

Further Amended Commercial List Response of the Seventh Respondent

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 ACN 009863807
Second Plaintiff	Geoffry Edward Underwood
Third Respondent	Wayne Leonard Chapman
Number of Respondents	11

Preparation Details

Prepared by	the Seventh Respondent, Robert Henry Graham
Legal representative	Nil
Telephone	0418 80 45 80
Email	rhg18669@gmail.com

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acceptance has been
given.



Principal Registrar &
Chief Executive Officer



NATURE OF THE DISPUTE

I (as the Seventh Defendant) have re-read the original Commercial List Statement of the Plaintiffs and also all of those amendments that I have. [The CLS Docs]

The Plaintiffs' case appears to concern allegations made by the Plaintiffs in their CLS Docs, against me as the Seventh Respondent and against the other Respondents.

To the extent that the case concerns allegations made by the Plaintiffs against the Seventh Respondent, the Seventh Respondent disputes the Plaintiffs' allegations in the CLS docs for the reasons set out below.

I have not responded to the following:

1. allegations which I believe are statute barred.
2. allegations which relate to decisions made outside of the time (18th April 2008 to 27th November 2012) when I was a director of GPL (The Relevant Period).
3. allegations that relate to duties which the Plaintiffs allege I owe to them. All of these duties relate to the responsibilities of a Responsible Entity or Investment Scheme Manager. I have never held either of these roles. I was for the Relevant Period a director of GPL. If I failed in any of my responsibilities (which I deny), it would be a matter for ASIC or the police.
4. allegations not made specifically against me.
5. allegations which are not based on established facts or are based on errors and false assumptions:
 - a. Allegations relating to alleged or implied Growers' Trust Funds and the associated obligations as, (except for the Application Fees which were nominally held in trust pending the approval of the Application when those fees were then released to become the Establishment Fees) no such obligations existed and in fact the tax returns of the Plaintiffs will confirm this.
 - b. No Forest Right Deed was cancelled for non-payment by Gunns Ltd of fees during my time as a director of GPL.
 - c. At no time did the amount of money on loan to Gunns Ltd ever equal \$344,127,000 or any other amount anywhere near that. I do not understand how that figure was calculated.
 - d. Most of the payments to Gunns Ltd by GPL were to cover Gunns Ltd's costs under their management contract with GPL.
 - e. The \$4,000,000 bank guarantee from ANZ could not have been handled in any way that would have preserved the funds for GPL's use and in fact the guarantee was put in place solely to meet the costs of finding a replacement Responsible Entity of the scheme should GPL lose it or surrender it.
 - f. The Plaintiffs' were not entitled to any payments other than from the sale of wood fiber and carbon rights. Had any of the Establishment Fee been refundable then their right to a tax deduction would have been negated.
 - g. There were no Growers' Trust Funds as alleged in Clauses 52A, 52B and 52C.
6. After these deletions, I have concluded that there are no allegations to which I need to respond further.

ISSUES LIKELY TO ARISE

For the sake of clarity the Seventh Respondent agrees that the Issues generally identified by the Plaintiffs are likely to arise.

In addition The Seventh Respondent considers the following issues are likely to arise.

1. Whether the proceedings are statute barred as not having been commenced within the time prescribed by the relevant sections of the *Corporations Act 2001 (CWLTH)*, of the *Limitation Act (1974 TAS)*, of the *Limitation Act 1969 (NSW)*, the *Limitation of Actions Act 1958 (VIC)*, of the *Limitation of Actions Act 1936 (SA)*, of the *Limitation Act 2005 (WA)*, of the *Limitation of Actions Act 1974 (QLD)*, of the *Limitation Act 1985 (ACT)* and the *Limitation Act 1981 (NT)*.
2. Whether the duties alleged by the Plaintiffs to be owed by the Seventh Respondent or any of the Third, Fourth, Fifth, Sixth, Eighth and Ninth Respondents were in fact owed to the Plaintiffs.
3. Whether the claim against the Seventh Respondent is an apportionable claim within the meaning of the appropriate section of the *Civil Liability Act 2002 (TAS)* or further or alternatively the appropriate section of the *Civil Liability Act 2002 (NSW)*.
4. The Product Disclosure Statements (PDS) (only one of which; the final one - 2009 - was issued during my time as a director) all carried clear descriptions of the nature of the investment, a recommendation that potential investors should seek appropriate advice and an outline of the conditions relating to the tax ruling on this investment.
5. In all schemes the Application Fee was precisely equal to the Establishment Fee and was disclosed as such in the PDS's and in the Compliance Plans.
6. In relation to the Plaintiffs' allegations that I contravened the civil penalty provisions, I assert that I have acted honestly and having regard to all aspects of this case I believe I should fairly be excused for any contravention of the Act.
7. If there were any duties owed by me in relation to these allegations they were owed by me to GPL not to the investors. Any breach in this regard would be a matter for ASIC. The Seventh Respondent is not and never has been a Responsible Entity or a Scheme Manager for these investments.

ALLEGATIONS WITH WHICH I AGREE

1. The Seventh Respondent admits that he was a Director of GPL for the Relevant Period.
2. The Seventh Respondent admits the matters alleged in paragraphs 14, 15, 16, 17.1 and including the PDS, 18.2, 18.3, 19.1, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 32.2, 33, 34, 35, 37, 38.3, 38.4, 38.5, 38.6, 40, 44, 54, 55, 58 (excluding 58A), 65.1, 65.2, 66.1, 66.3, 66.4 and 67A.

The remaining allegations are denied categorically for the reasons set out at the top of this response.

Signature of the Seventh Respondent



Date signed 21st February 2021