

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

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**ORDERS REGARDING 2010 HARVEST COSTS  
BEFORE MASTER SANDERSON IN CHAMBERS  
16 MARCH 2010**

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Date of Document: 18 March 2010  
Date of Filing: 18 March 2010  
Filed on behalf of: The plaintiffs

Prepared by  
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UPON the application of the plaintiffs by Originating Process dated 10 March 2010 and UPON hearing Mr. R. Douglas of counsel for the plaintiffs and Mr L Ayres for the Receivers and Managers of the 1<sup>st</sup> Plaintiff, IT IS ORDERED THAT:

1. Pursuant to 511 of the *Corporations Act 2001* (Cth) (**Act**), the fourth to seventh plaintiffs in their capacity as liquidators of the first to third plaintiffs (**Liquidators**) are justified in entering into the letter agreement with Kailis Organic Olive Groves Limited ACN 095 927 519 which forms Annexure 34 to the First Saker Affidavit filed in these proceedings (**Kailis Harvest Costs Letter**), for the expenditure of up to \$1,864,850 to be incurred by the Liquidators on behalf of GSOH and GSOC respectively.
2. Pursuant to section 511 of the Act, the Court declares that expenditure made in accordance with the Kailis Harvest Costs Letter:
  - (a) is an actual, proper and reasonably necessary expense of GSMAL and GSOH incurred in order to conduct the 2010 harvest of the olive trees planted on the GSOH properties the subject of the Kailis Harvest Costs Letter which are set out in paragraph 1 of Schedule 2 to this order (**GSOH Kailis Harvest**), and to preserve the value of those properties;
  - (b) is an actual, proper and reasonably necessary expense of GSMAL and GSOC incurred in order to conduct the 2010 harvest of the olive trees planted on the GSOC properties the subject of the Kailis Harvest Costs Letter which are set out in paragraph 2 of Schedule 2 to this order (**GSOC Kailis Harvest**), and to preserve the value of those properties;
  - (c) is an expense that the Liquidators, in their respective capacities as liquidators of GSMAL, GSOH and GSOC, are justified in procuring GSMAL, GSOH and GSOC respectively to incur in order to conduct the GSOH Kailis Harvest and GSOC Kailis Harvest respectively and preserve the value, respectively, of the GSOH and GSOC properties the subject of the GSOH Kailis Harvest and GSOC Kailis Harvest;
  - (d) in respect of that interest, if any, which GSMAL has in the olive produce derived from the GSOH Kailis Harvest and GSOC Kailis Harvest, is:
    - (i) a proper and reasonably necessary expense of GSMAL in order to conduct the GSOH Kailis Harvest and GSOC Kailis Harvest;
    - (ii) an expense that the Liquidators would be justified in procuring GSMAL to incur in its respective capacities as lessee of the GSOH and GSOC properties the subject of the GSOH Kailis Harvest and GSOC Kailis Harvest, and as responsible entity of the managed investment schemes listed in Schedule 1 of this Order, in order to conduct the GSOH Kailis Harvest and GSOC Kailis Harvest;

- (e) in respect of the expenditure on the GSOH Kailis Harvest, will be an expenditure chargeable by the Liquidators of GSOH against the olive produce yielded from the GSOH Kailis Harvest and against any fund arising from the sale of such olive produce; and
  - (f) in respect of the expenditure on the GSOC Kailis Harvest, will be an expenditure chargeable by the Liquidators of GSOC against the olive produce yielded from the GSOC Kailis Harvest and against any fund arising from the sale of such olive produce.
3. Pursuant to section 511 of the Act, the Liquidators are justified in entering into the letter agreement with Sumich EVOO Australia Pty Ltd ACN 123 114 492 which forms Annexure 35 to the First Saker Affidavit filed in these proceedings (**Sumich Harvest Costs Letter**), for the expenditure of up to \$650,000 to be incurred by the Liquidators on behalf of GSOC.
4. Pursuant to section 511 of the Act, that expenditure made in accordance with the Sumich Harvest Costs Letter:
- (a) is an actual, proper and reasonably necessary expense of GSMAL and GSOC incurred in order to conduct the 2010 harvest of the olive trees planted on the GSOC properties the subject of the Sumich Harvest Costs Letter which are set out in paragraph 3 of Schedule 2 to this Order (**GSOC Sumich Harvest**) and to preserve the value of those properties;
  - (b) is an expense that the Liquidators, in their capacity as liquidators of GSMAL and GSOC, are justified in procuring GSMAL and GSOC to incur in order to conduct the GSOC Sumich Harvest and preserve the value of the GSOC properties the subject of the GSOC Sumich Harvest;
  - (c) in respect of that interest, if any, which GSMAL has in the olive produce derived from the GSOC Sumich Harvest, will be:
    - (i) a proper and reasonably necessary expense of GSMAL in order to conduct the GSOC Sumich Harvest;
    - (ii) an expense that the Liquidators would be justified in procuring GSMAL to incur in its capacity as lessee of the GSOC properties the subject of the GSOC Sumich Harvest, and as responsible entity of the managed investment schemes listed in Schedule 1 of this Order, in order to conduct the GSOC Sumich Harvest; and

