

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

Nos 8870 and 9510 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 HAMILTON PRYN

Date of document: 20 October 2009
Filed on behalf of: the Plaintiffs

Prepared by:
ARNOLD BLOCH LEIBLER
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(Leon Zwier - lzwier@abl.com.au)

I, **MARK HAMILTON PRYN** of Level 8, 461 Bourke Street, Melbourne, in the State of Victoria,
Chartered Accountant, **SAY ON OATH** that:

- 1 I am an employee of the First Plaintiff (**Timbercorp**) and a former company secretary of each of Timbercorp and the Second Plaintiff (**TSL**). From 28 November 2001 to 3 September 2009 I was also the company secretary of the Defendant (**PLL**).
- 2 I have read the defence and the affidavit of Alan Fisher (**Mr Fisher**) dated 13 October 2009 filed by PLL in this proceeding.



- 3 I refer to paragraph 17 of Mr Fisher's affidavit. I attended PLL board meetings solely in my capacity as the company secretary of PLL. I did not attend these meetings as a representative of Timbercorp or TSL. During my time as company secretary of PLL, I did not speak to Timbercorp or TSL about the matters discussed at the PLL board meeting on 14 August 2009.
- 4 The PLL board meeting on 14 August 2009 was the last one which I attended. During that meeting, I recorded by hand, on a copy of the meeting agenda, notes to assist with the subsequent drafting of the minutes, which included notes to the effect that the PLL board resolved "in principle" to terminate the Timbercorp leases and to procure QC advice in relation to the standing timber rights. To the best of my knowledge, my handwritten notes no longer exist, as it was my practice to dispose of draft notes after I prepared the minutes of each board meeting. I drafted the minutes of the 14 August 2009 board meeting, which contained a record of the resolution of the PLL board "in principle" to terminate the Timbercorp leases and to procure QC advice in relation to the standing timber rights. I sent the draft minutes to Mr Fisher by email on, or about, 24 August 2009.
- 5 On or about 17 August 2009, I sent an email to Mr Fisher and Philip Jones of Maddocks (PLL's solicitors), in which I recommended that PLL speak with the liquidators of Timbercorp and TSL before terminating the leases.
- 6 On 19 August 2009 I had a telephone conversation with Mr Fisher (to which he refers in paragraph 18 of his affidavit). During the conversation, which took less than 2 minutes, I said to Mr Fisher words to the effect that PLL should speak to the liquidators prior to terminating the leases. Mr Fisher said words to the effect of those stated in paragraph 18 of Mr Fisher's affidavit. My understanding from this conversation, and in light of my email to Mr Fisher and Mr Jones on 17 August 2009, was that PLL would obtain legal advice, and then speak to the liquidators prior to terminating the leases.
- 7 On 24 August 2009, I received a phone call from Jonathan Ambler of Maddocks. He asked me for a copy of PLL's letterhead for the termination notices. I asked Mr Ambler whether PLL had spoken with the liquidators. Mr Ambler said words to the effect that I should speak with Mr Fisher regarding communications with the liquidators. At approximately 2:50pm that day, I sent an email to Mr Fisher on an administrative matter but I also enquired as to how discussions with the liquidators


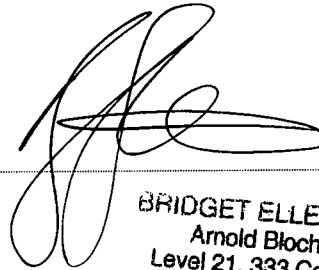
were progressing. Later that afternoon, I received a phone call from Bryan Webster of KordaMentha who told me that he had received termination notices from PLL in relation to the PLL leases. I asked Mr Webster whether Mr Fisher had discussed the termination of the leases with him, and Mr Webster said that PLL had not spoken to him. Immediately after my conversation with Mr Webster, I called Mr Fisher on his mobile phone. Mr Fisher did not answer. I left a message on his voicemail. I said that PLL's issuing of the termination notices without first speaking to the liquidators was contrary to my understanding of how things were going to happen. I said that PLL's actions would make it difficult for me to continue to act as company secretary. I sent Mr Fisher an email shortly after I left this phone message.

8 Mr Fisher responded to my phone call by email dated 24 August 2009. He acknowledged receipt of my phone call and email and stated that, based on legal advice PLL had received, it was not possible for him to have spoken to the liquidators prior to terminating the PLL leases. Mr Fisher replied to my email of 24 August 2009 on, or about, 31 August 2009, in which he said that he had made some amendments to the board minutes and asked me to circulate them. I circulated the amended board minutes by an email on or around 31 August 2009. In the covering email I stated that the minutes included Chairman Alan's (Mr Fisher's) comments. I believe that the redacted board minutes which are Exhibit "ADF-3" to Mr Fisher's affidavit are the amended board minutes I circulated following the board meeting.

9 On 2 September 2009, Mr Fisher sent an email to Arianne Rose (Corporate Solicitor –Timbercorp and PLL) and me stating that PLL's board of directors had agreed, in view of the sensitivities of the issues we are dealing with, that it was prudent that we move these roles (Secretarial, Legal, Finance and Administration) as soon as possible. Later that day I tendered my letter of resignation as company secretary with effect from the close of business 3 September 2009. Now produced and shown to me and marked "MP-1" is a copy of my resignation letter.

SWORN at Melbourne in the State of)
Victoria by **MARK HAMILTON PRYN** this)
20th day of October 2009)

Before me:



BRIDGET ELLEN SLOCUM
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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PLANTATION LAND LIMITED
ACN 090 443 333

Defendant

CERTIFICATE IDENTIFYING EXHIBIT

Date of document: 20 October 2009
Filed on behalf of: the Plaintiffs

Prepared by:
ARNOLD BLOCH LEIBLER
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DX 38455 Melbourne
Tel: 9229 9999
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Ref: 01-1499489
(Leon Zwier - lzwier@abl.com.au)

This is the exhibit marked "**MP-1**" now produced and shown to **Mark Hamilton Pryn** at the time of swearing his affidavit on 20 October 2009.

Before me: 

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

Exhibit "MP-1"

Letter of Resignation dated 2 September 2009

Directors
Plantation Land Limited
C/- Level 6
90 William Street
MELBOURNE 3000
2nd September 2009

Dear Sirs,

I hereby tender my resignation as company secretary of Plantation Land Limited, with effect from the close of business 3 September 2009.

As previously noted, the secretarial role is in conflict with my on-going employment arrangements and I believe that in the circumstances, it is appropriate for me to resign.

I will endeavour to ensure that there is a smooth transition of duties and I will continue to provide support services as required, subject to any agreement with my employer.

I extend my best wishes to the Company and its Board in relation to achieving positive and fair outcomes for its stakeholders.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Mark Pryn', with a stylized, sweeping stroke.

Mark Pryn
10 Deane Street
Blackburn VICTORIA 3130