

FILED
20 OCT 2011



AFFIDAVIT OF ANDREW JOHN SAKER SWORN 19 OCTOBER 2011

COURT DETAILS

Court	Supreme Court
Division	Equity Division
List	Commercial List
Registry	Sydney
Case number	2011/334501

TITLE OF PROCEEDINGS

Plaintiff	Great Southern Pine Pty Ltd (ACN 087 353 820) (in liquidation)
First defendants	The persons named in Schedule 1 to the summons (being certain members of the "Templegate Forestry Trust Wombat" managed investment scheme ARSN 092 667 439)
Second defendant	Registrar General of New South Wales

FILING DETAILS

Filed for	The plaintiff
Filed in relation to	
Legal representative	Nicholas Brown, Middletons
Legal representative reference	10038163
Contact name and telephone	Rachael King (08) 9216 0907

[on separate page]

AFFIDAVIT

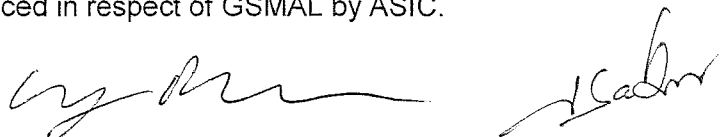
Name Andrew John Saker
Address c/- Level 26, 108 St George's Tce, Perth WA 6000
Occupation Liquidator
Date 19 October 2011

I say on oath:

1. I am, with my partners, Martin Bruce Jones, Darren Gordon Weaver and James Henry Stewart (together, **Liquidators**), a joint and several liquidator of:
 - (a) the plaintiff, Great Southern Pine Pty Ltd (ACN 087 353 820) (In Liquidation) (**GSP**);
 - (b) Beagle Management Pty Ltd (ACN 009 280 791) (In Liquidation); and
 - (c) Great Southern Managers Australia Ltd (receivers and managers appointed) (in liquidation) (ACN 083 825 405) (**GSMAL**).
2. I am authorised to make this affidavit on behalf of the plaintiff. Except where otherwise stated, I make this affidavit from my own knowledge.
3. A tabbed folder of documents marked exhibit **AJS-1** contains the documents referred to in this affidavit.
4. I make this affidavit in support of the plaintiff's application for declarations:
 - (a) that certain leases have expired by effluxion of time or otherwise terminated; and
 - (b) that the plaintiff is entitled to have those leases removed from the title to land of which it is the owner.

Background

5. GSP was registered as a public company on 29 April 1999. At **tab 1 of AJS-1** is a copy of a company extract produced in respect of GSP by the Australian Securities and Investments Commission (**ASIC**).
6. GSMAL was registered as a public company on 11 August 1998. At **tab 2 of AJS-1** is a copy of a company extract produced in respect of GSMAL by ASIC.



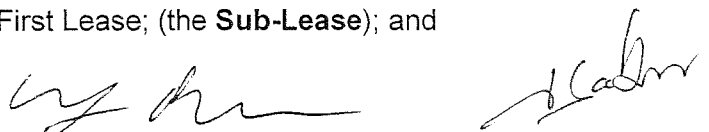
7. Both GSP and GSMAL have, since their inception, been wholly owned subsidiaries of Great Southern Ltd (receivers and managers appointed) (in liquidation) (ACN 052 046 536) (**GSL**). Before the appointment of administrators to GSL and its subsidiaries, including GSP and GSMAL, in May 2009, the companies were engaged in the promotion and conduct of a variety of agricultural managed investment schemes.

Templegate Forestry Trust Wombat

8. On 11 April 1988, the Templegate Forestry Trust was established by trust deed between Templegate Funds Management Limited (**TFML**) as manager and Perpetual Trustees WA Limited (ACN 008 666 886) (**Trust Deed**) and five pine plantation projects were created. One of those plantation projects was known as the "Wombat" plantation.
9. At the time of establishment of the trust, TFML was the manager of the Trust (the **Manager**).
10. From my review of the company extract produced by ASIC in respect of Beagle Management Pty Ltd (ACN 009 280 791) (In Liquidation) (**Beagle**), it appears that Beagle is the company which was formerly known as TFML. At **tab 3 of AJS-1** is a copy of the company extract produced by ASIC in respect of Beagle.
11. At **tab 4 of AJS-1** is a copy of the Scheme Prospectus for the Templegate Forestry Trust.

