

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

r8.05

LIST E

No of 2009

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

TIMBERCORP SECURITIES LIMITED  
(UNDER ADMINISTRATION) ACN 092 311 469  
IN ITS CAPACITY AS RESPONSIBLE ENTITY OF EACH OF THE  
MANAGED INVESTMENT SCHEMES LISTED IN SCHEDULE 1  
First Plaintiff

MARK ANTHONY KORDA and LEANNE KYLE CHESSER  
Second and Third Plaintiffs

FIRST AFFIDAVIT OF DAVID SYDNEY BUTTERFIELD

Date of document:  
Filed on behalf of:  
Prepared by:  
Clarendon Lawyers  
Level 17, Rialto North Tower  
525 Collins Street  
MELBOURNE VIC 3000

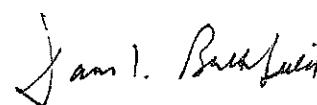
9 June 2009  
Chris Garnaut

Tel: 03 8681 4400  
Fax: 03 8681 4499  
Solicitors Code: 101294  
Ref: MJF:0900205

I, DAVID SYDNEY BUTTERFIELD of Level 2, 428 Little Bourke Street, Melbourne, make oath as say that:

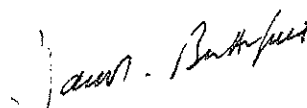
1. I make this affidavit on my own behalf and except where I otherwise indicate, the matters deposed to in this affidavit are deposed to from my own personal knowledge of the facts.
2. Where I propose to matters from information and belief, I believe such matters to be true.
3. I or entities controlled by me are investors in 11 Timbercorp managed investment schemes as follows:

2008	FinYr (2007/2008) SP Timberlot - Post-30 June	3	\$9,240.00
2008	Olive Early	2	\$11,400.00
2007	(2007/2008) SP Timberlot - Pre-30 June	7	\$21,560.00
2007	Almond Early	4	\$28,000.00
2006	(2005 Post June) SP Timberlot Project	6	\$18,480.00
2004	SP Timberlot - Pre Payment	3	\$9,240.00
2002	Almond - PO	5	\$30,250.00
2002	Olive	3	\$18,810.00



2000	Eucalypts	3	\$10,500.00
1999	Eucalypts	14	\$52,500.00
1998	Eucalypts	5	\$18,750.00
1996	Eucalypts (income now received)	3	\$10,650.00
	<b>Total Investments</b>	<b>58</b>	<b>\$239,380.00</b>

4. In total I have invested \$239,380 plus a substantial amount in annual rent, maintenance and operating costs.
5. I am a chartered accountant aged 57. I sold my practice in 1999. Since then I have been consulting and acting as responsible manager to a couple of companies with Australian Financial Services Licences. I am currently a responsible manager for Match Funds Management Ltd which holds a responsible entity licence and CBS Funds Management Limited which holds an Australian Financial Services Licence to issue and manage wholesale managed investment schemes.
6. I planned my investments in Timbercorp as part of my overall retirement plan. The deferred payments under the forestry schemes which I anticipate receiving from this year onwards, other than the 1996 forestry income which I have already received, and the cash flow from the almond and olive schemes form a substantial part of my income expectations over the next 20 years.
7. The 2002 almond scheme has been almost cash flow positive for me for the last three years and I would have expected it to be cash flow positive from here on. I cannot understand how this scheme could suddenly become unviable when it has been almost cash flow positive. My understanding is that the almond trees are now mature and should continue to bear more almonds. The only explanation for saying that the schemes are insolvent is if investors don't pay their annual contributions because the Timbercorp Group is in administration. The notification from the administrators that they did not intend to send out invoices for the annual operating costs of the almond and olive schemes seems to me to be incomprehensible.
8. I have recently received a number of invoices from Timbercorp Securities Limited. Now produced and marked with the letters "DSB-1" are copies of the invoices.
9. I do not know whether to pay these invoices. I have not received sufficient information from the administrators to enable me to make an informed decision whether or not to pay. I do not wish to pay if I am going to lose my investments.
10. Now produced and marked with the letters "DSB-2" is the copy of a letter which I believe was sent to the administrators by one of the investors who had received an invoice for the 1999 eucalyptus scheme. So far as I am aware, no response has been provided by the administrators to the questions raised in that letter.

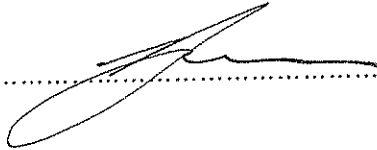



11. From my point of view, it is essential that I receive independent advice on my rights and obligations and on what is the best course of action for me.

