

**IN THE SUPREME COURT OF WESTERN AUSTRALIA
COMMERCIAL AND MANAGED CASES LIST**

No. CIV 1561 of 2012

B E T W E E N

STEPHEN WILLIAM MARSH

First Plaintiff

SUSAN GENEVIEVE MARSH

Second Plaintiff

and

MICHAEL OWEN BAXTER

Defendant

WITNESS STATEMENT OF SACHIN AYACHIT

I, **SACHIN PRAKASH AYACHIT**, of 10/2-4 Glen Osmond Road, Parkside, in the State of South Australia, Certification Manager, state:

Background

1. Since August 2012 I have been employed full-time as the Certification Manager for NASAA Certified Organic Pty Ltd (**NCO**), the certification arm of National Association for Sustainable Agriculture, Australia (**NASAA**).
2. Prior to commencing at NCO I worked for 7 years in a similar role as a Certification Manager for BioGro New Zealand (**BioGro**), New Zealand's leading organic certifier.
3. I completed my Bachelor of Agricultural Science in 2000 from the College of Agriculture, Pune and my Masters of Business Administration Marketing in 2002 from the University of Pune, India.
4. I then completed my Masters of Agribusiness Management at Massey University in New Zealand in 2005.
5. Part of my responsibility at BioGro was to keep up to date with international organic standards. For this reason I was already closely familiar with the NASAA Organic Standard (**the NASAA Standard**) prior to commencing my role at NCO. I refer to *NASAA Organic Standard* [TB 1293-1407].
6. In my role as certification manager at NCO I am responsible for overseeing the two aspects of NCO's mandate: accreditation and certification.

7. Accreditation relates to NASAA's own accreditation, from both domestic and international organisations. This involves ensuring that NASAA's quality systems meet the requirements of these external standards.
8. Certification relates to the actual assessment and granting of organic certification to farmers, processors, wholesalers and retailers.

Accreditation

9. NASAA maintains the following accreditations:
 - a. Commonwealth Department of Agriculture, Fisheries and Forestry (**DAFF**);
 - b. International Federation of Organic Agriculture Movement (**IFOAM**);
 - c. ISO65 (changing to ISO17065) by International Organic Accreditation Service (**ISO65**);
 - d. United States Department of Agriculture (**USDA**);
 - e. Japanese Agricultural Ministry; and
 - f. European Commission.
10. Each of these accrediting organisations performs a annual audit of NASAA (the IFOAM, ISO65 and European Commission audit is conjoint) to ensure that our systems and processes are in line with those required by our accreditors.
11. I am a member of the NASAA Standards Committee which meets as required to discuss any changes to international organic standards and develop any resultant changes to the NASAA Standard.

Certification

12. NCO offers organic certification to farmers, processors, input manufacturers, wholesalers and retailers in 10 countries.
13. We certify hundreds of farmers in Australia every year. To ensure that each farmer is compliant with the NASAA Standard we conduct an annual inspection of the farm as well as occasional ad hoc inspections as required.
14. If we find that a farmer is not compliant with the NASAA Standard NCO can impose special conditions or quarantine measures, suspend certification or decertify. The NASAA standard enables NCO to assess each instance of noncompliance on a case by case basis.

Genetically Modified Organisms

15. The NASAA Standard prohibits genetically modified organisms (**GMOs**) anywhere in the production or processing of certified organic material. This is consistent with the IFOAM Norms for Organic Production and Processing. I refer to *IFOAM Norms for Organic Production and Processing* [TB 1908-2041].
16. Part 3.2.8 of the NASAA Standard specifies that where there is deliberate use of GMOs on land the land cannot be certified for a period of not less than 5 years.
17. The NASAA Standard does not specify a specific decertification period for adventitious (non-deliberate) presence of GMOs on the land. This is to enable NCO to make a risk assessment on a case by case basis.
18. In assessing the risk posed by GMOs on the land, NCO will consider:
 - a. The quantity of GMOs on the land;
 - b. The likelihood of a continued presence of GMOs on the land;
 - c. The management practices of the farmer; and
 - d. The likelihood of future GMO contamination of the property.

