

IN THE FEDERAL COURT OF AUSTRALIA
VICTORIA DISTRICT REGISTRY
GENERAL DIVISION

No. VID 541 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

Plaintiffs

WA CHIP & PULP CO. PTY LTD
and OTHERS
ACN 008 720 518

Defendants

AFFIDAVIT OF OWEN STUART LENNIE

Date of document:	August 2009
Filed on behalf of:	Growers
Prepared by:	
Clarendon Lawyers	Tel: 03 8681 4400
Level 17, Rialto North Tower	Fax: 03 8681 4499
525 Collins Street	Solicitors Code: 101294
MELBOURNE VIC 3000	Ref: MJF:0900205

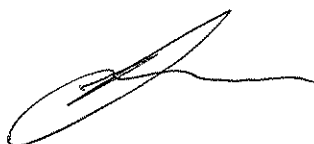
I, Owen Stuart Lennie, of 44 Tennyson Street, Elwood, Victoria, Financial Consultant, make oath and say that:

1. I am a financial consultant to the Timbercorp Growers Group (TGG).
2. I make this affidavit from my own personal knowledge of the facts, save where I state to the contrary.
3. I am a consultant and company director with more than 25 years experience in the property industry. I am a qualified accountant, town planner and fund manager. I am also an Associate Professor at the University of Melbourne and the Immediate Past President of Australian Direct Property Investment Association. Until December 2006 I was the managing director of property funds manager WRF Property Limited, where I created property funds and



syndicates with assets of over \$300m. I have advised the Government of Victoria as Chairman of the Planning Advisory Council, as Chairman of the Building advisory Council and as a director of the Urban Land Corporation. The TGG is a group representing growers in Timbercorp managed investment schemes (known as "**growers**"). It was comprised originally of the growers and financial advisers appointed to the Timbercorp Securities Limited (**TSL**) creditors committee. The TGG represented the growers in Victorian Supreme Court Proceedings instituted by the liquidators of TSL to wind up the Timbercorp Almond and Olive managed investment schemes (**MIS**).

4. On behalf of the TGG I spent many hours negotiating with Mr Mark Mentha on how the Timbercorp Forestry MIS (the **Schemes**) might be dealt with in the best interests of growers, by either being transferred to another MIS operator or to an outright purchaser of the scheme assets and the trees belonging to the growers.
5. There are at least two MIS operators who are interested in continuing the Schemes. These are Gunns Limited and a consortium known as TC Growers. Now produced and shown to me marked **OSL-1** is a copy of a letter dated 6 August 2009 from Gunns Limited to Mr Richard Forbes of KordaMentha expressing their interest in taking over the schemes. Now produced and shown to me marked **OSL-2** is a copy of a letter sent to Timbercorp growers from TC Growers indicating their interest.
6. The essence of the agreement which I came to on behalf of the TGG with Mr Mark Mentha was as follows:
 - (a) KordaMentha had issued an information memorandum inviting proposals from both MIS operators and outright buyers which requires respondents to put forward proposals including an allocation of their offers across:
 - (i) the trees in each of the Schemes
 - (ii) the land owned by the Timbercorp Limited group, which is subject to a mortgage to the Commonwealth Bank of Australia (**CBA**);
 - (iii) the leases of land from lessors who are not part of the Timbercorp Limited group; and
 - (iv) the share in the Albany port operations owned by the Timbercorp Limited Group;
 - (b) I was to be given a copy of this information memorandum, subject to my signing a confidentiality agreement;
 - (c) The information memorandum stated that the sale of the trees was dependent on Korda Mentha obtaining a power of sale, following meetings of the growers in the Schemes, and TGG would support the seeking of a power of sale.



- (d) The value of the trees would be established in two ways; –
- (i) Korda Mentha would produce a document containing time series of cash flows, with the underlying assumptions made available on the Korda Mentha website and the cash flows reviewed by an independent audit firm, which would be held by the chairman of the meeting of growers until the closing date for responses to the information memorandum, when the document would be made available to the TGG who could apply a discount rate to the cash flows to obtain the present value ; and
 - (ii) One of the respondents to the information memorandum, the T C Growers consortium would allow a small number of growers or advisers to have full access to the valuation process employed by the consortium in preparing its proposal and this knowledge could be used by the growers as a benchmark for all proposals;.
- (e) When all the proposals are in I would meet with KordaMentha and we would establish that the proposal selected by Korda Mentha was a satisfactory proposal for the growers or could be made satisfactory by a reallocation of the amounts within the proposal.
- (f) The selected proposal whether it be an outright sale, a continuation of the Schemes under a new MIS operator or a restructure of the Schemes, 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.
- (g) As further assurances Mr Mentha told me that
- (i) the allocation to the trees in the proposal that is accepted would not be available to repay the CBA or for other purposes;
 - (ii) respondents to the information memorandum had been told that Korda Mentha would welcome proposals that continued the operation of the Schemes and that this was not excluded by the terms of the information memorandum; and
 - (iii) there was no truth in the rumours circulating in the market that respondents to the information memorandum were being told by Korda Mentha, directly or indirectly, to weight the allocation in their proposals to the land component. at the expense of the trees, to ensure that the CBA was repaid in full (not just the debt secured by the mortgage mentioned above but also for other secured debt of the Timbercorp Limited Group) and there was excess funds for other purposes.
7. I attended the growers' meetings held on 7 August 2009 and presented to the growers on the above agreement. After the presentation the growers were asked to vote on a 'sale/recapitalisation' of the schemes.



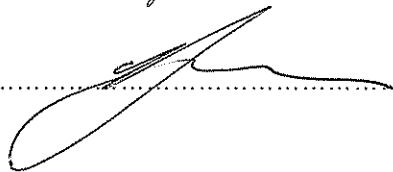
8. The vote was overwhelmingly in favour of the proposal for TSL to seek a power of sale. A resolution to the effect that TGG represent the growers in court proceedings to approve the selected proposal and be funded out of the property of the Schemes was passed without dissent.
9. I am informed by Mr Michael Fernon of Clarendon Lawyers and verily believe that in these proceedings in Court on 14 August 2009 Mr Justice Finkelstein indicated that TSL had no legal interest in the trees to sell and that a course of action for the liquidators to consider could be to:
- (a) assign the leases; and
 - (b) terminate the sub-leases.
10. This is fundamentally different from the agreement which I had with Mr Mentha and which was put to growers. There is no guarantee that the value of the trees, which under the agreement with Mr Mentha would be paid to the growers, would be reflected in any amount paid for the transfer of leases and that the amount paid for the transfer would be passed on to the growers on termination of the sub-leases.
11. As I understand, the sub-leases the growers continue to own the trees and their rights to come on the land to tend and otherwise deal with the trees continues after the termination of the sub-leases.
12. I am most concerned that the liquidators of TSL may not fulfil the agreement reached between me and Mr Mark Mentha, to the detriment of the growers.

SWORN by the Owen Stuart Lennie
at Melbourne in the State of Victoria
this 17th day of August 2009

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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

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CERTIFICATE IDENTIFYING EXHIBIT

Date of document:	August 2009
Filed on behalf of:	Growers
Prepared by:	
Clarendon Lawyers	Tel: 03 8681 4400
Level 17, Rialto North Tower	Fax: 03 8681 4499
525 Collins Street	Solicitors Code: 101294
MELBOURNE VIC 3000	Ref: MJF:0900205

This is the exhibit marked "OSL-1" now produced and shown to OWEN STUART LENNIE at the time of affirming his affidavit on August 2009.

Before me:.....

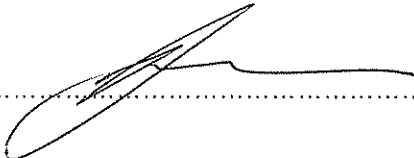

MICHAEL JOSEPH FERNON
of Clarendon Lawyers Pty Ltd
Level 17, Rialto North Tower
525 Collins St, Melbourne Victoria 3000
an Australian Legal Practitioner within the
meaning of the *Legal Profession Act 2004*

Exhibit "OSL-1"



6 August 2009

Mr Richard Forbes
Korda Mentha
333 Collins Street
Melbourne Vic 3000

Via email: rforbes@kordamentha.com

Dear Richard

**Invitation to acquire Timbercorp forestry assets
and acquire or recapitalise Timbercorp Growers Forestry assets**

Further to our previous correspondence and recent discussions, I am writing to confirm the interest of Gunns Limited ("Gunns"), in acquiring Timbercorp's forestry assets and in participating in a recapitalisation of Timbercorp's managed investment schemes.

We welcome the opportunity to participate in the process you have established.

Our preliminary investigations suggest there are reasonable prospects for a solution whereby our subsidiary Gunns Plantations Limited would undertake the role of Responsible Entity for the schemes. We recognise that the group would need to fund various obligations associated with the schemes. We have identified several possible means by which this may be done in a manner which would enable the group to earn a commercial return on the support which it would provide.

We would, of course, need to fully understand any exposures or commitments we might assume and develop a detailed transaction structure. We have commenced our due diligence and detailed work on the transaction. We expect to be in a position to provide full details by 18 September 2009 as contemplated by the Information Memorandum you provided.

While we still need to complete our analysis, we consider there is a reasonable prospect that a proposal of this kind will enable Timbercorp Growers to benefit from the growth of their plantation assets to maturity in a manner which could deliver more value to them than simply winding up the schemes and selling the immature forests along with other assets of the Timbercorp group in a distressed sales process.

The MIS regime has provided an important source of capital for the Australian forest industry. We think it can continue to do so and would like to find a way for the Timbercorp schemes to continue.

Gunns processes approximately 5 million green metric tonnes of wood annually, producing wood fibre, solid timber and veneer products for sale in both domestic and export markets. We own over 275,000 hectares of land in Tasmania, New South Wales and the Green Triangle region with a high quality plantation estate under management of 200,000 hectares, developed over a 40 year period.

Gunns is well placed to participate in a solution for both Timbercorp Growers and Timbercorp creditors. We look forward to developing our proposals and canvassing them with you and the Growers in due course.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Wayne Chapman', with a stylized flourish at the end.

