AJS-83 to the second confidential affidavit of Andrew John Saker sworn 7 April 2010; and
 - (b) the Sumich Asset Sale Agreement between the Liquidators, the second plaintiff, Cranmount Investments Pty Ltd ACN 115 500 304, Sumich EVOO Australia Pty Ltd ACN 123 114 492 and Olive West Management Pty Ltd ACN 123 114 527, in terms which are substantially the same as the agreement set out in Annexure AJS-84 to the second confidential affidavit of Andrew John Saker sworn 7 April 2010; and
 - (c) all other agreements which are reasonably necessary to give effect to the sale of any asset:
 - (a) the subject of Asset Sale Agreements; or
 - (b) set out in Schedule 4 of the Amended Originating Process;
(Sale Assets);

(together, **the Asset Sale Agreements**).
5. The entry into the Asset Sale Agreements are approved pursuant section 477(2B) of the Act.

Application of proceeds of Asset Sale Agreements

6. Upon any completion of any sale provided for in Order 4, the net proceeds of the Asset Sale Agreements after the deduction by the Liquidators at any time of:
 - (a) selling costs and expenses, and retentions (if any);
 - (b) the reasonable costs and expenses of the Liquidators referable to the operation, preservation or realisation of any Sale Asset:
 - (i) excluding the Liquidators' and administrators' remuneration;

- (ii) including the reasonable costs and expenses of conducting these proceedings including the Rights Proceeding, subject to any further order of the Court; and
 - (iii) including the reasonable costs and expenses referable to the discharge of the statutory duties of the administrators or the Liquidators in relation to the first, second, third and eighth plaintiff; and
- (c) the costs, expenses and remuneration of the Receivers and Managers of the first plaintiff referable to the preservation and realisation of any Sale Asset,

(**Net Proceeds**) be held by the Liquidators in an interest bearing account with an Australian bank (as defined in section 9 of the Act) pending the hearing and determination by the Court of a proceeding (**Rights Proceeding**) to determine which person or persons have any, and if so, what rights to all or any part of the Net Proceeds (**Claimants**), and to be held on trust for the Claimants until further order of the Court (**Fund**).

7. The Liquidators in their capacities as administrators or liquidators of the first, second, third or eighth plaintiff may pay from the Fund their remuneration but only to the extent it both:
- (a) relates to the administration, liquidation or winding up of the first, second, third or eighth plaintiff; and
 - (b) is referable to the operation, preservation or realisation of any Sale Asset including the conduct of these proceedings including the Rights Proceeding, subject to any further order of the Court, and including the discharge of the statutory duties of the administrators or the Liquidators,

subject to approval from the committee of inspection or the creditors of the first, second, third, or eighth plaintiff in respect of which that remuneration was incurred, or upon approval of the Court, pursuant to s.449E or s.473 of the Act as applicable.

Conduct of Rights Proceeding

8. For the purposes of the claims of any Claimant to be paid all or any part of the Net Proceeds on account of that Claimant's rights:
- (a) insofar as the fourth defendants or the first plaintiff have any rights to the Sale Assets or rights under the Subleases or the Head Leases which are assigned, terminated, surrendered or otherwise dealt with pursuant to these Orders, nothing in these Orders nor any action taken thereunder by any plaintiff will prejudice or diminish those rights;
 - (b) insofar as the second or third plaintiff has any rights to assign, terminate, surrender or otherwise deal with any Head Lease or any Sublease nothing in these Orders nor any action taken thereunder by any plaintiff or any defendant will prejudice or diminish those rights;

- (c) insofar as any plaintiff has any rights to the Sale Assets, including the right to defend any claim capable of being brought by the fourth defendants in relation to the Subleases or the Head Lease, nothing in these Orders nor any action taken thereunder by any plaintiff or any defendant will prejudice or diminish the second or third plaintiff's rights to assert any such claims and defences; and
 - (d) insofar as any other Claimant has rights to the Sale Assets, nothing in these Orders nor any action taken thereunder by any plaintiff will prejudice or diminish those rights.
9. The Rights Proceeding be conducted in these proceedings and be entered forthwith in the Commercial and Managed Cases list.
 10. Within 3 working days of an interlocutory dispute arising, the solicitors for the relevant parties shall confer in person and attempt to resolve it.
 11. If the dispute has not been resolved after the parties' solicitors have conferred in an attempt to resolve it and a directions hearing is scheduled to take place within 7 days then the party seeking the interlocutory relief shall file and serve a minute of the relief sought by that party and the dispute shall be heard at the next directions hearing.
 12. If the dispute has not been resolved after the parties' solicitors have conferred in an attempt to resolve it and a directions hearing is not scheduled to take place within 7 days then the party seeking the interlocutory relief may forthwith exercise his right to seek the re-listing of the matter for the purpose of applying for interlocutory relief.
 13. The party applying for interlocutory relief at a directions hearing shall, not later than the day before the directions hearing, file and serve a minute of the orders sought by that party by way of interlocutory relief.
 14. The next directions hearing in the Rights Proceeding shall be at 9:15am on 15 June 2010.
 15. 7 days prior to the directions hearing, the first, second, third and eighth plaintiffs will circulate a minute of proposed directions for the conduct of the Rights Hearing.

