

## AFFIDAVIT OF KIMBERLEY HAMILTON MARTIN

18 FEBRUARY 2015

### COURT DETAILS

Court	Land and Environment Court of New South Wales
Division	Class 4
Registry	Sydney
Case number	14/40998

### TITLE OF PROCEEDINGS

Plaintiff	<b>SHCAG Pty Ltd</b>
First defendant	<b>Hume Coal Pty Ltd</b>
Second defendant	<b>New South Wales Minister for Resources and Energy</b>

### FILING DETAILS

Filed for	<b>SHCAG Pty Ltd</b> Plaintiff
Legal representative	[eg plaintiff's claim, (number) cross-claim] [include only if form to be eFiled]
#Legal representative reference	[solicitor on record] [firm] [reference number]
Contact name and telephone	Marylou Potts 02 8012 4994
Contact email	ml@mlppl.com.au

[on separate page]

## AFFIDAVIT

Name Kimberley Hamilton Martin  
Address 371 Golden Vale Road Sutton Forest NSW 2577  
Occupation Homemaker, farmer, conservationist  
Date 18/2/2015

I affirm:

### PURPOSE OF THIS AFFIDAVIT

- 1 I make this affidavit in support of the Plaintiff's Summons dated 2 December 2014.
- 2 Except where otherwise indicated, I make this affidavit from my own knowledge. Where I depose to matters on the basis of information and belief, I believe those matters to be true.

### MY BACKGROUND

- 3 I am a mother of four adult children and I have been married to my husband Peter for thirty-five years. I care deeply about our environment and our community here in the Southern Highlands.
- 4 I own our farm at 371 Golden Vale Road Sutton Forest in partnership with my husband.
- 5 For four and a half years I have been campaigning against Hume Coal's (Hume) exploration for an underground coal mine in Sutton Forest. I am very worried about what is happening now to the local community, and what will happen if a mine is ever built.
- 6 I am worried about the impact on the landowners in the district of the on-going pressure from Hume to drill on our properties. The new approval for 25 more holes makes me really angry because of the time this is all taking, with no end in sight. I understand from my husband that Hume has written in it's REF that it may need to drill up to 70 holes before they apply for a mining licence so this may just go on.
- 7 I am also passionate about the environment. I'm particularly worried about the underground water that we totally depend on for our farm. I'm a keen

gardener. I love growing flowers and vegetables and planting trees. Without our bore we could not survive hot summers.

- 8 I have been worried about the future of our farm since I was told over dinner at our farm in 2012 by John Lee who is a water scientist that, *"This is one of the best aquifers in NSW. The coal seam is right under the aquifer and if you take the coal out it will be like taking the plug out of a bath."*
- 9 The uncertainty and the inability to plan for the future really unnerves me. For four and a half years we have been waiting for Hume to tell us their mine plans. We have not been told where the mine operation will be located, what type of mining they will employ and how they will protect our precious aquifer from losing its water and our land from subsidence. The latest approval for more holes including holes on our farm is just too much.
- 10 My husband and I will never agree to let Hume onto this property for exploration or any other activity.

#### **THE COST OF THE CAMPAIGN**

- 11 Committing to a campaign of this length has taken a lot of determination and time from both my husband and myself. I have found it difficult finding a balance between being a mother, a partner and a supporter to our community.
- 12 I have focused on the emotional, physical and spiritual health of our landowners. My own experience has been an overwhelming feeling of helplessness, anger, anxiety and fury with a system that seems to allow a mining company to put an entire community in this predicament.
- 13 Our eldest daughter was recently married on the front lawn of our farm and I realised that it was years since I had felt sheer joy and happiness. I feel that I can never really relax, it is though someone is going to take away one of the most important things in my life and there is nothing I can do about it.
- 14 I resent the hours that I have lost with my children and friends even though I know it is one of the most important things I will ever do in my life.
- 15 The number of hours Peter and I are spending on the campaign has also meant that we can't look after the farm without extra labour. We just can't do all the work we want to do on the place because of the time involved. I now

have a gardener one day a week and 2 horticulturalists also one day a week looking after the trees, gardens and the truffiere. Our farm contractor, Matt Mitchell also does extra jobs for us. This is double what we'd normally need. Peter estimates this costs us an extra \$25,000 a year in farm overheads.

- 16 This causes me immense frustration as I love to get into the garden and get my hands dirty tending my vegetables. We both love planting trees and he likes being the farm handyman.

