

Natalie Collins

From: Celia Armstrong [Celia.Armstrong@clarendonlawyers.com.au]
Sent: Thursday, 6 May 2010 2:30 PM
To: Natalie Collins
Cc: Michael Fernon; James Healy
Subject: RE: In the matter of Great Southern Managers Australia Limited COR 35 of 2010

Natalie

Michael and I are both available at that time. Will you call us?

By way of clarification, on instructions we have amended the proposed interlocutory process such that our clients no longer intend to apply for the appointment of a special purpose liquidator. The balance of the proposed interlocutory process remains substantially the same and we expect it to be filed shortly.

Regards

Celia Armstrong | Senior Associate

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From: Natalie Collins [mailto:natalie.collins@middletons.com]
Sent: Thursday, 6 May 2010 11:37 AM
To: Celia Armstrong
Cc: Michael Fernon; James Healy
Subject: In the matter of Great Southern Managers Australia Limited COR 35 of 2010

Dear Celia

Could you please advise whether yourself and Michael Fernon are available for a telephone conference at 8.30am (Perth time) tomorrow to discuss the above matter? We understand from your junior counsel, Mr Marsh that you may be amending the application that is yet to be filed but that was served on Middletons on 27 April 2010. We would like to discuss those parts of our application that can be agreed and those that are still in issue.

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Melbourne | Perth | Sydney

9 May 2010

By Email: Michael.Fernon@clarendonlawyers.com.au

Our reference
NCC.JMH.20090355

Clarendon Lawyers
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Dear Sirs

In the matter of Great Southern Managers Australia Limited COR 35 of 2010

We refer to your clients' interlocutory process dated 6 May 2010.

As paragraph 1 of your clients' interlocutory process currently stands, we are unable to deduce the relief that is sought by your clients in relation to any amendments to the orders of Master Sanderson made on 16 March 2010. Please provide us with a minute of the orders that your clients intend seeking by paragraph 1 of the interlocutory process. We note that the time for filing a notice of appeal in relation to those orders has now passed and your clients have provided no explanation as to why this period should be enlarged.

Paragraph 5 of your clients' interlocutory process does not specify who is entitled to apply for a part of the "Net Proceeds". It does not provide that the Liquidators costs incurred in relation to the GSMAL Olive Schemes but not referable to the sale are payable. It does not provide that Receivers and Managers costs are payable from the fund proposed. It does not provide that Administrators costs are payable from the fund proposed. That paragraph does specifically refer to Liquidators fees referable to the sale and it may therefore be inferred that other costs of external administrators are excluded. Please confirm your clients' position.

Further, the consequence of your orders appears to be that costs incurred by the first, second or third plaintiffs referable to the preservation and realisation of the assets the subject of the (undefined) sale are not to be satisfied from the fund. Is this your clients' position?

Please provide a minute of the orders you seek setting out who is eligible to apply for a share of the fund.

Do your clients intend to make an application for relief against forfeiture or an application under s,81(4) of the *Real Property Act 1969* (WA)? If so, when may we expect that application to be filed?

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We look forward to receiving your response as soon as possible.

Yours faithfully
Middletons


James Healy



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10 May 2010

Our Ref: MJF:CJA:1000171

James Healy
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Dear Mr Healy

**Great Southern Managers Limited (In Liquidation)
Supreme Court of Western Australia proceeding COR 35 of 2010**

We refer to the above proceeding and to your five letters of 9 May 2010. We also refer to the hearing of our clients' interlocutory processes on Wednesday, 12 May 2010.

We **enclose** a proposed Amended Memorandum of Appearance.

1 Stephen Lynch's availability for cross examination.

You have asked us whether Mr Lynch will be available for cross examination on Wednesday.

We were not intending for Mr Lynch to be available on Wednesday. We have consistently maintained our position that the time allocated on Wednesday is insufficient to allow a proper hearing of the contentious issues. Accordingly, the matter can only be dealt with as an interlocutory matter in respect of which cross examination does not ordinarily occur.

