



## HIGH COURT OF AUSTRALIA

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#### Details of Filing

File Number: A10/2022  
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#### Important Information

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IN THE HIGH COURT OF AUSTRALIA  
ADELAIDE REGISTRY

BETWEEN:

**DANIEL MATHEW BRYANT, IAN MENZIES CARSON, AND CRAIG DAVID  
CROSBIE IN THEIR CAPACITIES AS JOINT AND SEVERAL LIQUIDATORS OF  
GUNNS LIMITED (IN LIQUIDATION) (RECEIVERS & MANAGERS APPOINTED)  
(ACN 009 478 148) AND AUSPINE LIMITED (IN LIQUIDATION) (RECEIVERS &  
MANAGERS APPOINTED) (ACN 004 289 730)**

10

Appellants

and

**BADENOCH INTEGRATED LOGGING PTY LTD (ACN 097 956 995)**

Respondent

### APPELLANTS' CHRONOLOGY

#### 20 Part I: Certification

This chronology is in a form suitable for publication on the internet.

#### Part II: Chronology

	Date	Event	Ref.
1.	15 August 2003	The respondent and Auspine entered into a Harvesting Agreement for the purpose of the respondent harvesting trees on behalf of Auspine.	CAB 14 at [14]; CAB 102 at [58])  AFM 11
2.	December 2007	The 2003 Harvesting Agreement expired.	CAB 14 at [14]
3.	25 September 2008	Auspine and the respondent agreed to renew the Harvesting Agreement (entered into on 15 August 2003) for a " <i>Renewed Term of 5½ years effective from 01/01/2008</i> ".	CAB 14 at [14]; CAB 102 at [58]  AFM 48
4.	Between 2010 and 2012	Mr Peter Badenoach was aware that Gunns' situation was at times mentioned in the financial section of the newspapers, " <i>with reference to the involvement of the banks, and investments in the Pulp Mill</i> ".	AFM 454

	Date	Event	Ref.
5.	Between 2010 and 2012	Mr Peter Badenoch deposes that <i>“From time to time, Gunns published annual reports with cash flows. As I have said above, I did not read these reports at the time”</i> and <i>“I thought that if there was a serious issue, then Gunns would stop trading as a listed company. Until the end in late 2012, I still held the belief that Gunns had the support of its banks, and that the issues were being worked through.”</i>	AFM 460
6.	Between 2010 and 2012	Mr Peter Badenoch kept track of how Gunns were doing as best he could by relying on what information was in the <i>“public arena”</i> (mainly newspapers, not ASX announcements) and that <i>“if it was in the financial pages of the Herald Sun or The Age or something I would have read it”</i> , but he was not looking at Gunn’s balance sheet and reports.  In cross-examination, Mr Peter Badenoch denied believing what the media was saying about Gunns’ financial position, saying that he had a long standing distrust of media reporting.  He was aware that Gunns’ profits were down.	CAB 16 at [24]  AFM 411; AFM 414; AFM 418; AFM 788
7.		Mr Kenneth Badenoch agreed in cross-examination to keeping abreast of Gunns’ financial position primarily by reading newspapers (being the financial pages in the Herald Sun and The Age on Saturdays). He also agreed he was aware that Gunns was involved in various asset sales.	CAB 16 at [24]  AFM 414
8.	8 April 2010	Mr Kenneth Badenoch emailed Gunns seeking payment for their services in February 2010.	CAB 15 at [19]; CAB 20 at [37]; CAB 102 at [58]  AFM 51
9.	3 May 2010	Respondent emailed Gunns for payment for March services (due by 30 April 2010).	CAB 15 at [19]; CAB 20 at [37]; CAB 102 at [58]  AFM 52
10.	5 May 2010	Respondent sought a response to its email of 3 May 2010.	CAB 15 at [19]; CAB 20 at [37]; CAB 102 at [58]  AFM 53
11.	2 to 5 August 2010	Respondent emailed Gunns to ask when payment will be made for June and was told it would be made <i>“this Wednesday”</i> . When payment was not received the	CAB 15 at [19]; CAB 20 at [37];

Date	Event	Ref.
	respondent emailed Gunns and was told " <i>Payment made</i> ".	CAB 102 at [58] AFM 54; AFM 55
12.	1 September 2010 Respondent emailed Gunns chasing payment for July services.	CAB 15 at [19]; CAB 20 at [37]; CAB 102 at [58] AFM 56
13.	5 October 2010 Respondent emailed Gunns chasing payment for August services.	CAB 15 at [19]; CAB 20 at [37]; CAB 102 at [58] AFM 57
14.	1 & 4 April 2011 Respondent emailed Gunns asking when February services will be paid; when no response was received, the respondent emailed again on 4 April 2011.	CAB 15 at [19]; CAB 20 at [37]; CAB 102 at [58] AFM 58
15.	3 & 5 May 2011 Respondent emailed Gunns chasing payment for March services; when no response was received, the respondent emailed again on 5 May 2011.	CAB 15 at [19]; CAB 20 at [37]; CAB 102 at [58] AFM 59; AFM 60
16.	27 May 2011 By email, Mr Lloyd (Gunns) informed the respondent that " <i>the best indication of payment timing for April accounts is that payments could be up to one or to two weeks late</i> ".	CAB 15 at [19]; CAB 20 at [37]; CAB 102 at [58] AFM 61
17.	3 June 2011 Mr Lloyd (Gunns) emailed Mr Mansfield (Gunns) to confirm " <i>April payment will be made in full on Monday 6 June</i> ".	CAB 15 at [19]; CAB 20 at [37]; CAB 102 at [58] AFM 62
18.	1 July 2011 Mr Lloyd (Gunns) emailed Mr Mansfield (Gunns), copying the respondent, stating " <i>I have been informed this morning that payments due yesterday will likely be delayed into next week. Please accept my apologies as I was expecting payments to be made this week. ...</i> ".	CAB 15 at [20] AFM 63
19.	8 July 2011 Mr Lloyd (Gunns) emailed several recipients (including the respondent) stating " <i>Unfortunately Gunns didn't receive some payments by Wednesday as anticipated and we expect to make payments today Friday and Monday. I understand you are on the list, and if you don't receive full payment it should be at least part of your May payment. That is all I can say at this time, but if I get further advice today I will pass it</i>	CAB 16 at [21] AFM 65

	Date	Event	Ref.
		<i>on... ”.</i>	
20.	12 July 2011	The respondent emailed Mr Lloyd (Gunns) stating <i>“Payment (full or part) was not made on Friday or Monday as indicated. We thank you for keeping us informed but as you would appreciate we require funds to meet our creditors and will be writing to Rob Bilson [Gunns] this morning to hopefully obtain details of when payment will be made”.</i>	CAB 16 at [21] AFM 64
21.	12 July 2011	Mr Lloyd (Gunns) emailed the respondent stating <i>“I understand your situation and I am trying to ascertain when payment will be made. It appears Gunns haven’t received some anticipated payments late last week from an asset sale...”.</i>	CAB 16 at [21] AFM 64
22.	12 July 2011	The respondent emailed Mr Bilson (Gunns) stating <i>“We note that Gunns have not paid for our May contract work in accordance with contract terms and despite indications to our office that part or full payment was to have been made on the 8<sup>th</sup> and or 11<sup>th</sup> of this month no such payment has been forthcoming. We are sure you understand the need for us to meet our creditors and request a response to indicate when payment will be made...”.</i>	CAB 16 at [21] AFM 66
23.	12 July 2011	Mr Lloyd (Gunns) emailed several recipients stating <i>“I understand payments were not made last Friday or Monday as previously advised. I don’t have all the answers but it appears Gunns is still waiting on some anticipated payments last week. I understand we were waiting on a transaction to be completed last night, but I can’t confirm if it has been received or whether payments will be paid today. I am endeavouring to find out more today and will let you know as I know some more”.</i>	CAB 16 at [21] AFM 67
24.	13 July 2011	Mr Lloyd (Gunns) emailed several recipients stating <i>“My latest advice from Launceston is that payments are unlikely until later this week. Unfortunately it appears Gunns is still waiting on payments expected last week”.</i>	CAB 16 at [22] AFM 68
25.	18 July 2011	Mr Lloyd (Gunns) emailed several parties, including the respondent, <i>“Latest advice from head office is all outstanding May invoice payment will be made over Tuesday to Thursday this week as funds become available”.</i>	CAB 16 at [22] AFM 69