Decertification of Eagle Rest

19. I was not working for NCO when Stephen Marsh lost his NASAA certification for parts of his farm (**Eagle Rest**). I was made aware of the situation and the relevant reports when I began working at NCO.
20. Some time after I began working for NCO, I read the following documents contained in NASAA's records relating to Eagle Rest:
 - a. The 4 December 2010 Inspection Report completed by Kathe Purvis and the Post Inspection Review completed by Luke You and Stephanie Goldfinch. I refer to *NASAA Inspection of Eagle Rest* [TB 0293-0309] and *NASAA Post Inspection Review Sheet* [TB 0314-0317].
 - b. The 21 December 2010 Inspection Report completed by Claire Coleman. I refer to *NASAA Inspection Checklist and Report (Extra Announced Inspection)* [TB 0325-0331].
 - c. The 24 October 2011 Inspection Report completed by Claire Coleman and the Post Inspection Review completed by Diane Gore. I refer to *NASAA Inspection Checklist and Report* [TB 0385-0408] and *NASAA Review Sheet* [TB 0416-0421].

- d. The 19 April 2012 Inspection Report completed by Claire Coleman. I refer to *NASAA Inspection Checklist and Report* [TB 0427-0446].

Recertification of Eagle Rest

21. In October 2012 NCO asked Kathe Purvis to conduct an inspection of Eagle Rest on its behalf. On about 20 October 2012 NCO received Ms Purvis' report of her inspection and recommendations arising out of the inspection. I refer to *NASAA Inspection Checklist and Report* [TB 0452-04714] and *NASAA Visit Confirmation and Exit Interview* [TB 0472].
22. An initial review of Ms Purvis's report was completed by NCO certification officer Luke (Wenpeng) You on 22 December 2012. In January 2013 I asked NCO certification officer Diane Gore to undertake a second review. I refer to *Post Inspection Review Sheet* [TB 0476-0479].
23. In the review report, the NCOs recommended that Eagle Rest be recertified in 2013, being 3 years from when some paddocks were decertified.
24. There is no precedent for GMO contamination of a certified organic farm as extensive as was found on Eagle Rest, domestically or internationally. It is therefore only possible for NCO to make a decision based on the information available to us as a result of our inspections of Mr Marsh's property and consideration of the circumstances of the contamination.
25. In reviewing the certification officers' recommendation, I had regard to the following:
 - a. The NASAA Standards;
 - b. All inspection reports relating to Eagle Rest from November 2010 to October 2012.
 - c. Generally available information regarding the viability of GM canola;
 - d. Personal discussions with organic certifiers in Canada, Argentina and India.
26. The NASAA Standard requires a minimum period of 36 months before organic certification can be obtained (where a conventional farmer is converting to organic). This period allows organic matter to build up in the soil, and residues to be removed from the soil. It also provides NCO the opportunity to observe the farmer's management practices on the farm and efforts to remove or avoid prohibited inputs.
27. While the three year period in the NASAA Standard does not specifically concern the adventitious presence of GMOs, NCO considers that the three year period provides appropriate guidance for Mr Marsh's situation because the contamination of the affected part of the farm was extensive.

28. Having regard to the above, I decided on behalf of NCO, that the remaining paddocks on Eagle Rest should be recertified commencing in October 2013.
29. This certification will be subject to the following requirements:
 - a. NCO will conduct an additional inspection of Eagle Rest prior to granting the certification status;
 - b. NCO will conduct additional inspections of Eagle Rest at the flowering stages of canola, these inspections will not be as comprehensive as an annual inspection and will focus only the presence of GM canola;
 - c. Following harvest, all organic seed grown on Eagle Rest will be subject to a seed screening process to test for the presence of GM canola.
30. The process of seed screening involves the harvest grain passing through a sieve which separates the cereals from the smaller debris and potential canola seeds. This smaller debris can then be tested for the presence of GMOs.
31. NCO has not previously requested Mr Marsh to screen seed in this manner because there were visible canola plants on his property which could be tested for GMOs.
32. NCO has never previously requested this type of seed screening from a farmer because we have never been faced with a situation of GMO contamination on a farm before.
33. It is clear to me from the NCO inspection reports and NASAA communications with Mr Marsh that he has made every effort to remove the contamination from his property and prevent it from occurring again.
34. The re-certification conditions are presently being finalized. Once that has occurred I intend to write to Mr Marsh to advise him of NCO's intention to recertify the decertified paddocks on Eagle Rest beginning in October 2013.

I have read the contents of this my witness statement and the documents referred to in it and I am satisfied that it is correct and that this is the evidence-in-chief which I wish to give at the trial of the proceeding.

Sachin Ayachit

Dated: 26 February 2013

Amended: 17 February 2014