However, if you require Mr Lynch to be available for cross examination on Wednesday, and can assure us that there will be time for cross examination of your witnesses on that day as well as cross examination of Mr Lynch, we will make the necessary arrangements.

2 Authorities

You have asked us what authorities that counsel will refer to at the hearing on Wednesday.

We refer you to our letter of 6 May 2010 pursuant to which we served you with *inter alia* a List of Authorities dated 6 May 2010 which indicated with an asterisk which documents counsel intends to read from. If the matter proceeds to trial, counsel is also likely to read from most of the other cases listed.

3 Affidavit of Stephen Lynch – confidential documents

You are concerned about maintaining the confidentiality of certain exhibits to Mr Lynch's report.

To maintain the confidentiality of the confidential exhibits you should refrain from publishing those exhibits on the website on the basis of the original order of confidentiality. The parties can deal with any additional concerns in court on Wednesday.

We confirm that our clients will maintain the confidentiality of all confidential material.



4 Minute of proposed orders

You have requested that we provide you with a minute of proposed orders in relation to paragraphs 1 and 5 of our clients' Interlocutory Process dated 6 May 2010 (IP). You have also asked whether our clients intend to make an application for relief against forfeiture.

We are seeking our clients' instructions in this regard and will try to let you know before Wednesday. However, as we will be travelling and have to confer in Perth on Tuesday afternoon, we will have some logistical difficulties in meeting your deadline. Your clients' insistence that these matters be dealt with hastily heightens these difficulties.

Regarding paragraph 1 of the IP, our clients object to any interpretation of the orders made by Master Sanderson that inhibit the other orders sought in the IP.

Regarding paragraph 5 of the IP, that paragraph specifically contemplates that Court will '*determine which person or persons have any rights to all or any part of the Net Proceeds*'. This allows any creditor of the schemes to become a claimant in the proceeding.

It is not our case that we need to seek relief against forfeiture. We are seeking a declaration of a remedial trust that preserves the Growers' interests, either as sub-tenants in possession or as the holders of an equity to seek relief against forfeiture. We do not need to seek a separate order for relief against forfeiture.

5 Appearances

You have highlighted some discrepancies in respect of the Notice of Appearance filed on behalf of our clients on 3 May 2010.

We will seek leave to file the enclosed Amended Notice of Appearance at Wednesday's hearing.

We respond as follows in respect of each of your enumerated points:

- (1) We confirm that Grower 743 in Schedule 8 whom is listed as Ms Anna Beck is Anna McSweeney.
- (2) The correct name of Grower 1154 is Danila Checchin.
- (3) We confirm that we also act for Mrs Aimee Marta Mackie.
- (4) We confirm that the correct reference is to Grower 1155 in Schedule 8, namely Raymond Drummond.
- (5) We confirm that the correct reference is to Grower 2475 in Schedule 8, namely Sandra Florence Drummond.
- (6) We are instructed that Evelyn Rubie Wilkie was a Grower in the 2008 Diversified Olive Project Scheme. The executor of her Estate has consented to our filing an appearance on behalf of the Estate of Evelyn Rubie Wilkie. The late Ms Wilkie does not appear in Schedule 8. Can you please confirm if she appears on the register of Growers? If so, on Wednesday, we will seek leave of the Court to add her Estate to the list of Growers in Schedule 8.
- (7) See enclosed Amended Notice of Appearance.

If your clients were inclined to consent to the orders sought by our clients in their IP we would be hopeful of reaching a suitable arrangement that would alleviate any need for us and counsel to travel to Perth for



Wednesday's hearing. Accordingly, our clients request that your clients consider granting consent to the orders sought in their IP.

We look forward to your prompt response.

Yours faithfully

Michael Fernon
Director

Enc

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Melbourne | Perth | Sydney

10 May 2010

Our reference
NCC.JMH.20090355

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Dear Sirs

In the matter of Great Southern Managers Australia Limited COR 35 of 2010

We refer to your letter of 10 May 2010 and adopt the numbering in that letter.

