

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

---

INTERLOCUTORY PROCESS ON BEHALF OF THE PERSONS NAMED IN SCHEDULE 1

---

Date of document:  
Filed on behalf of:  
Prepared by:  
Clarendon Lawyers  
Level 17, Rialto North Tower  
525 Collins Street  
MELBOURNE VIC 3000

6 May 2010  
Fourth Defendants  
Tel: 03 8681 4400  
Fax: 03 8681 4499  
Solicitors Code: 101294  
Ref: MJF:100171

Email: [Michael.femon@clarendonlawyers.com.au](mailto:Michael.femon@clarendonlawyers.com.au)

---

Interlocutory process for relief is made under Supreme Court (Corporations) (WA) Rules 2004 (WA) Pt 1 r1.3(2) and the Rules of the Supreme Court 1971 (WA) O 3 r 5 and O 21 r 10.

On the facts stated in the supporting affidavit, the applicant applies for the following relief:

**A. DETAILS OF APPLICATION**

This application is made under the Court's inherent jurisdiction and under section 1321 *Corporations Act 2001*.

On the facts stated in the supporting affidavits of Michael Joseph Fernon sworn 22 April 2010, Robert Allen Burns sworn 23 April 2010 and that sworn on 5 May 2010, Phillip Capicchiano sworn 5 May 2010 and Stephen Lynch sworn 5 May 2010 the Fourth Defendants named in schedule 1 apply for the following relief:

1. That to the extent necessary, the orders of Master Sanderson made in this proceeding on 16 March 2010 be set aside.
2. The Fourth, Fifth, Sixth and Seventh Plaintiffs as liquidators of the Second and Third Plaintiff are not justified in terminating or disclaiming the lease agreements (**Head Leases**) referred to in Schedule 5 of the plaintiffs' interlocutory process dated 7 April 2010 (**Plaintiffs' Application**) or causing them to be terminated nor are they as liquidators of the First Plaintiff justified in accepting the termination or disclaimer or causing the First Plaintiff to accept the termination or disclaimer.
3. The Fourth, Fifth, Sixth and Seventh Plaintiffs are justified in causing the First Defendant to cause the Fourth Defendants' subleases as listed in schedule 9 of the Plaintiff's Application (**Subleases**) to be surrendered for value.
4. The Fourth, Fifth, Sixth and Seventh Plaintiffs are justified in causing the First Plaintiff in its capacity as responsible entity of each of the schemes listed in schedule 2 of the Plaintiffs' Application (**Schemes**) to amend the constitution of each of the Schemes pursuant to section 601GC(1)(b) of the Corporations Act by executing a deed in the form contained in schedule 2 for each of the constitutions.
5. Upon completion of any sale by the Fourth, Fifth, Sixth and Seventh Plaintiffs of the Great Southern Olive Assets including the assets of the Second and Third Plaintiffs, the net proceeds of sale (after payment of selling costs and expenses, retentions (if any) and the costs and expenses of the liquidators of the Fourth, Fifth, Sixth and Seventh Plaintiffs referable to the preservation and realisation of the assets the subject of the sale, as approved by the committee of inspection of the First Plaintiff (**Net Proceeds**) be held by the Fourth, Fifth, Sixth and Seventh Plaintiffs in an interest bearing account with an Australian bank (as defined in section 9 of the Corporations Act) (**Fund**)

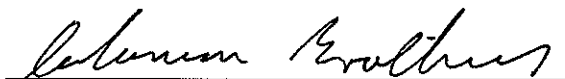
pending the hearing and determination by the Court of a proceeding (**Rights Proceeding**) to determine which person or persons have any rights to all or any part of the Net Proceeds (**Claimants**), and to be held on trust for the Claimants until further order of the Court.

6. Insofar as the Fourth Defendants have any rights to the assets the subject of the sale and the value of the rights they had under the Subleases which are surrendered to enable the Fund to be created nothing in orders 4 to 6 above, or any action taken thereunder by the Second and Third Plaintiffs, will prejudice or diminish the value of those rights for the purposes of their claim to be paid all or any part of the Net Proceeds on account of those rights..

**Other matters**

7. The costs of this application be paid from the assets of GSMAL, GSOC and GSOH.
8. There be granted to any person affected by these orders general liberty to apply on three business days notice to the Plaintiffs and the Defendants.
9. Such further order or orders as the Court deems fit.

Dated: 6 May 2010



For and on behalf of Clarendon Lawyers  
Solicitors for the Fourth Defendants

This application will be heard by Justice Le Miere at the Supreme Court of Western Australia, Stirling Gardens, Barrack Street, Perth at 10.30am on 12 May 2010.

**B. NOTICE TO PLAINTIFFS AND FIRST, SECOND AND THIRD DEFENDANTS**

TO: Each Plaintiff and Defendant (excluding each Grower listed in Schedule 8).

If you or your legal practitioner do not appear before the Court at the time shown above, the application may be dealt with, and an order made, in your absence. As soon after that time as the business of the Court will allow, any of the following may happen:

- (a) the application may be heard and final relief given;

- (b) directions may be given for the future conduct of the proceeding;
- (c) any application may be heard.

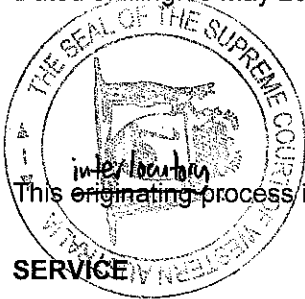
Before appearing before the Court, you must file a notice of appearance, in the prescribed form, in the Registry and serve a copy of it on the plaintiffs.

