

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

LIST E
No. S CI 2011 6604

BETWEEN:

AUSTRALIA AND NEW ZEALAND BANKING GROUP Plaintiff
LIMITED
(ACN 005 357 522)



- and -

OIM#2 PTY LTD (RECEIVERS AND MANAGERS Defendants
APPOINTED (ACN 112 691 997) as trustee for
TIMBERCORP ORCHARD TRUST #3 & ORS (according
to the attached Schedule)

ORDER



JUDGE OF THE COURT: The Honourable Justice Judd

DATE MADE: 12 December 2012

ORIGINATING PROCESS: Originating motion dated 6 December 2011

HOW OBTAINED: On application by summons dated 27 August 2012

ATTENDANCE: Ms W. Harris of Senior Counsel with Mr M. Rush of
counsel for the Plaintiff

Mr M. N. C. Harvey of counsel for the First and Second
Defendants

Mr G. Bigmore, one of Her Majesty's Counsel for the
Fifth to Tenth Defendants

OTHER MATTERS: Nil

THE COURT ORDERS THAT:

1. Pursuant to rule 16.01(4) of the *Supreme Court (General Civil Procedure) Rules 2005*, the compromise set out in clause 2 of the Deed of Compromise dated 25 July 2012 between the plaintiff and the first to tenth defendants (the

Compromise) is approved and shall be binding on the absent persons who are represented by the fifth, sixth, seventh, eighth, ninth and tenth defendants.

2. Pursuant to rule 54.02 of the *Supreme Court (General Civil Procedure) Rules 2005*, the Court approves the first and second defendants agreeing to the Compromise.
3. 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-11 and CJA-13 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".

THE COURT ORDERS FURTHER BY CONSENT THAT:

4. The proceeding is dismissed.
5. There is no order as to costs.



DATE AUTHENTICATED:

18 December 2012



A handwritten signature in black ink, appearing to read "The Hon. Justice Judd".

The Hon. Justice Judd

SCHEDULE OF PARTIES

BETWEEN

AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED
(ACN 005 357 522)

Plaintiff

- and -

OIM#2 PTY LTD (RECEIVERS AND MANAGERS APPOINTED) (ACN 112 691 997) AS TRUSTEE FOR TIMBERCORP ORCHARD TRUST #3

First Defendant

OIM#5 PTY LTD (RECEIVERS AND MANAGERS APPOINTED) (ACN 118 204 701) AS TRUSTEE FOR TIMBERCORP ORCHARD TRUST #5

Second Defendant

MICHAEL FUNG IN HIS CAPACITY AS RECEIVER AND MANAGER OF OIM#2 PTY LTD (RECEIVERS AND MANAGERS APPOINTED) (ACN 112 691 997) IN ITS CAPACITY AS TRUSTEE FOR TIMBERCORP ORCHARD TRUST #3 AND RECEIVER AND MANAGER OF OIM#5 IN ITS CAPACITY AS TRUSTEE FOR TIMBERCORP ORCHARD TRUST #5

Third Defendant

PAUL WILLIAM KIRK IN HIS CAPACITY AS RECEIVER AND MANAGER OF OIM#2 PTY LTD (RECEIVERS AND MANAGERS APPOINTED) (ACN 112 691 997) IN ITS CAPACITY AS TRUSTEE FOR TIMBERCORP ORCHARD TRUST #3 AND RECEIVER AND MANAGER OF OIM#5 IN ITS CAPACITY AS TRUSTEE FOR TIMBERCORP ORCHARD TRUST #5

Fourth Defendant

GRAHAM DACE as the representative of the Growers in the 2001 Timbercorp Almond Project (ARSN 095 649 746)

Fifth Defendant

GRAHAM GOLDENBERG as the representative of the Growers in the 2002 Timbercorp Almond Project (ARSN 099 611 935)

Sixth Defendant

GORAN RUNJE as the representative of the Growers in the 2003 Timbercorp Almond Project (ARSN 103 197 299)

Seventh Defendant

GRAEME PHILIP COLE as the representative of the Growers in the 2004 Timbercorp Almond Project (ARSN 108 336 670)

Eighth Defendant

CHRISTOPHER MARK LITTLEY as the representative of the Growers in the 2005

Timbercorp Almond Project (ARSN 112 935 092)

Ninth Defendant

DAVID SYDNEY BUTTERFIELD as the representative of the Growers in the
unregistered managed investment scheme known as the 2002 Timbercorp Almond
Project (Private Offer No. 1)

Tenth Defendant