Grant of interests in plantation

12. Each investor in the Wombat plantation acquired a lot or lots by completing an application and paying to the Manager, an application fee. After the application was accepted by the Manager, pursuant to clause 3.5 of the Scheme Constitution, each applicant became entitled to the grant of a Lease and Management Agreement which would specify a lot or lots to be determined by the Manager in its absolute discretion.
13. From my investigation of the records relating to the Templegate Forestry Trust, it appears that each Lease and Management Agreement granted the following interests to each investor in the land comprised by their lot:
- (a) a lease for a term of 5 years (the **First Lease**), commencing 30 June 1988;
 - (b) a sublease for the term of 5 years less one day, commencing 5 years after the commencement date of the First Lease; (the **Sub-Lease**); and



- (c) a lease for the term of 5 years, commencing 5 years after the commencement date of the Second Lease (the **Third Lease**).
14. Also from my investigation of the records relating to the Templegate Forestry Trust, it appears that each Lease and Management Agreement granted to TFML (now Beagle) a lease for the term of 5 years, commencing 5 years after the commencement date of the First Lease (**Second Lease**).
15. A Management Agreement commenced on the date of commencement of the First Lease and continued for three management periods commensurate with the term of each of the First Lease, Second Lease and Sub-Lease and Third Lease.
16. Notwithstanding that the provisions contained in the Lease and Management Agreement relating to the term, the Lease and Management Agreement provided, at clauses 1.2(b)(ii), 2.2(b)(ii), 3.2(b)(ii) and 4.2(b)(ii) for the extension of the terms of the First Lease, Second Lease, Sub-Lease and Third Lease respectively, in the event that clear-felling of the leased land by the Manager did not take place prior to the termination date.

Transition to managed investment scheme

17. For the purposes of registration of the project comprised by the Wombat plantation, as a managed investment scheme:
- (a) the Trust Deed was amended to become a separate constitution for each of the five pine plantations; and
- (b) on or about 23 May 2000, GSMAL was appointed responsible entity of, *inter alia*, the "Templegate Forestry Trust Wombat" managed investment scheme (ARSN 092 667 439) (**Wombat Scheme**).

At **tab 5 of AJS-1** is a copy of the company extract produced by ASIC in respect of the Wombat Scheme. At **tab 6 of AJS-1** is a copy of the constitution of the Wombat Scheme, dated 2 May 2000.

18. The Wombat Scheme was conducted on land described as Lot 3 in Deposited Plan 562257, Lots 9 and 10 in Deposited Plan 562405 in the Shire of Yass Parish of Umburra County of Cowley (the **Plantation**). At **tab 7 of AJS-1** is a copy of the certificate of title for the land comprising the Plantation, which was obtained from the Department of Lands in or about February 2011. It appears from my examination of

that certificate of title that the land comprising the Plantation was transferred to GSP on or about 5 November 2001.

19. The certificate of title for the land comprising the Plantation shows a number of encumbrances including, *inter alia*, leases and subleases to each of the persons listed in Schedule 1 to the plaintiff's summons.

Changes to lease particulars

20. It appears from my perusal of the certificate of title which is tab 7 of AJS-1, that the following changes have occurred to the particulars of the leases:

- (a) on or about 20 November 1992, the transfer of lease Y447013 to GIO Finance Limited;
- (b) on or about 10 January 1994, the transfer of lease Y447032 to GIO Finance Limited;
- (c) on or about 19 December 1994, the transfer of lease Y7322070 to GIO Finance Limited;
- (d) on or about 27 April 1995, the transfer of lease Y446996 to GIO Finance Limited;
- (e) on or about 2 October 2003, the transfer of the following leases to GSMAL:
 - (i) Y446987;
 - (ii) Y446854; and
 - (iii) Y447026;
- (f) on or about 28 April 2005, the transmission of lease Y548188 to Beryl Edith Lyon.

