

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

**MEMORANDUM OF CONFERRAL
RE: THE DEFENDANTS' INTERLOCUTORY PROCESS
DATED 6 MAY 2010**

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
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I refer to the fourth defendants' interlocutory process dated 6 May 2010 that the orders of Master Sanderson made in Chambers on 18 March 2010 be set aside and that orders be made to establish a process for the apportionment of the proceeds of sale of the Great southern olive assets and certify that—

1. CONFERRAL

The parties have conferred to try to resolve the matters giving rise to this application. Given the urgency of the matter as dictated by the plaintiffs' application, the high degree of complexity of the matter generally and sheer volume of materials before the Court to be consider in that context, agreement by conferral has been difficult and no agreement has been reached. That being said, conferral has occurred on this application as follows:

- 1.1 The parties have exchanged letters.
- 1.2 By letter dated 19 April 2010 to James Healy, Middletons, Clarendon Lawyers requested communication regarding the adoption by the liquidators of an alternative process to protect growers' rights.

Attached to this notice and marked "MJF-1" is a copy of the letter from Clarendon Lawyers to Middletons dated 19 April 2010.

- 1.3 By letter dated 27 April 2010, Clarendon Lawyers provided Middletons with a copy of the proposed interlocutory process aimed at protecting growers' rights.

Attached to this notice and marked "MJF-2" is a copy of the letter from Clarendon Lawyers to Middletons dated 27 April 2010.

- 1.4 By letter dated 28 April 2010, Middletons responded to parts of that letter.

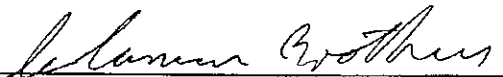
Attached to this notice and marked "MJF-3" is a copy of the letter from Middletons to Clarendon Lawyers dated 28 April 2010.

1.5 By letter dated 3 May 2010, Clarendon Lawyers replied to that letter.

Attached to this notice and marked "MJF-4" is a copy of the letter from Clarendon Lawyers to Middleton dated 3 May 2010.

2. MATTERS IN DISPUTE

All the matters the subject of this application remain in dispute.

(Signed) 
Signed Solomon Brothers for Clarendon Lawyers, Solicitors for the Applicants

(Dated) 6 May 2010

MJF I



19 April 2010

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Our Ref: MAB:MJF:1000171

James Healy
Middletons
Level 25, Rialto South Tower
525 Collins Street
MELBOURNE VIC 3000

Dear Mr Healy

**GS Olive proceedings
Supreme Court Proceeding No. COR 35 of 2010**

As at the time of writing, we act for 119 growers in relation to this proceeding. This number is increasing on a daily basis. These clients are supported by the Save My Trees group which comprises over 7000 members, of whom over 500 are olive growers

On 12 April 2010 we filed and served a notice of appearance in respect of GP Levvey Pty Ltd and Mr Phillip Capicchiano. We will be filing and serving notices of appearance in respect of additional growers in due course.

Access to confidential information

All of the growers for whom we act have appointed Mr Rob Burns as their agent in this proceeding. Accordingly it is essential that Mr Burns be given access to the confidential information so that he can properly instruct us. Enclosed is a letter from Mr Cappicchiano confirming his appointment of Mr Burns. We trust this is sufficient and look forward to your clients agreeing to release the information to Mr Burns. If they continue to refuse access, our clients will have no alternative but to seek an adjournment of the 29 April hearing date until the information is provided and Mr Burns has had a reasonable opportunity to consider it and give us his instructions.

Our clients' concerns

Our clients are concerned about three matters concerning your clients' application – whether the sale process has been conducted with appropriate rigour, the procedure they propose to adopt to pass to the purchasers clear title to the olive assets by destroying growers' rights, and your clients' conflicts of interest.

Sale process

We have reviewed the material filed on behalf of your clients and they do not provide sufficient evidence to form a view whether the sale process was rigorous. Our clients are reviewing their position on this and, as we indicated above and in our letter of 16 April 2010, our clients require the confidential information to be made available to Mr Burns in order to give us instructions.

Growers Rights

Our clients have subleases over their lots, including the olive trees and the infrastructure, for the unexpired portion of 20 years. These subleases are proprietary rights which cannot be ignored by your clients or by the landlords. Similar rights held by the Timbercorp growers were described by Mr Justice Robson in the Victorian Supreme Court as having substantial value.

