

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

SCI 2013 01478

THE TRUST COMPANY (NOMINEES) LIMITED (ACN 004 134 441)

Plaintiff

and

MICHAEL FUNG IN HIS CAPACITY AS RECEIVER AND MANAGER OF ALIGN  
FUNDS MANAGEMENT LIMITED (RECEIVER & MANAGER APPOINTED)  
(ACN 105 684 231) IN ITS CAPACITY AS THE RESPONSIBLE ENTITY OF THE  
TIMBERCORP ORCHARD TRUST & ORS

Defendants

AFFIDAVIT OF GREGORY WESTAWAY

Date of document: 9 May 2014  
Filed on behalf of: The Second Defendant  
Macpherson + Kelley  
Lawyers  
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I, **GREGORY WESTAWAY** of 1795 Mornington-Flinders Road, Flinders in Victoria, make oath and say that:

- 1 I am the Second Defendant in this proceeding.
- 2 I am the founder and currently the Executive Chairman of Gregorays Transport, a national transport and logistics company.
- 3 I make this affidavit from my own knowledge. Where I depose to matters from information or belief, I believe those matters to be true.
- 4 By order made 19 July 2013, I was ordered to act as the representative defendant in this proceeding on behalf of the members of the 2004 Timbercorp Citrus Project (ARSN 108 887 538) (**Project**).
- 5 On 3 October 2013, I received an email from Mr Yu-chiao Hsueh of M+K Lawyers addressed to me that enclosed copies of the Plaintiff's settlement offer (**Offer**). Now produced and shown to me marked **confidential exhibit GW-1** is a true copy of the email from M+K Lawyers to me dated 3 October 2013 with its enclosures, including a draft Deed of Compromise. The email is privileged and I do not waive that privilege.
- 6 In between receiving this email and subsequently attending a telephone conference with Messrs Garry Bigmore QC and Samuel Hopper of Counsel and Mr Yu-chiao Hsueh of M+K Lawyers, I read and considered the Offer.



- 7 On 11 November 2013, I attended a conference in person with Samuel Hopper of Counsel and Yu-chiao Hsueh of M+K Lawyers with Garry Bigmore QC attending by telephone. During this conference, Counsel provided their advice to me verbally, indicated that a written advice would be provided to me afterwards and gave me the opportunity to ask questions.
- 8 I asked a number of questions during the conference which Counsel answered. I then instructed M+K Lawyers that I accepted the Offer on the basis of the advice given to me as I believed it was in my best interest and the best interests of the other growers in the Project to accept the Offer.
- 9 On 18 November 2013, M+K Lawyers provided me with a copy of Counsel's written advice to my email address. I read and understood Counsel's written advice and did not change my instructions as I still considered it to be in my best interest and the best interests of the other growers in the Project to accept the Offer.
- 10 On about 20 December 2013, I was provided with the final Deed of Compromise with a letter explaining the changes to the deed since I was originally provided with the original draft in October 2013. As I considered the changes did not affect my belief that the Offer was in my best interest and the best interests of the other growers in the Project, I signed the Deed of Compromise soon after.
- 11 On 9 April 2014, I was provided with a Supplementary Memorandum of Advice (**Supplementary Advice**) by an email from Mr Yu-chiao Hsueh of M+K Lawyers to me.
- 12 In between receiving this email and subsequently attending a telephone conference with Messrs Garry Bigmore QC and Samuel Hopper of Counsel and Mr Yu-chiao Hsueh of M+K Lawyers, I read and considered the Supplementary Advice. The Supplementary Advice did not change my belief that it was in my best interest and the best interests of the other growers in the Project to accept the Offer.
- 13 On 17 April 2014, I attended a telephone conference with Messrs Garry Bigmore QC and Samuel Hopper of Counsel and Mr Yu-chiao Hsueh of M+K Lawyers. During this telephone conference, Counsel explained the Supplementary Advice to me, offered me the opportunity to ask any questions and I confirmed my belief that accepting the offer was in my best interest and the best interests of the other growers in the Project.

Sworn by **GREGORY WESTAWAY** )  
at Dandenong in the State of Victoria )  
this Ninth day of May 2014 )

Before me: Stephanie Anne Burn



V-3522988:1

**BEFORE ME**.....  
**Stephanie Anne Burn**  
**An Australian Legal Practitioner**  
**(within the meaning of the Legal Profession Act 2004)**  
**40-42 Scott St, Dandenong 3175 VIC**