Other

16. The Liquidators of the second, third and eighth plaintiff, are justified in entering and performing, and grants approval under section 477(2B) to enter and perform, the amended letter agreement with Kailis which forms Annexure AJS-75 to the Second Supplementary Affidavit of Andrew John Saker Affidavit sworn 7 April 2010 and filed in these proceedings.
17. The plaintiffs' application for:
 - (a) directions under sections 511 and 601NF(2) of the Act to wind up each of the Schemes in accordance with their respective constitutions; and

(b) an order under section 601ND(1)(a) of the Act that each of the Schemes be wound up on the grounds that it is just and equitable to do so;

is adjourned to a date to be fixed.

18. The Interlocutory Process filed by certain fourth defendants and dated 6 May 2010 is otherwise dismissed.

19. Within 2 working days of their receipt, the first, second and third plaintiffs do post to the websites of the Great Southern Group and of Ferrier Hodgson, a copy of:

(a) each document filed (and which is not ordered to be kept confidential) other than attachment GRT-1 to the affidavit of Gary Robert Tucker affirmed 10 May 2010; and

(b) each order made in;

the Rights Proceeding.

20. The third confidential affidavit of Andrew John Saker sworn 21 May 2010 and annexures attached to it:

(a) be placed in a sealed envelope marked "*Confidential – Not to be Accessed for Inspection except so far as the Court orders*"; and

(b) not be available for inspection so far as the Court orders; and

(c) any application to inspect the document be referred to a Judge or Master of the Court with 3 days notice thereof to be provided to the plaintiffs.

21. Costs of this proceeding be reserved.

22. There be liberty to apply on 3 working days' notice.

BY THE COURT



THE HONOURABLE JUSTICE LE MIERE

IN THE SUPREME COURT OF WESTERN AUSTRALIA

COR 35 OF 2010

IN THE MATTER OF GREAT SOUTHERN MANAGERS AUSTRALIA LIMITED (ACN 083 825 405) (IN LIQUIDATION)

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Third Defendants

THE GROWERS LISTED IN SCHEDULE 8 OF THE AMENDED ORIGINATING PROCESS

Fourth Defendants

SCHEDULE 1

THIS DEED POLL is made on

2010

PARTIES

GREAT SOUTHERN MANAGERS AUSTRALIA LIMITED (IN LIQUIDATION) ACN 083 825 405 of C/- Ferrier Hodgson, Level 26, 108 St Georges Terrace, Perth, Western Australia, 6000 (GSMAL)

BACKGROUND

A. GSMAL was appointed the responsible entity of the *[insert name of Scheme]* (ARSN *[insert]*) pursuant to the Constitution.

- B. GSMAL holds assets including certain head leases granted by third parties which the grantors of those leases have sought to terminate. GSMAL has granted subleases of the property the subject of the head leases. That property is wasting or at risk of wasting. It is proposed that the property the subject of the head leases and subleases be disposed of.
- C. In order to give clear and free title to assignees of all interests in that property the subject of the head leases and subleases, it is necessary and convenient to terminate, assign, surrender, or deal with the head leases and the subleases.
- D. GSMAL considers it appropriate that it be granted the power to terminate, assign, surrender, or deal with the head leases and the subleases in return for the right of the sublessees and GSMAL to assert a claim against the fund to be created from the sale of the property the subject of the head leases and subleases.
- E. On 25 May 2010, the Honourable Justice Le Miere of the Supreme Court of Western Australia directed GSMAL and the liquidators of GSMAL that the liquidators of GSMAL would be justified in executing or procuring GSMAL to execute a deed amending the Constitution, pursuant to section 601GC(1)(b) of the *Corporations Act*, in the form of this deed.
- F. In accordance with section 601GC of the *Corporations Act* and the directions of the Court, GSMAL has executed this deed to modify the Constitution in the manner set out in this deed.

AGREED TERMS

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this deed, unless the context requires otherwise, terms that are defined in the Constitution have the same meaning and:

"Constitution" means the constitution dated *[insert date]* (as amended).

"Effective Date" means the date this deed is lodged with the Australian Securities and Investments Commission.

1.2 Interpretation

Clause 42 of the Constitution applies to the interpretation of this deed.

2 AMENDMENT

The Constitution is amended with effect on and from the Effective Date by inserting at the end of clause 12.2 the following words:

"and the power to assign, terminate, surrender or otherwise deal with any lease or sublease of a Grovelot on behalf of a Grower."

2.1 Remains in effect

Except as specifically amended by this document, all terms and conditions of the Constitution remain in full force and effect.

2.2 Read as a single document

With effect on and from the Effective Date:

- (a) the Growers are bound by the Constitution as amended by this deed; and
- (b) the Constitution is to be read as a single integrated document incorporating those amendments.

3 GENERAL

3.1 Paramountcy of document

If this deed conflicts with any other document, agreement or arrangement, this document prevails to the extent of the inconsistency.

3.2 Attorneys

Each person who executes this deed on behalf of a party under a power of attorney warrants that he or she has no notice of the revocation of that power or of any fact or circumstance that might affect his or her authority to execute this document under that power.

3.3 Governing law and jurisdiction

This deed will be governed by and construed in accordance with the laws in force in the State of Western Australia and each party submits to the non-exclusive jurisdiction of the courts of that State.

EXECUTED as a Deed

EXECUTED by GREAT SOUTHERN MANAGERS AUSTRALIA LIMITED (IN LIQUIDATION) by being signed in its name and on its behalf by **ANDREW JOHN SAKER** in his capacity as liquidator in the presence of:

Signature of witness

Signature of liquidator

Name of witness (*please print*)