The landowners take their rights subject to the growers' rights under the schemes because:

- (a) the growers are tenants in possession of the land;
- (b) the subleases, in addition to the land include *"the Olive Trees and the Olive Grove infrastructure"*, and confer rights to water;



- (c) if the sublease are terminated, our clients have rights to seek an order for relief against forfeiture under s.81(4) of the *Property Law Act 1969* (WA);
- (d) the subleases will survive the surrender or merger of the head leases into the freehold under s.75 of the *Property Law Act 1969* (WA);
- (e) if the Liquidator were to disclaim the head leases, then the head leases will merge into the freehold and our clients subleases survive the disclaimer under s.75 of the *Property Law Act 1969* (WA) (see *NAB v NSW* [2009] FCA 1066 per Rares J, esp at 26)

Winding up

The winding up of the scheme may lead to the automatic termination of our clients' subleases. Pursuant to the terms of the sublease agreements, the growers' subleases terminate earlier than the 20 year term if a project is terminated pursuant to the provisions of the scheme constitutions. As the constitutions contemplate that the schemes may terminate in accordance with the Corporations Act, your clients' current application could result in the subleases being terminated with consequent loss by the growers of their proprietary rights. GSMAL should not be applying to wind up the schemes in a manner that denies the scheme members any ability to be compensated for the loss of their valuable proprietary rights.

Conflicts

Your clients, as officers of GSML as the responsible entity, are obliged to act in the best interests of scheme members and should be taking all steps to protect the growers' valuable rights.

There is a fundamental and irreconcilable conflict in your clients acting as liquidators for both the landlords and the responsible entity as tenant in negotiating for the termination of the head leases.

The proposal put forward by your client is advantageous to the creditors and shareholders of the landlord companies but disadvantageous for the members of the schemes. There is no basis for your client to ignore the valuable rights of the scheme members in favour of the creditors and shareholders of the other entities. Your clients must act to protect the interests of all parties and as a responsible entity, where there is a conflict, give preference to the rights of members (secs 601FC(1)(c) and 601FD(1)(c) of the Corporations Act)

Proper process

In our opinion, the proper process is to adopt the procedures considered appropriate by the Victorian Supreme Court namely:

1. adjourn the winding up application,
2. the responsible entity seeks approval from the court that it is justified in amending the scheme constitutions under s.601FC to give itself the power to surrender growers' leases for valuable consideration,
3. all rights of the parties are preserved,
4. the sale proceeds, once received, are deposited into an account held by the liquidators, and
5. the growers and the liquidators of the landowners either agree upon an appropriate apportionment or the apportionment is determined by a legal proceeding.

It may also be necessary to conduct a more rigorous sale process depending upon the outcome of our clients' further investigation when the confidential information is available.

Enclosed with this letter are copies of orders made by Mr Justice Robson on 21 August 2009 and 9 October 2010 in the Victorian Supreme Court in relation to the sale of some of the Timbercorp almond assets. These orders have been replicated three times and by two other Victorian Supreme Court judges in relation to other Timbercorp schemes - on 12 November 2009 by Mr Justice Croft in relation to the Timbercorp olive assets, on 11 December 2009 by Ms Justice Davies in relation to other Timbercorp almond assets and on 26 February 2010 by Ms Justice Davies in relation to Timbercorp citrus assets.

Our clients request that your clients amend their application to adopt the same procedure as adopted by the liquidators of the Timbercorp horticultural entities. In all the circumstances, this is, in our clients' view, the best



way to ensure that the growers' rights are recognised and protected and essential for your client to fulfil its obligations to the growers as members of the schemes while still making progress with the liquidation of the companies and the schemes. By adopting this procedure, the growers' rights will only be extinguished for value and, in the absence of agreement between the parties, the Court will settle upon a proper apportionment of the sale proceeds.

Please let us have a response at your earliest convenience.

Yours faithfully



Michael Fernon
Director

Enc

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27 April 2010

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Our Ref: MAB: 1000171
Your Ref:

James Healy
Middletons Lawyers
Level 2
6 Kings Park Road
West Perth WA 6005

Dear James

Great Southern Managers Australian Limited COR 35 2010

We refer to the above proceeding.

