

MemberUpdate

No. 16 of 2023 • 30th June 2023

TOPIC: Federal Court Ruling – Moulamein Grain Co-Operative Limited.

DISTRIBUTION: GTA Members – primary contact list. Please circulate to all appropriate internal parties.

1. Purpose

- To update GTA members with information on a recent Federal Court ruling regarding the status of stored grain at Moulamein Grain Co-Operative Limited (Co-Operative) storages in Administration.

2. Background

- As reported in GTA [Member Update No. 13 of 22](#) Administrators were appointed to Moulamein Grain Services Pty Ltd in August 2022.
- With the consent of the owners of the remaining grain stocks held in the Co-Operative storage sites, and pursuant to Court Orders, the Administrators sold the remaining grain. A dispute arose as to the distribution of the proceeds.
- The grades and amounts of grain determined on outturn differed from the Co-Operative inventory ownership records. The Administrators developed a concept of ‘*excess or surplus grain stocks*’, whereby if the grades of grain on outturn could not be clearly reconciled with the Co-Operative inventory records, then this “*surplus grain*” (or the proceeds from the sale of the surplus grain) had (in effect) no owner (by reference at least to the Co-Operative’s records) and should be retained by the Administrator and applied to the benefit of the creditors of the Co-Operative.
- This surplus grain identified by the Administrator were grades of grain identified (by grade) that did not correspond with the grain/grade inventory records of the Co-Operative. For example the Co-Operative inventory records indicated residue stock of SFW1 wheat whereas there were no records of any SFW1 being received. Therefore this grain was identified as surplus and retained by the Administrator.
- A number of the clients of the Co-Operative involved in the Federal Court case are GTA Members (**Interested Parties**). They claimed entitlement to the surplus grain as it was believed grades of their grain received by the Co-Operative had changed or been regraded from grain / grades recorded in the client’s inventory records noting this is common in the grain industry.
- GTA provided an Affidavit to the Court supporting the Interested Parties claim as consistent with industry practice and their proposed method of distribution as consistent with industry practice for comingled grain and the Australian Grain Industry Code of Practice.
- However, the Federal Court ruled on 20 June 2023 that based on the available Co-Operative records and the court’s understanding the grain owners had apparently “abandoned” their claims as ownership could not be established and the surplus grain could be retained by the Administrators for the benefit of all creditors.

3. GTA Consideration – Direction

- It should be noted the Court’s ruling was based on the apparent abandonment of claims of ownership of the grain. The Court **did not** make a ruling on the merits of the differing methods for distribution of sale proceeds

of the grain proposed by the Administrators and the Interested Parties and on particular the concept of “*surplus grain*”.

- The Interested Parties and GTA remain concerned by this ruling and around any possible precedent it may set for the grain industry in future insolvency and inventory related matters.
- GTA is considering the Court’s ruling and how it may be addressed in the interests for GTA Members and the broader industry.
- In the meantime, GTA Members should:
 - a) Familiarise themselves with Information on the GTA Website for [Managing Insolvency](#).
 - b) Review GTA Fact Sheets - Grain Contracts [Managing Counterparty insolvency](#) and [Managing Counterparty Risk](#) .
 - c) Ensure they register their security interests on the [Personal Property Securities Register \(PPSR\)](#) for grain contracted with and/or delivered to any counterparty and/or held in any third party storages.
 - d) In any future insolvency where grain is held in third party storages, immediately affirm and assert their interests in the grain, including commingled stocks, with Administrators, and where possible request outturn of their grain in a manner consistent with the relevant storage and handling agreement. This should be evidenced in writing.
 - e) Take advice before agreeing to any proposal from Administrators/Liquidators as to dealings with grain in storage.

4. For further Information

- If GTA members require further information on this Member Update, please contact GTA at admin@graintrade.org.au

Ends: