

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

BETWEEN:

GREAT SOUTHERN MANAGERS AUSTRALIA LIMITED (ACN 083 825 405) (IN LIQUIDATION) (RECEIVERS AND MANAGERS APPOINTED) INCLUDING IN ITS CAPACITY AS RESPONSIBLE ENTITY OF THE MANAGED INVESTMENT SCHEMES LISTED IN SCHEDULE 2 TO THE FURTHER 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 128 457 437)(IN LIQUIDATION)

Eighth Plaintiff

JAMES GERARD THACKRAY

First Defendant

ANTHONY GREGORY MCGRATH

Second Defendant

COLIN MCINTOSH NICOL AND SIMON ANDREW READ

Third Defendant

THE GROWERS LISTED IN SCHEDULE 8 OF THE FURTHER AMENDED ORIGINATING PROCESS

Fourth Defendants

DEFENDANT GROWERS' SUPPLEMENTARY SUBMISSIONS

Case Manager: The Hon Justice Le Miere

Date of Document: 7 September 2010

Filed on behalf of: Those of the fourth defendants listed in the appearances dated 12 April and 12 May 2010

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1. These supplementary submissions are made to clarify two issues that arise out of the plaintiffs' submissions dated 6 September 2010. We are instructed to make these submissions as Mr Marsh is unavailable. We are also instructed that his Honour's Associate indicated to Ms Armstrong of Clarendon Lawyers that further submissions would be accepted.

2. First, the plaintiffs' submissions suggest that the defendant Growers have changed their case and that the change is somehow significant. The case against the Liquidators is and has always been that the Liquidators had and have a conflict between the duties owed to the landlord companies and their creditors and those owed to the Growers; and have put the interests of the former ahead of the interests of the latter. This is borne out in the transcript of 12 May 2010 at pages 91-92, 94, 96-99, 101, 103, 108 and 111. The plaintiffs' submissions seem to quote selectively from the transcript and latch onto the use of the word "contrived" in oral submissions that was not used in the Defendant Growers' defence and counterclaim. It is a distinction without significance. So too is the distinction between malfeasance and misfeasance by the Liquidators when the Liquidators maintain that they have no duty to the Growers.

3. Secondly, the submissions ignore the contention that:
 - (a) the application for judicial approval under s 511 is now completed and the Liquidator has been given approval to extinguish the Growers' rights; and
 - (b) the Growers are entitled to their costs as objectors in that proceeding in any event (see paragraphs 6 to 19 of Mr Marsh's principal written submissions filed in this application).

Garry Bigmore and Sam Hopper

7 September 2010