We now enclose by way of service the following affidavits:

- (a) Affidavit of Michael Joseph Fernon dated 22 April 2010 (with exhibits MJF-1 to MJF-3); and
- (b) Affidavit of Robert Allen Burns dated 23 April 2010 (with exhibit RAB-1).

We also enclose a draft Interlocutory Process (undated). We will provide you with a sealed copy in due course.

We refer to the orders made in this proceeding on 8 April 2010. Our clients will seek an adjustment to the timetable prescribed by these orders at tomorrow's hearing. We anticipate filing submissions on behalf of our clients soon.

Yours sincerely



Mark Bland
Director

Enc

Direct Tel: 03 8681 4415
Email: mark.bland@clarendonlawyers.com.au

Cc: Andrew Tregear
andrew.tregear@aslc.gov.au

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ANDREW JOHN SAKER

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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:

April 2010

Filed on behalf of:

Fourth Defendants

Prepared by:

Clarendon Lawyers

Tel: 03 8681 4400

Level 17, Rialto North Tower

Fax: 03 8681 4499

525 Collins Street

Solicitors Code: 101294

MELBOURNE VIC 3000

Ref: MJF:100171

Email: Michael.fernon@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 and of Robert Allen Burns sworn 23 April 2010, the Fourth Defendants named in schedule 1 apply for the following relief:

1. The Fourth, Fifth, Sixth and Seventh Plaintiffs be replaced as liquidators of the First Plaintiff with an independent special purpose liquidator for the purpose of winding up the Great Southern Managers Australia Limited and that the new liquidator be also appointed to wind up the Great Southern Olive Schemes.
2. That to the extent necessary, the orders of Master Sanderson made in this proceeding on 16 March 2010 be set aside.

Further and in the alternative to order 1

3. 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.
4. 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 Plaintiffs' Application (**Subleases**) to be surrendered for value.
5. 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.
6. 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.

7. 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

8. The costs of this application be paid from the assets of GSMAL, GSOC and GSOH.
9. 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.
10. Such further order or orders as the Court deems fit.

Dated: April 2010

Clarendon Lawyers
Solicitors for the Fourth Defendants

This application will be heard by _____ at the Supreme Court of Western Australia, Stirling Gardens, Barrack Street, Perth at _____ am/pm on _____

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: April 2010

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.

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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;
- Kevin and Leonie Thomas;
- Shanon Thomson;
- Robin Aldis;
- Scott Edmonds;
- Vicki Eckart;
- Milan Stefanovic;
- Christopher Shaw;
- Mari Ashted;

- Julie Green;
- David Young;
- Raymond Drummond;
- Rhonda Burgess;
- Richard Metherall;
- Stephen Haddy;
- Danita Checcin.

IN THE SUPREME COURT OF WESTERN AUSTRALIA

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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)*

middletons

Melbourne | Perth | Sydney

28 April 2010

By Email: mark.bland@clarendonlawyers.com.au

Our reference
NCC.JMH.20090355

Mr M Bland
Director
Clarendon Lawyers
Level 17
Rialto North Tower
525 Collins Street
MELBOURNE VIC 3000

Your reference
MAB:KFD:100171

Dear Mark

**In the matter of Great Southern Managers Limited (In liquidation)
COR 35 of 2010**

We refer to your further interlocutory process sent to us by email on 27 April 2010. We understand that you intend to file that application, which concerns the application to appoint replacement liquidators to GSMAL, imminently.

We note that we have not conferred with you in relation to that application.

We raise the following questions which are relevant to consideration by the plaintiffs and us of your clients' application:

1. Have you identified a liquidator (or liquidators) who is prepared to accept this liquidator appointment? If so, who?
2. What arrangements, if any, are contemplated for the payment of that person's fees given that GSMAL is without funds?
3. Would that special purpose liquidator appoint solicitors? Who would those solicitors be? By whom would they be paid?
4. The appointment of a special purpose liquidator requires that role to be specifically described and delimited. What is the ambit of the role for the contemplated liquidator, in language which is unambiguous, concise and suitable for an order? Or is it contemplated that the liquidator is appointed to GSMAL generally?
5. Would such a liquidator initially report to creditors on the prospects of relief against forfeiture? When would that report be provided?
6. If that special purpose liquidator were to recommend against an application for relief against forfeiture, what would be the response of your clients?

