

OUTCOME DETAILS

**Supreme Court - Civil
at Supreme Court Sydney
on 17 April 2019**

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

HH vacates orders 2, 9 and 10 of the orders made on 12 December 2018.

HH vacates orders 1 to 4 made by the Court on 30 November 2018.

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

HH dismisses the plaintiffs' two notices of motion filed on 2 April 2019.

Costs in both motions be costs in the cause.

Short Minutes of Order

Terms of Order made by the Court

1. Pursuant to sections 175(1)(a) and 176(1) of the Civil Procedure Act 2005 (NSW) (Act), the Court approves the form and content of the proposed Opt Out Notice as set out in Annexure "A" to these orders.

2. Pursuant to sections 176(2) and (4) of the Act, the Court orders the solicitors for the Plaintiffs to cause the Opt Out notice to be sent by email to each Group Member by no later than 18 April 2019.

3. Pursuant to section 162(1) of the Act, the Court fixes 24 May 2019 as the date before which a Group Member may opt out of these proceedings (the Opt Out Date).

4. The date of "By 10 May 2019" in Order 3 of the orders dated 12 December 2018 be varied to read "By 27 May 2019".

5. The Plaintiffs are to propose a confidentiality regime regarding Group Member details to all parties at least two weeks in advance of the Opt Out Date. The parties are to endeavour to agree an appropriate confidentiality regime and, if agreement cannot be reached by one week prior to the Opt Out Date, any party may seek to have the matter relisted for further directions.

6. Liberty to apply on 3 days' notice.

2018/00076580-016 / Notice of Motion Civil - Giabal Pty Ltd v Gunns Plantations Limited (in Liquidation)

HH dismisses the plaintiffs' two notices of motion filed on 2 April 2019.

Costs in both motions be costs in the cause.

**2018/00076580-015 / Notice of Motion Civil - Giabal Pty Ltd v Gunns Plantations Limited
(in Liquidation)**

HH dismisses the plaintiffs' two notices of motion filed on 2 April 2019.

Costs in both motions be costs in the cause.

Justice M Ball

Signed

Date

Annexure "A"

SUPREME COURT OF NEW SOUTH WALES GUNNS WOODLOT SCHEMES CLASS ACTION NOTICE OF OPT-OUT DEADLINE

This notice is an important document which may affect your legal rights. **You should read this notice carefully** and, if you do not understand any part of it, you may wish to seek legal advice in relation to its content.

1. The class action

- 1.1 On 8 March 2018, a class action was commenced in the Supreme Court of New South Wales by Giabal Pty Ltd and Geoffry Edward Underwood (**Plaintiffs**) on their own behalf and behalf of all the persons who are "Group Members", as defined below in section 2 of this notice (the **class action**).
- 1.2 The class action was brought against:
 - (a) Gunns Plantations Ltd (in Liquidation) (Receivers and Managers Appointed) (ACN 091 232 209) (**GPL**),
 - (b) Gunns Limited (in Liquidation) (Receivers and Managers Appointed) (ACN 009 478 148) (**Gunns**),
 - (c) certain of the directors of GPL and Gunns (**directors**), and
 - (d) two partners of KPMG (**KPMG**) in their capacities as the auditors of the compliance plans of certain managed investment schemes of which GPL was the responsible entity and in which the Plaintiffs invested (**Gunns Woodlot Schemes**).
- 1.3 The class action relates to investments made between 2002 and 2009 in the Gunns Woodlot Schemes. In 2012, the Gunns group of companies collapsed. As a result of that collapse and during the course of the liquidation of GPL, the Plaintiffs allegedly suffered a loss of their interests in the Gunns Woodlot Schemes.
- 1.4 In respect of GPL, Gunns and their directors, the Plaintiffs claim declaratory and other relief in relation to various breaches of trust and the *Corporations Act 2001* (Cth).
- 1.5 The Plaintiffs also allege that KPMG, as the auditor of the compliance plans for the Gunns Woodlot Schemes, had duties at common law and under statute with respect to those audits and that those duties were breached, resulting in loss to the Plaintiffs.
- 1.6 GPL, Gunns, the directors and KPMG deny these allegations and are defending the class action.

