

IN THE FEDERAL COURT OF AUSTRALIA  
VICTORIA DISTRICT REGISTRY

No. of 2009

IN THE MATTER OF TIMBERCORP SECURITIES LIMITED  
(IN LIQUIDATION) ACN 092 311 469

AND

IN THE MATTER OF TIMBERCORP LIMITED  
(IN LIQUIDATION) ACN 055 185 067

TIMBERCORP SECURITIES LIMITED (IN LIQUIDATION)  
ACN 092 311 469 AND OTHERS  
(see attached Schedule of Parties)  
Plaintiffs

PLANTATION LAND LIMITED  
ACN 090 443 333

Defendant

**AFFIDAVIT**

On 3 July 2009, I, **ALAN DAVID FISHER** of 4 Parkview Road, Brighton East, company director,  
make oath and say as follows:

1. I am an independent director on the Board of Directors of Plantation Land Limited (PLL).
2. I make this affidavit from my own knowledge unless stated otherwise.
3. There have been two other directors namely Mr Robert James Hance and Mr Sol Charles Rabinowicz. Both Mr Hance and Mr Rabinowicz are persons who have been previously associated with Timbercorp Limited and the Timbercorp Group of Companies. The Board of Directors is expected to resolve shortly that two new directors, Mr Peter Keating and Mr Dan Payne (who are persons not associated with Timbercorp) will be appointed as directors to PLL.

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Filed on behalf of: Defendant  
Prepared by:  
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Attention: Philip Jones





4. PLL owns large parcels of land in Western Victoria and the eastern part of South Australia in the area known as the 'Green Triangle'. Now produced and shown to me and marked with the letters "AF-1" is a list of these properties.
5. PLL has entered into 5 leases with Timbercorp Limited and 2 leases with Timbercorp Securities Limited for various parcels of land owned by PLL. Now produced and shown to me and marked with the letters "AF-2" are copies of a schedule of leases, a report on rentals and copies of the leases to each of Timbercorp Limited and Timbercorp Securities Limited.
6. Under all of the leases a rental payment became due and payable on 30 June 2009. The rental has not been paid.
7. Pursuant to the leases, one month after PLL issues a notice notifying of the failure to pay the rental, a notice of termination can be issued terminating the leases. Notices notifying of the failure to pay the rental are currently being prepared. Now produced and shown to me and marked "AF-3" are copies of draft notices which will be issued shortly. I have instructed the lawyers of PLL to prepare notices of termination, and to deliver those notices upon the expiration of one month after the notices notifying of the failure have been sent. I expect that the leases will be formally terminated in early August 2009.
8. PLL is a land holding entity and does not conduct any other business. In addition to holding land PLL holds certain water rights as evidenced by the Water Licence No. 12856 from the Government of South Australia in relation to the property known as Circelli. Now produced and shown to me and marked with the letters "AF-4" is a copy of that Water Licence.



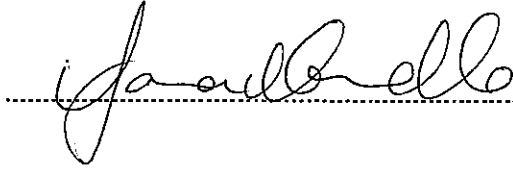
9. PLL had entered into contracts of sale with Timbercorp Limited for the sale of all but 5 allotments of land (4 of which were sold to third parties). Timbercorp Limited was due to make payment of the balance of a total purchase price of approximately \$38 million on 31 March 2009. Timbercorp Limited was placed into administration on 23 April 2009 and did not make payment of the balance of the purchase moneys on 31 March 2009. Notices of rescission were issued in relation to the contracts of sale. The contracts of sale have been terminated.
10. PLL has issued Unsecured Notes to a value of approximately \$24 million to Note Holders. Under the Trust Deed in relation to the Note Holders the capital was to be repaid on 30 June 2009 (**Capital Payment Date**). Due to the failure of Timbercorp Limited to make payment of the purchase price of the properties under the contracts of sale on 31 March 2009, PLL was not in a position to repay the Note Holders in accordance with the trust deed.
11. On 29 June 2009 at a duly convened meeting of Note Holders the Note Holders authorised the Trustee and PLL to enter into a Supplemental Deed to amend the trust deed by changing the Capital Payment Date from 30 June 2009 until 31 December 2010.
12. The purpose of seeking an extension of the Capital Payment Date was to enable PLL to:
- (a) terminate the leases (assuming the non-payment of rental on 30 June 2009 as proved to be the case);
  - (b) the consequent termination of any subleases or sub-licences to Timbercorp Limited, Timbercorp Securities Limited and ultimately to the borrowers/investors;

- (c) obtaining advice and if necessary seeking declarations to clarify the rights of the borrowers/investors in relation to the trees located on the PLL land;
  - (d) to explore the possibility of making an accommodation with the borrowers/investors to join with PLL in the sale of the land and the trees (with an appropriate and equitable apportionment of the sale price as between PLL and the borrowers/investors);
  - (e) to arrange for a valuation of the land owned by PLL; and
  - (f) to proceed with an orderly sale of the land to enable repayment to the Note Holders (and hopefully a return to the Shareholders of PLL).
13. I do not believe that it is in the best interests of PLL, its note holders and shareholders that the application by the liquidator be granted. If the application by the liquidator were granted this may interfere with the plans of the directors of PLL in relation to the land and may unfairly see the liquidator take advantage of the Water Licence without making payment for same. If the liquidator continues to claim some rights to deal with the land (notwithstanding non-payment of the rental) then the liquidator should either:
- (a) make payment of rental to PLL as the land holder;
  - (b) make payment of a per diem expense in relation to the use or occupancy of the land; or
  - (c) disclaim the land leaving PLL to deal appropriately with its asset.



**SWORN** at Melbourne  
this 3<sup>rd</sup> day of July, 2009

Before me:



TANIA MANNELLO  
140 William St Melbourne 3000  
An Australian Legal Practitioner  
within the meaning of the  
Legal Profession Act 2004.

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