

OUTCOME DETAILS

**Supreme Court - Civil
at Supreme Court Sydney
on 30 November 2018**

2018/00076580-001 / Summons: Giabal Pty Ltd v Gunns Plantations Limited (in Liquidation)

HH makes orders in terms of short minutes of order initialled and dated today's date.

Short Minutes of Order

Terms of Order made by the Court by consent

1. Pursuant to Rule 21.2(1) of the Uniform Civil Procedure Rules 2005 (NSW), the parties are to provide discovery of documents falling within the categories as set out in Annexure A.

2. Discovery the subject of Order 1 is to be provided in tranches accompanied by a list of documents with:

2.1 the first tranche of documents to be produced by 25 January 2019; and

2.2 the final tranche of documents to be produced by 13 March 2019.

3. Direct that the parties use reasonable endeavours to provide discovery on a rolling basis, where practicable, between 25 January 2019 and 13 March 2019.

4. By 13 March 2019, each party is to:

4.1 serve a list of all the documents to be produced pursuant to Order 1 verified in accordance with Rule 21.4 of the Uniform Civil Procedure Rules 2005 (NSW) on all other parties; and

4.2 complete production to all other parties of electronic copies of the documents referred to in that verified list.

5. Paragraph 2 of the Plaintiffs' Notice of Motion filed 8 November 2018 be stood over to 9.00am on 12 December 2018.

6. The matter be listed for directions at 9.00am on 12 December 2018.

7. The directions hearing listed for 8 February 2019 be vacated.

Justice M Ball

Signed

Date

ANNEXURE A

DISCOVERY CATEGORIES

In this document capitalised terms have the same meaning as set out in the Plaintiffs' Amended Commercial List Statement filed on 6 August 2018 (**ACLS**) unless otherwise stated. "Documents" has the meaning as set out in the *Evidence Act 1995* (NSW) and any reference to "communications" includes "electronic communications" as defined in the *Electronic Transactions Act 2000* (NSW).

"**KPMG (A Firm)**" and "**Replacement Compliance Plans**" each have the same meaning as set out in the Amended Commercial List Response filed on behalf of the Tenth and Eleventh Defendants on 27 August 2018.

In this document, "**Compliance Plans**" means the Original Compliance Plans, Replacement Compliance Plans and the Compliance Plan for the 2009 Gunns Woodlot Scheme.

Documents to be discovered by the First to Ninth Defendants

No	Description
<i>Growers' Investment</i>	
1.	<p>All documents recording or relating to the participation and investment in each of the Gunns Woodlot Schemes by each of the Plaintiffs, including but not limited to:</p> <ul style="list-style-type: none"> a. any application/s or application form/s to participate in the Gunns Woodlot Schemes submitted by each of the Plaintiffs (including applications which were rejected by GPL, if any); b. documents recording each of the Plaintiffs as Applicants, Members and/or Growers under the Scheme Documents for the Gunns Woodlot Schemes; c. documents relating to Investor Numbers 20500456 and 20500117, including but not limited to the Scheme Documents for the Gunns Woodlot Schemes; d. documents recording the amounts invested by each of the Plaintiffs in respect of each Gunns Woodlot Scheme (as applicable) and the dates those amounts were invested; e. contracts, agreements and other documents recording agreements entered into between each of the Plaintiffs and Gunns Ltd and/or GPL in relation to the Gunns Woodlot Schemes, including but not limited to: <ul style="list-style-type: none"> (1) Management Agreements; (2) Forestry Right Lease Deeds; and (3) Sub-Forestry Right Deeds, f. documents recording or relating to finance sought and/or obtained by the Plaintiffs in connection with their investments in the Gunns Woodlot Schemes;