**C. APPLICATION FOR WINDING UP ON GROUNDS OF INSOLVENCY**

Not applicable.

**D. FILING**

Dated of filing: 6 May 2010



KF Chapman  
Principal Registrar

This originating process is filed by Clarendon Lawyers for the Fourth Defendants.

**E. SERVICE**

The Plaintiffs' address for service is care of Solomon Brothers, Level 6, Kings Park Road, West Perth, Western Australia, 6000.

It is intended to serve a copy of this interlocutory process on each plaintiff and the First, Second and Third Defendants and the Australian Securities & Investments Commission.

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

---

SCHEDULE 1

---

The applicants are:

- GP Levvey Pty Ltd;
- Mr Phillip Capicchiano;
- Anna and John McSweeney (743)
- Anthony D'Ambros (1762)
- Bruce and Judy Ruthven (3158)
- Carmelo Barbanti (1760)
- Chris Shaw (1603)
- Christopher Graham (256)
- Container Forwarding Services Pty Ltd (2108)
- Daniel Forster (2706)

- Danila Checcin (1154)
- Debby Graham (857)
- Douglas Nelson (3169)
- Elizabeth Mayocchi (1141)
- Estate of Evelyn Rubie Wilkie (455)
- Greg Riebe (3974)
- Ian Marshall (423)
- John Burgess (1301)
- John Byrnes (1079)
- Julie Green (270)
- Kevin and Leone Thomas (1689)
- Leonard Sommer (2229)
- Lindsay Horn (3876)
- Lisa Sommer (2228)
- Mari Ashted (2863)
- Michael White (3184)
- Milan Stefanovic (1812)
- Peter Mackie (314)
- Raymond Drummond (1115)
- Rhonda Burgess (1302)
- Richard Metherall (3993)
- Robert Gordon Hankins (236)
- Robin Aldis (267)
- Russell Haug (2261)
- Sandra Drummond (3475)
- Scott Edmonds (2901)
- Shannon Thomson (3004)
- Stephen Haddy (208)
- Sue Foster (1717)

- Vicki Eckart

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

---

SCHEDULE 2

---

THIS DEED POLL is made on

2010

**PARTIES**

**GREAT SOUTHERN MANAGERS AUSTRALIA LIMITED (IN LIQUIDATION)** ACN 083 825 405  
of C/- McGrath Nicol, Level 17, 37 St Georges Terrace, Perth, Western Australia, 6000 (**GSMAL**)

**BACKGROUND**

- A. GSMAL was appointed the responsible entity of the *[insert name of Project]* (ARSN *[insert]*) pursuant to the Constitution.
- B. GSMAL is desirous of disposing of its assets including various leases granted by third parties.
- C. In order to give clear and free title to the assignee of any lease, any sublease/licence and joint venture agreement of the leased land may be surrendered.

- D. GSMAL considers it appropriate that it be granted the power to surrender each sublease/licence and joint venture agreement on behalf of the Growers.
- E. On # 2010, Justice # of the Supreme Court of Western Australia directed GSMAL and the liquidators of GSMAL that the liquidators of GSMAL would be justified in executing or procuring GSMAL to execute a deed amending the Constitution, pursuant to section 601GC(1)(b) of the *Corporations Act*, in the form of this Deed.
- F. In accordance with section 601GC of the *Corporations Act* and the directions of the Court, GSMAL has executed this deed to modify the Constitution in the manner set out in this deed.

## **AGREED TERMS**

### **1 DEFINITIONS AND INTERPRETATION**

#### **1.1 Definitions**

In this deed, unless the context requires otherwise, terms that are defined in the Constitution have the same meaning and:

"**Constitution**" means the constitution dated *[insert date]* (as amended).

"**Effective Date**" means the date this deed is lodged with the Australian Securities and Investments Commission.

#### **1.2 Interpretation**

Clause 1.2 of the Constitution applies to the interpretation of this deed.

### **2 AMENDMENT**

The Constitution is amended with effect on and from the Effective Date by inserting at the end of clause 12.2 the following words:

*"and the power to assign, terminate, surrender or otherwise deal with any lease or sublease of a Grovelot on behalf of a Grower."*

#### **2.1 Remains in effect**

Except as specifically amended by this document, all terms and conditions of the Constitution remain in full force and effect.

#### **2.2 Read as a single document**

With effect on and from the Effective Date:

- (a) the parties are bound by the Constitution as amended by this deed; and
- (b) the Constitution is to be read as a single integrated document incorporating those amendments.

### **3 GENERAL**

#### **3.1 Paramountcy of document**

If this deed conflicts with any other document, agreement or arrangement, this document prevails to the extent of the inconsistency.

#### **3.2 Attorneys**

Each person who executes this deed on behalf of a party under a power of attorney warrants that he or she has no notice of the revocation of that power or of any fact or circumstance that might affect his or her authority to execute this document under that power.

#### **3.3 Governing law and jurisdiction**

This deed will be governed by and construed in accordance with the laws in force in the State of Victoria and each party submits to the non-exclusive jurisdiction of the courts of that State.

**EXECUTED** as a Deed

**EXECUTED by GREAT SOUTHERN MANAGERS AUSTRALIA LIMITED (IN LIQUIDATION)** by being signed in its name and on its behalf by **ANDREW JOHN SAKER** in his capacity as liquidator in the presence of:

---

Signature of witness

---

Signature of liquidator

---

Name of witness *(please print)*