- (d) in respect of the expenditure on the GSOC Sumich Harvest, an expenditure chargeable by the Liquidators of GSOC against the olive produce yielded from the GSOC Sumich Harvest and against any fund arising from the sale of such olive produce.
5. Pursuant to section 477(2B) of the Act, the Court approves the Liquidators to enter into each of the Kailis Harvest Costs Letter and Sumich Harvest Costs Letter.
6. The Confidential Affidavits of:
- (a) Andrew John Saker (2) sworn 10 March 2010;
  - (b) Mark Peter Kailis sworn 9 March 2010;
  - (c) Jerome Clement Gumley sworn 9 March 2010; and
  - (d) Jerome Clement Gumley (2) sworn 15 March 2010,
- and the annexures attached to those affidavits,
- (e) be placed in a sealed envelope marked "Confidential – Not to be Accessed for Inspection except so far as the Court orders"; and
  - (f) not be available for inspection except in so far as the Court orders; and
  - (g) any application to inspect the document be referred to a Judge or Master of the Court with 3 days notice thereof to be provided to the solicitors for the plaintiffs.
7. An order that the costs of this application be paid from the assets of GSMAL, GSOC and GSOH.
8. There be liberty to apply.

BY THE COURT



REGISTRAR

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**SCHEDULE 1 – LIST OF MANAGED INVESTMENT SCHEMES**

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1. 2005 Organic Olives Project (ARSN 112 665 157)
2. 2006 Organic Olives Income Project (ARSN 112 665 308)
3. 2007 Organic Olives Income Project (ARSN 115 654 950)
4. 2007 Diversified Olives Income Project (ARSN 124 197 771)
5. 2008 Diversified Olives Income Project (ARSN 124 197 897)

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## SCHEDULE 2 – LIST OF PROPERTIES

### 1. GSOH properties the subject of the Kailis Harvest Costs Letter

Property	Address	Title Details
Avon Valley	Sheahan Road & Kokeby Road, Kokeby	Vol 1003 Folio 577
Avon Valley	Dale Kokeby Road & Corberding Road, Kokeby	Vol 2107 Folio 268
Avon Valley	Dale Kokeby Road & Corberding Road, Kokeby	Vol 2107 Folio 269
Avon Valley	Dale Kokeby Road & Corberding Road, Kokeby	Vol 2107 Folio 270
Avon Valley	Dale Kokeby Road & Corberding Road, Kokeby	Vol 2107 Folio 271
Avon Valley	Dale Kokeby Road & Corberding Road, Kokeby	Vol 2107 Folio 272
Avon Valley	Dale Kokeby Road & Corberding Road, Kokeby	Vol 2107 Folio 273
Avon Valley	Dale Kokeby Road & Corberding Road, Kokeby	Vol 2107 Folio 274
Avon Valley	Dale Kokeby Road & Corberding Road, Kokeby	Vol 2107 Folio 275

Avon Valley	Dale Kokeby Road & Corberding Road, Kokeby	Vol 799 Folio 24
Avon Valley	Dale Kokeby Road & Corberding Road, Kokeby	Vol 903 Folio 80
Avon Valley	Dale Kokeby Road & Corberding Road, Kokeby	Vol 907 Folio 76
Avon Valley	Dale Kokeby Road & Corberding Road, Kokeby	Vol 1019 Folio 375
Avon Valley	Dale Kokeby Road & Corberding Road, Kokeby	Vol 1098 Folio 937
Avon Valley	Dale Kokeby Road & Corberding Road, Kokeby	Vol 2046 Folio 590
Avon Valley	Dale Kokeby Road & Corberding Road, Kokeby	Vol 1252 Folio 792
Avon Valley	Dale Kokeby Road & Corberding Road, Kokeby	Vol 1385 Folio 141
Avon Valley	Dale Kokeby Road & Corberding Road, Kokeby	Vol 1562 Folio 587
Avon Valley	Dale Kokeby Road & Corberding Road, Kokeby	Vol 1245 Folio 725
Avon Valley	Dale Kokeby Road & Corberding Road, Kokeby	Vol 1010 Folio 809
Preston Valley	3101 Doonybrook/Boyup Brook Road, Mumballup	Vol 1170 Folio 472
Preston Valley	3101 Doonybrook/Boyup Brook Road, Mumballup	Vol 1170 Folio 539
Preston Valley	3101 Doonybrook/Boyup Brook Road, Mumballup	Vol 1570 Folio 197
Preston Valley	3101 Doonybrook/Boyup Brook Road, Mumballup	Vol 1573 Folio 883

**2. GSOC properties the subject of the Kailis Harvest Costs Letter**

Property	Address	Title Details
Dandaragan Estate	Lot 5 Kayanaba Road, Dandaragan	Vol 2534 Folio 998
Dandaragan Estate	Lot 5 Kayanaba Road, Dandaragan	Vol 2567 Folio 265
Twin Brooks	5708 Brand Highway, Red Gully	Vol 2092 Folio 348

**3. GSOC properties the subject of the Sumich Harvest Costs Letter**

Property	Address	Title Details
Beermullah Road	1968 Beermullah Road Wanerie	Vol 2662 Folio 247
Sappers Road	126 Sappers Road, Nilgen	Vol 2096 Folio 426
Waterville Road	182 Waterville Road Wanerie	Vol 1854 Folio 199