	Date	Event	Ref.
26.	21 July 2011	The respondent emailed Mr Lloyd (Gunns) stating <i>“Sorry to bother you but Thursday has passed and no payment made. Please check with head office and let us know when payment will be made (not just words from them) so that we can assess our situation as have creditors and other commitments to meet ...”</i>	CAB 16 at [22] AFM 70
27.	22 July 2011	Mr Lloyd (Gunns) emailed several recipients, including the respondent, stating <i>“Once again my apologies, but I understand some payments have not been made as I previously indicated this week. I have been assured by head office the payments will be made today. There was an unexpected delay in some paper work processing a woodchip payment, and we expect the banks to clear the chip payment this morning. ...”</i>	CAB 16 at [22] AFM 71
28.	27 July 2011	Mr Kenneth Badenoch emailed Mr Bilson (Gunns) stating <i>“We note that the balance of May contract work has not been made as previously indicated. We request a response as to when the balance of payment for May contract work will be paid as we require these funds to operate. We further ask as to when June contract work will be made. According to the terms of our contract, payment is due at the end of the month following completion of the work. ...”</i>	CAB 16 at [22] AFM 72
29.	28 July 2011	Mr Kenneth Badenoch emailed Mr Bilson (Gunns) stating <i>“We refer to our email of the 27<sup>th</sup> to which we have not received a response apart from the acknowledgment of having read the email. We require payment to bring us into line with contract terms. The lack of communication is disturbing in that we are concerned with your ability to pay and the effect it is having on us our employees and creditors.”</i>  Mr Lloyd (Gunns) responded, <i>“Based on our current cash in flows we expect to make payment by Friday this week”</i> . To which the respondent replied <i>“Does the payment scheduled for Friday also include the June amount owing as this is also due and payable as of tomorrow? Let us know at your earliest”</i> .	CAB 16 at [22] AFM 75; AFM 76
30.	29 July 2011	Mr Lloyd (Gunns) emailed the respondent stating <i>“Today’s payment will cover May invoice. I understand there is some money for June invoices as well however I am not in a position to say exactly how much may be available right now. I hope to have a conversation with Bryan Hayes this afternoon to</i>	CAB 16 at [22] AFM 73; AFM 74

Date	Event	Ref.
	<p><i>clarify the June invoice payment situation.”</i></p> <p>Later that day Mr Lloyd (Gunns) emailed “<i>I’ve had confirmation you will get paid for May today, but not yet sure on June, will confirm Monday</i>”.</p>	
31.	<p>3 August 2011</p> <p>The respondent emailed Gunns asking when they will be part of a distribution, having not been part of a distribution made on 2 August. Mr Lloyd (Gunns) replies “<i>we don’t anticipate payment of June invoices moneys to be available until next week</i>”. The respondent replies “<i>I will let Ken know</i>”.</p>	CAB 16 at [22] AFM 77; AFM 78
32.	<p>2 September 2011</p> <p>The respondent emailed Mr Lloyd (Gunns) asking him to call to confirm when payment for “<i>July (full or part) will be made</i>”.</p>	CAB 16 at [22] AFM 83
33.	<p>5 September 2011</p> <p>The respondent emailed Mr Lloyd (Gunns) stating “<i>We ask that you determine with Head Office (with urgency) the plan for full or part payment of amounts outstanding from July. We require payment to meet our creditors and would appreciate an early response to that we can budget accordingly, bearing in mind the significant immediate cost increases in meeting current quota demand</i>”.</p> <p>During his s596B examination, Mr Peter Badenoch recalled that this was the first time they had received a late payment from Auspine.</p> <p>However, in his affidavit, Mr Peter Badenoch deposed that Gunns had made late payments from time to time since it took over operation of Auspine from 2009. In 2009, there is at least one late payment and in 2010, payments were late every month.</p>	CAB 16 at [22] AFM 84; AFM 421; AFM 448-449
34.	<p>6 September 2011</p> <p>During his s596B examination, Mr Peter Badenoch accepted that the email correspondence between Gunns and the respondent from September 2011 was “<i>the start of the gathering storm</i>” and that payments were becoming more difficult.</p>	AFM 421
35.	<p>6 September 2011</p> <p>Mr Lloyd (Gunns) emailed the respondent stating “<i>The feedback I have had is things are looking tight today for payment, but we are endeavouring to get payments out as soon as possible...</i>”</p>	AFM 85
36.	<p>21 September 2011</p> <p>The respondent emailed Mr Lloyd (Gunns) stating “<i>We wish to advise that we have not been paid for the balance of July. We would appreciate your immediate</i></p>	AFM 87; AFM 422

Date	Event	Ref.
	<p><i>advice as to when the balance of July will be made and would also appreciate comment on the August balance as this is due by the end of September. We require Gunn's [sic] to meet their contractual obligations in order for us to meet our creditors."</i></p> <p>During his s596B examination, Mr Peter Badenoch accepted that this was a dramatic development and said that it <i>"was actually the seed that was planted for us to decide whether or not we wanted to be there"</i>.</p>	
37.	<p>30 September 2011</p> <p>Gunns released to the ASX its audited financial statements for the financial year ended 30 June 2011, which recorded relevantly:</p> <ul style="list-style-type: none"> <li>(a) a loss in the financial year of \$355.486 million;</li> <li>(b) a total comprehensive income of negative \$454.687 million;</li> <li>(c) retained earnings of negative \$156.726 million; and</li> <li>(d) total liabilities of \$858.108 million.</li> </ul>	CAB 16 at [23] AFM 149-153
38.	<p>25 November 2011</p> <p><i>The Age</i> newspaper published an article entitled <i>"Gunns directors under fire"</i> which stated that <i>"Shareholders in loss-making forestry group Gunns have used the company's annual meeting to question whether the company can pay its bills, asking whether it has a back-up plan should it fail in its bid to build a controversial \$2.3 billion pulp mill"</i>.</p>	CAB 16 at [24] AFM 220
39.	<p>22 December 2011</p> <p>Gunns announced to the ASX that it had revised down to \$30 million its expected earnings for the financial half-year ending 30 June 2012.</p>	CAB 17 at [25] AFM 221
40.	<p>In 2012</p> <p>Mr Peter Badenoch became aware that Gunns was <i>"shuffling money"</i> to pay creditors based on priorities and had knowledge of asset write downs and losses by Gunns.</p> <p>During his s596B examination, Mr Peter Badenoch recalled conversations with managers/executives of Gunns that they were <i>"shuffling deck chairs"</i> and that <i>"it was obvious they were shuffling money"</i>.</p> <p>Mr Peter Badenoch attended the monthly contractor meetings held by Gunns.</p>	AFM 416; AFM 452; AFM 455
41.	<p>In 2012</p> <p>Mr Peter Badenoch deposes that he had conversations with people in the industry and became aware that</p>	AFM 455

Date	Event	Ref.
	<p>Gunns were behind in payments for some other creditors.</p>	
42.	<p>In 2012</p> <p>Mr Peter Badenoch deposes that “<i>it was general public knowledge that Gunns were pouring money into the Bell Bay Pulp Mill, and tens of millions of dollars were invested for research, development and obtaining permits</i>” and that he became aware “<i>through general public knowledge</i>” and conversations with Mr Lloyd and Mr Hayes that “<i>Gunns’ banks had approved a refinance for the Gunns facility, and that the fee alone for the refinance was about \$29 million.</i>”</p> <p>Mr Badenoch deposes that “<i>I believed that since Gunns could afford a fee of that size the banks must have had confidence that Gunns could continue to trade</i>”.</p>	<p>CAB 43 at [117(i)] AFM 456</p>
43.	<p>Early 2012</p> <p>Mr Peter Badenoch had a concern at times that income that Gunns was generating was insufficient to cover their costs.</p> <p>Mr Peter Badenoch accepted that Gunns’ banking facilities must have been fully drawn if they didn’t have the money to pay their accounts</p> <p>Mr Peter Badenoch was fuzzy on the details, but was aware of conversations generally between Gunns and the banks.</p>	<p>AFM 418-419</p>
44.	<p>In or around January and February 2012</p> <p>Mr Peter Badenoch was informed by Mr Hayes and Mr Lloyd that there were “refinance” discussions going on involving Gunns.</p>	<p>CAB 17 at [26] AFM 455</p>
45.	<p>31 January 2012</p> <p>Gunns issued Recipient Created Tax Invoice No 141 to the respondent for the amount of \$645,951.75.</p>	<p>CAB 21 at [44]; CAB 22 at [48]; CAB 35 at [99(a)]; CAB 43 at [117(k)]; CAB 103 at [60], [65]; CAB 105 at [71] AFM 224</p>
46.	<p>7 February 2012</p> <p><i>The Sydney Morning Herald</i> newspaper published an article entitled “<i>Gunns bid for more capital</i>” which stated that Gunns had forecast an overall profit downgrade of \$10 million to \$20 million for 30 June 2012 and was “<i>trading at historic lows</i>” on the ASX.</p>	<p>CAB 17 at [27] AFM 225</p>

