

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

LIST E  
No. S CI 2011 6606

**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 #2 & 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 Defendant

Mr G. Bigmore, one of Her Majesty's Counsel for the  
Fourth Defendants

K Bezencon and A Gubalovski for the TGG Committee

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 fourth defendants (the **Compromise**) is approved and shall be binding on the absent persons who are represented by the fourth defendants.

2. Pursuant to rule 54.02 of the *Supreme Court (General Civil Procedure) Rules 2005*, the Court approves the first defendant 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-31 and CJA-33 to the Fifth 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 "J. Judd", written over a horizontal line.

**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 #2

First 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 #2

Second 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 #2

Third Defendant

ROBERT BUGDEN AND ELIZABETH BUGDEN (AS THE REPRESENTATIVES OF THE GROWERS IN THE 2005 TIMBERCORP CITRUS PROJECT (ARSN 114 091 299))

Fourth Defendants