No	Description
	<p>and</p> <p>g. documents recording or relating to the obligations of the Plaintiffs pursuant to the terms of any such finance arrangements, and the Plaintiffs' compliance (or non-compliance) with those obligations.</p>
2.	Documents and communications relating to or specifying any distributions or other amounts (including settlement amounts) paid to each of the Plaintiffs in respect of their investments in each Gunns Woodlot Scheme.
3.	<p>Documents used in the preparation of:</p> <p>a. the Scheme Documents; and</p> <p>b. the prospectus or PDS,</p> <p>for each of the Gunns Woodlot Schemes.</p>
4.	Documents recording legal advice sought by or provided to GPL and/or Gunns Ltd in relation to the Scheme Documents for the Gunns Woodlot Schemes.
<i>Growers' Trust Funds</i>	
5.	Documents setting out the total of the monetary amounts received by GPL in respect of Application Fees for each of the Gunns Woodlot Schemes.
6.	Documents setting out the total of the monetary amounts received by GPL in respect of Application Money for each of the Gunns Woodlot Schemes.
7.	Documents setting out the total of the monetary amounts released by or on behalf of GPL in respect of the Woodlot Establishment Expenses for each of the Gunns Woodlot Schemes.
8.	Documents setting out the total of the monetary amounts of the costs of the Establishment Services for each of the Gunns Woodlot Schemes.
9.	Documents setting out the total of the monetary amounts of the Establishment Fees for each of the Gunns Woodlot Schemes.
10.	<p>Documents, including any communications between any directors, officers, employees or representatives of Gunns Ltd or GPL, which refer to and/or determine with reference to the Gunns Woodlot Schemes:</p> <p>a. any monetary difference between the amount of Application Fees or Application Money (on the one hand) and the Woodlot Establishment Expenses or the costs of the Establishment Services or the Establishment Fees (on the other); and</p> <p>b. how such a monetary difference was to be dealt with, including any legal advice sought by or provided to the First and/or Second Defendant in relation thereto.</p>
11.	<p>Documents, including bank account statements, in the period between 1 July 2002 and 30 June 2011 which record:</p> <p>a. loans made by GPL to Gunns Ltd; and</p>

No	Description
	b. dividends paid by GPL to Gunns Ltd.
GPL and Gunns Ltd Documents	
12.	Minutes of meetings of the Gunns Ltd board of directors (including handwritten amendments) between 1 January 2002 and 25 September 2012, and any documents or packs created for the purpose of those meetings.
13.	Minutes of meetings of the GPL board of directors (including handwritten amendments) between 1 January 2002 and 25 September 2012, and any documents or packs created for the purpose of those meetings.
14.	Public Liability insurance policies held by GPL in relation to the Gunns Woodlot Schemes.
15.	Documents which record the details of land owned by Gunns Ltd or a subsidiary of Gunns Ltd on which plantations the subject of the Gunns Woodlot Schemes were located.
16.	Any bank guarantees issued in favour of GPL between 2002 and 2012 (Bank Guarantees).
17.	Documents, including communications between any directors, officers, employees or representatives of Gunns Ltd or GPL, in relation to the Bank Guarantees including but not limited to documents relating to the purpose for which the Bank Guarantees were arranged.
18.	<p>Documents which relate to any of the following in the period from 1 July 2002 to 25 September 2012:</p> <ul style="list-style-type: none"> a. the payment and/or non-payment of Forestry Right Fees by GPL or Gunns Ltd in relation to the Gunns Woodlot Schemes; b. the performance and/or non-performance of the Maintenance Services by GPL or Gunns Ltd in relation to the Gunns Woodlot Schemes; and c. the payment and/or non-payment of public liability insurances by GPL or Gunns Ltd.
19.	The audited accounts of GPL between 2002 and 2012.
Compliance Plans	
20.	Agreements or documents and/or correspondence recording agreements, between KPMG (A Firm) and GPL relating to the appointment of KPMG (A Firm) as auditor of the Compliance Plans for the 2003-2011 financial years, including but not limited to the terms of engagement of KPMG (A Firm) by GPL.
21.	<p>Documents relating to the audits of the Compliance Plans for the 2003-2011 financial years, including but not limited to:</p> <ul style="list-style-type: none"> a. communications between KPMG (A Firm) (on the one hand) and GPL, Gunns Ltd and their respective directors, officers, employees or representatives (on the other);

No	Description
	b. documents and communications relating to representations and certifications given by or on behalf of GPL to KPMG (A Firm) in relation to the compliance plan audits of the Gunns Woodlot Schemes; and c. communications between the directors, officers, employees and representatives of Gunns Ltd and GPL.
22.	Copies of any AFSL held by GPL in relation to the Gunns Woodlot Schemes.
23.	Reports of the audits of any AFSL held by GPL in relation to the Gunns Woodlot Schemes.
Default Notices	
24.	Communications in the period from 1 January 2002 to 25 September 2012 between Gunns Ltd and/or GPL and ASIC in relation to the Gunns Woodlot Schemes.
25.	Communications, including default notices, in the period from 1 January 2002 to 25 September 2012, between owners of land on which plantations the subject of the Gunns Woodlot Schemes were located and GPL in relation to unpaid Forestry Right Fees.
26.	Communications in the period from 25 September 2012 to 11 August 2014 between the Receivers and Administrators/Liquidators in relation to breaches by GPL of the Forestry Right Deeds.
Documents relevant to administration/liquidation	
27.	Documents and communications prepared by (or on behalf of) or received by the First and/or Second Defendants (including by the Administrators, Liquidators and/or Receivers as their agents) in relation to the Gunns Woodlot Schemes, comprising: <ul style="list-style-type: none"> a. minutes of meetings; b. reports and communications to Growers; c. documents and communications relating to attempts by the Administrators and/or Liquidators to secure a replacement responsible entity for any or all of the Gunns Woodlot Schemes, including but not limited to: <ul style="list-style-type: none"> (1) documents seeking expressions of interest; (2) any proposals received by the Administrators and/or Liquidators, including but not limited to proposals received from Macquarie Bank Limited, Macquarie Forestry Services Pty Ltd, or W.A. Blue Gum Ltd to replace GPL as the responsible entity for the 2002-2006 and 2008 Gunns Woodlot Schemes; (3) communications with Growers; (4) minutes of meetings; (5) documents prepared in relation to court proceedings relating to the potential replacement of GPL as responsible entity; and