	Date	Event	Ref.
47.	27 February 2012	Gunns released its financial statements to the ASX for the financial half year ended 31 December 2011, which recorded a loss in the half-year period of \$163.347 million, a total comprehensive income of negative \$173.323 million, retained earnings of negative \$333.910 million and total liabilities of \$798.760 million with net assets of \$876.125 million.	CAB 17 at [29] AFM 226-244
48.	28 February 2012	<i>The Age</i> newspaper published an article entitled “ <i>Gunns records loss</i> ” which stated that Gunns had recorded “ <i>a 40 per cent revenue slump for the half to \$217.4 million, and posted a \$173.3 million loss on the back of impairments and asset write-downs</i> ”.	CAB 17 at [30] AFM 245
49.	29 February 2012	Gunns issued Recipient Created Tax Invoice No 142 to the respondent for the amount of \$820,532.33.	CAB 21 at [44]; CAB 22 at [48]; CAB 35 at [99(a)]; CAB 43 at [117(k)]; CAB 103 at [60], [65]; CAB 105 at [71] AFM 246
50.	29 February 2012	The respondent was owed \$1,638,197.35 by Gunns.	CAB 18 at [31]; CAB 102 at [58] AFM 613
51.	In or around February and March 2012	Mr Peter Badenoch recalled that the respondent stopped work and extended the terms of payment providing a \$1 million dollar credit limit.	AFM 412
52.	1 March 2012	Mr Peter Badenoch sent an email to Mr Hayes (Gunns) stating “ <i>I wish to express our concern about current problems with payments by Gunn’s [sic] ... I would like to highlight the difficulties that we are facing with cash flow which are normally evident at this time of year, have been substantially magnified with the current payment situation. Gunn’s [sic] are our only customer and we are solely reliant on you for the timely payment to continue to operate.</i> ” He asked the following questions:  (a) “ <i>Are Gunn’s [sic] solvent?</i> ”  (b) “ <i>What are the timelines for payment of amounts outstanding?</i> ”;  (c) “ <i>Currently our overdraft is 9.12 per cent. We</i>	CAB 18 at [32]; CAB 19-20 at [36]-[37]; CAB 43 at [177(h)]; CAB 47 at [127 (g)]; CAB 103 at [60] AFM 247; AFM 423-424; AFM 715; AFM 777

Date	Event	Ref.	
	<p><i>do not think it is unreasonable to ask that Gunn's [sic] pay interest at these rates on overdue amounts."</i></p> <p>(d) <i>"Will the proposed asset sales improve cash flow to the extent that we would in the near future return to normal trading terms?"</i></p> <p>During his s596B examination, Mr Peter Badenoch said he asked question (a) in an attempt to be rude in order to solicit a response. He accepted in light of the climate it was not an unreasonable question. And with question (d), Mr Badenoch recalled that Gunns had intimated that some of the assets sales would go to creditors and some returned to bankers.</p> <p>In cross examination, Mr Peter Badenoch said in respect of this email, that <i>"Gunns were not paying their debts to me on time. That is correct... [t]hat had been their pattern of behavior [for more than 12 months]"</i> and <i>"I knew there weren't able to pay me on time"</i>. The trial Judge otherwise found Mr Peter Badenoch's evidence about this email evasive and not forthcoming.</p> <p>Mr Kenneth Badenoch knew that Mr Peter Badenoch was sending this email to Mr Hayes and they had been discussing whether or not Gunns was solvent and it was a matter of real concern to Mr Kenneth Badenoch at the time that Badenoch's monthly payments return to being paid on time.</p>		
53.	1 March 2012	Mr Peter Badenoch deposed that he was not willing to compromise Badenoch's reputation for paying its debts on time, and not allow Auspine/Gunns to use Badenoch as effectively a bank.	AFM 463
54.	7 March 2012	Bryan Hayes replied <i>"I will respond to your specific queries after consulting with Phil in the next day or so"</i> .	CAB 18 at [33] AFM 248
55.	9 March 2012	Mr Hayes (Gunns) sent an email to Mr Peter Badenoch advising that Gunns was solvent, had <i>"guaranteed access to funds on March 19<sup>th</sup> which will pay outstanding November and December accounts along with priorities identified from outstanding January accounts. The balance of January outstandings will be paid by March 30<sup>th</sup>"</i> and that the company expected to return to normal trading terms in	CAB 18 at [34] AFM 250

Date	Event	Ref.
	April as <i>“the asset sales are completed and nett [sic] cash is made available to use from the participating financial institutions”</i> .	
56.	9 March 2012 Mr Peter Badenoch replied to Mr Hayes (Gunns) stating that <i>“we do appreciate that current cash flow issues are presenting challenges to Gunn’s”</i> and noting that <i>“we have been very patient given the current financial situation as we understand it”</i> .	CAB 19 at [35] AFM 253
57.	9 March 2012 <i>The Sydney Morning Herald</i> newspaper published an article entitled <i>“Gunns blames Greens for billionaire blow”</i> which stated that RCC had withdrawn from a proposed equity investment of \$150 million into Gunns. The article stated that Gunns had <i>“staked their future on the value-adding pulp mill project”</i> and quoted Mr Greg L’Estrange, Managing Director of Gunns, as stating <i>“if the project doesn’t go ahead I’m not sure where the company will end up”</i> . The article also stated that, <i>“shares have lost more than 70 per cent of their value [between March 2011 and March 2012], as investors fret over the future of the company”</i> .  Mr Peter Badenoch was aware of Gunn’s failure to obtain this investment and that this occurred at around the time of a trading halt. He agreed that he was aware that the pulp mill was a big part of Gunns’ future and if the pulp mill was not able to proceed that would have been a significant event for Gunns.	CAB 21 at [41]; CAB 43 at [117(i), (j)] AFM 256; AFM 790-794; AFM 799
58.	9 March 2012 Gunns announced to the ASX a halt in trading in its shares pending the release of an announcement to the market.	CAB 21 at [40] AFM 258
59.	13 March 2012 ASX issued Market Release in respect of Gunns, <i>“Suspension from Official Quotation...at the request of the Company, pending the release of an announcement”</i> .	AFM 259
60.	19 March 2012 Gunns sent a fax to the respondent regarding “EFT Payment” in respect of Recipient Created Tax Invoice No 140, which was for the amount of \$244,978.53.	AFM 261
61.	20 March 2012 <i>The Australian Financial Review</i> published an article entitled <i>“Moelis joins Gunns runners”</i> , stating: <i>“Credit Suisse is advising Gunns on the raising that investors hope will wipe the company’s debt and right its balance sheet once and for all. Gunns wants to pay</i>	CAB 21 at [43] AFM 263

Date	Event	Ref.
	<i>down its \$580 million debt pile as it looks for a joint-venture partner for its planned \$2.3 billion pulp mill</i> ".	
62.	<p>20 March 2012</p> <p>Scanlan Carroll, solicitors for Badenoch, sent a letter to Gunns demanding payment of outstanding debts totaling \$645,951.75 for work and labour performed by Badenoch in January 2012. The letter stated that:</p> <ul style="list-style-type: none"> <li>(a) should payment not be received within seven days, <i>“legal proceedings will be commenced forthwith and without further notice”</i>;</li> <li>(b) an additional \$820,532.33 was owed to the respondent for work and labour performed in the month of February 2012 and requested that payment of this invoice was made <i>“by the 31<sup>st</sup> of March 2012 otherwise we are instructed to issue proceedings immediately upon default and without further notice”</i>;</li> <li>(c) Badenoch would not be providing any further services to Gunns until non-payment for past services was rectified.</li> </ul>	<p>CAB 21-22 at [44]; CAB 35 at [99(a)]; CAB 43-44 at [117(k)]; CAB 47 at [127(e)]; CAB 103 at [60]</p> <p>AFM 264</p>
63.	<p>Around 20 March 2012</p> <p>Badenoch ceased to provide services to Auspine for about 10 days.</p> <p>Mr Peter Badenoch admitted it was a serious step for Badenoch to stop supplying services. He required his employees to take annual leave during this period. A stop supply <i>“meant the end of BIL potentially”</i>.</p> <p>Mr Kenneth Badenoch would not agree to the proposition that a stop supply was a serious step. The trial Judge found his response evasive. Although he admitted that making a threat to stop was a serious thing to do, he likened stopping supply of services to <i>“just turn[ing] the tap off”</i>. Mr Kenneth Badenoch suggested that at the time of ceasing supply he was willing to stop working, all of [Badenoch]’s potential profit under the arrangement and let someone else take it over.</p>	<p>CAB 22 at [46]; CAB 35 at [99(a)]; CAB 103 at [60]</p> <p>AFM 717-718; AFM 782-783</p>
64.	<p>21 March 2012</p> <p>In the s.596 examinations, Mr Peter Badenoch gave evidence that in or around March 2012, he was <i>“at that stage thinking about if this can’t be sorted we don’t want to be there”</i> and that they were <i>“sick of getting stuffed around”</i>. Mr Badenoch also acknowledged that to be issued with a letter of demand</p>	<p>CAB 22 at [45]</p> <p>AFM 415; AFM 425</p>

