

**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**

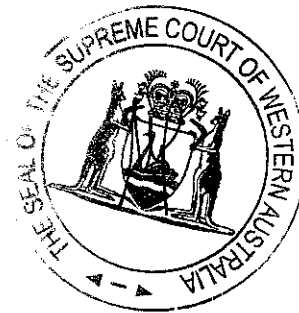
Second Defendant

**COLIN MCINTOSH NICOL AND SIMON ANDREW READ**

Third Defendants

**THE GROWERS LISTED IN SCHEDULE 8 TO THE FURTHER AMENDED ORIGINATING PROCESS**

Fourth Defendants



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**ORDERS BEFORE THE HONOURABLE JUSTICE LE MIERE  
22 OCTOBER 2010**

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Date of Filing: 25 October 2010  
Filed on behalf of: The plaintiffs

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UPON THE APPLICATION of the first to eighth plaintiffs by interlocutory process dated 12 August 2010 filed in the consolidated Supreme Court actions COR 35 of 2010 and COR 252 of 2009 and UPON HEARING Mr R W Douglas of counsel for the first to eighth plaintiffs and Mr D J Marsh of counsel for the Growers listed in Schedule 8 to the Further Amended Originating Process dated 12 August 2010 IT IS ORDERED THAT:

### **Amendment to Further Amended Originating Process**

1. The Minute of Further Re-Amended Originating Process annexed and marked "A" to these orders stand as the Originating Process in these proceedings.

### **Dealing with the Subleases**

2. The fourth, fifth, sixth and seventh plaintiffs (**Liquidators**) (in their capacity as joint and several liquidators of the first plaintiff) are justified in causing the first plaintiff (**GSMAL**) as responsible entity of the Great Southern 2008 Diversified Olives Income Project (ARSN 123 197 897) listed in Schedule 2 to the Amended Originating Process (**2008 Scheme**) to exercise the power granted by the amendments to the constitution of the 2008 Scheme and approved by order 1(a) of this Honourable Court made 27 May 2010 (**27 May Orders**) and thereby cause each fourth defendant's sublease listed in Schedule B to these orders (**Subleases**) to be assigned, terminated, surrendered or otherwise dealt with in return for a right of each such fourth defendant to assert a claim under the 2008 Scheme against the fund provided for by Order 6 of the 27 May Orders, as supplemented by Order 7 of these orders (**Olive Fund**).



### **Dealing with the Head Leases**

3. The Liquidators in their capacities as joint and several liquidators of the second plaintiff (**GSOC**) are justified in causing GSOC to take all necessary or prudent steps to assign, terminate, surrender or otherwise deal with:
  - (a) the lease agreement between GSOC and GSMAL undated and entered into on or about 1 May 2009 (**Steak Plains Head Lease**) in relation to Lot 2 in Deposited Plan 1130925 (**Steak Plains Property**); and

- (b) the lease agreement between GSOC to GSMAL dated 6 June 2008 registered as dealing number AE10920 (**Collaroy Head Lease**) against Lot 4685 in Deposited Plan 767849 and Lot 5045 in Deposited Plan 43596 (**Collaroy Property**),

(together, the **NSW Head Leases**) (the Steak Plains Property and the Collaroy Property, together, the **NSW Properties**).

4. The Liquidators in their capacities as joint and several liquidators of GSMAL including in its capacity as responsible entity of the 2008 Scheme are justified in causing GSMAL respectively to take all necessary or prudent steps to assign, terminate or otherwise deal with each NSW Head Lease including:

- (a) giving vacant possession of the each NSW Properties to GSOC upon termination of, assignment of, surrender of or dealing with the each respective NSW Head Lease;
- (b) not applying for relief against forfeiture in respect of the termination of any NSW Head Lease; and
- (c) not resisting the termination of any NSW Head Lease,

in return for a right of GSMAL to assert a claim against the Olive Fund.

