

**IN THE FEDERAL COURT OF AUSTRALIA
VICTORIA DISTRICT REGISTRY
GENERAL DIVISION**

No. VID 595 of 2009

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

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

Plaintiffs

AFFIDAVIT OF MARK FRANCIS XAVIER MENTHA

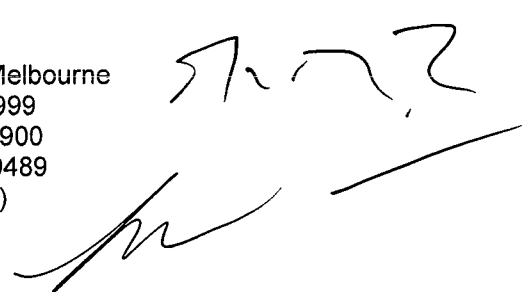
On 17 August 2009, I, **MARK FRANCIS XAVIER MENTHA**, of Level 24, 333 Collins Street, Melbourne, in the State of Victoria, Chartered Accountant, SAY ON OATH that:

- 1 I am a chartered accountant and a partner of the firm KordaMentha. I am a Registered Liquidator and an Official Liquidator of the Court. I am a member of the Insolvency Practitioners Association of Australia and a member of the Institute of Chartered Accountants. I have been practising in the area of corporate insolvency and financial reconstructions for approximately 29 years.
- 2 Except where I otherwise indicate, I make this affidavit from my own knowledge. Where I depose to matters from information or belief, I believe those matters to be true. I am authorised by Ms Chesser and Mr Korda to make this affidavit on their behalf.
- 3 I refer to the affidavit of Owen Stuart Lennie made on 17 August 2009 sworn on behalf of unknown and unnamed "Growers". In that affidavit, Mr Lennie makes statements about an "agreement" he says was reached between us. I disagree with some of those statements. This affidavit only addresses the matters with which I disagree that are relevant to the present application.
- 4 At paragraph 6(e) of his affidavit he deposes that I had agreed with him that when KordaMentha receives bids from proposed purchasers in accordance with the Information

Filed on behalf of the Plaintiffs

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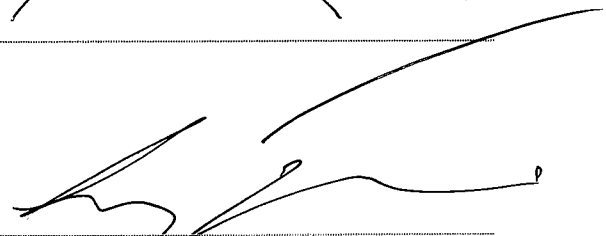
Memorandum process (as outlined in Mr Korda's affidavit of 13 August 2009), KordaMentha would meet with Mr Lennie "and we would establish that the proposal selected by KordaMentha was a satisfactory proposal for the growers or could be made satisfactory ...".

- 5 No such agreement was ever reached between myself and Mr Lennie. All bids received by the liquidators of the First Plaintiff are confidential. The liquidators alone will decide which proposals to accept or reject. Moreover I am advised by my legal advisers that any agreement of the kind suggested by Mr Lennie could amount to an improper fetter upon a liquidator's powers.
- 6 At paragraph 6(f) of Mr Lennie's affidavit, he deposes that the offer selected by the liquidators of the First Plaintiff "would be the subject of an application to the Court for approval and the TGG would be funded from the Scheme assets to appear and be represented at Court."
- 7 No agreement of this nature was ever reached between myself and Mr Lennie. Moreover such an arrangement is commercially untenable. If potential purchasers believe that the sale/recapitalisation process requires further court processes then it may cause them not to make a bid for the assets. Obviously, the liquidators of the First Plaintiff are subject at all times to the supervision of the Court. And, if any issue arises in the future in respect of which the liquidators are advised to make an application to the Court, then they will do so. However, neither I, nor Mr Korda or Ms Chesser have yet decided that any offer ultimately selected in accordance with the Information Memorandum process will be the subject of an application for Court approval.
- 8 I also note that at the Forestry Growers' Meeting held on 17 August 2009 (the transcript is exhibit MAK-5 to Mr Korda's affidavit of 13 August 2009), Mr Korda outlined (at page 55) that the liquidators would only go to Court if there was a controversial issue which they could not resolve. Mr Lennie was present at that meeting.

SWORN at Melbourne in the State of
Victoria this 17th day of August 2009

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Before me:



LUCY HANNAH KIRWAN
Arnold Bloch Leibler
Level 21, 333 Collins Street
Melbourne 3000
An Australian Legal Practitioner within the
meaning of the Legal Profession Act 2004

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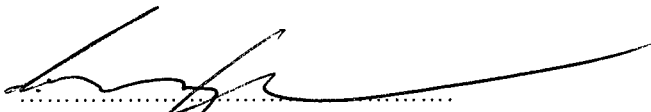
Plaintiffs

AFFIDAVIT - CERTIFICATE OF COMPLIANCE

(Order 14, rule 5A)

I, LUCY HANNAH KIRWAN, certify to the Court that the affidavit of **MARK FRANCIS XAVIER MENTHA** sworn on 17 August 2009 filed on behalf of the Plaintiffs complies with Order 14, rule 2 of the Federal Court Rules.

Date: 17 August 2009



LUCY HANNAH KIRWAN

A solicitor of Arnold Bloch Leibler
Solicitor for the Plaintiffs

Filed on behalf of the Plaintiffs

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