

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)

EX PARTE

**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 1**

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

JAMES THACKRAY

First Defendant

TONY MCGRATH

Second Defendant

COLIN NICOL

Third Defendant

THE GROWERS LISTED IN SCHEDULE 8 OF THE APPLICATION

Fourth Defendants


**SECOND AFFIDAVIT OF ROBERT ALLEN BURNS IN OPPOSITION TO THE PLAINTIFFS
INTERLOCUTORY PROCESS AND IN SUPPORT OF THE FOURTH DEFENDANTS
INTERLOCUTORY PROCESS**

Date of document:
Filed on behalf of:
Prepared by:
Clarendon Lawyers
Level 17, Rialto North Tower
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May 2010
Fourth Defendants

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Catherine A Byrne
JP
128074

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I, **ROBERT ALLEN BURNS** of Suites 1-8 Kellicar Lane, Macarthur Square Shopping Centre, Gilchrist Drive, Campbelltown, New South Wales, 2560, make oath and say that:

1. I am Chairman of the Great Southern Growers Group known as "Save My Trees". There are over 7,000 growers registered with the group. Of these, over 500 are growers in the Great Southern Olive Schemes.
2. I have been appointed by the Fourth Defendants from whom appearances have been filed by Clarendon Lawyers to represent them in this matter.
3. I refer to my affidavit sworn 23 April 2010 in this proceeding setting out my qualifications and the role played by me and the Save My Trees group in representing growers in Great Southern managed investment scheme matters.
4. I received a copy of the Originating Process dated 10 March 2010 on Friday, 12 March 2010 at 1:42pm. Now produced and shown to me and marked with the letters "RAB-1" is a copy of the covering letter received by me with the time of receipt noted in the top right hand corner. This did not allow me sufficient time to organise an appearance on behalf of growers before the Master.
5. I understood from the third paragraph on the second page of the letter that the application related to applying the harvest proceeds to the costs of the harvest. I saw that as necessary, but I did not realise that the documentation between the liquidators and the persons conducting the harvest would be structured in such a way that left a potential claim on foot by the landlords as head lessors for breach of lease by the sublessor.
6. I had insufficient time to read and understand the material. Accordingly, I did not appreciate the desirability of organising legal representation for growers at the proceedings before the Master on 16 March 2010.

SWORN by the said **ROBERT ALLEN BURNS**
 at Sydney in the State of New South Wales
 this 5th day of *May* May 2010

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)

Before me:.....

Catherine A Byrne
 JP 128074

RECEIVED
 12 03 2010
 13:42
middletons

Melbourne | Perth | Sydney

11 March 2010

Our reference
 SMM.JMH:20090355.344784

By courier

Great Southern Growers Group
 C/- BCP Group Services Pty Ltd
 PO Box 417
 Campbelltown NSW 2560

Attention: Robert Burns – Chairman and Media Spokesperson

Dear Sirs

Great Southern Limited ACN 052 046 536 (In Liquidation)

We act for Andrew John Saker, Darren Gordon Weaver and James Henry Stewart (Liquidators), as liquidators of (among others):

1. the Great Southern Managers Australia Limited ACN 083 825 405 (In Liquidation) (Receivers and Managers Appointed) (GSMAL);
2. Great Southern Olives Company Limited ACN 121 381 208 (In Liquidation) (GSOC);
3. Great Southern Olive Holdings Pty Limited ACN 111 092 374 (In Liquidation) (GSOH); and
4. Great Southern Olive Processing Pty Limited ACN 128 547 437 (In Liquidation) (GSOP).

Please find enclosed copies of the following documents, provided by way of service, each of which was filed at the Supreme Court on 10 March 2010:

1. Originating Process pursuant to Supreme Court (Corporations Rules) 2004 (WA) Rule 2.2(3); and
2. affidavit of Mr Andrew John Saker sworn 10 March 2010 and annexures.

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Please note that confidential affidavits have also been sworn by Mr Andrew John Saker, Mr Jerome Clement Gumley and Mr Mark Peter Kailis in support of the application, which for confidentiality purposes are not enclosed within this letter.

This matter is listed for hearing at 11 am on 16 March 2010.

The purpose of the application is for the Liquidators of to seek directions and authorisation to enter certain agreements (and thereby incur certain expenditure) to conduct the 2010 olive harvest with the benefit of a senior lien over the olive harvest. The Liquidators are otherwise without funds in these entities.

In the absence of the liens sought, the Liquidators may not incur the expenditure required to conduct the 2010 olive harvest, which may result in the waste of the olive crop and diminished production of olives for several years. Further, the failure to obtain the lien and complete the 2010 olive harvest may adversely affect the prospect of successfully selling the olive properties for the benefit of GSOC and GSOH (the respective owners of those properties).

If granted as sought, the liens would support the right of payment of the 2010 olive harvest costs in priority to any payment to any Grower (and any other payment).

This letter has been sent to you as part of the Liquidators' attempts to keep stakeholders informed of the steps they are taking to realise value from the assets of GSOC, GSOH and GSOP.

Should any Grower wish to be heard at the hearing of this application, that Grower should file a notice of appearance in the Supreme Court in these proceedings and attend the hearing on the date given above.

Please contact James Healy or Skye Miller of this office with any queries.

Yours sincerely
Middletons


James Healy