

## **SECOND FURTHER AMENDED SUMMONS**

(Filed pursuant to the orders of Justice Ball Hammerschlag dated ~~13 March 2018~~ 14 August 2020)

### **COURT DETAILS**

Court	Supreme Court of New South Wales
Division	Equity
List	Commercial List
Registry	Sydney
Case number	2018/76580

### **TITLE OF PROCEEDINGS**

First Plaintiff	<b>Giabal Pty Ltd</b> ACN 009 863 807
Second Plaintiff	<b>Geoffry Edward Underwood</b>
<del>First Defendant</del>	<del><b>Gunns Plantations Ltd (in Liquidation)</b> ACN 091 232 209</del>
<del>Second Defendant</del>	<del><b>Gunns Ltd (in Liquidation) (Receivers and Managers Appointed)</b> ACN 009 478 148</del>
<u>Third Defendant</u>	<u>Wayne Leonard Chapman</u>
Number of Defendants	11 Refer to Party Details at rear for full list of parties

### **FILING DETAILS**

Filed for	<b>Giabal Pty Ltd</b> , ACN 009 863 807 First Plaintiff <b>Geoffry Edward Underwood</b> , Second Plaintiff
Legal representative	Gordon Grieve Piper Alderman
Legal representative reference	GTG.MDM.402437
Contact name and telephone	Gordon Grieve Tel: +61 2 9253 9999
Contact email	ggrieve@piperalderman.com.au

### **HEARING DETAILS**

~~This summons is listed at 9:45am on 23 March 2018.~~

### **TYPE OF CLAIM**

Other (Commercial List) – Representative proceeding under Part 10 *Civil Procedure Act 2005*

## RELIEF CLAIMED

### Interlocutory Orders:

1A. ~~Leave be granted pursuant to section 500(2) of the *Corporations Act 2001 (Cth)* (**Act**), *nunc pro tunc*, for the Plaintiffs to commence and maintain these proceedings against the First and Second Defendants (**GPL** and **Gunns Ltd**).~~

### Declarations that:

1. Gunns Plantations Ltd (in Liquidation) ACN 091 232 209 (**GPL**) ~~GPL~~ and Gunns Ltd (in Liquidation) (Receivers and Managers Appointed) (**Gunns Ltd**) ~~Gunns Ltd~~ each acted in breach of trust in respect of the Grower's Trust Funds as defined in the Further Amended Commercial List Statement.
- 1A. GPL had the GPL Unauthorised Retention of Growers' Trust Funds in the operation of the Gunns Woodlot Schemes as defined in the Further Amended Commercial List Statement.
2. GPL contravened ss.601FC(1)(b), 601FC(1)(c), 601FC(1)(h), 601FC(1)(i), 601FC(1)(k) 601FC(1)(l) and 601LC of the ~~Act~~ *Corporations Act 2001 (Cth)* (**Act**).
3. The late John Eugene Gay (**Mr Gay**) and the Third and Fifth to Ninth Defendants (**GPL Directors**) contravened ss.601FD(1)(b), 601FD(1)(c), 601FD(1)(e) and 601FD(1)(f) of the Act.
4. The Tenth and Eleventh Defendants (**KPMG**) breached ss.601HG(3) and 601HG(4A) of the Act.
5. Pursuant to s.197 of the Act, the GPL Directors are liable for liabilities incurred by GPL as a trustee.
6. Pursuant to s.197 of the Act, Mr Gay and the Eighth and Ninth ~~Fourth~~ Defendants ~~are~~ is liable for liabilities incurred by Gunns Ltd as custodian.
- 6A. GPL and the GPL Directors have, within the meaning of 'Financial and Professional Risks Excess Insurance' policy 923424 (**First Excess IMI Policy**) issued by the Twelfth Defendant (**Catlin**), a legal liability to pay damages or compensation for and/or arising out of events covered by the Underlying Policies in respect of the allegations made by the Plaintiffs and Group Members in these proceedings.