2. Who are the "Group Members"?

- 2.1 The Supreme Court of New South Wales has ordered that this notice be provided to persons who are members of the class on whose behalf the action is brought and who may be affected by the class action. You have been identified as a member of the class (**Group Member**) as the solicitors for the Plaintiffs understand that you:
 - (a) acquired an interest in one or more of the managed investment schemes known as the "Woodlot Projects" operated by GPL in the periods 2002-2003, 2005-2006 and 2008-2009;

- (b) have entered into a litigation funding agreement with LCM Operations Pty Ltd on or before 8 March 2018 (**Funding Agreements**);
- (c) may have suffered loss or damage by or resulting from the conduct alleged in the Amended Commercial List Statement filed on 6 August 2018; and
- (d) are not those persons listed in s 159(2) of the *Civil Procedure Act 2005* (NSW).

If you do not consider that you satisfy each of these criteria (or are unsure), please contact the solicitors acting for the Plaintiffs, Piper Alderman, or seek your own legal advice without delay.

3. What is a class action?

- 3.1 A class action is an action that is brought by one or more people or entities (the **Plaintiff** or **Plaintiffs**) on their own behalf and on behalf of a group of people (**Group Members**) against another person or entity, or persons or entities (the **Defendant** or **Defendants**) where the Plaintiff(s) and the Group Members have similar claims against the Defendant(s).
- 3.2 Group Members in a class action **are not** individually responsible for the legal costs associated with bringing a class action. In a class action, only the Plaintiff(s) is responsible for those costs.
- 3.3 Group Members are bound by any judgment entered or Court-approved settlement reached in the class action unless they have opted out of the proceeding. This means that:
 - (a) if the class action is successful, Group Members may be eligible for a share of any settlement monies or Court-awarded damages;
 - (b) if the class action is unsuccessful, Group Members are bound by that result; and
 - (c) regardless of the outcome of the class action, Group Members will not be able to pursue their claims against the Defendants in separate legal proceedings unless they have opted out.

4. Will you be liable for legal costs if you remain a Group Member?

- 4.1 The class action is being funded by a litigation funder. If the class action is successful, the litigation funder will be entitled to recover fees and reimbursement of costs paid or payable by the funder pursuant to the terms of the Funding Agreements. These amounts will come out of any compensation which becomes payable to you as a result of any order, judgment or settlement in the class action.
- 4.2 You will **not become liable for any legal costs** simply by remaining as a Group Member for the determination of the common questions. However, if the preparation or finalisation of your personal claim requires work to be done in relation to issues that are specific to your claim, you will need to engage a solicitor to do that work for you. The solicitors acting for the Plaintiffs, Piper Alderman, will be in a position to provide that service or you can seek the assistance of another lawyer. A copy of the terms on which Piper Alderman are acting in the class action may be obtained from them on request; and
- 4.3 Class actions are often settled out of court. If this occurs in the class action, you may be able to claim from the settlement amount without retaining a lawyer.

5. If you wish to remain a Group Member

- 5.1 If you are a Group Member then you will be bound by the outcome of the class action unless you "opt out".

5.2 **If you remain a Group Member and the class action is successful, you will be entitled to share in the benefit** of any order, judgment or settlement in favour of the Plaintiffs and Group Members (in some cases you may have to satisfy certain conditions before your entitlement arises). However, if the action is unsuccessful or is not as successful as you might have wished, you will not be able to sue on the same claim in any other proceedings.

5.3 **Please note** that ^{27 May 2019} if you wish to remain a Group Member your identity will be disclosed to the Defendants ~~14 days before the mediation is to take place~~ pursuant to Orders made by the Court in these proceedings. Piper Alderman will seek confidentiality orders from the Court to protect private information concerning Group Members from entering the public domain. However, whether confidentiality orders are made is a matter for the Court.

5.4 Group Members should note that a binding result can happen either through a judgment after a hearing, or a settlement at any time. If there is a judgment or a settlement that is approved by the Court, Group Members will not be able to pursue the same claims against the Defendants in other legal proceedings. Group Members should note that:

(a) In a judgment following trial, the Court will decide factual and legal issues in respect of the claims made by the Plaintiffs and Group Members. Those decisions will bind the Plaintiffs, Group Members and Defendants unless successfully appealed. Importantly, if other legal claims are brought between a Group Member and one or more of the Defendants, it is likely that none of those parties will be permitted to raise arguments in that proceeding which are inconsistent with a factual or legal issue decided in the class action; and

(b) A settlement of a class action for compensation is likely to extinguish any other rights to compensation a Group Member might have against the Defendants which arise in any way out of the events or transactions which are the subject-matter of the class action.