#### **Approval of Sale of Olive Properties**

5. The Liquidators (in their capacities as liquidators of GSOC) are justified in entering into and performing:

- (a) the sale agreement between the Liquidators, GSOC and Australian Executor Trustees Limited ABN 84 007 869 794 as custodian of the RFM Riverbank (ARSN 112 951 578) (**RFM**) dated 30 July 2010, in terms which are substantially the same as the agreement set out in confidential attachment AJS-182 to the confidential affidavit of Andrew John Saker sworn 12 August 2010 (**NSW Sale Contract**);
- (b) the replacement deed of co-ownership between Lachlan Farming Limited (ACN 082 230 028), RFM and GSOC, in terms which are substantially the same as the agreement set out in attachment

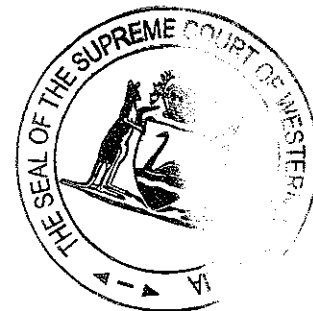


AJS-170 to the affidavit of Andrew John Saker sworn 12 August 2010 (**Replacement Deed of Co-Ownership**); and

- (c) all other agreements which are reasonably necessary to give effect to the sale of each NSW Property to RFM (**Other Agreements**).

6. The entry into of the:

- (a) NSW Sale Contract;
- (b) Replacement Deed of Co-Ownership; and
- (c) Other Agreements,



are approved under s.477(2B) of the Act.

#### **Application of proceeds of NSW Sale Contract**

7. Upon any completion of any sale provided for in Order 5, the net proceeds of the NSW Sale Contract 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 the NSW Properties:
  - (i) excluding the remuneration of the Liquidators and administrators (**Administrators**) of the first, second, third and eighth plaintiffs;
  - (ii) including the reasonable costs and expenses of conducting these proceedings including the Rights Proceeding referred to in order 6 of the 27 May Orders and these Orders (subject to 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 the NSW Properties,

**(NSW Net Proceeds):**

- (d) as to 52% of the NSW Net Proceeds, be paid to GSOC; and
- (e) as to 48% of the NSW 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 to determine which person or persons have any, and if so what, rights to all or any part of the NSW Net Proceeds (**Claimants**), and to be held on trust for the Claimants until further order of the Court together with those other proceeds as are held pursuant to Order 6 of the 27 May Orders.

8. Supplementary to Order 7 of the 27 May Orders, the Liquidators in their capacities as Administrators or liquidators of the first, second, third or eighth plaintiff may pay from the Olive Fund, including the NSW Net Proceeds, 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 part of the NSW Properties including the conduct of these proceedings including the Rights Proceeding (subject to 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 *Corporations Act 2001 (Cth)* as applicable.

9. The NSW Net Proceeds that are paid into the Olive Fund shall be held, and the rights of Claimants shall be determined, in the manner provided by orders 6 to 13 of the 27 May Orders.

10. For the purposes of the claims of any Claimant to be paid all or any part of the NSW Net Proceeds on account of that Claimant's rights:

- (a) insofar as the fourth defendants or the first plaintiff have any rights to the Steak Plains Property 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 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 Steak Plains Property, including the right to defend any claim capable of being brought by the fourth defendants in relation to the Subleases or the Head Leases, nothing in these Orders nor any action taken thereunder by any plaintiff or any defendant will prejudice or diminish any plaintiff's rights to assert any such claims or defences; and
- (d) insofar as any other Claimant has rights to the Steak Plains Property, nothing in these Orders nor any action taken thereunder by any plaintiff will prejudice or diminish those rights.

### **Confidentiality**

11. The following confidential affidavits of:

- (a) Andrew John Saker sworn 12 August 2010;
- (b) Brian Arthur Miles sworn 18 October 2010; and
- (c) Brian Arthur Miles sworn 18 October 2010 (second confidential supplementary affidavit),

and their attachments:

- (d) be placed in sealed envelopes marked "Confidential- Not to be Accessed for Inspection except so far as the Court orders";
- (e) not be available for inspection so far as the Court orders; and
- (f) any application to inspect the documents be referred to a Judge or Master of the Court with 3 days notice thereof to be provided to the plaintiffs.



**Other**

12. Subject to Orders 7 and 8 of these Orders, the Costs of this proceeding be reserved.
13. There be general liberty to apply on 3 business day's notice to the plaintiffs and the first, second and third defendants, until further order.

BY THE COURT



THE HONOURABLE JUSTICE LE MIERE