	Date	Event	Ref.
		by a creditor was a <i>“fairly serious sign”</i> and raised concern as to the financial strength of the company.	
65.	22 March 2012	<p>Mr Lloyd (Gunns) emailed Mr Hayes (Gunns) to report on his teleconference with the Mr Peter Badenoch, during which Mr Peter Badenoch said that he had <i>“talked to dad”</i> and requested additional security for payment in the form of <i>“an agreed credit limit of say \$1M, with a bank guarantee for this amount”</i>.</p> <p>In cross-examination, Mr Peter Badenoch admitted that he was aware that the effect of a bank guarantee would be to give Badenoch security for the work it was doing.</p>	CAB 22 at [47] AFM 267; AFM 785
66.	22 March 2012	<p>Mr Hayes (Gunns) emailed Mr Lloyd (Gunns),</p> <p><i>“We are max’d out on the bank guarantee front and any more requires us to deposit an equivalent amount of cash with the bank. May was well pay it to Badenoch.</i></p> <p><i>We are proposing to pay 50% Jan on Monday 26<sup>th</sup>, 50% Jan on Wednesday 28<sup>th</sup> and 50% Feb on Friday 30<sup>th</sup>. That is over \$1M in the week.</i></p> <p><i>Then balance 50% Feb on 13<sup>th</sup> April.</i></p> <p><i>He will then be back on terms and we will try and keep him there.</i></p> <p><i>See if that works to get him back and producing and build your log stocks up for future”</i></p>	CAB 22 at [47] AFM 267
67.	Around 23 March 2012	Telephone conversations between Mr Lloyd (Gunns) and Mr Peter Badenoch regarding extension of payment terms to a \$1 million credit limit, and Badenoch to cease services if Gunns exceeded the limit.	AFM 450
68.	23 March 2012	<p>Mr Lloyd (Gunns) emailed Mr Peter Badenoch that Gunns was <i>“max’d out on the bank guarantee front and any more requires us to deposit an equivalent amount of cash with the bank”</i> so <i>“we may as well pay the money to you in order to get deliveries back on track asap.”</i></p> <p>Mr Lloyd also proposed a payment plan of \$1,000,000 to be paid in three instalments on 26 March 2012, 28 March 2012 and 30 March 2012 respectively. He noted that the above <i>“would put you back on terms</i></p>	CAB 22-23 at [48]; CAB 103-104 at [65] AFM 269

Date	Event	Ref.
	<p><i>until Feb payments are due at end of March</i>". He enquired whether the respondent would be willing to resume "<i>almost normal</i>" deliveries in the week before and after Easter pending the payment of the outstanding 50% of February 2012's invoice.</p>	
69.	<p>23 March 2012</p> <p>During his s.596B examination, Mr Peter Badenoch accepted that regardless of whether public companies can give out guarantees, at that stage he knew that they couldn't given the 'maxing out'. In cross-examination accepted that it couldn't provide a bank guarantee because it only had \$1 million available. He also accepted that despite this payment plan proposal, he was no less concerned than previously about Gunns' ability to pay invoices on time.</p> <p>Mr Badenoch disagreed with the proposition that he was concerned that he might never be paid. He had an agreement and expected that it would be honoured.</p> <p>Mr Badenoch accepted that the reason that there was no payment was not performance-based but as a result of cash flow issues.</p>	AFM 427-429; AFM 786-787
70.	<p>23 March 2012</p> <p>Mr Peter Badenoch acknowledged Mr Lloyd's (Gunns) previous email and advised that he would revert back once he had spoken with "KW".</p>	AFM 270
71.	<p>23 March 2012</p> <p>Mr Peter Badenoch sent an email to Mr Lloyd (Gunns) advising that "<i>we are understanding of your position however we need to ensure that we have adequate measures in place to protect our exposure and business</i>".</p> <p>Mr Peter Badenoch also accepted the payment proposal on the basis that "<i>there will be no further flexibility with respect to the timeframes proposed</i>" and advised that, should the liability to the respondent exceed \$1,000,000, "<i>our services will immediately cease</i>".</p> <p>Mr Peter Badenoch also wrote that Badenoch "<i>reserves the right to enforce the terms of the contract at any time notwithstanding the indulgence granted herein... particularly in the event of a default of [sic] pursuant to your proposal</i>".</p> <p>In cross-examination, Mr Peter Badenoch thought that a solicitor may have drafted that email for him.</p>	CAB 23 at [49] AFM 272; AFM 787

	Date	Event	Ref.
72.	25 March 2012	Mr Lloyd (Gunns) emailed Mr Peter Badenoch stating <i>“I look forward to deliveries of bush stocks resuming after the first payment and normal deliveries after the second payment. Following that we’ll be in touch regarding weekly order planning in relation to the \$1M credit limit”</i> .	AFM 273
73.	26 March 2012	Gunns released a market update to the ASX outlining the Gunns Group’s intention to undertake an equity raising of approximately \$400 million, to reduce debt facilities and strengthen the Gunns Group’s balance sheet. Gunns also noted that the suspension of trade of Gunns’ securities would continue.	CAB 23 at [50] AFM 275
74.	26 March 2012	The Relation Back Period commenced.	CAB 9 at [2]
75.	26 March 2012	Gunns made a payment of \$322,976 to the respondent.	CAB 85 at [5] AFM 613
76.	28 March 2012	Gunns made a payment of \$322,975.75 to the respondent.	CAB 85 at [5] AFM 613
77.	30 March 2012	Mr Lloyd (Gunns) emailed Mr Peter Badenoch stating <i>“I can confirm 50% Feb invoice will be paid on Monday”</i> .	AFM 276
78.	30 March 2012	Gunns made a payment of \$410,000 to the respondent ( <b>Payment 1</b> ). This payment was a rounded-sum payment which represented payment of 50% of Badenoch’s invoice for February 2012.	CAB 9 at [2]; CAB 35 at [99(a)] CAB 85 at [5] AFM 613
79.	30 March 2012	Gunns became insolvent.	CAB 11 at [7]; CAB 85 at [4]
80.	31 March 2012	Gunns issued Recipient Created Tax Invoice No 143 to the respondent for the amount of \$660,347.78.	CAB 14 at [15]; CAB 85 at [5] AFM 277
81.	31 March 2012	The respondent was owed \$1,071,312.85 by Gunns.	CAB 23 at [52] AFM 613
82.	March 2012	During his s596B examination, Mr Peter Badenoch recalled that he was aware of an equity injection from Richard Chandler Corporation to Gunns that had fallen over. That did not cause Mr Badenoch any more concern than he already had.	AFM 417
83.	March 2012	During his s.596B examination, Mr Peter Badenoch	AFM 417 – 418,

Date	Event	Ref.
	said he was aware that Gunns was significantly in arrears and were just paying round sums. Further, he was aware Gunns was selling off assets to attempt to pay creditors and that Gunns had maxed out their bank guarantees and he knew that Gunns was trying to raise replacement finance for their debt facilities.	427
84.	March 2012 Mr Peter Badenoch deposes that <i>“I was annoyed that Badenoch was being ignored, but did not think there was a risk of the debts ultimately not being able to be paid by Gunns or Auspine”</i> .	CAB 42 at [115] AFM 458
85.	Sometime between March and May 2012 Face to face meeting between Mr Peter Badenoch, Mr Kenneth Badenoch and Mr Hayes (Gunns) at Gunns Office in discussion of:  (d) Gunns’ ability to pay its debt;  (e) main reason for the late payments to Badenoch;  (i) the bank facility of Gunns;  (ii) the failed deal with Richard Chandler;  (iii) investment in the Pulp Mill;  (f) renewal of contract between Badenoch and Gunns.	AFM 451 - 452
86.	20 March to 31 July 2012 Mr Peter Badenoch deposed that correspondence sent to Gunns in relation to issuing Statutory Demand, or other proceedings was purely a threat. He did not want to actually issue any proceedings against Gunns.	CAB 27 at [70] AFM 459
87.	2 April 2012 Gunns made a market announcement to the ASX recording that it <i>“confirms its proceeding to formulate an equity offer”</i> as detailed in the announcement on 26 March 2012, and <i>“requests that its suspension from trading continue until details of the proposed equity raising, and associated document preparation have been finalised”</i> .	CAB 23 at [53] AFM 278
88.	3 April 2012 <i>The Examiner</i> published an article entitled <i>“Gunns requests trading halt again”</i> , recording that Gunns <i>“has sought to extend its trading halt again as it tries to raise \$400 million and get its Bell Bay pulp mill project off the ground.”</i>	CAB 23 at [53] AFM 279
89.	10 April 2012 Gunns made a market announcement to the ASX recording that it <i>“confirms its proceeding to formulate</i>	CAB 23 at [53]

