

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

No 8870 of 2009  
and of 2009

List B

COMMERCIAL COURT

BETWEEN

**TIMBERCORP LIMITED (IN LIQUIDATION)**  
**ACN 055 185 067**

First Plaintiff

and

**TIMBERCORP SECURITIES LIMITED (IN LIQUIDATION)**  
**ACN 092 311 469**

Second Plaintiff

**PLANTATION LAND LIMITED**  
**ACN 090 443 333**

Defendant

**AFFIDAVIT OF MARK ANTHONY KORDA**

Date of document: 9 October 2009  
Filed on behalf of: the Plaintiffs

Prepared by:  
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I, **MARK ANTHONY KORDA** of Level 24, 333 Collins Street, Melbourne, in the state of Victoria, Chartered Accountant, **SAY ON OATH** that:

- 1 I am a chartered accountant and a partner of the firm KordaMentha Pty Ltd (ACN 100 169 391) (**KordaMentha**). I am a Registered Liquidator and an Official Liquidator of the Court. I am, with Leanne Kylie Chesser (**Ms Chesser**) of KordaMentha, the liquidator of the First Plaintiff, Timbercorp Ltd (in liquidation) (ACN 055 185 067) (**Timbercorp**) and the Second Plaintiff, Timbercorp Securities Ltd (in liquidation) (ACN 092 311 469) (**TSL**). I am authorised to make this affidavit on behalf of Timbercorp and TSL.



- 2 On 23 April 2009, Ms Chesser and I were appointed as voluntary administrators of Timbercorp and TSL. Also on 23 April 2009, the respective directors of thirty nine (39) of Timbercorp's wholly owned subsidiaries (together **Timbercorp Group Companies**) appointed Ms Chesser and I and two or more of three other KordaMentha partners, namely Mark Francis Xavier Mentha, Craig Peter Shepard and Clifford Stuart Rocke, as administrators of those companies. All of the appointments were made pursuant to section 436A of the *Corporations Act 2001* (Cth) (**Corporations Act**).
- 3 On 29 June 2009, at a meeting of the creditors of the Timbercorp Group Companies and a separate meeting of the creditors of TSL, the creditors resolved to wind up the Timbercorp Group Companies and TSL respectively. Ms Chesser and I became the Liquidators of Timbercorp and TSL. Timbercorp and TSL, as well as other Timbercorp Group Companies, are insolvent.
- 4 On 3 July 2009 the Liquidators applied to the Federal Court (proceeding VID 497 of 2009) for a direction about the treatment of PLL's claim for rent. PLL was the respondent. The hearing was held on 6 July 2009. Finkelstein J gave judgment on 10 July 2009. Now produced and shown to me, marked "**MAK-1**" is copy of the originating process in that Federal Court proceeding. Now produced and shown to me, marked "**MAK-2**" is copy of Finkelstein J's reasons for judgment of 10 July 2009 in that Federal Court proceeding. On 23 July 2009 the Liquidators applied to the Federal Court (proceeding VID 541 of 2009) for an extension of the time within which to decide whether to disclaim leases. The hearing was held on 3 August 2009. Finkelstein J gave judgment on 18 August 2009. Now produced and shown to me, marked "**MAK-3**" is copy of the originating process in that Federal Court proceeding. Now produced and shown to me, marked "**MAK-4**" is copy of Finkelstein J's reasons for judgment of 18 August 2009 in that Federal Court proceeding.
- 5 In early July 2009, a number of parties contacted KordaMentha to express their interest in the possible acquisition or recapitalisation of the various assets which are the subject of the forestry managed investment schemes (**Forestry Schemes**). On 24 July 2009 the Liquidators commenced a sale or recapitalisation process for the Forestry Schemes (**Timbercorp Sale Process**) by issuing a confidential information memorandum which invited expressions of interest (**Information Memorandum**). Now produced and shown to me, marked "**MAK-5**" is a redacted copy of the confidential Information Memorandum. After reviewing the tenders, the Liquidators

selected a preferred bidder, Australian Bluegum Plantations Pty Limited ACN 139 400 623 (**Purchaser**). The Liquidators and the Purchaser executed a confidential Sale and Purchase Deed (**SPD**) on 30 September 2009. Now produced and shown to me, marked "**Confidential MAK-6**" is a copy of the SPD. That document is highly confidential and commercially sensitive. On 30 September 2009 a joint press release was issued by Timbercorp, TSL and the Purchaser in relation to the conclusion of the Timbercorp Sale Process. Now produced and shown to me, marked "**MAK-7**" is a copy of the press release.

- 6 Under cover of a letter from Maddocks dated 21 July 2009, PLL sent to Timbercorp and TSL notices of default (**Default Notices**) under the leases between PLL and Timbercorp or TSL (**PLL Leases**). Mr Webster told me at the time that PLL had sent the Default Notices. Mr Webster also told me that he had spoken with Alan Fisher of PLL. If Mr Webster had told me at the time that he was worried that PLL would terminate the PLL Leases, and had asked me for funds to pay the outstanding rent demanded by PLL, I would have authorised the payment. At the time the Liquidators had funds at our disposal to enable Timbercorp and TSL to meet the payment of \$891,512.46 to PLL. Those funds were derived from receipts of maintenance fees arrears from members of the Forestry Schemes (**Growers**) under the management agreements (**Management Funds**), and could have been applied towards the outstanding rent to PLL. The tenders of rent to PLL on 18 September 2009 and 30 September 2009 were made from the Management Funds, and those funds still remain.
- 7 If relief against forfeiture of the PLL Leases were granted, Timbercorp and TSL are in a position to pay to PLL, from the Management Funds, the rental arrears together with any other amounts ordered by the Court to be paid.
- 8 The land which is the subject of the PLL Leases (**PLL Land**) comprises 8,391 hectares of mature forestry plantations, being approximately 8% of the forestry assets, and more than 2655 Growers have sub-leases on parts of the PLL Land. A substantial part of the value of the plantations on the PLL Land is represented by the trees, rather than the land. The sale to the Purchaser under the SPD is the only option presently available to help minimise the losses incurred by the Growers, as well as other creditors, as a result of the insolvency of Timbercorp and TSL. Many of the Growers are individual investors from around Australia. If the PLL Land cannot be included in the assets sold to the Purchaser under the SPD, the pool of funds

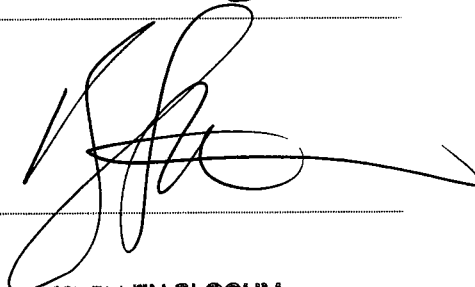
available will be substantially reduced. The extent of the reduction is highly confidential and commercially sensitive. If PLL takes the trees, the Growers will lose out.

**SWORN** at Melbourne  
in the State of Victoria  
by **MARK ANTHONY KORDA** this  
9<sup>th</sup> day of October 2009

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Before me:



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An Australian Legal Practitioner within the  
meaning of the Legal Profession Act 2004