Affairs of GSP, Beagle and GSMAL

21. On 16 May 2009, the Liquidators were appointed joint and several administrators of *inter alia*, GSP, Beagle and GSMAL.
22. On 18 May 2009, ANZ Fiduciary Services Pty Ltd (as security trustee of the GSL Security Trust) (ACN 083 825 405) (**ANZ Fiduciary**), being a debenture-holder of GSMAL, appointed James Gerard Thackray, Colin McIntosh Nicol, Anthony Gregory McGrath and Simon Andrew Read to be receivers and managers of the property of GSMAL (the **receivers and managers**).




23. The first meeting of creditors of, *inter alia*, GSP and GSMAL took place on 27 May 2009.
24. On 19 November 2009, at the second meeting of creditors of, *inter alia*, GSP, Beagle and GSMAL, GSP's, Beagle's and GSMAL's creditors resolved, pursuant to section 439C(c) of the Act, that the companies be wound up. Also on 19 November 2009, the Liquidators were appointed liquidators of, *inter alia*, GSP, Beagle and GSMAL. At **tab 8 of AJS-1** is a copy of the notice of special resolution to wind up company.
25. I intend to realise the property of GSP by selling the land comprising the Plantation. In order to sell the land on an unencumbered basis, it is necessary to cause the leases and subleases to be removed from the titles to the Plantation land.

Destruction of the Plantation

26. On or about 18 January 2003, the pine trees growing on the Plantation were destroyed by fire.
27. A salvage operation took place in or about late 2004 to recover any remaining timber on the Plantation.
28. To the best of my knowledge and belief:
- (a) no pine trees have been planted on the Plantation since the fire in 2003;
 - (b) other than writing to investors and collecting and distributing the proceeds of the insurance claim, GSMAL has not, in its capacity as Manager, undertaken any activity in relation to the cultivation or management of the Plantation as required by the Lease and Management Agreements since the fire in 2003.
29. Further, to the best of my knowledge and belief, since January 2003:
- (a) no investor has undertaken any activity connected with the cultivation of pine trees on the Plantation;
 - (b) no investor has instructed or requested GSMAL to undertake any cultivation or management task on the Plantation in accordance with the Lease and Management Agreements.




Insurance pay out

30. It appears from my investigation of the records of the Templegate Forestry Trust, that the Plantation and the trees were the subject of a policy of insurance with Agricola Underwriting Management Pty Ltd (ACN 070 058 212), trading as Agricola Crop Insurance (**Agricola**) (Policy Number FAU02-00048OR06-31971).
31. After the fire on the Plantation, in or about 2003, GSMAL lodged a claim with Agricola in respect of the loss and damage caused by the fire. On or about 22 October 2004, it appears that GSMAL lodged a declaration of loss. At **tab 9 of AJS-1** is a copy of a letter to Agricola enclosing the declaration of loss
32. From my inspection of GSMAL's books and records, it appears that the insurance proceeds were distributed proportionately to all investors pursuant to the Wombat Scheme constitution in four tranches on or about 18 December 2003, 13 August 2004, 2 December 2004 and 29 April 2005.

Notice of winding up of the Wombat Scheme

33. It appears from my investigations that, on or about 29 April 2005, Christine Cooke, then the Administration Manager of GSMAL, wrote to each investor and informed them that the Wombat Scheme would be wound up and that further contact would be made to the investors in relation to removing the Lease and Management Agreements from the title to the Plantation. At **tab 10 of AJS-1** is a copy of that letter.
34. From my investigations of GSMAL's books and records, it appears that, until the appointment of the receivers and managers, GSMAL did not send any further information to the investors in relation to removing the Lease and Management Agreements from the title to the Plantation or winding up the Scheme.
35. On or about 20 October 2009, the receivers and managers sent to each investor, a circular letter proposing to wind up the Wombat Scheme. At **tab 11 of AJS-1** is a copy of that letter.
36. I am not aware of any objection by any investor to the proposal to wind up the Wombat Scheme contained in either the letter to investors dated 29 April 2005 or the letter to investors dated 20 October 2009.
37. On or about 16 May 2011, I caused a letter to be sent to investors in the Wombat Scheme at the address for each investor shown in the register of members

maintained by GSMAL (other than Barrie Bailey Nominees Pty Ltd (ACN 005 379 340), Graham Mulhall and Colin Barry Marsh), requesting that each investor execute a surrender of lease in respect of any leasehold interest retained by them in the land. At **tab 12 of AJS-1** is a copy of a letter sent to an investor. All of the letters sent to investors were in materially identical terms.


