

Filed: 12 October 2018 3:00 PM



## **Commercial List Statement**

**COURT DETAILS** 

Court Supreme Court of NSW

Division Equity
List Commercial

Registry Supreme Court Sydney

Case number 2018/00076580

**TITLE OF PROCEEDINGS** 

First Plaintiff Giabal Pty Ltd
Second Plaintiff Geoffry Underwood

First Defendant Gunns Plantations Limited (in Liquidation)

Second Defendant Gunns Limited (in Liquidation)(Receivers & managers

Appointed)

Number of Defendants 11

**TITLE OF THIS CROSS-CLAIM** 

First Cross Claimant Gunns Plantations Limited (in Liquidation)

Second Cross Claimant Gunns Limited (in Liquidation) (Receivers & managers

Appointed)

First Cross Defendant Andrew Gray

Second Cross Defendant Mathew Gary Wallace

FILING DETAILS

Filed for Gunns Plantations Limited (in Liquidation), Cross Claimant 1

Benjamin Renfrey

Gunns Limited (in Liquidation)(Receivers & managers

Appointed), Cross Claimant 2

Filed in relation to Cross-Claim 2

Legal representative

Legal representative reference

Telephone (08)82397158

Your reference B8450

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## **ATTACHMENT DETAILS**

In accordance with Part 3 of the UCPR, this coversheet confirms that both the Lodge Document, along with any other documents listed below, were filed by the Court.

Commercial List Statement (Further Amended Second Cross-Claim Commercial List Statement (12.10.2018).PDF)

[attach.]

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Filed: 12/10/2018 15:00 PM

# FURTHER AMENDED SECOND CROSS-CLAIM COMMERCIAL LIST CROSS-CLAIM STATEMENT

(FILED PURSUANT TO THE ORDERS OF JUSTICE BALL DATED 8 OCTOBER 2018)

**COURT DETAILS** 

Court Supreme Court of New South Wales

Division Equity

List Commercial

Registry Sydney

Case number 2018/76580

TITLE OF PROCEEDINGS

First plaintiff Giabal Pty Ltd

Second plaintiff Geoffry Underwood

First defendant Gunns Plantations Limited (In Liquidation)

Number of defendants 11

TITLE OF THIS CROSS-CLAIM

First Cross-Claimant Gunns Plantations Limited (In Liquidation)

First Defendant)

Second Cross-Claimant Gunns Limited (In Liquidation)(Receivers & managers

Appointed) (Second Defendant)

First Cross-Defendant Andrew Gray

(Tenth Defendant)

Second Cross-Defendant Matthew Wallace

(Eleventh Defendant)

**FILING DETAILS** 

Filed for Gunns Plantations Limited (In Liquidation), First Cross-

Claimant

Gunns Limited (In Liquidation) (Receivers & managers

Appointed), Second Cross-Claimant

Legal representative Ben Renfrey, Johnson Winter & Slattery

Legal representative reference B8450

Contact name and telephone Ben Renfrey 08 8239 7111

## **PRELIMINARIES**

A The terms defined in the Amended Commercial List Statement filed by the Plaintiffs on 6 August 2018 (CLS) and in the Amended Commercial List Response filed by the First and Second Defendants on 20 July 2018 (CLR) have the same meaning in this document, unless otherwise defined or stated.

## A NATURE OF DISPUTE

- The Plaintiffs in the Proceedings have brought representative proceedings against the First and Second Cross-Claimants (the Cross-Claimants) and the First and Second Cross-Defendants (the Cross-Defendants) on their behalf and on behalf of Group Members in relation to investments that they made in the Gunns Woodlot Schemes for the 2002-2003, 2005-2006 and 2008-2009 financial years.
- As set out in the CLR, the Cross-Claimants deny that the Plaintiffs or the Group Members are entitled to the relied claimed by them against the Cross-Claimants.
- 3 However, for the purposes of this Cross-Claim only, the Cross-Claimants allege that, if they are liable to the Plaintiffs, then the Cross-Defendants are liable.

