

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 ELIZABETH BUGDEN

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

- 1 I together with my husband Robert am the Third Defendant in this proceeding.
- 2 I am a retired schoolteacher.
- 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 husband Robert and me that enclosed copies of the Plaintiff's settlement offer (**Offer**).
This email and its attachments have been exhibited to my husband's affidavit as **confidential**
exhibit RB-1. The email is privileged and my husband Robert and I do not waive that
privilege.
- 6 In between receiving this email and subsequently attending a telephone conference with my
husband Robert, 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 husband Robert, 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 my husband verbally and indicated that a written advice would be provided to us afterwards.

- 8 I asked a number of questions about the proceeding and the advice and they were answered 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 or about 18 November 2013, my husband provided me with an email from Mr Yu-chiao Hsueh of M+K Lawyers addressed to both of us enclosing 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 husband Robert.
- 12 In between receiving this email and subsequently attending a telephone conference with my husband Robert, 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 husband Robert, 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 Robert, 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 **ELIZABETH BUGDEN**)

at *Fyshwick* in the Australian Capital Territory)

this *14th* day of May 2014)

Before me:

MWS Power
JP ACT #1769