## IMPACT ON NEIGHBOURS

- 17 Our neighbour Kathy Roche who is 79 and her husband John 87 are facing land access arbitration. Kathy has often said to me *"My first thought in the morning is about Hume Coal and how I am going to find the money to pay for legal expenses if I fight land access."*
- 18 Kathy works tirelessly for the equestrian community. I know that because we see what she and John do running the 3 day events that on their property Aruluen next door every 2 or 3 months.
- 19 Kathy has told me *"We don't make any money from this it all goes back into the sport. Riding's been fabulous for our kids and we love seeing all the riders come here from the Olympians to the little kids just starting out. Everyone helps each other and that's what makes it so marvellous"*.
- 20 On Monday this week Kathy had major surgery for bowel cancer. I was at her house on Sunday and typically she is more concerned for her husband John's well being. She said to me *"Look after John if anything happens to me, he often forgets to feed himself"*. She also said to me words to the effect that *"You won't believe it but John and I were just made 'Eventing Volunteers of the Year' by Eventing NSW."*
- 21 She also showed me another letter from Hume about a land access agreement. She said to me *"We got this yesterday and I couldn't sleep worrying about it. Not good when I'm going in for the op tomorrow. They didn't even bother to turn up last time when we went to their office for a meeting and now they want us to just sign up."*
- 22 Another former neighbour Michael Seay, an American from Carolina battled for over two years to sell his property. Michael has melanoma and his wife

Barbara had early onset Alzheimer's disease. He told me *"I'm an engineer and I know what's going to happen to my water if they mine. I'm going to have to sell even if I don't want to. Timing couldn't be worse with this hanging over us. No-one is coming to look at my property because of the coal mining."* The property was eventually sold but he said to me words to the effect that *"I didn't get what I wanted but I had no choice, I only had one offer. We've just got to get on with our lives."*

- 23 There are many more stories like these that I have personal knowledge of.

### **HUME'S PROPERTY PURCHASES**

- 24 I have a deep mistrust of Hume that has only been made worse by the way they are buying properties in the district without telling the community what they are doing and why they are doing it.
- 25 They have bought local farms using \$2 companies set-up by legal firms. I am aware that the real estate agents involved say to property owners that they are acting on behalf of rural buyers.
- 26 I know this because Debra van Breda who owns a property on Coney Hatch Lane was approached by an agent in 2011. She told me words to the effect that *"The agent said that the buyers were Aurelious something, I asked if they had anything to do with Hume Coal and he said they weren't anything to do with the mining company. But I was suspicious because they only wanted the front of the property facing Hume Highway not the best part. I kept asking and in the end he admitted the miners were involved. They kept upping their offer but I refused to sell."*
- 27 This infuriates me and I have really focused on it as a project. I have become quite proficient at ASIC searches and liaising with real estate agents in the district. I have also visited almost every farm in the coal licence area and know many of the owners and property managers.
- 28 The first properties Hume bought were 'Wongombara' and 'Carlisle Downs' in the last quarter of 2011. They were purchased by a company called 'Aurelius Rural P/L' who presented themselves as a rural company. I did an ASIC search on this company and found that it was newly established with 3 Directors, all from the law firm Blake Dawson Waldron.

- 29 The fact that that the buyer was Hume caused much distress to the part-owners Michael and Daria Ball. I know that because Daria said words to me to the effect that *"We feel that we have let the community down as we thought it was a genuine rural company that we were selling to. They made a lot of visits and spent a long time looking. They also made such a big deal about the cattle and the machinery and how the farm worked."*
- 30 A newly formed company called 'Cavalier Rural Properties P/L' bought 'Evandale' owned by Colleen and Malcolm Reid. The sole Director at the time on incorporation was senior partner of Minter Ellison. The Reid's were active supporters of SHCAG. Malcolm asked my husband Peter to be his agent when he was facing land access arbitration.
- 31 Colleen and Malcolm Reid told me that a real estate agent approached them on 22 July 2013. Colleen told me that they were not aware the agent was representing Hume. She said in an email to me [see Annexure KM 1] *"I feel betrayed by the real estate agent as he knows our stand against mining and if the company who has offered to buy the place is not for farming as we have been told. It is a great sadness to us."*
- 32 Last year another property called 'Stonington' was sold to a company called SF Pastoral Holdings P/L. When I spoke to the owner Gordon O'Byrne he said, *"SF Pastoral Holdings are the miners and they are starting soil testing next week."* I asked him if he knew who bought neighbouring property 'Mereworth'. He said words to the effect that *"It's the same company, SF Pastoral Holdings."* A title search confirmed this.
- 33 I called Hume Coal for verification that they were the buyers of Stonington. I spoke to [DELETED] he said, *"I don't know anything about the sale"*. I also asked [DELETED] from Hume and he said *"Why don't you ask SF Pastoral Holdings"* and then added *"I heard the Chinese had bought it"*.
- 34 Daria Ball said words to the effect that *"Our former manage, Daniel O'Kieffe has been employed by Hume as manager on Wongondra since we sold the property. I know that Daniel is now also doing work at Mereworth for Hume."*
- 35 I am also aware of an article in the Sydney press which reported on the property purchases in the district. [see Annexure KM 2]