SWORN by the said DAVID SYDNEY BUTTERFIELD )  
 at Melbourne in the State of Victoria )  
 this 10<sup>th</sup> day of June 2009 )

*David Butterfield*

Before me:.....



**MICHAEL JOSEPH FERNON**  
 of Clarendon Lawyers Pty Ltd  
 Level 17, Rialto North Tower  
 525 Collins St, Melbourne Victoria 3000  
 an Australian Legal Practitioner within the  
 meaning of the Legal Profession Act 2004

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE  
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LIST E

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First Plaintiff

MARK ANTHONY KORDA and LEANNE KYLE CHESSER  
Second and Third Plaintiffs

CERTIFICATE IDENTIFYING EXHIBIT

Date of document:  
Filed on behalf of:  
Prepared by:  
Clarendon Lawyers  
Level 17, Rialto North Tower  
525 Collins Street  
MELBOURNE VIC 3000

9 June 2009  
Chris Garnaut

Tel: 03 8681 4400  
Fax: 03 8681 4499  
Solicitors Code: 101294  
Ref: MJF:0900205

This is the exhibit marked "DSB-1" now produced and shown to DAVID SYDNEY BUTTERFIELD at  
the time of swearing his affidavit on

Before me:.....

**MICHAEL JOSEPH FERNON**  
of Clarendon Lawyers Pty Ltd  
Level 17, Rialto North Tower  
525 Collins St, Melbourne Victoria 3000  
an Australian Legal Practitioner within the  
meaning of the Legal Profession Act 2004



**TIMBERCORP**  
AGRIBUSINESS  
INVESTMENT MANAGERS  
(Administrators Appointed)

(Administrators Appointed)  
Timbercorp Securities Limited  
ABN 12 092 311 469  
AFSL 235653

Head Office  
Level 8, 461 Bourke Street  
Melbourne, Victoria 3000  
Tel (03) 8615 1200  
Fax (03) 9670 4271  
Email melb@timbercorp.com.au  
Website www.timbercorp.com.au

All correspondence to  
PO Box 186  
Collins Street West  
Melbourne, Victoria 8007



030/15

Mr DS Butterfield  
PO BOX 263  
IVANHOE VIC 3079

Investment Name: David Sydney Butterfield

## Tax Invoice

Retain for your Tax Return

Tax Invoice Reference

002576841

Issue Date

18 May 2009

Project	No. Lots	Amount	GST	Total
1999 Timbercorp Eucalypts Project	9	\$3,810.15	\$381.03	\$4,191.18

Amount Due

\$4,191.18

Pay By

31 May 2009

For further information refer to Tax Invoice Details overleaf

## Payment Slip

Detach and return this Slip  
with your payment

Investment Name: David Sydney Butterfield

### Payment Methods:

#### 1. Bpay

Use Internet or phone banking to make this payment from your cheque, savings, Visa, MasterCard or Bankcard account.



Biller Code: 58958  
Ref: 002576841

#### 2. Cheque

Please make cheque payable to "Timbercorp Securities Limited (Administrators Appointed)".

Timbercorp Securities Limited  
(Administrators Appointed)  
PO Box 186  
Collins Street West  
MELBOURNE VIC 8007



**TIMBERCORP**  
AGRIBUSINESS  
INVESTMENT MANAGERS  
(Administrators Appointed)

Tax Invoice Ref

002576841

Amount Due

\$4,191.18

Pay By

31 May 2009



**TIMBERCORP**  
AGRIBUSINESS  
INVESTMENT MANAGERS  
(Administrators Appointed)

For contact details  
refer to Tax Invoice

Investment Name: David Sydney Butterfield

Page 2 of 2

## Tax Invoice Details

Tax Invoice Reference

Issue Date

Pay By

002576841

18 May 2009

31 May 2009

Category	No. Lots	Per Lot	Amount	GST	Total
1999 Timbercorp Eucalypts Project					
2009 Forest Maintenance	3	\$100.80	\$302.40	\$30.24	\$332.64
2009 Forest Maintenance	3	\$100.80	\$302.40	\$30.24	\$332.64
2009 Forest Maintenance	3	\$100.80	\$302.40	\$30.24	\$332.64
2009 Forest Maintenance	3	\$322.55	\$967.65	\$96.77	\$1,064.42
2009 Land Rental	3	\$322.55	\$967.65	\$96.77	\$1,064.42
2009 Land Rental	3	\$322.55	\$967.65	\$96.77	\$1,064.42
2009 Land Rental					<u>\$4,191.18</u>

Total Number of Lots: 9

Invoice Total: \$4,191.18

## Change of Details

Address

Post Code

Postal Address

Post Code

Tel (H)

Tel (W)

Fax

Mobile

Email

Signature(s)



