

OUTCOME DETAILS

**Supreme Court - Civil
at Supreme Court Sydney
on 24 May 2019**

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

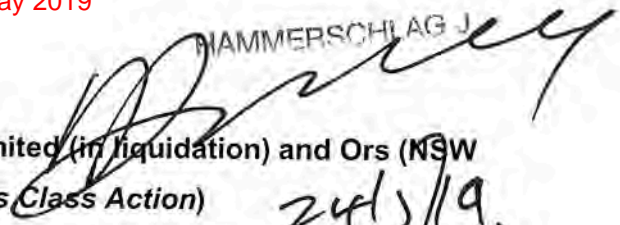
VERDICT ORDER OR DIRECTION

After hearing argument his Honour settled the terms of the Confidentiality Undertaking that are to be given before the impending mediation.

Justice D Hammerschlag

Signed

Date

GIAMMERSCHLAG J

Giabal Pty Ltd and Anor v Gunns Plantations Limited (in liquidation) and Ors (NSW Supreme Court Proceedings 2018/76580) (Gunns Class Action) 24/5/19.

First Plaintiff: Giabal Pty Ltd ACN 009 863 807 of C/- Sands & Associates 156 Hume Street Toowoomba QLD 4350

Second Plaintiff: Geoffry Edward Underwood of Sixth Floor Wentworth Chambers 180 Phillip Street Sydney NSW 2000

First Defendant: Gunns Plantations Limited (in Liquidation) of C/- PricewaterhouseCoopers, 2 Riverside Quay, Southbank VIC 3006

Second Defendant: Gunns Limited (in Liquidation) (Receivers and Managers Appointed) of C/- PricewaterhouseCoopers, 2 Riverside Quay, Southbank VIC 3006

Third Defendant: Wayne Leonard Chapman of 15 Lord Street Launceston TAS 7250

Fourth Defendant: John Eugene Gay of 7 Clarence Street East Launceston TAS 7250

Fifth Defendant: Rodney John Loone of Unit 3, 26A Balfour Street Launceston TAS 7250

Sixth Defendant: Leslie Ralph Baker of 40 Marieville Esplanade Sandy Bay TAS 7005

Seventh Defendant: Robert Henry Graham of 30 Bagshaw Way Mile End SA 5031

Eighth Defendant: Robin Gray of 11 Beech Road Norwood TAS 7250

Ninth Defendant: Paul Desmond Teisseire of 4 Bickford Terrace Somerton Park SA 5044

Tenth Defendant: Andrew Gray of 33 George Street Launceston TAS 7250

Eleventh Defendant: Matthew Gary Wallace of Level 3, 100 Melville Street Hobart TAS 7000

Confidentiality Undertaking Given by Legal Practitioner

I, [INSERT NAME], [INSERT CAPACITY], of [INSERT ADDRESS], as a condition of obtaining access to the information about Group Members in relation to the Gunns Class Action which is to be provided pursuant to ~~order 3 of orders 3.1 to 3.4 of~~ the orders of Justice Ball dated 12 December 2018 (as varied by order 4 of the orders of Justice Ball dated 17 April 2019) (**Confidential Information**), undertake to the Group Members:

- 1 Except as permitted by paragraphs ~~5-6 4-6~~ and ~~11-10~~ below, I will keep the Confidential Information confidential at all times and I will use the Confidential Information only for the purposes of the Gunns Class Action.
- 2 Subject to paragraphs ~~5-6 4-6~~ and ~~11-10~~ below, I will **not** disclose the Confidential Information without leave of the Court being granted, orders permitting disclosure being made by the Court or consent of the Group Members (including the Plaintiffs) being obtained.
- 3 Except as permitted by paragraphs ~~5-6 4-6~~ and ~~11-10~~ below, I will keep any notes, records, memoranda or other documents (including but not limited to any electronic versions thereof) created by me incorporating or referring to, or derived directly or indirectly from, the Confidential Information (**Ancillary Information**), in a manner which will reasonably preserve the confidentiality of the Confidential Information and the Ancillary Information at all times.
- ~~4 I acknowledge that the Group Members may suffer loss or damage if I breach this undertaking and that the Group Members may be able to seek damages from me if I breach this undertaking.~~
- 4 I may disclose the Confidential Information and Ancillary Information to my client or clients in the Gunns Class Action (including ~~any~~ in respect of the Tenth and Eleventh Defendants, to KPMG (A Firm)), their authorised representatives ~~of my client or clients who intend to directly participate in the mediation set down for 25 June 2019~~, internal legal advisors, external legal advisors, and relevant insurers, reinsurers, insurance brokers and their respective legal advisors ^{up to the extent of} (and any officers, agents, servants or employees of the foregoing) (each a **Receiving Party**), subject to the Receiving Party signing a confidentiality undertaking in the form attached to this undertaking. I will provide a copy of any undertaking signed by any Receiving Party pursuant to this paragraph to the Plaintiffs' solicitors within 3 business days of the undertaking being signed.
- 5 The Confidential Information and Ancillary Information may be disclosed by me to any counsel or expert witness (in respect of the alleged loss or damage said to be suffered by Group Members) retained on behalf of my client or clients in the Gunns Class Action, subject to the recipient being made aware of this undertaking and agreeing to deal with the Confidential Information and Ancillary Information in a manner consistent with the terms of this undertaking.
- 6 Subject to my strict compliance with paragraph ~~8-7~~ below, I may disclose the Confidential Information or Ancillary Information as required by law ~~or in the course of the Gunns Class Action.~~



7 If any part of the Confidential Information or Ancillary Information is to be disclosed pursuant to paragraph 7-6 above:

- (a) in any document to be filed or tendered in a Court; or
- (b) in the course of any evidence or submissions (in each case, whether oral or in writing) to be adduced or relied on in a Court;

then, I must:

- i. advise the Plaintiffs' solicitors as soon as reasonably practicable of any proceeding in which any part of the Confidential Information or Ancillary Information is to be disclosed;
 - ii. use my best endeavours to maintain the confidentiality of the Confidential Information and Ancillary Information, including by using my best endeavours to obtain from the relevant Court such orders as may be necessary to preserve their confidentiality;
 - iii. advise the Plaintiffs' solicitors as soon as reasonably practicable of any hearing to be held in respect of any application for the orders contemplated by sub-paragraph (ii) above, and of the outcome of that hearing; and
 - iv. in the event that I am unsuccessful in obtaining the orders contemplated by sub-paragraph (ii) above:
 - 1. only disclose the Confidential Information or Ancillary Information to the minimum extent required in order to comply with the practice and procedural requirements of the Court including, without limitation, any applicable rules of Court; and
 - 2. advise the Plaintiffs' solicitors as soon as reasonably practicable of any hearing scheduled in the proceeding in which the Confidential Information or Ancillary Information may be publicly disclosed, and provide the Plaintiffs' solicitors with any documents filed in the proceeding which contains, refers to or otherwise relates to the Confidential Information or Ancillary Information.
- 8 If an application is made to the Court for leave to disclose the Confidential Information (or for orders permitting disclosure to be made) pursuant to paragraph 2 above, I must give the Plaintiffs' solicitors:
- (a) notice of the intention to make that application at least 5 business days prior to the filing of the application; and
 - (b) a copy of the application to be filed and any document to be relied on in support of the application at least 2 business days prior to it being filed.
- 9 I will promptly notify the Plaintiffs' solicitors if I become aware of any unauthorised use or disclosure of the Confidential Information or Ancillary Information.

