

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMERCIAL AND EQUITY DIVISION
COMMERCIAL COURT

LIST E
No. S APCI 2011 0103

BETWEEN:

GRAHAM GOLDENBERG & ORS
(according to the Schedule of Parties)
- and -

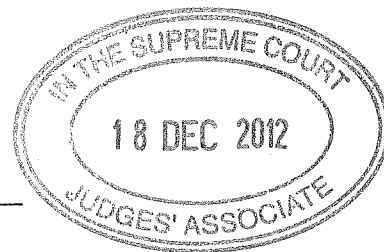
Appellants

BOSI SECURITY SERVICES LIMITED (A.C.N. 009 413 852) as trustee for AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED (A.C.N. 005 357 522) and BOS INTERNATIONAL (AUSTRALIA) LIMITED (A.C.N. 066 601 250) and WESTPAC BANKING CORPORATION (A.C.N. 007 457 141) & ORS (according to the Schedule of Parties)

Respondents



ORDER



JUDGE OF THE COURT:	The Honourable Justice Judd
DATE MADE:	12 December 2012
ORIGINATING PROCESS:	Notice of appeal dated 11 July 2011
HOW OBTAINED:	On application by summons dated 27 August 2012
ATTENDANCE:	Mr G. Bigmore, one of Her Majesty's Counsel for the Appellants Mr P. Anastassiou of Senior Counsel with Mr R. G. Craig of counsel for the First Respondent Ms W. Harris of Senior Counsel with Mr M Rush of counsel for the Second Respondent Dr O. Bigos for the Third to Fifth Respondents and Timbercorp Securities Limited (in liquidation) Mr M. Hoyne for MRB Equities Pty Ltd, Redvil Pty Ltd and Ferrari Investments Holdings Pty Ltd
OTHER MATTERS:	The deed of compromise dated 25 July 2012 executed on behalf of the Appellants, the First to Fifth Respondents and Timbercorp Securities Limited (in liquidation) ACN

092 311 469 (TSL) was amended by a deed of amendment executed on behalf of the same parties on 17 December 2012 (the deed of compromise as amended being the **Amended Deed of Compromise**).

Counsel for the Appellants foreshadowed orally before the Court on 12 December 2012 an application for orders that the Appellants be indemnified for their liability to the Funders under the funding agreement dated 22 October 2011 (as amended from time to time) from the Almond Settlement Amount (as defined in the Amended Deed of Compromise) to be paid pursuant to the Amended Deed of Compromise (**Appellants' Application**).



With the consent of the parties, TSL seeks leave to be joined as the Sixth Respondent to the proceeding (**TSL's Application**).

THE COURT ORDERS THAT:

1. Subject to order 5 below, pursuant to rule 16.01(4) of the *Supreme Court (General Civil Procedure) Rules 2005*, the compromise set out in clause 2 of the Amended Deed of Compromise is approved and shall be binding on the absent persons who are represented by the Appellants.
2. That compliance with rule 4.02 be dispensed with in respect of the Appellants' Application.
3. That compliance with rule 4.02 be dispensed with in respect of TSL's Application.
4. TSL be added as the Sixth Respondent to the proceeding.
5. The payments by the First and Second Respondents to TSL pursuant to clause 4(a) of the Amended Deed of Compromise are subject to a lien in the Appellants' favour in the amount of \$1,753,443.25 payable on receipt of those funds by TSL.
6. The following exhibits be kept confidential:
 - (a) confidential exhibits CJA-1, CJA-2 and CJA-3 to the Affidavit of Celia Jane Armstrong sworn 30 August 2012;

- (b) confidential exhibit MAK-6 to the Affidavit of Mark Anthony Korda sworn 18 September 2012;
- (c) confidential exhibit CJA-9 to the Third Affidavit of Celia Jane Armstrong sworn 19 September 2012;
- (d) confidential exhibit MAK-7 to the Affidavit of Mark Anthony Korda sworn 2 October 2012; and
- (e) confidential exhibits CJA-12 and CJA-14 to the Fourth Affidavit of Celia Jane Armstrong sworn on 2 October 2012,

and be sealed on the Court file in an envelope marked "Not to be opened except by leave of the Court".

- 7. The Funders' application made pursuant to their right to be heard as ordered on 31 August 2012 is dismissed.
- 8. There is no order as to costs.

DATE AUTHENTICATED: **18 December 2012**



A handwritten signature in black ink, appearing to read "Judd", written over a horizontal line.

The Hon. Justice Judd

SCHEDULE OF PARTIES

B E T W E E N

GRAHAM GOLDENBERG

(in his capacity as representative of the Members in the 2002 Almond Project)

First Appellant

CHRISTOPHER MARK LITTLE

(in his capacity as representative of the Participant Members in the 2005 Almond Project)

Second Appellant

CONSTANTINE MOSHOPOULOS

(in his capacity as representative of the Participant Members in the 2006 Almond Project)

Third Appellant

DAVID BUTTERFIELD

(in his capacity as representative of the Participant Members in the 2007 Almond Project and as representative of the Members in the 2002 Private offer Scheme)

Fourth Appellant

- and -

BOSI SECURITY SERVICES LIMITED (ACN 009 413 852)

as trustee for

AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED

(ACN 005 357 522) and **BOS INTERNATIONAL (AUSTRALIA) LIMITED**

(ACN 066 601 250) and **WESTPAC BANKING CORPORATION (ACN 007 457 141)**

First Respondent

AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED

(ACN 005 357 522)

Second Respondent

ALMOND LAND PTY LTD (IN LIQUIDATION) (ACN 091 460 392)

Third Respondent

MARK ANTHONY KORDA

(in his capacity as liquidator of Almond Land Pty Ltd (in liquidation))

Fourth Respondent

LEANNE KYLIE CHESSER

(in her capacity as liquidator of Almond Land Pty Ltd (in liquidation))

Fifth Respondent