Date	Event	Ref.
	<i>an equity offer</i> ” as detailed in the announcement on 26 March 2012, and “ <i>requests that its suspension from trading continue until details of the proposed equity raising, and associated document preparation have been finalised</i> ”.	AFM 280
90.	10 April 2012 An article is published on the news.com.au website entitled “ <i>Gunns shares remain suspended</i> ”, stating “... <i>Gunns again has asked for more time to put together a plan to raise funds</i> ” and “ <i>Shares in Gunns have not traded since March 9 when they were at 16 cents</i> ”.	CAB 23 at [53] AFM 281
91.	11 April 2012 <i>The Advertiser</i> published an article entitled “ <i>Gunns aims for recovery</i> ”, recording that Gunns “ <i>has asked for more time to put together a plan to raise funds ... the company has also requested an extension of the suspension of its shares from trading on the ASX</i> ”.	CAB 23 at [53] AFM 282
92.	13 April 2012 Gunns sent a fax to the respondent regarding “EFT Payment” in respect of Invoice No 00010972 (which was for the amount of \$432.74) and Recipient Created Tax Invoice No 142 (which was for the amount of \$820,532.33).	AFM 283
93.	16 April 2012 Gunns made a payment of \$410,956.07 to the respondent ( <b>Payment 2</b> ), being payment of the remaining 50% of Badenoch’s invoice from February 2012.	CAB 9 at [2]; CAB 14 at [15]; CAB 35 at [99(a)]; CAB 85 at [5] AFM 613
94.	16 April 2012 Gunns made a market announcement to the ASX recording that it “ <i>confirms it’s proceeding to formulate an equity offer</i> ” as detailed in the announcement on 26 March 2012, and “ <i>requests that its suspension from trading continue until details of the proposed equity raising, and associated document preparation have been finalised.</i> ” Also, Gunns confirmed “ <i>that no decision has been made</i> ” in respect of change of company name and head office location.	CAB 23 at [53] AFM 285
95.	23 April 2012 Gunns made a market announcement to the ASX confirming that “ <i>its preparation for its planned equity raising is continuing but has not been finalised</i> ” and “ <i>requests that its suspension from trading continue until details of the proposed equity raising, and associated document preparation have been</i>	CAB 23 at [53] AFM 286

Date	Event	Ref.
	<i>finalised.</i> ” Also, in relation to the legal action by the Tasmanian Conservation Trust, Gunns is “ <i>reviewing the decision</i> ” of the Director of the Tasmanian Environmental Protection Authority.	
96.	30 April 2012 Gunns issued Recipient Created Tax Invoices No 144 and 144A to the respondent for the amounts of \$674,368.12 and \$4,561.51 respectively.	CAB 14 at [15]; CAB 85-86 at [5] AFM 288-289
97.	30 April 2012 The respondent was owed \$1,339,277.41 by Gunns.	CAB 23 at [54] AFM 613
98.	30 April 2012 Gunns’ announced to the ASX that the suspension on securities trade (which began on 9 March 2012) would remain in place until Gunns finalised an equity offer for Gunns’ \$400 million equity raising scheme.	CAB 23 at [53] AFM 290
99.	1 May 2012 <i>The Mercury</i> published an article entitled “ <i>Gunns in talks to generate \$400m</i> ”, recording that Gunns “ <i>is in confidential discussions with institutional investors about a \$400 million capital raising</i> ”.	CAB 23 at [53] AFM 291
100.	1 May 2012 Gunns sent a fax to the respondent regarding “EFT Payment” in respect of Recipient Created Tax Invoice No 143, which was for the amount of \$660,347.78.	AFM 292
101.	2 May 2012 Gunns made a payment of \$660,347.78 to the respondent ( <b>Payment 3</b> ) in full payment of Badenoch’s invoice in that sum dated 31 March 2012.	CAB 9 at [2]; CAB 14 at [15]; CAB 35 at [99(b)]; CAB 85- 86 at [5] AFM 613
102.	6 May 2012 <i>The Examiner</i> published an article entitled “ <i>Shareholders support \$400m plan Gunns debt deal backing</i> ”, recording that Gunns “ <i>is believed to have won the backing of institutional shareholders for a \$400 million-plus recapitalisation, which will allow it to play down debt, realise the value of its plantation estate and develop its controversial pulp mill without an equity partner</i> ”.	CAB 23 at [53] AFM 294
103.	15 May 2012 Gunns announced to the ASX that “ <i>a contract for the sale of the Heyfield hardwood sawn timber business at an enterprise value of approximately \$28 million had been executed and was expected to complete in late May 2012</i> ”.	CAB 24 at [55] AFM 296
104.	15 May 2012 <i>The Mercury</i> published an article entitled “ <i>Heyfield sawmill sold by Gunns</i> ”, recording that Gunns <i>old the</i>	CAB 23 at [53]

	Date	Event	Ref.
		<i>Heyfield sawmill to a Melbourne-based consortium for an undisclosed amount, believed to range between \$25 million and \$30 million</i> ".	AFM 297
105.	22 May 2012	Gunns released an announcement to the ASX regarding the Heyfield Sawmill, recording that Gunns <i>"has executed a contract of sale for the mill"</i> and <i>"is in dispute with the purchaser in respect of one aspect of the sale contract ... this relates to adequate assurance being required by the Company that a component of the purchase consideration will be paid in full when due"</i> .	CAB 24 at [55] AFM 298
106.	31 May 2012	Gunns issued Recipient Created Tax Invoice No 145 to the respondent for the amount of \$737,633.68.	CAB 14 at [15]; CAB 86 at [5] AFM 299
107.	31 May 2012	The respondent was owed \$1,416,563.31 by Gunns.	CAB 24 [54] AFM 613
108.	31 May 2012	The indebtedness in the running account peaked at \$1,416,563.31 according to the findings of Davies J.	CAB 24 at [54]; CAB 36 at [100]
109.	7 June 2012	Gunns sent a fax to the respondent regarding "EFT Payment" in respect of Recipient Created Tax Invoices No 144 and 144A, which were for the amounts of \$674,368.12 and \$4,561.51 respectively.	AFM 300
110.	8 June 2012	Gunns made a payment of \$678,929.63 to the respondent ( <b>Payment 4</b> ) in full payment of two invoices dated 30 April 2012 in the sum of \$4,561.51 and \$674,368.12.	CAB 9 at [5]; CAB 14 at [15]; CAB 35 at [99(b)]; CAB 86 at [5] AFM 613
111.	26 June 2012 [erroneously dated as 2018 in affidavit]	Telephone conversation between Mr Peter Badenoch and Mr Mansfield (Gunns) that Badenoch would be dropping back the supply to the contract volume following an incident with a Badenoch's drivers.	AFM 461
112.	29 June 2012	Handwritten notes prepared by Mr Hayes (Gunns), including:  (a) "10.45 – Peter Badenoch = out of contract + agreement – if they need to stop it will be <u>permanent!</u> "; and  (b) " <u>Phil</u> – spoken to Peter Badenoch. Family meeting tonight. Deliver 3-4 days log stocks. GNS to pay [with] in fortnight".	CAB 24 at [56] – [57]  AFM 302; AFM 802 - 803

	Date	Event	Ref.
		Mr Peter Badenoch recalled having a conversation with Mr Lloyd at the start of July 2012 regarding the potential termination of the contractual services and saying to Mr Lloyd that he was going to have a family meeting that night.	
113.	30 June 2012	Gunns issued Recipient Created Tax Invoice No 146 to the respondent for the amount of \$627,687.34.	CAB 14 at [5]; CAB 86 at [5]  AFM 303
114.	30 June 2012	The respondent was owed \$1,365,321.02 by Gunns.	CAB 24 at [54]  AFM 613
115.	30 June 2012	The conclusion of the continuing business relationship as held by Davies J (overturned on appeal).	CAB 40 at [109]; CAB 91 at [22]
116.	Mid 2012	Mr Peter Badenoch deposes that <i>“I assumed that Auspine and Gunns would be able to meet the Statutory Demand and was using it as a tool to move up the list of creditors to be paid earlier.”</i>	CAB 27 at [70]  AFM 459
117.	2 July 2012	Gunns announced to the ASX that Gunns:  (a) was analysing the effect of a substantial decline in stumpage prices in the woodchip market on the values of Gunns’ forestry assets;  (b) was continuing negotiations regarding proposed capital raisings (meaning that the suspension on trade, which began on 9 March 2012, would continue); and  (c) had decided that it was in the interests of Gunns that no distribution on FORESTS notes for the period to 14 July 2012 be declared.	CAB 25 at [60]  AFM 304
118.	2 July 2012	Mr Lloyd (Gunns) had a <i>“another”</i> teleconference with Mr Peter Badenoch, during which Mr Badenoch advised that the respondent would cease providing services to Gunns and Auspine as a result of non-payment, and requested <i>“a letter from Gunns indicating the plan going forward in relation to timing of his next payment... and whether Gunns plans to or will use a portion of the asset sale proceeds to get working capital under control”</i> .	CAB 24 at [58]- [59]  AFM 305
119.	2 July 2012	<i>The Australian Financial Review</i> newspaper published an article entitled <i>“Low prices cut value for Gunns”</i>	CAB 25 at [61]  AFM 306