5.5 If you wish to remain a Group Member there is nothing you need to do at the present time. The Plaintiffs will continue to conduct the proceeding on your behalf up to the point that the Court determines those questions that are common to the claims of the Plaintiffs and the Group Members.

6. **If you do not wish to remain a Group Member**

6.1 **If you do not wish to remain** a Group Member you must "opt out" of the class action. If you opt out you will not be bound by or entitled to share in the benefit of any order, judgment or settlement in the class action, but you will be at liberty to bring your own claim against the Defendants, provided that the time limit applicable to your claim has not already expired and you issue Court proceedings within the time limit applicable to your claim. If you wish to bring your own claim against the Defendants; you should seek your own legal advice about your claim and the applicable time limits **prior** to opting out. You should also read your Funding Agreement and/or seek independent legal advice about your contractual obligations and rights under the Funding Agreements which might be affected by opting out of the class action.

6.2 **If you wish to opt out** of the class action you **must** do so by completing an "Opt-Out Notice" in the form shown annexed to this notice (Form 115.v2 UCPR 58.2 of the Supreme Court's approved forms), and returning it to the Registrar of the New South Wales Supreme Court at the address on the form and by email to the Plaintiffs' legal representative at mmoore@piperalderman.com.au.

IMPORTANT: the Notice must reach the Registrar by 24 May 2019 otherwise it will not be effective.

6.3 Each Group Member wishing to opt out should fill out a separate form. If you are opting out on behalf of a company or business please provide your name, the name of the company or business and your position within the company or business (e.g. director or partner).

7. Where can you obtain copies of relevant documents?

7.1 Copies of relevant documents, including the Plaintiffs' Amended Commercial List Statement and the Defendants' Commercial List Responses (as amended) may be obtained by:

- (a) contacting Piper Alderman at mmoore@piperalderman.com.au; or
- (b) inspecting them between 9am and 5pm at one of the offices of Piper Alderman, contact details for which are available from www.piperalderman.com.au.

7.2 Please consider the above matters carefully. If there is anything of which you are unsure, you should contact Piper Alderman by email at mmoore@piperalderman.com.au or seek your own legal advice. You should not delay in making your decision.

This notice is published pursuant to Orders made by the Court on **[INSERT]** 2019

Piper Alderman
[INSERT DATE] April 2019

OPT OUT NOTICE

COURT DETAILS

Court	Supreme Court of New South Wales
Division	Equity
List	Commercial List
Registry	Sydney
Case number	2018/00076580

TITLE OF PROCEEDINGS

First Plaintiff	Giabal Pty Ltd (ACN 009 863 807)
Second Plaintiff	Geoffrey Edward Underwood
First Defendant	Gunns Plantations Limited (In Liquidation) (Receivers and Managers Appointed) (ACN 091 232 209)
Second Defendant	Gunns Ltd (in Liquidation) (Receivers and Managers Appointed) ACN 009 478 148
Number of Defendants	11

FILING DETAILS

Filed for

.....
(Name of person opting out of representative proceedings)

Legal representative

.....
(If applicable)

Legal representative reference

.....
(If applicable)

Contact name and telephone

Contact email

OPT OUT NOTICE

Name of person opting out

Address of person opting out

I,, a group member in these representative proceedings, opt out of the proceedings.

I understand that in opting out:

- 1 I forego the right to share in any relief obtained by the representative party in the representative proceedings;
- 2 I am not entitled to receive any further notification about the conduct or disposition of the proceedings; and

- 3 To the extent that I have a claim against the defendants, any limitation period suspended by the commencement of the representative proceedings has recommenced to run.

SIGNATURE

Signature of legal representative

Signature of or on behalf of person
opting out if not legally represented

Capacity

.....
(eg solicitor, authorised officer of person opting out, person
opting out)

Date of signature

NOTICE TO PERSON OPTING OUT

You must, within the time specified in the notice to group members:

- 1 file this form in the registry of the court at the address below, or in the manner provided in the notice to group members; and
- 2 serve a copy of this form on the representative party at the address, or in the manner provided, in the notice to group members.

REGISTRY ADDRESS

Street address	Supreme Court of NSW Law Courts Building, Queen's Square 184 Phillip Street Sydney NSW 2000
Postal address	Supreme Court of NSW GPO Box 3 Sydney NSW 2001
Telephone	1300 679 272