10 Nothing in this undertaking:

- (a) shall prevent me from permitting clerical staff from handling Confidential Information or Ancillary Information within my office subject to my obligations in paragraph 3 above;
- (b) shall prevent me from discussing or otherwise communicating with the legal representatives of a party to the Gunns Class Action in respect of the Confidential Information or Ancillary Information;
- (c) shall prevent me from disclosing Ancillary Information to the extent it comprises aggregated totals or sub-totals derived from the Confidential Information;
- (d) operates as a waiver or release of any implied undertaking of confidentiality applicable to any other documents discovered by any party or otherwise produced as part of the Court's processes;
- (e) shall prevent any party from disclosing, referring to or relying upon the Confidential Information or Ancillary Information in the context of any mediation or other dispute resolution process in respect of the Gunns Class Action (including, without limitation, disclosure of that information to any mediator in writing or otherwise), subject to any further obligations of confidentiality, whether express or implied, which are imposed as a requirement or consequence of participating in any such mediation or other dispute resolution process; or
- (f) prevents or limits any party making at any time an application to the Court for orders contrary to this undertaking (subject to the provision of notice as contemplated by paragraph 9-8 above).

11 This undertaking does not extend to any Confidential Information or Ancillary Information that, other than by a breach of this undertaking, has been disclosed in the Gunns Class Action without confidentiality orders being made, is already in the public domain or comes into the public domain or otherwise ceases to be confidential.

12. *This undertaking is given to the Court and interpreters and is subject to variation by the Court*

Signature

Name

Title

Date

ATTACHMENT:

**UNDERTAKING TO BE SIGNED BY RECEIVING PARTY FOR DISCLOSURE OF
CONFIDENTIAL INFORMATION OR ANCILLARY INFORMATION**

**Giabal Pty Ltd and Anor v Gunns Plantations Limited (in liquidation) and Ors (NSW
Supreme Court Proceedings 2018/76580 (Gunns Class Action)**

First Plaintiff: Giabal Pty Ltd ACN 009 863 807 of C/- Sands & Associates 156 Hume Street
Toowoomba QLD 4350

Second Plaintiff: Geoffry Edward Underwood of Sixth Floor Wentworth Chambers 180 Phillip
Street Sydney NSW 2000

First Defendant: Gunns Plantations Limited (in Liquidation) of C/- PricewaterhouseCoopers, 2
Riverside Quay, Southbank VIC 3006

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PricewaterhouseCoopers, 2 Riverside Quay, Southbank VIC 3006

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Seventh Defendant: Robert Henry Graham of 30 Bagshaw Way Mile End SA 5031

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Ninth Defendant: Paul Desmond Teisseire of 4 Bickford Terrace Somerton Park SA 5044

Tenth Defendant: Andrew Gray of 33 George Street Launceston TAS 7250

Eleventh Defendant: Matthew Gary Wallace of Level 3, 100 Melville Street Hobart TAS 7000

Confidentiality Undertaking Given by Receiving Party

I, [INSERT NAME], [INSERT CAPACITY], of [INSERT ADDRESS], as a condition of obtaining access to the information about Group Members in relation to the Gunns Class Action which is to be provided pursuant to ~~order 3 of orders 3-1 to 3.4 of~~ the orders of Justice Ball dated 12 December 2018 (as varied by order 4 of the orders of Justice Ball dated 17 April 2019) (**Confidential Information**), undertake to Group Members:

- 1 Except as permitted by paragraphs ~~4-3, 5-4 and 8-7~~ below, I will keep the Confidential Information confidential at all times and I will use the Confidential Information only for the purposes of the Gunns Class Action.
- 2 Except as permitted by paragraphs ~~4-3, 5-4 and 8-7~~ below, I will keep any notes, records, memoranda or other documents (including but not limited to any electronic versions thereof) created by me incorporating or referring to, or derived directly or indirectly from, the Confidential Information (**Ancillary Information**), in a manner which will reasonably preserve the confidentiality of the Confidential Information and the Ancillary Information at all times.

~~3 I acknowledge that the Group Members may suffer loss or damage if I breach this undertaking and that the Group Members may be able to seek damages from me if I breach this undertaking.~~

3 4I may disclose the Confidential Information and Ancillary Information to my solicitors in the Gunns Class Action.