38. By 27 June 2011, I had received surrender of lease forms which appear to have been executed in respect of each of the following lease numbers, by or on behalf of each of the following persons:

- (a) Y446865 (Timothy John Goodman);
- (b) Y446869 (Kenneth William Frank Chambers);
- (c) Y446870 (George Robert Henry Kelsall);
- (d) Y446988 (J.C. Rawlings Pty Ltd);
- (e) Y446990 (Mark Joffe);
- (f) Y446991 (John Barry Arthur);
- (g) Y446992 (Monika Suzanne Larmer);
- (h) Y446993 (Ross Christopher Larmer);
- (i) Y446999 (Brian John Pascoe);
- (j) Y447001 (Graeme Innes - Ker MacNish);
- (k) Y447002 (Keith Raymond Hamilton);
- (l) Y447004 (Russell John Clear);
- (m) Y447005 (Jose Ivo Da Silva);
- (n) Y447006 (Freda Cashmore);
- (o) Y447016 (RKH Airconditioning Pty Ltd);
- (p) Y447018 (Timothy William McNamee);
- (q) Y447025 (Susan Merrick);

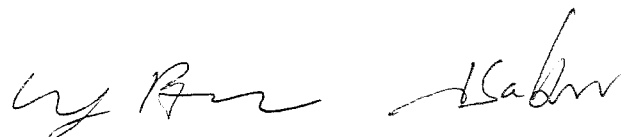


- (r) Y447029 (Timothy Edward Cocks);
 - (s) Y447030 (Ashley Harley Nicols);
 - (t) Y447033 (Peter Edward Brown);
 - (u) Y447035 (Harold Lewis McMinn);
 - (v) Y548188 (Beryl Edith Lyon);
 - (w) Y446863 (John Carlton Young);
 - (x) Y446864 (Graham Charles Ankers);
 - (y) Y446866 (Longworth Engineering Pty Ltd);
 - (z) Y447009 (Pierre Allard);
 - (aa) Y447012 (Victoria Blatt);
 - (bb) Y447017 (Edward George Anderson);
 - (cc) Y548186 (Lloyd Owen Morgan);
 - (dd) Y548187 (Helen Margaret Sewell);
 - (ee) Y548190 (John Carlton Young); and
 - (ff) Y732072 (Kenneth William Frank Chambers).
39. It appeared that those forms referred to at subparagraphs 37 (w) to (ff) above may not have been properly executed by the relevant lessee.
40. On 28 September 2011, I wrote to each of the lessees listed in subparagraphs 37 (w) to (ff) above, attaching a further surrender of lease form and inviting each lessee to:
- (a) re-execute the surrender;
 - (b) clarify the basis upon which a surrender had been completed by a person other than the lessee listed on the title to the land; or
 - (c) execute a transmission or notice of death form.

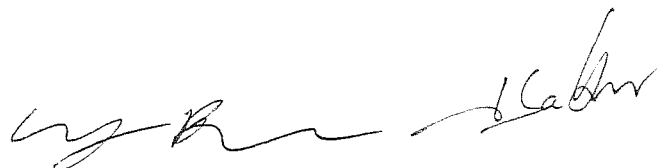
At **tab 13 of AJS-1** is a copy of each of those letters.