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		<p>which stated that:</p> <p>(a) Gunns’ review of stumpage values “<i>reduced standing timber valuation buy [sic] nearly \$40 million. The Tasmanian wood plant and equipment was reduced by \$25 million</i>”; and</p> <p>(b) Gunns was reviewing its land and tree values and that a reduction “<i>is not good news as Gunns has listed that land, plantation and infrastructure as its \$600 million equity contribution to the Pulp Mill Project.</i>”</p>	
120.	3 July 2012	<p><i>The Examiner Newspaper</i> publishes an article “<i>Gunns share freeze ‘unfair’</i>”, reporting on Gunns’ decision to remain in trading suspension.</p>	<p>CAB 25 at [61] AFM 307</p>
121.	3 July 2012	<p>A further article published by <i>The Examiner Newspaper</i> with the headline “<i>No money for quarterly distribution analyst</i>” refers to analyst Tony Gray commenting “<i>Gunns’ decision not to pay quarterly distribution on 1.2 million of redeemable securities indicates that the company does not have the money to profit from them</i>”.</p>	<p>CAB 25 at [62] AFM 308</p>
122.	3 July 2012	<p>Scanlan Carroll sent a letter to Gunns demanding payment of outstanding debts relating to work and labour performed by the respondent in May 2012. The relevant invoice had only fallen due for payment two business days earlier.</p> <p>The letter also stated that, should payment not be received by 11 July 2012, Scanlan Carroll were instructed to commence legal proceedings against Gunns for recovery of the debt totaling \$737,633.68 and that the respondent would cease to provide any further services to Auspine and Gunns until non-payment was rectified and that, should payment not be forthcoming, the respondent reserved its rights to terminate their agreement.</p> <p>In the s.596 examination, Mr Peter Badenoch recalled that he had had enough, and wanted to take his money and go. At that time ‘everyone’ knew Gunns’ financial position was poor and that Gunns was “<i>juggling their money, I knew that, a blind Freddy could see that, the market knew that</i>”.</p> <p>In cross-examination, Mr Peter Badenoch considered at that stage that “<i>enough [was] enough. I don’t need</i></p>	<p>CAB 25 at [63]; CAB 26 at [66]; CAB 103 at [60]; CAB 106 at [76]  AFM 309; AFM 431; AFM 804-805, 811</p>

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		<i>to be here. I don't fucking want to be here.</i> " After 3 July 2012, Mr Badenoch's desire was to get out and get paid.	
123.	10 July 2012	<p>In apparently contemporaneous handwritten notes of a telephone conversation between Ms Staff (Scanlan Carroll) and Mr Lloyd (Gunns), S Staff notes:</p> <ul style="list-style-type: none"> <li>(a) <i>"New Forest Manager – rang them to advise that they have stopped harvesting"</i>;</li> <li>(b) <i>"Refrain – from doing so"</i>; and</li> <li>(c) <i>"Offer relates to the outstanding amount only not the \$627,687.34"</i>.</li> </ul>	AFM 311
124.	10 July 2012	Badenoch ceased providing services to Gunns.	CAB 26 at [64]
125.	11 July 2012	<p>Mr Lloyd (Gunns) sent a letter to Scanlan Carroll, advising that Gunns was unable to make the requested payment, proposing a payment schedule and stating that the payment schedule would be reviewed after completion of the Portland Export Woodchip Terminal sale when Gunns proposed to <i>"bring the payments back to contract terms"</i>.</p> <p>The proposed payment schedule was a payment of \$150,000 per week commencing 20 July 2012.</p> <p>Mr Peter Badenoch recalled that he did not know what would happen if Gunns were wound up at that stage, but didn't think that they would be wound up. In cross-examination, Mr Badenoch accepted that if Gunns paid Badenoch then it was <i>"legally required"</i> to resume services but he was <i>"prepared to have that fight"</i>, his mindset was to <i>"take his money and go"</i> and that he <i>"was no longer thinking about a future with Gunns"</i>.</p>	CAB 26 at [65] AFM 312; AFM 432; AFM 810-811
126.	16 July 2012	<i>The Sydney Morning Herald</i> publishes an article with the headline <i>"Gunns offloads Portland woodchip plant for \$61.8m"</i> which stated that Gunns had sold its Portland woodchip plant in Portland, Victoria as part of a mass asset sell down it was undertaking to fund its <i>"ambitious \$400 million capital raising"</i> for the pulp mill project.	CAB 26-27 at [67] AFM 313
127.	18 July 2012	Scanlan Carroll sent a letter to Gunns advising that the respondent had <i>"queried whether Gunns could also provide some additional security for payment"</i> and	CAB 27 at [68] AFM 314

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	requested whether Gunns could provide a bank guarantee or security interest in addition to the proposed payment plan outlined in the letter from Gunns dated 11 July 2012.	
128.	<p>18 July 2012</p> <p>Mr Peter Badenoch deposed that he “<i>did not believe Badenoch would actually achieve a grant of security because Gunns was a public company</i>” but the request for security “<i>were just tactics to open the lines of communication</i>”.</p> <p>Mr Badenoch asserted the seeking of security was a means to try and generate communication. He considered that Gunns was a public company and that Badenoch would never get security.</p>	AFM 426; AFM 457-458
129.	<p>Before 20 July 2012</p> <p>Mr Peter Badenoch had a phone call with Phil Mason of New Forest, which lasted “<i>probably ... 30 seconds</i>”, during which the respondent advised New Forest that they were “<i>finished up with Gunns</i>” because they were “<i>not being paid on time</i>”.</p> <p>Mr Badenoch recalled that the intention of phone call was to inform New Forests as to why the respondent was ceasing work i.e. that “<i>it’s not [that] we didn’t want to work on the estate</i>”.</p>	CAB 28 at [74] AFM 437
130.	<p>20 July 2012</p> <p>Scanlan Carroll sent a letter to Gunns advising that, should a response to their letter of 18 July 2012 not be received by close of business, they held instructions to issue proceedings in relation to the monies outstanding.</p>	CAB 27 at [69] AFM 315
131.	<p>20 July 2012</p> <p>Mr Peter Badenoch recalled that at this time he instructed his solicitors to issue a letter to Gunns stating that they were instructed to issue proceedings on the basis of repeated failures to pay. However he did not intend to commence proceedings at the time.</p> <p>Mr Badenoch accepted that he would not be paid in the ordinary course of business</p> <p>Mr Badenoch did not accept that the issuing of a statutory demand was the first step in a possible winding up, but rather that he was pushing Gunns very hard for the money</p> <p>Mr Badenoch acknowledged that the respondent adopted the approach of threatening legal proceedings in order to ensure Gunns’ complied with the payment plan, asking his examiner whether “<i>you telling me a</i></p>	CAB 28-29 at [76]; CAB 27 at [70]  AFM 434 – 435, 439; AFM 802

	Date	Event	Ref.
		<p><i>carrot and stick is not the way to get things done? That's effectively what that is. No one wants proceedings against them". Mr Badenoch further stated that "I didn't want to be put down the bottom of the heap and have to wait for my money ... I wasn't going to hang around waiting for it, I was going to do everything I reasonably could to pursue it".</i></p>	
132.	20 July 2012	<p>Mr Lloyd (Gunns) emailed S Staff (Scanlan Carroll) stating <i>"We are currently preparing a response to your letter received Wednesday 18 July and we will send a reply early next week"</i>.</p> <p>Scanlan Carroll respond requesting a definite timeframe by which it would receive a response to its letter of 18 July 2012 stating that <i>"Peter Badenoch is most concerned about the delay and we hold instructions as of this morning to issue proceedings Monday"</i>. Mr Lloyd replies stating <i>"I confirm that Gunns will respond by close of business Monday"</i>, to which S Staff replies stating her client's instructions are <i>"2pm Monday is the deadline....Failing a satisfactory resolution....we hold instructions to issue a Statutory Demand"</i>.</p>	CAB 27 at [69] AFM 317, 319
133.	23 July 2012	<p>Gunns sent a letter to Scanlan Carroll advising that Gunns was unable to provide a bank guarantee and that Gunns intended to utilise funds retained from the sale of the company's Portland facilities to fund creditor payments and <i>"normal operation of the business"</i>.</p>	CAB 27-28 at [71] AFM 322
134.	23 July 2012	<p><i>The Australian Financial Review</i> publishes an article with the headline <i>"All Gunns blazing for Korda Mentha"</i>, reporting <i>"lenders...have called in KordaMentha"</i> (referred to in the same article as <i>"insolvency specialists"</i>).</p>	CAB 28 at [72] AFM 323
135.	23 July 2012	<p>Gunns sent a Notice to Remedy Breach to Mr Kenneth Badenoch in which Gunns alleged that Mr Badenoch had contacted Mr Philip Mason from New Forests to discuss that <i>"Badenoch Logging had stopped working for Gunns and may not start again."</i></p>	CAB 28 at [73] AFM 325
136.	25 July 2012	<p>Mr Hayes (Gunns) emailed C Frame and M Matthews (Gunns) querying the details of where the settlement monies on the sale of the Portland Facility should be allocated.</p>	AFM 326