Wayne Chapman
Company Secretary

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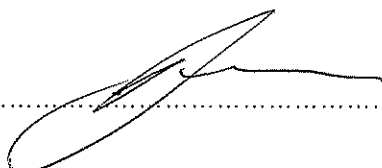
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Level 17, Rialto North Tower
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MELBOURNE VIC 3000

August 2009
Growers

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

This is the exhibit marked "OSL-2" now produced and shown to OWEN STUART LENNIE at the time of affirming his affidavit on August 2009.

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*

Exhibit "OSL-2"



2nd July 2009

Dear Timbercorp Forestry Grower,

The demise of Timbercorp as a going concern has left you and all of the grower investors with problems that, through no fault of your own, must be addressed if any commercial return is to be realised from your investment. Immediate issues that need to be addressed include:

- The stabilisation of the MIS projects
- Appointing a new Responsible Entity (RE)
- Resuming forest management to protect the commercial value of the trees

We have assembled a consortium consisting of the operations management of the Forestry Company that has managed your trees to date, the team behind the Penola Pulp Mill and FIRST Super together with a significant international investor with a long-term financial interest in Australian forestry and international forest management experience. This consortium proposes to work with you to create commercially viable choices for you, the Timbercorp MIS forestry growers.

The Opportunity

The consortium seeks to offer each individual grower the opportunity to assess their involvement in the schemes. Subject to detailed review of each scheme, it proposes to offer you an opportunity to choose from one of three possibilities:

1. Remain in the scheme and pay the rent and maintenance until harvest
2. Call on the "hardship provisions" under the present contract and ask the Manager to pay the rent and maintenance in return for a lien against the sale proceeds
3. Sell your trees to The Consortium.

While there is a great impetus to act quickly, we believe it is in everyone's interest to take stock of their positions and make informed choices of how they wish to proceed.

It is proposed that a mutually acceptable independent forestry valuer be retained to measure and value each project using industry standard practices. Subject to the outcomes of the valuations and assessment of the commercial viability of acquiring the trees at those values, all growers (both woodlot and timberlot) would be offered the opportunity to sell their trees to the Consortium at a negotiated price.

This evaluation will also allow growers to assess the prospect of continuing with the payment of rents and maintenance until harvest or to request the new Manager to pay rent and maintenance until harvest recouping those costs together with interest from the proceeds of timber sales.

The Plan

There are many concerns to be addressed. This letter only scratches the surface. The consortium has a long term interest in Australian forestry and an ability to facilitate the best commercial outcome for MIS growers.



Grower Meetings

We propose holding meetings with growers and their advisors, the details of which will be provided as soon as possible via email or internet. The initial meetings will be held in Melbourne, Sydney, Brisbane and Perth. At the meetings, grower reference groups will be established. The grower reference groups will comprise representatives of growers and will facilitate the method by which growers can come to an agreement with the consortium.

Information Website

The consortium is currently establishing a website www.TCGrowers.com.au. The website will advise details of the grower meetings. We understand that you will have many questions and queries and we invite you to submit them via the website. This will assist us in our processes and provide the best opportunity for you to get timely and accurate answers.

We look forward to meeting you at the grower meetings over the coming weeks.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'John Roche', is written over a light, circular, textured background.

John Roche
Penola Pulp Mill (for the consortium)

Background Information on The Consortium

Consortium members include:

- First Super (FIRST)
- The workers formerly employed by Timbercorp's Forestry Division
- Penola Pulp Mill Pty Ltd (PPM)
- An international fund experienced in owning managing and operating forestry estates (the Fund)

First Super was established in 2008 by the merger of the Timber Industry Superannuation Scheme, the Furniture Industry Retirement and Superannuation Trust and the Pulp & Paper Workers' Superannuation Fund. The Pulp & Paper Workers' Superannuation Fund was Australia's first industry fund, commencing in 1974. First Super's 80,000 members are employed in Australia's timber, forestry, forest products, furniture and pulp and paper industries, including in the management and downstream processing of the national plantation estate.

The **Fund** is an international forestry management company with more than a million hectares of forest under its management



PPM will be a natural buyer of approximately 1.5 million green metric tonnes of fibre per annum. PPM has spent the greater portion of the last four years designing a world class Mill together with a contract that will deliver to growers a premium price for their product; the collapse of Timbercorp has affected PPM too.

The consortium intends to employ the **staff** from Timbercorp's Forestry Division. These are the people who physically established your plantations. Under Timbercorp's larger umbrella they ran a profitable and efficient business and would still be a going concern were it not for the financial disorder that engulfed the parent company. They are knowledgeable about your timber assets and committed and well placed to attend to their continued maintenance.

PPM has been designed to meet the requirements of the World Bank and the Equator Principles for environmental and social responsibility. Not only will it be Totally Chlorine Free, it will incorporate a complete water and chemical recycling process so as to use only 10% of the water that would be used by a comparably sized mill. Furthermore, PPM has been designed to have zero-liquid-effluent-discharge (ZLD) technology. It will not discharge **any** chemicals or toxins into local waterways or aquifers. PPM is fully approved by both the South Australian State Government and the Federal Government and there are no regulatory restrictions to its operations.