

OUTCOME DETAILS

**Supreme Court - Civil
at Supreme Court Sydney
on 26 May 2021**

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

His Honour makes the orders in the document entitled Short Minutes of Order which his Honour has initialled, dated today's date and placed with the papers.

Justice D Hammerschlag

Signed

Date

Form 44 (version 3)
UCPR 36.1A**SHORT MINUTES OF ORDER**

26/5/21.

COURT DETAILS

Court	Supreme Court of NSW
Division	Equity
List	Commercial
Registry	Supreme Court Sydney
Case number	2018/76580

TITLE OF PROCEEDINGS

First Plaintiff	Giabal Pty Ltd ACN 009 863 807
Second Plaintiff	Geoffrey Edward Underwood
First Defendant	Gunns Plantations Ltd (in Liquidation) ACN 091 232 209
Second Defendant	Gunns Ltd (in Liquidation) (Receivers and Managers Appointed) ACN 009 478 148
Number of Defendants	13

PREPARATION DETAILS

Prepared for	David Haddock as Liquidator of Gunns Plantations Ltd (in Liquidation) (Receivers and Managers Appointed) and Gunns Ltd (in Liquidation) (Receivers and Managers Appointed) C/- PricewaterhouseCooper Australia
Legal representative	Matthew Critchley, Corrs Chambers Westgarth
Legal representative reference	9973
Contact name and telephone	David Hertzberg, (02) 9210 6116
Contact email	david.hertzberg@corrs.com.au

TERMS OF ORDER MADE BY THE COURT

The Court notes:

- 1 The mailboxes and re-collected mailboxes of the Custodians contain documents in which the following persons may be entitled to assert a claim for privilege from production (including, without limitation, legal professional privilege and without prejudice privilege):
 - a. the Liquidators of Gunns, GPL and the Gunns Group, whether in their own right or on behalf of Gunns, GPL and the Gunns Group;
 - b. the third to ninth Defendants, whether in their own right or jointly with Gunns, GPL and the Gunns Group; and

- c. other persons who are not party to this proceeding.
- 2 The provision access to the mailboxes and re-collected mailboxes of the Custodians in answering the subpoena does not constitute a waiver of privilege held by any of the persons identified in paragraph 1 above.

The Court orders:

- 1 By 26 May 2021, the solicitors for the first and second plaintiffs have first access to the documents produced in response to the Subpoena (**Documents**) for the purposes of complying with orders 2, 4, 6 and 8 below.
- 2 By 2 June 2021, the solicitors for the first and second plaintiffs are to upload the Documents to a Nuix Discover electronic database (**Database**) and are to assign unique document identification numbers to the Documents.
- 3 By 26 May 2021 the Liquidators are to provide to the solicitors for the first and second plaintiffs with a list of the law firms retained by the Liquidators (and their predecessors, all in their capacities as external administrators of Gunns, GPL or the Gunns Group), Gunns, GPL or any of the entities that comprise the Gunns Group between 1 January 2000 and 25 September 2012.
- 4 By 8 June 2021, the solicitors for the first and second plaintiffs are to:
- a. produce to the Court a packet labelled "POTENTIALLY PRIVILEGED" containing all emails and their attachments sent to or by, or copied to, partners or employees of the law firms referred to in order 3 above, which are to be identified by the solicitors for the first and second plaintiffs using electronic, keyword searches of the email domain addresses of those law firms that are run across the Database without any manual review (**Potential Liquidator or Company Privilege Documents**);
 - b. produce to the parties a list of the Potential Liquidator or Company Privilege Documents, including unique document identification numbers, the title or subject line of the document and any attachment (to the extent that this information is not privileged) and, in respect of emails, the sender, recipient and any persons copied; and
 - c. undertake not to access the Potential Liquidator or Company Privilege Documents on the Database and to take steps to prevent access by any person.
- 5 There be no access to the Potential Liquidator or Company Privilege Documents by any other person, including any party to the proceeding, until further order.
- 6 By 8 June 2021, the solicitors for the first and second plaintiffs are to:
- a. produce to the solicitors for the eighth defendant (**Eighth Defendant Privilege Review Set**), in the form of a Nuix load file, all emails sent to

or by, or copied to, the eighth defendant which are to be identified by the solicitors for the first and second plaintiffs using electronic search terms comprising the eighth defendant's name applied across the Database (excluding any Potential Liquidator or Company Privilege Documents) and are to be produced to the solicitors of the eighth defendant without any manual review; and

- b. undertake not to access the Eighth Defendant Privilege Review Set on the Database and to take steps to prevent access by any person, subject to order 9(c) below.

7 The first and second plaintiffs must not rely in the proceeding on:

- a. any Potential Liquidator or Company Privilege Documents, subject to further order of the Court or the agreement of the Liquidators, Gunns, GPL or the Gunns Group and, in the event that any claim for privilege from production is jointly held with another person, with the agreement of that person; or
- b. any Eighth Defendant Privilege Documents, subject to further order of the Court or the agreement of the Eighth Defendant.

8 On 10 June 2021, the solicitors for the first and second plaintiffs are to provide the Documents to all parties by way of Nux load file, excluding the Potential Liquidator or Company Privilege Documents and the Eighth Defendant Privilege Review Set.