- 6B. GPL and the GPL Directors are insured persons with insured liabilities within the meaning of ss.3-4 of the *Civil Liability (Third Party Claims Against Insurers) Act 2017 (NSW) (Third Party Claims Act)* under the First Excess IMI Policy in respect of the allegations made by the Plaintiffs and Group Members in these proceedings.
- 6C. Subject to the 'Limit' of indemnity of the First Excess IMI Policy and the relevant 'Underlying Limit':
- 6C.1. Catlin is liable to indemnify GPL and the GPL Directors in respect of the allegations made by the Plaintiffs and Group Members in these proceedings and
- 6C.2. the Plaintiffs and Group Members may recover the amount of GPL's and the GPL Directors' insured liabilities in respect of the allegations made in these proceedings from Catlin pursuant to s. 4(1) of the Third Party Claims Act.
- 6D. Subject to the 'Limit of Liability in the aggregate' of the Third Excess IMI Policy and the relevant 'Underlying Limit':
- 6D.1. Chubb is liable to indemnify GPL and the GPL Directors in respect of the allegations made by the Plaintiffs and Group Members in these proceedings and
- 6D.2. the Plaintiffs and Group Members may recover the amount of GPL's and the GPL Directors' insured liabilities in respect of the allegations made in these proceedings from Chubb pursuant to s. 4(1) of the Third Party Claims Act.

Orders that:

- ~~7. GPL, t[The GPL Directors and the Fourth Defendant, KPMG and Gunns Ltd pay equitable compensation to the Plaintiffs and the Group Members in respect of the breaches of trust for the loss of the Plaintiffs' and each of the Group Members' portion of the Growers' Trust Funds.~~
- 7A. The GPL Directors pay equitable compensation to the Plaintiffs and the Group Members in respect of the breaches of fiduciary duty in respect of GPL's Unauthorised Retention of Growers' Trust Funds from the operation of the Gunns Woodlot Schemes.
- ~~8. Pursuant to s.601MA of the Act, GPL pay to the Plaintiffs and the Group Members the amount of the loss of their respective Proportional Interest in the Wood Proceeds Portion and the Carbon Rights Portion for each of the Gunns Woodlot Schemes, less any liquidation distributions received.~~

9. Pursuant to s.1325(5)(e) of the Act, ~~GPL, Gunns Ltd,~~ the GPL Directors, the Fourth Defendant, and KPMG pay to the Plaintiffs and the Group Members the amount of the loss of their respective Proportional Interests in the Wood Proceeds Portion and the Carbon Rights Portion for each of the Gunns Woodlot Schemes, less any liquidation distributions received.
10. Alternatively, pursuant to s.1325(5)(d) of the Act, ~~GPL, Gunns Ltd,~~ the GPL Directors, the Fourth Defendant, and KPMG pay to the Plaintiffs and Group Members the amount of the loss of their respective investments in the Gunns Woodlot Schemes by way of refund of the Plaintiffs' and the Group Members initial investment in the Gunns Woodlot Schemes.
11. Pursuant to s.100 of the *Civil Procedure Act 2005 (NSW)*, ~~GPL, Gunns Ltd,~~ the GPL Directors, the Fourth Defendant, and KPMG pay to the Plaintiffs and Group Members interest on any amount ordered to be paid by them respectively pursuant to paragraphs 7 to 10 above.
- 11A. Pursuant to s.4(1) of the Third Party Claims Act, Catlin pay, subject to the 'Limit' of indemnity of the First Excess IMI Policy and the relevant 'Underlying Limit', the amount of any liability of GPL and the GPL Directors in favour of the Plaintiffs and Group Members declared in these proceedings.
- 11B. Pursuant to s.4(1) of the Third Party Claims Act, Chubb pay, subject to the 'Limit of Liability in the aggregate' of the Third Excess IMI Policy and the relevant 'Underlying Limit', the amount of any liability of GPL and the GPL Directors in favour of the Plaintiffs and Group Members declared in these proceedings.
12. Interest.
13. Costs.
14. Such further or other order as the Court thinks fit.

#### **SIGNATURE OF LEGAL REPRESENTATIVE**

I certify under clause 4 of Schedule 2 to the *Legal Profession Uniform Law Application Act 2014* 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 these proceedings has reasonable prospects of success.

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

Signature



Capacity

Solicitor on record for the Plaintiffs

Date of signature

21 August 2020 ~~19 March 2018~~

### NOTICE TO DEFENDANT

If your solicitor, barrister or you do not attend the hearing, the court may give judgment or make orders against you in your absence. The judgment may be for the relief claimed in the summons and for the plaintiff's costs of bringing these proceedings.

Before you can appear before the court you must file at the court an appearance in the approved form.

### HOW TO RESPOND

**Please read this summons very carefully. If you have any trouble understanding it or require assistance on how to respond to the summons you should get legal advice as soon as possible.**

You can get further information about what you need to do to respond to the summons from:

- A legal practitioner.
- LawAccess NSW on 1300 888 529 or at [www.lawaccess.nsw.gov.au](http://www.lawaccess.nsw.gov.au).
- The court registry for limited procedural information.