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Contact
Natalie Collins
telephone: +61 8 9216 0906
natalie.collins@middletons.com

7. Is it contemplated that during the currency of appointment of any special purpose liquidator GSMAL would meet its obligations under the head leases? If it is intended that GSMAL meet those obligations, from what source will those obligations be paid. If GSMAL does not meet those obligations causing loss to GSOC and GSOH, who will bear that loss?
8. Will your clients now provide evidence of the ability and willingness of any grower to fund the cure of past defaults and adequate assurance against future defaults in case any special purpose liquidator does recommend an application for relief against forfeiture? Will your clients now provide evidence of that ability and willingness to provide an adequate fund to pay the costs of the lawyers to make any such application for relief against forfeiture?
9. Is it your clients' position that it is necessary to cure past faults and make adequate provision against the possibility of future defaults as a predicate to any application for relief against forfeiture? If not, please identify any authority upon which you rely.
10. Is it your clients' position that, in the absence of an application for relief against forfeiture, there is an entitlement on GSOC and GSOH to terminate the leases?
11. If GSMAL is unable to meet the cost of curing past and providing against future defaults from its own resources, why is a special purpose liquidator of GSMAL necessary at all?
12. Why do your clients not simply bring an application as to the sub-lessees under s.81(4) of the *Property Law Act 1969* (WA)?

We look forward to discussing these matters with you prior to the commencement of this application as it is required under O59 r9.

Yours sincerely
Middletons


James Healy



3 May 2010

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Our Ref: MJF:MAB:1000171

James Healy
Middletons Lawyers
Level 2
6 Kings Park Road
West Perth WA 6005
By email: james.healy@middletons.com

Dear James

Great Southern Managers Limited (In Liquidation) COR 35 of 2010

We refer to your letter of 28 April 2010. We note as a result of that your application (which was made without any meaningful conferral in the sense contemplated by Martin CJ in *Youlden Enterprises Pty Ltd v Health Solutions (WA) Pty Ltd* (2006) 33 WAR 1 at [2]-[5]), our clients have been required to deal with the matter with great urgency. The impact of this urgency was also noted by Justice Le Miere on Wednesday this week.

The proposed interlocutory application has been formulated following conferral with you. The conferral that can be meaningfully undertaken is limited by the time constraints imposed by your clients.

Further, the alternative relief is one which you should be well aware of as it mirrors that provided by Justice Robson in *re Timbercorp (No. 3)* (2009) 74 ACSR 626.

We are instructed to respond to your specific questions as follows:

1. We have not yet identified a liquidator but expect to do so in the near future.
2. No liquidator will accept the appointment without an arrangement for the payment of his or her fees. This will be a matter for negotiation with the liquidator.
3. That is a matter for the special purpose liquidator.
4. We are currently considering this. At this stage we believe the role of the special purpose liquidator would be to carry out the responsibilities of GSMAL as responsible entity of the Olive Schemes.
5. That would be a matter for the special purpose liquidator.
6. If that occurred, it is likely that our clients would support the application.
7. That would be a matter for the special purpose liquidator. We understand that the GSOC and GSOH have failed in a number of their obligations under the leases.
8. These matters will be considered at the appropriate time.
9. This matter is under consideration.
10. No.
11. Our clients believe your clients, as liquidators for the landlords and the tenant, are conflicted and have undertaken actions which favour the landlords and their creditors as opposed to the scheme members.
12. This is under consideration.



In relation to the curing of alleged defaults, we note that your clients caused the borrowing from Kallis and Sumich to be in the names of the landowners rather than GSMAL and those borrowings were used to rectify the alleged defaults. Those funds could have been borrowed by GSMAL and applied in this way. To this extent, the non-curing of the alleged defaults has been perpetuated by the strategy adopted by your clients.

It is also becoming abundantly clear that the leases are worth more than the encumbered properties. Two issues arise from this:

- It heightens the degree of your clients' conflict even further. The diminution in the value of the assets to which the creditors seek to have recourse (the freehold land) caused by the encumbrance of the head leases is a major problem for the creditors. The removal of the head leases would maximise the value of their assets. This is a position diametrically opposed to that of the Growers who need the value of the lease maintained.
- It is clear that, at the time funding was sought for the maintenance and harvest, as between the leases and freehold, the leases were better assets over which to hold security because they were of greater value. It is inexplicable that, as the responsible entity and trustee, GSMAL made no attempt to secure funding on this basis.

Yours faithfully

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