1. The hearing on 12 and 13 May 2010 is a final hearing, as is plain from the relief sought. Consequently, Mr Lynch's non-attendance may give rise to a circumstance where his evidence may be insufficient or not accepted if he fails to attend. Please confirm whether Mr Lynch will be attending the hearing or not. Our clients' witnesses will be available for cross-examination. Mr Kailis will be available by video-link.

4. As we have stated previously, we do not understand the relief that you seek in paragraph 1 of your interlocutory process dated 6 May 2010. In particular, we do not understand your answer that "[your] clients object to any interpretation of the orders made by Master Sanderson that inhibit the other orders sought in the [interlocutory process dated 6 May 2010]". We do not understand: (i) the relief sought, (ii) the grounds on which that relief will be sought, or (iii) whether you seek the liquidator's entitlement to have the harvest proceeds applied in satisfaction of harvest costs should be overturned or not.

The issue is of vital importance for our clients who are, at present, incurring liabilities for harvest costs which they have proceeded to incur on the basis of orders that they may apply the harvest proceeds in discharge of those harvest costs. As you are aware, there are insufficient assets to meet those harvest costs in any of GSMAL, GSOC or GSOH. Should the orders of Master Sanderson be displaced, our clients will be at risk of personally incurring those expenses.

Please explain why you have declined to provide a clear answer as to whether or not your clients seek to displace the arrangements for harvest.

If your clients wish to displace those orders and will indemnify our client for the costs of the 2010 Harvest, please advise us immediately. If you believe that there is a means of funding the harvest costs, other than by the arrangement contemplated, please specify that by reply. If you maintain that you will be seeking to set aside our clients' arrangements for meeting harvest costs out of the harvest proceeds, please let us know immediately by reply.

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When our clients understand whether or not your client seeks to set aside those orders and the grounds (if any) for doing so, they may take further steps including the immediate suspension of the 2010 Harvest without further notice to you. Whether or not that is the most efficient way of minimising the harvest costs at this stage in the 2010 Harvest, nearly one month after the orders of Master Sanderson, is not determinable at the time of writing this letter.

Your response in relation to our question concerning paragraph 5 of your client's interlocutory process makes things no clearer. It is not clear whether there is any limit on persons who may assert claims against the pool. We infer from your silence, in response to our direct question, that there is none.

5. Our clients do not agree to the orders contained in the interlocutory process. As stated above, the immediate reason for the inability to agree is that, despite request, our clients do not understand what the orders sought are.

Yours faithfully
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James Healy



11 May 2010

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Our Ref: MJF:CJA:1000171

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Dear Mr Healy

**Great Southern Managers Limited (In Liquidation)
Supreme Court of Western Australia proceeding COR 35 of 2010**

We refer to your letter of 10 May 2010.

Our clients seek to set aside the order of Master Sanderson to the extent that it would interfere with or impede the substantive order being sought by our clients, ie, that the proceeds of the sale be placed in a common fund and the claims of any claimants to any entitlement from the common fund be determined by the Court.

The concern of our clients is that the order may be seen as causing or perpetuating a breach by GSMAL of the head lease and to the extent that it does so, it should be set aside.

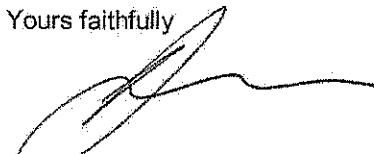
It is not the intention of our clients to stop the harvest.

In relation to the orders sought in the fifth paragraph of our clients' interlocutory processes, we cannot make the terms of the order any clearer. As we said to you in our letter yesterday, the proposed order permits any person to make a claim and contemplates that the Court will determine whether their claim is proper and ought to be paid.

It appears to us that our proposed order satisfies the claims of all parties, whereas the orders proposed by your clients destroy growers' interests.

As your clients are charged under s.601FD as officers of GSMAL to act in the best interests of the growers as scheme members and if there is a conflict between the members' interests and the interests of the responsible entity, give priority to the members' interests, they are duty bound to avoid a course which destroys growers' rights where the alternative course will protect those rights.

Yours faithfully



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