**TIMBERCORP**  
AGRI-BUSINESS  
INVESTMENT MANAGERS  
(Administrators Appointed)

(Administrators Appointed)  
Timbercorp Securities Limited  
ABN 12 092 311 469  
AFSL 235653

Head Office  
Level 8, 461 Bourke Street  
Melbourne, Victoria 3000  
Tel (03) 8615 1200  
Fax (03) 9670 4271  
Email melb@timbercorp.com.au  
Website www.timbercorp.com.au

All correspondence to  
PO Box 186  
Collins Street West  
Melbourne, Victoria 8007



030/193

Mr DS Butterfield  
PO BOX 263  
IVANHOE VIC 3079

Investment Name: David Sydney Butterfield

## Tax Invoice

Retain for your Tax Return

Tax Invoice Reference

Issue Date

002563658

18 May 2009

Project	No. Lots	Amount	GST	Total
1998 Timbercorp Eucalypts Project	5	\$1,371.60	\$137.17	\$1,508.77

Amount Due

\$1,508.77

Pay By

31 May 2009

For further information refer to Tax Invoice Details overleaf

## Payment Slip

Detach and return this Slip  
with your payment

Investment Name: David Sydney Butterfield

### Payment Methods:

#### 1. Bpay

Use Internet or phone banking to make this payment from your cheque, savings, Visa, MasterCard or Bankcard account.



Biller Code: 58958  
Ref: 002563658

#### 2. Cheque

Please make cheque payable to "Timbercorp Securities Limited (Administrators Appointed)".

Timbercorp Securities Limited  
(Administrators Appointed)  
PO Box 186  
Collins Street West  
MELBOURNE VIC 8007



**TIMBERCORP**  
AGRI-BUSINESS  
INVESTMENT MANAGERS  
(Administrators Appointed)

Tax Invoice Ref

002563658

Amount Due

\$1,508.77

Pay By

31 May 2009

Investment Name: David Sydney Butterfield

Page 2 of 2

## Tax Invoice Details

Tax Invoice Reference

Issue Date

Pay By

002563658

18 May 2009

31 May 2009

Category	No. Lots	Per Lot	Amount	GST	Total
1998 Timbercorp Eucalypts Project	5	\$105.51	\$527.55	\$52.76	\$580.31
2009 Forest Maintenance WA	5	\$168.81	\$844.05	\$84.41	\$928.46
2009 Land Rental WA					<u>\$1,508.77</u>

\* 1998 Plantings. Costs have been reduced proportionate to the lots which have been harvested.

Total Number of Lots: 5

Invoice Total: **\$1,508.77**

## Change of Details

Address

Post Code

Postal Address

Post Code

Tel (H)

Tel (W)

Fax

Mobile

Email

Signature(s)





**TIMBERCORP**  
AGRIBUSINESS  
INVESTMENT MANAGERS  
(Administrators Appointed)

(Administrators Appointed)  
Timbercorp Securities Limited  
ABN 12 092 311 469  
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Level 8, 461 Bourke Street  
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Tel (03) 8615 1200  
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Email [mejb@timbercorp.com.au](mailto:mejb@timbercorp.com.au)  
Website [www.timbercorp.com.au](http://www.timbercorp.com.au)

All correspondence to  
PO Box 186  
Collins Street West  
Melbourne, Victoria 8007



030/13

Botany Glen Pty Ltd ATF DS Butterfield Family Trust  
C/- Mr DS Butterfield  
PO BOX 263  
IVANHOE VIC 3079

Investment Name: Botany Glen Pty Ltd ATF DS Butterfield Family Trust

## Tax Invoice

Retain for your Tax Return

Tax Invoice Reference

002572139

Issue Date

18 May 2009

Project	No. Lots	Amount	GST	Total
1999 Timbercorp Eucalypts Project	5	\$2,116.75	\$211.68	\$2,328.43

Amount Due **\$2,328.43**

Pay By **31 May 2009**

For further information refer to Tax Invoice Details overleaf

## Payment Slip

Detach and return this Slip  
with your payment

Investment Name: Botany Glen Pty Ltd ATF DS Butterfield Family Trust

### Payment Methods:

#### 1. Bpay

Use Internet or phone banking to make this payment from your cheque, savings, Visa, MasterCard or Bankcard account.



Bill Code: 58958  
Ref: 002572139

#### 2. Cheque

Please make cheque payable to "Timbercorp Securities Limited (Administrators Appointed)".