	Date	Event	Ref.
137.	25 July 2012	Mr Peter Badenoch emailed a letter to Gunns responding to Gunns' allegations in its Notice to Remedy Breach stating that <i>"it is Auspine Ltd that is in breach of the agreement with our company, and Auspine/Gunns has been put on notice that unless you make firm arrangements to pay our company what it is owed for the services provided, then we intend to instruct our lawyers to serve a creditor's statutory demand"</i> .	CAB 28 at [75] AFM 327
138.	25 July 2012	Mr Peter Badenoch recalled that he sent a letter to Gunns, highlighting his intention to instruct the lawyers to serve a statutory demand. Mr Badenoch recalled that he wanted to keep pressure on, in order to obtain his money.  Mr Badenoch accepted that the wanted to keep pressure on Gunns long enough to get himself back up the queue of creditors  Mr Badenoch did not accept that Gunns would be unable to meet a statutory demand, he figured that they would have to meet it. He understood at this time that he would not be paid in the ordinary course of business.	CAB 28 at [76] AFM 437 - 438
139.	31 July 2012	The respondent was owed \$1,559,594.08 by Gunns. Comprising \$1.36 million and an invoice issued on 31 July 2012 for \$194,273.06 (which was not payable until 31 August 2012).	CAB 29 at [78]
140.	31 July 2012	The respondent sent a letter to Gunns noting that Auspine and Gunns currently owed the respondent more than \$1.36 million in outstanding invoices and proposing the termination of the respondent's agreement with Auspine on the basis of:  (g) an immediate payment of \$300,000 to the respondent;  (h) weekly instalments of \$150,000 starting one week after the initial payment until all money owed was paid;  (i) a release for both parties from all claims either party may have against the other in respect of the agreement;  (j) an acknowledgement from Auspine and Gunns	CAB 29 at [77]; CAB 48 at [129]; CAB 106 at [78]  AFM 329; AFM 813

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	<p>of the amount of the current debt; and</p> <p>(k) a covenant by the respondent to take no action against Gunns and Auspine in respect of the current debt while the instalments were paid when due.</p>	
141.	31 July 2012	Gunns issued Recipient Created Tax Invoice No 147 to the respondent for the amount of \$194,273.08.
142.	31 July 2012	The end of the continuing business relationship, as found by the Full Court.
143.	July 2012	Mr Peter Badenoch deposed that the cessation of service by Badenoch was a combination of the 26 June incident, non-payment and that Mr Hayes could not guarantee a future contract.
144.	July 2012	Mr Peter Badenoch did not accept that the demands made by Scanlon Carroll reflected heightened concerns about solvency. Instead, he said Badenoch was concerned that Gunns were not honouring their agreement.
145.	July 2012	<p>Telephone conversations between Mr Peter Badenoch, Mr Lloyd and Turner, B Badenoch was told of a “shortfall” in stock at the Tarpeena mill.</p> <p>He deposes that <i>“This additional work was undertaken purely as a favour to Mr Lloyd and Mr Turner, and because of my concern about the sawmill workers... This work generated more debt, but I still expected to be paid for the additional work performed after the initial services ceased and then resumed.”</i></p>
146.	Late July 2012	Mr Peter Badenoch deposed that the breach of \$1 million credit limit in late June 2012 was the impetus for decision to terminate relationship, and that he was of the view that the respondent had given Gunns <i>“the most generous flexibility”</i> that they were prepared to do.
147.	Around July 2012	Mr Peter Badenoch recalled that he would not have continued further work if he thought at that stage that Gunns was insolvent.
148.	Around August 2012	Conversation between Mr Peter Badenoch and Mr Lloyd. Mr Badenoch deposes that he was aware Gunns sold the Portland Chip Facility and believed the banks allowed Gunns to retain some of the funds. Mr Badenoch believed that given the banks did not take

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	all the proceeds, they were not concerned with Gunns' ability to make repayments.	
149.	2 August 2012	Gunns emailed a letter to the respondent accepting the proposal set out in the respondent's letter of 31 July 2012 and advising that an initial payment of \$300,000 would be made on 6 August 2012, with weekly instalments of \$150,000 commencing the following week.
150.	6 August 2012	Gunns released to the ASX a market update which reported (amongst other things) that Gunns estimated that, as at 30 June 2012, the Gunns Group would record an impairment of its assets of between \$700 million to \$800 million and the Gunns Group's net tangible asset position would fall to between negative \$50 million and negative \$150 million.
151.	6 August 2012	Gunns sent a fax to the respondent regarding "EFT Payment" in respect of Recipient Created Tax Invoice No 145, which was for the amount of \$737,633.68.  Payment was for a rounded-sum of \$300,000 and did not correspond to any amount of any particular invoice.
152.	6 August 2012	The respondent sent an email to Mr Lloyd (Gunns) advising that the fax indicating payment of the rounded sum of \$300,000 was received and requesting a meeting with 'Peter' the following day.
153.	7 August 2012	<i>The Australian Financial Review</i> newspaper published an article entitled " <i>Gunns faces huge write-down</i> " which stated that " <i>Battered timber company Gunns is clinging to survival after flagging an impairment of up to \$800 million for 2011-12 on lower commodity prices and conceded that its \$2.3 billion pulp mill project may fail because of its weak financial position</i> ". The article also quoted a " <i>market watcher</i> " as having commented that " <i>the person who had the most access to the books was Richard Chandler and he walked, which tells you everything.</i> "
154.	8 August 2012	Gunns made a payment of \$300,000 to the respondent ( <b>Payment 5</b> ). This Payment was a rounded-sum payment which did not correspond to any amount of any particular invoice and was made in accordance with the payment plan agreed to by Gunns on 2 August 2012.

	Date	Event	Ref.
			AFM 613
155.	14 August 2012	The respondent emailed Mr Lloyd (Gunns) stating “ <i>Payment of agreed amount of \$150000 was not made yesterday – we ask that you follow up. Further we ask if you also advise on the response to the “Deed of Variation and Release”.</i> ”	AFM 343
156.	14 August 2012	Mr Lloyd replied to the respondent, “ <i>The weekly payments were planned to occur each Friday, the first being this Friday 17/8.</i> ”	AFM 344
157.	17 August 2012	Gunns made a payment of \$150,000 to the respondent ( <b>Payment 6</b> ). This payment was made in accordance with the payment plan agreed to by Gunns on 2 August 2012.	CAB 29 at [77], [79]; CAB 30 at [83]; CAB 35 at [99(c)]; CAB 86 at [5]
158.	17 August 2012	Gunns sent a fax to the respondent regarding “EFT Payment” in respect of Recipient Created Tax Invoice No 145, which was for the amount of \$737,633.68.  Payment was for a rounded-sum of \$150,000 and did not correspond to any amount of any particular invoice.	CAB 9 at [2]; CAB 14 at [15]; CAB 86 at [5]  AFM 345
159.	20 August 2012	Auspine and the respondent executed a Deed of Variation and Release in which the parties agreed ( <i>inter alia</i> ) that Auspine owed the respondent the sum of \$1,559,594.08 and that the agreement between the parties (dated 15 August 2003) was terminated by mutual consent upon the final delivery by the respondent of some limited harvesting and delivery services outlined in the Deed.	CAB 30 at [84]; CAB 102 at [58]; CAB 106 at [78]  AFM 347
160.	24 August 2012	<i>The Australian Financial Review</i> newspaper published an article entitled “ <i>Critical point for wobbly Gunns</i> ” stating that “ <i>KordaMentha [were] poised to present a final report on the company’s vitals to its syndicate of 10 banks</i> ” and that “ <i>some of Gunns’ Asian lenders..... had enough and [were] considering selling their loans.</i> ”	CAB 30 at [85]  AFM 351
161.	24 August 2012	Gunns sent a fax to the respondent regarding “EFT Payment” in respect of Recipient Created Tax Invoice No 145, which was for the amount of \$737,633.68.  Payment was for a rounded-sum of \$150,000 and did not correspond to any amount of any particular invoice.	CAB 30 at [86]; CAB 14 at [15]; CAB 86 at [5]  AFM 352