Court forms are available on the UCPR website at [www.ucprforms.justice.nsw.gov.au](http://www.ucprforms.justice.nsw.gov.au) or at any NSW court registry.

### REGISTRY ADDRESS

Street address	184 Phillip Street, Sydney NSW 2000
Postal address	Supreme Court of NSW, GPO Box 3, Sydney NSW 2001
Telephone	1300 679 272

## PARTY DETAILS

### Plaintiffs

**Giabal Pty Ltd**

First Plaintiff

**Geoffry Edward Underwood**

Second Plaintiff

### Defendants

~~**Gunns Plantations Ltd (in Liquidation)**~~

First Defendant

~~**Gunns Ltd (in Liquidation) (Receivers and Managers Appointed)**~~

Second Defendant

**Wayne Leonard Chapman**

Third Defendant

**Robert Watson and Erica Gay as the legal personal representatives for the estate of the late John Eugene Gay in place of Mr Gay**

Fourth Defendant

**Rodney John Loone**

Fifth Defendant

**Leslie Ralph Baker**

Sixth Defendant

**Robert Henry Graham**

Seventh Defendant

**Robin Gray**

Eighth Defendant

**Paul Desmond Teisseire**

Ninth Defendant

**Andrew Gray (KPMG Partner)**

Tenth Defendant

**Mathew Gary Wallace**

Eleventh Defendant

**Catlin Australia Pty Limited**

Twelfth Defendants

**Chubb Insurance Australia Limited**

Thirteenth Defendants

## FURTHER DETAILS ABOUT PLAINTIFFS

### First Plaintiff

Name

Giabal Pty Ltd

Address

C/- Sands & Associates

156 Hume Street

TOOWOOMBA QLD 4350

**Second Plaintiff**

Name Geoffrey Edward Underwood  
 Address Sixth Floor Wentworth Chambers  
 180 Phillip Street  
 SYDNEY NSW 2000

**Legal representative for plaintiffs**

Name Gordon Grieve  
 Practising certificate number 30216  
 Firm Piper Alderman  
 Contact solicitor McKenzie Moore  
 Address Level 23  
 Governor Macquarie Tower  
 1 Farrer Place  
 Sydney NSW 2000  
 DX address DX 10216 Sydney Stock Exchange  
 Telephone +61 2 9253 9999  
 Fax +61 2 9253 9900  
 Email [ggrieve@piperalderman.com.au](mailto:ggrieve@piperalderman.com.au)

**DETAILS ABOUT DEFENDANTS****First Defendant**

Name ~~Gunns Plantations Limited (in Liquidation)~~  
 Address ~~C/- PPB Advisory  
 Level 21 181 William Street  
 MELBOURNE VIC 3000~~

**Second Defendant**

Name ~~Gunns Limited (in Liquidation) (Receivers and Managers  
 Appointed)~~  
 Address ~~C/- PPB Advisory  
 Level 21 181 William Street  
 MELBOURNE VIC 3000~~

**Third Defendant**

Name Wayne Leonard Chapman  
 Address 15 Lord Street  
 LAUNCESTON TAS 7250

**Fourth Defendant**

Name Robert Watson and Erica Gay as the legal personal  
 representatives for the estate of the late John Eugene Gay  
 in place of Mr Gay

Address 7 Clarence Street  
EAST LAUNCESTON TAS 7250

**Fifth Defendant**

Name Rodney John Loone  
Address Unit 3, 26A Balfour Street  
LAUNCESTON TAS 7250

**Sixth Defendant**

Name Leslie Ralph Baker  
Address 40 Marieville Esplanade  
SANDY BAY TAS 7005

**Seventh Defendant**

Name Robert Henry Graham  
Address 30 Bagshaw Way  
MILE END SA 5031

**Eighth Defendant**

Name Robin Gray  
Address 11 Beech Road  
NORWOOD TAS 7250

**Ninth Defendant**

Name Paul Desmond Teisseire  
Address 4 Bickford Terrace  
SOMERTON PARK SA 5044

**Tenth Defendant**

Name Andrew Gray  
Address 33 George Street  
LAUNCESTON TAS 7250

**Eleventh Defendant**

Name Mathew Gary Wallace  
Address 33 George Street  
LAUNCESTON TAS 7250

**Twelfth Defendant**

Name Catlin Australia Pty Limited  
ABN 64 108 319 786  
Address Angel Place  
Level 28, 123 Pitt Street  
SYDNEY NSW 2000

**Thirteenth Defendant**

Name Chubb Insurance Australia Limited  
ABN 23 001 642 020



Address

Level 38, Grosvenor Place  
225 George Street  
SYDNEY NSW 2000