9 By 22 June 2021 the solicitors for the eighth defendant are to produce:

- a. to the Court a packet labelled "PRIVILEGED – EIGHTH DEFENDANT" (**Eighth Defendant Privilege Documents**) containing documents over which the eighth defendant claims privilege from production; and
- b. to all parties a list of the Eighth Defendant Privilege Documents, including unique document identification numbers, the title or subject line of the document and any attachment (to the extent that this information is not privileged) and, in respect of emails, the sender, recipient and any persons copied; and
- c. to all parties a Nux load file of those documents in the Eighth Defendant Privilege Review Set in respect of which the eighth defendant does not assert a claim for privilege from production, which all parties may thereafter access.

10 There be no further access to the Eighth Defendant Privilege Documents until further order of the Court.

11 If, on review of any of the Documents, any party identifies material that it

reasonably considers may be the subject of claims for privilege against production (including, without limitation, legal professional privilege and without prejudice privilege) by any person:

- a. the identifying party must inform all other parties (including, for the avoidance of doubt, the Liquidators of Gunns, GPL and the Gunns Group) by written notice of the material by reference to the document ID, the basis of the potential claim and the identity of the person who may be entitled to assert the claim (**Notice**);
- b. all parties have 14 days from the date of the receipt of Notice to notify the identifying party of any objection to the assertion of privilege;
- c. failing any objection, at the end of 14 days from the date of receipt of Notice, all parties must delete all copies of the material and must not rely on that material in the proceeding, subject to further order of the Court or the agreement of the person entitled to assert the claim for privilege from production

12 If, on review of any of the Documents, any party identifies a document or documents which were created on or after 25 September 2012, then:

- a. the identifying party must, within 3 days of identifying the document or documents, inform all other parties (including, for the avoidance of doubt, the Liquidators of Gunns, GPL and the Gunns Group) by written notice of the document or documents by reference to the document ID and date of the document (**Notice – Inadvertent Disclosure**);
- b. all parties must, within 3 days from the date of receipt of the Notice – Inadvertent Disclosure:
 - I. delete all copies of the document or documents identified in the Notice – Inadvertent Disclosure; and
 - II. inform all other parties that they have deleted all copies of the document or documents; and
- c. no party may rely in the proceeding on the document or documents identified in the Notice – Inadvertent Disclosure, subject to further order of the Court or the agreement of the Liquidators of Gunns, GPL and the Gunns Group.

SIGNATURES**Plaintiffs**

Giabal Pty Ltd and Geoffry Edward Underwood, First and Second Plaintiffs, consent.

Signature of legal representative 

Capacity

Solicitor for the Plaintiffs

Date of signature

26 May 2021

Third Defendant

Wayne Leonard Chapman, Third Defendant, consents.

Signature of legal representative

Capacity

Solicitor for the Third Defendant

Date of Signature

2021

Fourth 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, consents.

Signature of legal representative

Capacity

Solicitor for the Fourth Defendant

Date of Signature

2021

Fifth Defendant

Rodney John Loone, Fifth Defendant, consents.

Signature of legal representative

Capacity

Solicitor for the Fifth Defendant

Date of Signature

2021

Sixth Defendant

Leslie Ralph Baker, Sixth Defendant, consents.

Signature of legal representative

Capacity

Solicitor for the Sixth Defendant

Date of Signature 2021

Seventh Defendant

Robert Henry Graham, Seventh Defendant, consents.

Signature of legal representative

Capacity Solicitor for the Seventh Defendant

Date of Signature 2021

Eighth Defendant

Robin Gray, Eighth Defendant, consents.

Signature of legal representative *Arnold Roch Leibler*

Capacity Solicitor for the Eighth Defendant

Date of Signature 26 May 2021

Ninth Defendant

Paul Desmond Teisseire, Ninth Defendant, consents.

Signature of legal representative

Capacity Solicitor for the Ninth Defendant

Date of Signature 2021

Tenth Defendant

Andrew Gray, Tenth Defendant, consents.

Signature of legal representative *Ross Dinnian*

Capacity Solicitor for the Tenth Defendant

Date of Signature 26 May 2021

Eleventh Defendant

Mathew Gary Wallace, Eleventh Defendant, consents.

Signature of legal representative *Ross Dinnian*

Capacity Solicitor for the Eleventh Defendant

Date of Signature 26 May 2021

Twelfth Defendant

Catlin Australia Pty Ltd, Twelfth Defendant, consents.

Signature of legal representative

Capacity Solicitor for the Twelfth Defendant

Date of Signature 2021

Thirteenth Defendant

Chubb Insurance Australia Limited, Thirteenth Defendant, consents.

Signature of legal representative

Capacity Solicitor for the Thirteenth Defendant

Date of Signature 2021

Subpoena Recipient

David Haddock as Liquidator of Gunns Plantations Ltd (in Liquidation) (Receivers and Managers Appointed) and Gunns Ltd (in Liquidation) (Receivers and Managers Appointed), consent.

Signature of legal representative

Colin Chambers Widdup

Capacity

Solicitor for subpoena recipient

Date of signature

26 May 2021

SEAL AND SIGNATURE

Court seal

Signature

Capacity

Date made or given

Date entered

NOTICE

Subject to limited exceptions, no variation of a judgment or order can occur except on application made within 14 days after entry of the judgment or order.

