

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 ROBERT BUGDEN

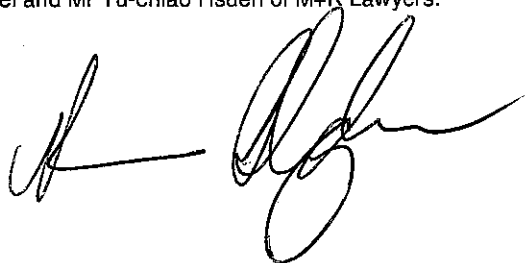
Date of document: May 2014
Filed on behalf of: The Third Defendant
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I, **ROBERT BUGDEN** of 55 Arthur Circle, Red Hill in the Australian Capital Territory, make oath and say that:

- 1 I together with my wife Elizabeth am the Third Defendant in this proceeding.
- 2 I am a retired pharmacist.
- 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, my wife and I were ordered to act as representative defendants in this proceeding on behalf of the members of the 2005 Timbercorp Citrus Project (ARSN 114 091 299) (**Project**).
- 5 On 3 October 2013, I received an email from Mr Yu-chiao Hsueh of M+K Lawyers addressed to my wife Elizabeth and me that enclosed copies of the Plaintiff's settlement offer (**Offer**). Now produced and shown to me marked **confidential exhibit RB-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 my wife Elizabeth and I do not waive that privilege.
- 6 In between receiving this email and subsequently attending a telephone conference with my wife Elizabeth, 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 12 November 2013, I attended a telephone conference with my wife Elizabeth, Messrs Garry Bigmore QC and Samuel Hopper of Counsel and Mr Yu-chiao Hsueh of M+K Lawyers.

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During this telephone conference, Counsel provided their advice to me and Elizabeth verbally and indicated that a written advice would be provided to us afterwards.

- 8 I had the opportunity to ask questions about the proceeding and the advice but I did not have any questions beyond what my wife asked during the conference. Towards the end of our conversation, I instructed M+K Lawyers that we accepted the Offer on the basis of the advice given to us 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 shortly 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 addressed to me and my wife Elizabeth.
- 12 In between receiving this email and subsequently attending a telephone conference with my wife Elizabeth, 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 my wife Elizabeth, 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 and Elizabeth, offered us 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 **ROBERT BUGDEN**)

at Fyshwick in the Australian Capital Territory)

this 13TH day of May 2014)

Before me:

MARK WILLIAM STEPHEN POWER
JP ACT #1769