## COMMUNITY SUPPORT

- 36 The community in the Southern Highlands has been very supportive. SHCAG has over 100 volunteers who help us with our activities and events. I know this because I have the list of volunteers and know all of them.
- 37 We have raised over \$120,000 to cover Ross and Margaret's legal costs via the Carters Lane Defence Fund. To do this I have helped organise and run a jazz picnic, jumble sale, garden opens, raffles, BBQ'S, a Melbourne Cup lunch and an open day at historic "Hillview".
- 38 A group of local women meet on a regular basis to cook, sew and knit products for sale at the various events. Margaret Alexander has it at her house and she said words to me to the effect that *"I call it Stitch and Bitch but they all love it"*.
- 39 We have also had a lot of support from the local business community. This is shown by the many organisations who have generously sponsored us with prizes for raffles, free venues, free music, discounted services or other assistance. These include local wineries such as Southern Highlands Vineyards, Banjo's Run, Artemis, Cuttaway Hill, Diamond Creek, Mount Ashby and Tertini. Other businesses who have supported us are Rona Lodge, Bowral Golf Club, Bowral Brewing Company, Dan Murphy's, Bradman Museum, Exeter General Store, Montrose Berry Farm, Sutton Forest Olives, Wariapendi Nursery, Mt Murray Nursery, Highland Trike Tours, Angus Campbell Jones Real Estate, Cafe Rosso and Berkelouws Book Barn. There are many more.

## HUME SPONSORSHIPS

- 40 I am aware from reading Hume's website and reading local newspapers that Hume is sponsoring local organisations including charities, schools, sporting clubs and other events. I have seen the division in the community that this can cause.
- 41 Hume sponsored a large Berrima Horse Trials equestrian event on the Roche property next door to us in 2012. When they returned Kathy Roche said to me words to the effect *"John and I are furious about this. This was agreed by the Secretary when we were overseas. She didn't even tell us that Hume had approached them. I can't believe how stupid some people*

*are. Don't they realise that a coal mine will destroy our water and there won't be an Aruluen. I am going to sort this out at the next meeting and it will never happen again."*

- 42 The Bowral Rugby Union Club organized the "Southern Highlands Sevens Tournament" on October 4, 2014. Hume sponsored the event. Montrose Berry Farm was invited to provide a stall. The owner of Montrose, Bruce Robertson, told me words to the effect that *"When we arrived we found out that Hume was their sponsor but they hadn't told us. I was mad and I refused to participate. That cost me about \$4000 in takings for the day"*. Kym Burrows owner of Sutton Forest Olives also told me *"They asked me to help with the day and they know how I feel about Hume. They didn't tell us they'd taken the money. I really gave them what for. We refused to set up and went home but I lost a day's sales which we really needed."*
- 43 Exeter Soccer Club accepted a \$7500 donation from Hume. [see Annexure KM4]I was told by Craig Shaw who runs the Exeter General Store and whose kids are in the club, words to the effect that *"We don't want the club to take this money. It's not right having 9 year olds running around with Hume Coal on their shorts when we know what coal mining will do to our water and the community. We're going to raise the money through crowd funding."* Peter and I then put an email out to all SHCAG supporters and also to our network. Craig told me two weeks later *"I can't believe it, \$8500 has been raised in 2 weeks."*



AFFIRMED at:

Signature of deponent

Name of witness

Address of witness

Capacity of witness                      Justice of the peace

And as a witness, I certify the following matters concerning the person who made this affidavit (the **deponent**):

- 1            I saw the face of the deponent
- 2            I have known the deponent for at least 12 months.

\_\_\_\_\_  
Identification document relied on (may be original or certified copy)\*

Signature of witness

Note: The deponent and witness must sign each page of the affidavit. See UCPR **35.7B**.

---

[\* "Identification documents" include current driver licence, proof of age card, Medicare card, credit card, Centrelink pension card, Veterans Affairs entitlement card, student identity card, citizenship certificate, birth certificate, passport or see [Oaths Regulation 2011](#) or [JP Ruling 003 - Confirming identity for NSW statutory declarations and affidavits](#), footnote 3.]