Timbercorp Securities Limited  
(Administrators Appointed)  
PO Box 186  
Collins Street West  
MELBOURNE VIC 8007



**TIMBERCORP**  
AGRIBUSINESS  
INVESTMENT MANAGERS  
(Administrators Appointed)

Tax Invoice Ref **002572139**

Amount Due **\$2,328.43**

Pay By **31 May 2009**



**TIMBERCORP**  
AGRI-BUSINESS  
INVESTMENT MANAGERS  
(Administrators Appointed)

For contact details  
refer to Tax Invoice

Investment Name: Botany Glen Pty Ltd ATF DS Butterfield Family Trust

Page 2 of 2

## Tax Invoice Details

Tax Invoice Reference

Issue Date

Pay By

002572139

18 May 2009

31 May 2009

Category	No. Lots	Per Lot	Amount	GST	Total
1999 Timbercorp Eucalypts Project	5	\$100.80	\$504.00	\$50.40	\$554.40
2009 Forest Maintenance	5	\$322.55	\$1,612.75	\$161.28	\$1,774.03
2009 Land Rental					<u>\$2,328.43</u>

Total Number of Lots: 5

Invoice Total: **\$2,328.43**

## Change of Details

Address

Post Code

Postal Address

Post Code

Tel (H)

Tel (W)

Fax

Mobile

Email

Signature(s)

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First Plaintiff

MARK ANTHONY KORDA and LEANNE KYLE CHESSER  
Second and Third Plaintiffs

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Prepared by:  
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Level 17, Rialto North Tower  
525 Collins Street  
MELBOURNE VIC 3000

9 June 2009  
Chris Garnaut

Tel: 03 8681 4400  
Fax: 03 8681 4499  
Solicitors Code: 101294  
Ref: MJF:0900205

This is the exhibit marked "DSB-2" now produced and shown to DAVID SYDNEY BUTTERFIELD at  
the time of swearing his affidavit on

Before me:.....

**MICHAEL JOSEPH FERNON**  
of Clarendon Lawyers Pty Ltd  
Level 17, Rialto North Tower  
525 Collins St, Melbourne Victoria 3000  
an Australian Legal Practitioner within the  
meaning of the *Legal Profession Act 2004*

27 May 2009

The Administrator  
Timbercorp Securities Ltd  
Administrators Appointed  
Level 8  
461 Bourke Street  
MELBOURNE VIC 3000

Dear Sir

**1999 Timbercorp Eucalyptus Project**

I am in receipt of your invoice dated 18 May 2009 for 2009 Forest Maintenance and land rental

The invoice is due for payment by 31 May 2009. Under normal circumstances I would pay this invoice, however, since the manager Timbercorp Securities Ltd is under administration, prior to paying this invoice, I would like answers to a number of questions in helping me determine whether it would be prudent to pay this invoice.

My questions are as follows :

1. Where will the proceeds of the invoices be banked?  
Will there be a separate bank account for 1999 Timbercorp Eucalyptus Project payments or will it be banked into a general account?
2. Will the proceeds only be used by the administrator for costs associated with the project?
3. What happens if a number of growers are unable to or refuse to pay their fees? Can this or does this jeopardise the viability of the project?
4. Is it possible to bank grower payments into a trust account until the viability of the project is determined?
5. If it is determined that the project is not viable, will the growers who have paid their 2009 fees be refunded their fees?
6. Under the original PDS, the project was due to be completed by 30 June 2010, ie the wood harvested, sold and proceeds paid to growers. Is this still on schedule, if not can you please advise an estimate of the time frame for harvest and sale?
7. Under the original PDS, the gross proceeds from wood sales was \$22,840 per woodlot harvest, haulage and supervision costs of \$9,180 per woodlot leaving the grower with a

net return of \$13,660 per woodlot. Is this estimate still accurate, if not what may we expect as a net return per woodlot?

8. Under the original PDS, the current invoice now received was to be final payment by growers. Is this still the case or will there be further charges? If so, how much?
9. As a project was to be finalised by 30 June 2010, was the lease on the land scheduled to end on 30 June 2010. If the project cannot be finalised by 30 June 2010, can the lease :
  - a. Be extended for the duration required?
  - b. How much will the extension be per annum per woodlot?
  - c. Who is to pay for the extensions?
10. Under the PDS the final year maintenance fees were to be deducted from the sales proceeds. Is this still the intention and if the sale process is delayed, will the maintenance fees be delayed or due and payable in May 2010?

As you can see there are a number of questions that need to be answered before I can make an informed decision in respect of paying the fees just invoiced.

As set out above, I do not refuse to pay these fees, however under the circumstances of the manager being under administration and the uncertainty this represents, I strongly believe that it is just and reasonable for you providing me with answers to the above questions before expecting payment.

Under no circumstances do I consider myself a defaulting grower by not paying the fees invoiced until I receive answers to the above questions.

Yours faithfully