

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

LIST B
No. 8870 of 2009

BETWEEN

TIMBERCORP LIMITED (IN LIQUIDATION)
ACN 055 185 067

First Plaintiff

and

TIMBERCORP SECURITIES LIMITED (IN LIQUIDATION)
ACN 092 311 469

Second Plaintiff

and

PLANTATION LAND LIMITED ACN 090 443 333

Defendant

AFFIDAVIT OF JONATHAN AMBLER

Date of document: 12 October 2009

Filed on behalf of: the defendant

Prepared by:

Maddocks

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Attention: Marelda Hibberd

E-mail Address: marelda.hibberd@maddocks.com.au

I, Jonathan Ambler, of Level 6 140 William Street, Melbourne in the State of Victoria, solicitor, make oath and say as follows:

1. I am a partner of Maddocks, the lawyers acting on behalf of Plantation Land Limited (**PLL**), the defendant in this proceeding and I am duly authorised to make this affidavit on behalf of the defendant.
2. I make this affidavit from my own knowledge unless stated otherwise.
3. I refer to the affidavit of Bryan Webster, sworn on 9 October 2009 and filed in this proceeding (**Mr Webster's Affidavit**).

4. As to paragraph 18 of Mr Webster's Affidavit I say that I agree that I said that I thought Mr Webster would be surprised when he received the Termination Notices because I was aware that Mr Fisher had not any conversations with Mr Webster or any representative of Timbercorp Limited (**Timbercorp**) or Timbercorp Securities Limited (**TSL**) during the week or so leading up to the date on which the Termination Notices were issued.
5. As to paragraph 19 of Mr Webster's Affidavit, I recall asking Mr Webster why KordaMentha proposed to post the termination notices on the website, rather than simply advise growers that PLL had terminated the leases. Mr Webster said to me words to the effect of "...the growers should know who is responsible for issuing termination notices..." and "...Mr Fisher should expect to receive calls from the growers once they read the notices...". I told Mr Webster that PLL's directors' duties were to the PLL shareholders, and not to the growers, although the growers' rights, if any, would need to be clarified.
5. As to paragraph 20 of Mr Webster's Affidavit, I say that I advised Mr Webster during my telephone conversation with him on 2 September 2009 that the PLL Board had decided that it was not in the interests of PLL's shareholders and noteholders to proceed down the Timbercorp sale path because the sale process assumed the growers had rights to the plantation trees, which was essentially the very issue that was in question and that needed to be resolved. I explained to Mr Webster that PLL was not seeking a windfall gain, but did consider that Timbercorp or the growers would need to prove their rights. I recall saying words to the effect of "...it would be misleading to sign the proposed standstill agreement as the proposed standstill was only intended to continue until 4 September 2009, being another 2 days, and that PLL's position was such that, if it signed the

standstill agreement, it would nonetheless reissue the termination notices after the standstill period". I also stated to Mr Webster that PLL's position was very clear, namely that, under the terms of the leases, PLL owned the trees on termination of the leases for failure to pay rent and that, if the liquidator or the growers wanted to challenge that position, by claiming relief from forfeiture, for instance, they were free to do so.

6. I did not keep file notes of my conversations with Mr Webster referred to above but did report on each of the phone calls to Alan Fisher by email or at a subsequent meeting which was minuted. I object to producing my email correspondence with Mr Fisher and minutes about the telephone calls with Mr Webster on the grounds of legal professional privilege.

SWORN at Melbourne in the state of
Victoria on 12 October 2009

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) *Jonathan Fumble*
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Before me:

M. Hibberd
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MARELDA CLEMENT HIBBERD
140 William St Melbourne 3000
An Australian Legal Practitioner
within the meaning of the
Legal Profession Act 2004.