41. Also on 28 September 2011, I wrote to Graham Mulhall in substantially identical terms to my 16 May 2011 letter.
42. On or about 10 October 2011 I caused a letter to be sent to each of Colin Barry Marsh and Barrie Bailey Nominees Pty Ltd in substantially identical terms to the 16 May 2011 letter at the addresses recorded on correspondence sent to each of them in relation to the Scheme in 2004.
43. Between 28 September 2011 and 19 October 2011, I received re-executed surrender of lease forms in respect of each of the following lease numbers, by or on behalf of each of the following persons:
 - (a) Y447017 (Edward George Anderson);
 - (b) Y732072 and Y446869 (Greta Margaret Chambers as executor and trustee of the estate of Kenneth William Frank Chambers (accompanied by a copy of the last will and testament of Kenneth William Frank Chambers));
 - (c) Y446861 (Graham Mulhall);
 - (d) Y446863 and Y548190 (John Carlton Young);
 - (e) Y548187 (Helen Margaret Sewell);
 - (f) Y446866 (Longworth Engineering Pty Ltd);
 - (g) Y548186 (Lloyd Owen Morgan);
 - (h) Y446864 (Graham Charles Ankers); and
 - (i) Y447012 (Victoria Blatt).
44. I intend to cause Beagle to execute each of the surrenders in its capacity as Second Lessee under each lease.
45. It appears from the Liquidators' records that no response to the 16 May 2011 letter has been received from:
 - (a) AMP Finance Limited;
 - (b) Barrie Bailey Nominees Pty Ltd;
 - (c) Vjekoslav Blatnik;



- (d) David Brown and Glenys Dawn Brown;
- (e) Philip Andrew Brown;
- (f) Ian Alfred Downs;
- (g) Nigel Faulkner;
- (h) Fine Rate Pty Ltd;
- (i) Kerelle Haase;
- (j) Peter James Haase;
- (k) Wayne Allard Haase;
- (l) Hendi Nominees Pty Limited;
- (m) Thomas Denis Elias;
- (n) Christine Dee Lavelle;
- (o) Colin Barry Marsh;
- (p) Trevor Noel Mabel;
- (q) Harold David McMinn;
- (r) Richard Kernan Newing;
- (s) Lynette Petruccelli;
- (t) Brian Maxwell Power;
- (u) Rossdeu Pty Ltd;
- (v) Elie Charlies Rotstein;
- (w) Scott Brokerage Group Pty Ltd;
- (x) Robert Leslie Scown;
- (y) Sibley Holdings Pty Ltd;
- (z) Raymond Anthony Stanley;

A handwritten signature in black ink, appearing to be 'Raymond Anthony Stanley', is located at the bottom right of the page.

- (aa) Sonia Sztrajt;
- (bb) Victor Sztrajt; and
- (cc) Tom & Mary & Associates Pty Ltd.

46. The liquidators seek orders for service of the summons on all those investors who are defendants to this action and are natural persons, by sending a copy of the summons by prepaid post to the last known address recorded in the register of members kept by the plaintiff in relation to the Wombat Scheme accompanied by a brief letter explaining the purpose of the proceedings and referring each defendant to the Ferrier Hodgson website upon which all court documents in relation to the plaintiff's application will be posted. At **tab 14 of AJS-1** is a copy of the proposed letter to investors.
47. I believe that posting a copy of the summons accompanied by a letter in substantially the same form as the letter which is at tab 14 of AJS-1 is the most practicable means of effecting service on each investor who is a natural person.

Termination of the First Lease, Sub – Lease, Second Lease and Third Lease


48. I believe that by reason of the destruction of the trees by fire on or about 18 January 2003, the Plantation has been clear felled and the term of each of the First Lease, Second Lease, Sub-Lease and Third Lease have ended.

Grazing Licence

49. On 1 October 2009 GSL, as agent for GSP, granted a grazing licence over the Plantation to Roy Amos commencing on 1 October 2009 and ending on 31 December 2009. That grazing licence was renewed on a month by month basis until April 2011, when I caused notice to be given to Mr Amos to vacate the Plantation. At **tab 15 of AJS-1** is a copy of that grazing licence.

SWORN at Perth, Western Australia

Signature of deponent



Signature of witness



Name of witness

GUY TIMOTHY PETERSON

Address of witness

LEVEL 32, 44 ST GEORGES TERRACE PERTH WA 6000

Capacity of witness

Solicitor

Note: The deponent and witness must sign each page of the affidavit. See UCPR 35.7B.