	Date	Event	Ref.
162.	27 August 2012	Gunns made a payment of \$150,000 to the respondent ( <b>Payment 7</b> ). This payment was made in accordance with the payment plan agreed to by Gunns on 2 August 2012.	CAB 9 at [2]; CAB 29 at [77], [79]; CAB 30 at [86]; CAB 35 at [99(c)]; CAB 86 at [5]  AFM 613
163.	31 August 2012	Mr Lloyd (Gunns) emailed the respondent acknowledging receipt of a signed copy of the deed of variation.	AFM 354
164.	31 August 2012	Gunns released to the ASX a Preliminary Final Report of its financial position and performance for the financial year ended 30 June 2012, which recorded a net loss after tax of \$903.865 million, a total comprehensive income of negative \$1.02 billion, retained earnings of negative \$1.070 billion, total liabilities of \$879.267 million, and total net assets of \$24.251 million.	CAB 30 at [87]  AFM 355
165.	31 August 2012	Gunns issued Recipient Created Tax Invoice No 148 to the respondent for the amount of \$129,687.68.	CAB 14 at [15]; CAB 86 at [5]  AFM 373
166.	31 August 2012	Gunns issued Recipient Created Tax Invoice No Jul-Aug 2012 Adj to the respondent for the amount of \$4,665.03.	AFM 374
167.	31 August 2012	Gunns sent a fax to the respondent regarding “EFT Payment” in respect of Recipient Created Tax Invoices No 146 and 145, which were for the amounts of \$627,687.34 and \$737,633.68 respectively.	CAB 14 at [15]; CAB 86 at [5]  AFM 375
168.	31 August 2012	The respondent was owed \$1,089,281.77 by Gunns.	CAB 31 at [90]  AFM 613
169.	31 August 2012	ABC Online published an article (which was then updated on 2 September 2012) entitled “ <i>Gunns announces massive \$900m loss</i> ” which stated that the Gunns Annual Report recorded a “ <i>massive annual loss</i> ” of \$904 million, that Gunns had “ <i>devalued its net tangible assets by more than \$1 billion</i> ” and that “ <i>Gunns’ creditors would have difficulty recovering more than \$500 million [of repayments owed to them].</i> ”	CAB 30 at [88]  AFM 377
170.	1 September 2012	An invoice was issued for \$4,665.04.	CAB 14 at [15]; CAB 86 at [5]

	Date	Event	Ref.
171.	3 September 2012	Gunns made a payment of \$150,633.68 to the respondent ( <b>Payment 8</b> ) in partial repayment of an invoice dated 31 May 2012.	CAB 9 at [2]; CAB 35 at [99(c)]; CAB 86 at [5]  AFM 613
172.	7 September 2012	Gunns sent a fax to the respondent regarding “EFT Payment” in respect of Recipient Created Tax Invoice No 146, which was for the amount of \$627,687.34.  Payment was for a rounded-sum of \$150,000 and did not correspond to any amount of any particular invoice. Payment was made on 10 September 2012.	CAB 14 at [15]; CAB 31 at [91]; CAB 86 at [5]  AFM 378
173.	10 September 2012	Gunns made a payment of \$150,000 to the respondent ( <b>Payment 9</b> ). This payment was made in accordance with the payment plan agreed to by Gunns on 2 August 2012.	CAB 9 at [2]; CAB 29 at [77],[79]; CAB 31 at [91]; CAB 35 at [99(c)]; CAB 86 at [5]  AFM 613
174.	12 September 2012	<i>The Business Review Weekly</i> published an article entitled “ <i>With Gunns on its knees what hope for Tasmania’s economy</i> ”, recording that “ <i>Debt-laden but still clinging to solvency, Gunns has faced the reality of entrenched community opposition to the pulp mill and conceded a \$793 million write-down against the mill and its forestry assets.</i> ”	CAB 31 at [92]  AFM 380
175.	14 September 2012	Gunns sent a fax to the respondent regarding “EFT Payment” in respect of Recipient Created Tax Invoice No 146, which was for the amount of \$627,687.34.  This payment was a rounded-sum payment of \$150,000 and did not correspond to any amount of any particular invoice. Payment was made on 17 September 2012.	CAB 86 at [5]; CAB 31 at [91]  AFM 382
176.	17 September 2012	Gunns made a payment of \$150,000 to the respondent ( <b>Payment 10</b> ). This payment was made in accordance with the payment plan agreed to by Gunns on 2 August 2012.	CAB 9 at [2]; CAB 31 at [91]; CAB 35 at [99(c)]; CAB 86 at [5]  AFM 613
177.	21 September 2012	Gunns sent a fax to the respondent regarding “EFT Payment” in respect of Recipient Created Tax Invoice No 146, which was for the amount of \$627,687.34. Payment was for a rounded-sum of \$150,000 and did not correspond to any amount of any particular	CAB 31 at [91]; CAB 86 at [5]  AFM 384

	Date	Event	Ref.
		invoice. Payment was made on 24 September 2012.	
178.	24 September 2012	Gunns made a payment of \$150,000 to the respondent ( <b>Payment 11</b> ). This payment was made in accordance with the payment plan agreed to by Gunns on 2 August 2012.	CAB 9 at [2]; CAB 29 at [77],[79]; CAB 31 at [91]; CAB 35 at [99(c)] AFM 613
179.	25 September 2012	Gunns issued Recipient Created Tax Invoice No 149 to the respondent for the amount of \$76,008.68.	CAB 14 at [15]; CAB 86 at [5] AFM 386
180.	25 September 2012	Gunns made an announcement to the ASX regarding the appointment of voluntary administrators to the Company and each of its subsidiaries..	CAB 48 at [131] AFM 387
181.	25 September 2012	The appellants were appointed as joint and several administrators of Gunns and Auspine.	CAB 13 at [13]; CAB 85 at [3]
182.	25 September 2012	The Relation Back Day.	CAB 9 at [2]; CAB 85 at [3]
183.	25 September 2012	The creditors of the Gunns group totaled \$780,798,000.	CAB 14 at [13]
184.	September 2012	Mr Peter Badenoch acknowledged that “ <i>nothing had changed for nearly 12 months</i> ” regarding cash flow and that Gunns “ <i>would run dry, they would catch up, they would run dry, they would catch up</i> ”.	AFM 432
185.	-	Informal Proof of Debt completed by respondent for purposes of voting at meeting of creditors, indicating an unsecured debt of \$569,321.81.	AFM 388
186.	Between 2010 and 2012	Mr Peter Badenoch deposes that “ <i>I was not aware that Gunns was insolvent and did not have a suspicion or belief that Gunns was insolvent in 2012 just because the \$1 million credit limit [agreed between Gunns and Badenoch in March 2012] was exceeded.</i> ”	AFM 459-460
187.	21 September 2015	The appellants commenced proceedings against the respondent in the Federal Court of Australia alleging 11 voidable transactions paid to the respondent.	
188.	March 2019	Trial in the Federal Court before Davies J.	
189.	27 May 2020	Reasons for judgment published and orders made by the Federal Court (Davies J): <i>Bryant, in the matter of Gunns Limited (in liq) (receivers and managers appointed) v Badenoch Integrated Logging Pty Ltd</i> [2020] FCA 713.	CAB 5

Date	Event	Ref.	
190.	30 July 2020	Reasons for judgment on costs published and final orders made by the Federal Court (Davies J): <i>Bryant, in the matter of Gunns Limited (in liq) (receivers and managers appointed) v Badenoch Integrated Logging Pty Ltd (No 2)</i> [2020] FCA 1081	CAB 52
191.	21 August 2020	The respondent filed a notice of appeal with the Federal Court.	CAB 68
192.	10 February 2021	Appeal hearing in the Full Court of the Federal Court before Middleton, Charlesworth and Jackson JJ.	
193.	10 May 2021	Reasons for judgment published and orders made by the Full Court of the Federal Court (Middleton, Charlesworth and Jackson JJ): <i>Badenoch Integrated Logging Pty Ltd v Bryant, in the matter of Gunns Limited (in liq) (receivers and managers appointed)</i> [2021] FCAFC 64	CAB 81
194.	24 June 2021	Reasons for judgment on costs published and final orders made by the Full Court of the Federal Court (Middleton, Charlesworth and Jackson JJ): <i>Badenoch Integrated Logging Pty Ltd v Bryant, in the matter of Gunns Limited (in liq) (receivers and managers appointed) (No 2)</i> [2021] FCAFC 111	CAB 126
195.	22 July 2021	The appellants filed and served an application for special leave to appeal with this Court.	
196.	18 March 2022	The appellants were granted special leave to appeal to this Court.	CAB 164
197.	1 April 2022	The appellants filed and served a notice of appeal with this Court.	CAB 166
198.	8 April 2022	The respondent filed and served a notice of cross-appeal with this Court.	CAB 172

Dated: 6 May 2022



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