

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

FIFTH AFFIDAVIT OF YU-CHIAO HSUEH

Date of document: 12 May 2014  
Filed on behalf of: The Second and Third Defendants  
Macpherson + Kelley  
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I, **YU-CHIAO HSUEH** of Level 22, 114 William Street, Melbourne, solemnly and sincerely declare and affirm that:

- 1 I am an employee of the firm Macpherson + Kelley Lawyers (**M+K Lawyers**), the solicitors for the Second and Third Defendants, being the persons appointed as representatives of all of the growers in the Timbercorp project of which they are a member (together the **Representative Growers**). I have carriage of this matter on behalf of the Representative Growers under the supervision of my principal, Michael Fernon, and I am authorised to make this affidavit on their behalf.
- 2 Except where otherwise indicated, I make this affidavit from my own knowledge. Where I depose to matters from information or belief, I believe those matters to be true.
- 3 I make this further affidavit in connection with the application for approval of the Deed of Compromise.

**Correction of my third affidavit**

- 4 I refer to paragraph 8 of my third affidavit dated 7 May 2014 where I relevantly deposed that "Based on my examination of the Communication Spreadsheets, I understand that one of the growers was bankrupt and the information forwarded to the Trustee in bankruptcy". I am informed by Ms Jing Chang of Arnold Bloch Leibler (**ABL**), solicitors for TSL, and believe that this is incorrect as this grower's bankruptcy was discharged in late 2012 and TSL has contacted the grower directly.

- 5 On 12 May 2014, I contacted Ms Chang of ABL and requested that TSL should:
- (a) provide this grower's trustee in bankruptcy with the Letter to Growers and First Notice to Participant Growers; and
  - (b) given the imminent timing of the application for approval of the Deed of Compromise, to contact the trustee separately to confirm if they wish to make any objection or have any queries.
- 6 I am informed by Ms Chang of ABL that she will instruct TSL to do the things identified in paragraph 5 of my affidavit and confirm in writing when they have been done.

Affirmed by **YU-CHIAO HSUEH** )

at *Melbourne* in the State of Victoria )

this *12<sup>th</sup>* day of May 2014 )

Before me: *[Signature]*

**BEFORE ME.....**

**Anne Louise McCartney**

**An Australian Legal Practitioner**

**(within the meaning of the Legal Profession Act 2004)**

**Level 22, 114 William St, Melbourne Vic 3000**