## **B** ISSUES LIKELY TO ARISE

If (which is denied) the First and/or Second Cross-Claimants are liable to the Plaintiffs then the key issues likely to arise as between the Cross-Claimants and the Cross-Defendants are the following:

- Whether any or all of the Cross-Defendants are liable for the same loss or damage as the First and/or Second Cross-Claimants within the meaning of s 3(1)(c) of the Wrongs Act 1954 (Tas) (Tas Act), or alternatively s 5(1)(c) of the Law Reform (Miscellaneous Provisions) Act 1946 (NSW) (NSW Act), or alternatively any other similar or equivalent provision of any other applicable legislation.
- Whether the First and/or Second Cross-Claimants are entitled to contribution from any or all of the Cross-Defendants in equity.
- The amount of contribution recoverable from those Cross-Defendants.

## C FIRST CROSS-CLAIMANTS' CONTENTIONS

For the purposes of this Cross-Claim only, if, contrary to the denials and non-admissions set out in the CLR, the Plaintiffs prove the allegations they have made against the Cross-Claimants and one or both of them is liable to the Plaintiffs, then:

## Allegations made by the Plaintiffs

The Cross-Claimants repeat against the Cross-Defendants the allegations made by the Plaintiffs in paragraphs 12, 13, 14-64, 70-78, 86 and 97-103 of section C of the CLS.

## Allegations made by the First and Second Defendants

- 1A The Cross-Claimants repeat against the Cross-Defendants the allegations made by:
  - a. the First Defendant in paragraph 53 of the First Defendant's CLR filed on 20 July 2018; and
  - b. the Second Defendant in paragraph 53 of the Second Defendant's CLR filed on 20 July 2018.

## Contribution at law or equity

- 2 On the basis of the facts and matters alleged by the Plaintiffs and repeated as set out in paragraph 1 above:
  - a. each of the Cross-Defendants is liable in respect of the same damage as the First and/or Second Cross-Claimants, within the meaning of s 3(1)(c) of the Tas Act, or alternatively s 5(1)(c) of the NSW Act, or alternatively any other similar or equivalent provision of any other applicable legislation;
  - b. to the extent the Plaintiffs' claims are not apportionable, then the Cross-Claimants are entitled to contribution from the Cross-Defendants against the Plaintiffs' claims to the extent as may be found by the Court to be just and equitable pursuant to s 3(1)(c) and (2) of the Tas Act, or alternatively s 5(1)(c) and (2) of the NSW Act, or alternatively any other similar or equivalent provision of any other applicable legislation;
  - c. further or alternatively, the Cross-Claimants are entitled to contribution in equity from the Cross-Defendants against the Plaintiffs' claims on the basis that the Cross-Defendants are liable in equity to make good the Plaintiffs' loss.

#### Relief

3 Accordingly, the Cross-Claimants claim against each of the Cross-Defendants the relief set out in the Cross-Summons of the same date.

## D QUESTIONS APPROPRIATE FOR REFERRAL TO A REFEREE

None.

#### E MEDIATION STATEMENT

A mediation has not yet taken place in this proceedings. The Cross-Claimants consider that these proceedings should be mediated at the same time as the principal proceedings.

## SIGNATURE OF LEGAL REPRESENTATIVE

I certify under clause 4 of Schedule 2 to the <u>Legal Profession Uniform Law Application Act</u> <u>2014</u> that there are reasonable grounds for believing on the basis of provable facts and a reasonably arguable view of the law that the claim for damages in this statement of cross-claim has reasonable prospects of success.

I have advised the Cross-Claimants that court fees may be payable during these proceedings. These fees may include a hearing allocation fee.

Signature

Capacity

Solicitor employed by Johnson Winter & Slattery

Date of signature /2 octo

## NOTICE TO CROSS-DEFENDANT

If you do not file a defence you will be bound by any judgment or order in the proceedings so far as it is relevant to this cross-claim.