4 5Subject to paragraph ~~4-3~~ above, I will not disclose the Confidential Information or Ancillary Information to any person, except (and subject to my strict compliance with paragraph ~~6-5~~ below):

(a) as required by law; or

(b) in the course of the Gunns Class Action, including:

- i. in respect of the Tenth and Eleventh Defendants, to KPMG (A Firm);
- ii. to any relevant insurers, reinsurers, insurance brokers and their respective legal advisors; and
- iii. to any officers, agents, servants or employees of the foregoing,

~~(b) to any of my authorised representatives for the purpose of them directly participating in the mediation set down for 25 June 2019 (each a **Receiving Party**),~~

subject to the Receiving Party signing a confidentiality undertaking in the form of this undertaking. I will provide, or cause to be provided, a copy of any undertaking signed by any Receiving Party pursuant to this paragraph to the Plaintiffs' solicitors within 3 business days of the undertaking being signed.

5 6If any part of the Confidential Information or Ancillary Information is to be disclosed by me pursuant to paragraph ~~5-4~~ above:

- (a) in any document to be filed or tendered in a Court; or
- (b) in the course of any evidence or submissions (in each case, whether oral or in writing) to be adduced or relied on in a Court;

then, I must comply with the following obligations (or cause those obligations to be complied with):

- i. advise the Plaintiffs' solicitors as soon as reasonably practicable of any proceeding in which any part of the Confidential Information or Ancillary Information is to be disclosed;
- ii. use my best endeavours to maintain the confidentiality of the Confidential Information and Ancillary Information, including by using my best endeavours to obtain from the relevant Court such orders as may be necessary to preserve their confidentiality;
- iii. advise the Plaintiffs' solicitors as soon as reasonably practicable of any hearing to be held in respect of any application for the orders contemplated by sub-paragraph (ii) above, and of the outcome of that hearing; and
- iv. in the event that I am unsuccessful in obtaining the orders contemplated by sub-paragraph (ii) above:
 - 1. only disclose the Confidential Information or Ancillary Information to the minimum extent required in order for me to comply with the practice and procedural requirements of the Court including, without limitation, any applicable rules of Court; and
 - 2. advise the Plaintiffs' solicitors as soon as reasonably practicable of any hearing scheduled in the proceeding in which the Confidential Information or Ancillary Information may be publicly disclosed and provide the Plaintiffs' solicitors with any documents filed in the proceeding which contains, refers to or otherwise relates to the Confidential Information or Ancillary Information.

6 7I will promptly notify the Plaintiffs' solicitors, or cause them to be notified, if I become aware of any unauthorised use or disclosure of the Confidential Information or Ancillary Information.

7 8Nothing in this undertaking:

- (a) shall prevent me from permitting clerical staff from handling Confidential Information or Ancillary Information within my office subject to my obligations in paragraph 2 above;
- (b) shall prevent me from discussing or otherwise communicating with another party to the Gunns Class Action, or that party's legal or other representatives, in respect of the Confidential Information or Ancillary Information;
- (c) shall prevent me from disclosing Ancillary Information to the extent it comprises aggregated totals or sub-totals derived from the Confidential Information;

- (d) operates as a waiver or release of any implied undertaking of confidentiality applicable to any other documents discovered by any party or otherwise produced as part of the Court's processes;
- (e) shall prevent any party from disclosing, referring to or relying upon the Confidential Information or Ancillary Information in the context of any mediation or other dispute resolution process in respect of the Gunns Class Action (including, without limitation, disclosure of that information to any mediator in writing or otherwise), subject to any further obligations of confidentiality, whether express or implied, which are imposed as a requirement or consequence of participating in any such mediation or other dispute resolution process; or
- (f) prevents or limits any party making at any time an application to the Court for orders contrary to this undertaking.

8. This undertaking does not extend to any Confidential Information or Ancillary Information that, other than by a breach of this undertaking, has been disclosed in the Gunns Class Action without confidentiality orders being made, is already in the public domain or comes into the public domain or otherwise ceases to be confidential.

9. This undertaking is given in full and the parties do not intend to raise any application to the Court and may be varied by the Court

Signature

Name

Title

Date