No	Description
	<p>(6) documents relating to the outcome of proposals to replace GPL as responsible entity, including any decisions not to proceed with proposals submitted, and</p> <p>d. documents and communications relating to the matters described in paragraphs 61-64 of the ACLS.</p>
28.	Documents and communications relating to or specifying the liquidation distributions paid to each of the Plaintiffs in relation to the Gunns Woodlot Schemes, including the Liquidation Distributions.

Documents to be discovered by the Tenth and Eleventh Defendants

No	Description
1.	Agreements, or documents recording agreements, between KPMG (A Firm) and GPL relating to the appointment of KPMG (A Firm) as auditor of the accounts of GPL and the Compliance Plans for the 2003-2011 financial years, including but not limited to the retainer letters and terms of engagement of KPMG (A Firm) by GPL with respect to each audit.
2.	KPMG (A Firm)'s audit files, including but not limited to any audit work papers and draft audit reports, for each of the audits of the Compliance Plans for the 2003-2011 financial years.
3.	To the extent they are not already covered by category 2 above, any communications between 1 July 2002 and 30 September 2011 between KPMG (A Firm) (and any of its partners) (on the one hand), GPL, Gunns Ltd and their respective directors, officers, employees or representatives or any other third party (on the other) in relation to the audits of the Compliance Plans for the 2003-2011 financial years (for the avoidance of doubt, this category includes internal emails and documents of KPMG (A Firm)).
4.	The audit work paper identified as "30 June 2008 – MIS Projects and accounting implications" [KPM.007.001.0166].
5.	<p>The documents identified by the following document numbers:</p> <p>a. KPM.007.009.0046;</p> <p>b. KPM.033.006.0014,</p> <p>c. KPM.033.006.0015,</p> <p>d. KPM.033. 006.0021,</p> <p>e. KPM.033.006.0027; and</p> <p>f. KPM.033.006.0028.</p>

Documents to be discovered by the Plaintiffs

No	Description
<i>Growers' Investment</i>	
3.	<p>All documents recording or relating to the investment and ongoing participation in each of the Gunns Woodlot Schemes by each of the Plaintiffs, including but not limited to:</p> <ul style="list-style-type: none"> a. any application/s or application form/s to participate in the Gunns Woodlot Schemes submitted by each of the Plaintiffs (including applications which were rejected by GPL, if any); b. documents recording the amounts invested by each of the Plaintiffs in respect of each Gunns Woodlot Scheme (as applicable) and the dates those amounts were invested; c. any contracts, agreements or other documents recording agreements entered into between any of the Plaintiffs and Gunns Ltd and/or GPL in relation to the Gunns Woodlot Schemes, including but not limited to: <ul style="list-style-type: none"> 1. Management Agreements; 2. Forestry Right Lease Deeds; and 3. Sub-Forestry Right Deeds, f. documents recording or relating to the transfer, assignment or divestment of interests, rights or obligations of the Plaintiffs in respect of the Gunns Woodlot Schemes.
<i>Quantification of loss</i>	
8.	Documents and communications relating to or specifying the liquidation distributions received by each of the Plaintiffs in relation to the Gunns Woodlot Schemes, including the Liquidation Distributions.
9.	Documents and communications relating to or specifying any other distributions, payments or amounts (including settlement amounts) received by each of the Plaintiffs in respect of their investments in each Gunns Woodlot Scheme.
13.	<p>Documents or communications between either of the Plaintiffs or their respective officers, employees or representatives and any of the Defendants or their respective officers, employees or representatives relating to the "Growers Trust Funds" including but not limited to:</p> <ul style="list-style-type: none"> a. a reference to any funds being held on trust by the First and/or Second Defendants; or b. a reference to a complaint/allegation/assertion made by the Plaintiffs regarding the First and/or Second Defendant acting in breach of trust.