

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

r8.05

LIST E

No 7114 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 PAUL MILLER

| | |
|------------------------------|-------------------------|
| Date of document: | 3 July 2009 |
| Filed on behalf of: | Paul Miller |
| 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: MAB:0900205 |

I, Paul Miller of 50 Middlesex Road, Surrey Hills, 3127, Professional Horticulturist, say on oath:

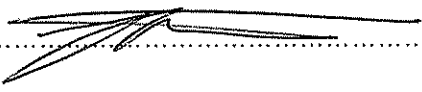
1. I am the consultant engaged for the Grower investors on the Creditors Committee for Timbercorp Securities Limited as expert witness for Timbercorp olive projects;
2. On 26 June 2009 I was engaged by the Clarendon Lawyers to prepare an expert opinion on:
 - (a) The assumptions and opinions in the Timbercorp olive projects Affidavits of Korda Mentha;
 - (b) The variables which affect project solvency and viability; and
 - (c) Prospects for the projects in the short and longer term.
3. I reviewed the contents of the brief from the Clarendon Lawyers and the relevant documents accompanying the brief. Now produced and shown to me marked **PM-1** is a copy of the Brief to Expert – Index of Relevant Documents.



4. I prepared a report setting out my expert opinion on the matters referred to in 3 above (Report). Now produced and shown to me marked PM-2 is a copy of the Report.
5. The facts stated in the Report are true and the opinions expressed in the Report are opinions held by me.

AFFIRMED by the said Paul Miller
at Melbourne in the State of Victoria
this 30 day of July 2009

)
)
) 

Before me: 

FRANCESCA FOGARTY
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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MANAGED INVESTMENT SCHEMES LISTED IN SCHEDULE 1
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

3 July 2009
Paul Miller

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

This is the exhibit marked "PM-1" now produced and shown to Paul Miller at the time of affirming his affidavit on *3 July 2009*

Before me: 

FRANCESCA FOGARTY
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 MATTER OF TIMBERCORP SECURITIES LIMITED
(UNDER ADMINISTRATION) (ACN 092 311 469)**

**OLIVE SCHEME DOCUMENTS
BRIEF TO EXPERT**

Olive Scheme Project

| | | |
|---|--|--------------|
| 1 | Affidavit of Mark Korda of KordaMentha – 2008 Olive Scheme | 25 June 2009 |
| 2 | Affidavit of Mark Korda of KordaMentha – 2007 Olive Scheme | 25 June 2009 |
| 3 | Affidavit of Mark Korda of KordaMentha – 2006 Olive Scheme | 25 June 2009 |
| 4 | Affidavit of Mark Korda of KordaMentha – 2004 Olive Scheme | 25 June 2009 |
| 5 | Affidavit of Mark Korda of KordaMentha – 2003 Olive Scheme | 25 June 2009 |
| 6 | Affidavit of Mark Korda of KordaMentha – 2002 Olive Scheme | 25 June 2009 |
| 7 | Affidavit of Mark Korda of KordaMentha – 2001 Olive Scheme | 25 June 2009 |

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First Plaintiff

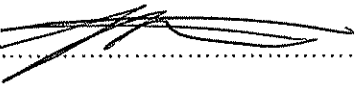
MARK ANTHONY KORDA and LEANNE KYLE CHESSER
Second and Third Plaintiffs

CERTIFICATE IDENTIFYING EXHIBIT

| | |
|------------------------------|-------------------------|
| Date of document: | 3 July 2009 |
| Filed on behalf of: | Paul Miller |
| 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: MAB:0900205 |

This is the exhibit marked "PM-2" now produced and shown to Paul Miller at the time of affirming his affidavit on 3 July 2009

Before me:


FRANCESCA FOGARTY
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

3 July 2009

Mark Bland
Clarendon Lawyers
Level 17, Rialto North Tower
525 Collins St
Melbourne VIC 3000

EXPERT REPORT BY PAUL MILLER

**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 ATTACHED TO THIS LETTER**

1 Background

- 1.1 My name is Paul Miller, of 50 Middlesex Road.
- 1.2 I am a professional horticulturist, consultant and company director with over 30 years of experience in research and commercial activities in intensive agriculture in Australia. I have been involved in the olive industry since 1997 as a consultant as well as holding corporate roles in the olive industry including the development of commercial olive groves in southern Australia some of which were Managed Investment Schemes. I have been President of the Australian Olive Association, the peak representative olive industry body in Australia since 2001.
- 1.3 I hold a Bachelor of Agricultural Science from La Trobe University (1977).

2 Instructions

- 2.1 I have been engaged by Clarendon Lawyers, as solicitor for the grower investors on the creditors committee of Timbercorp Securities Limited as an expert in the area of commercial olive oil production.
- 2.2 I have been engaged to review all of the contents of the brief provided to me and set out my expert opinion on:
 - (a) The assumptions and opinions in the Timbercorp olive projects Affidavits of Korda Mentha;
 - (b) The variables which affect project solvency and viability; and
 - (c) Prospects for the projects in the short and longer term.

- 2.3 I acknowledge that I have read the Expert Witness Code of Conduct provided to me as part of my brief, and I agree to be bound by it.

3 Basis for opinion

- 3.1 In formulating my opinion, I relied on the facts set out in the brief and relevant documents provided to me for this purpose as set out in the Index of Relevant Documents.
- 3.2 I have relied on my experience in the establishment and operation of similar olive groves in Australia over the last 12 years as well as my overall experience in irrigated horticulture in southeast Australia and as an irrigation farmer in my own right in the central Victorian region.
- 3.3 I have relied on research that I have done amongst my colleagues and the research community since being briefed for this task.

4 Opinion

4.1 Matter A - The assumptions and opinions in the Timbercorp olive projects Affidavits of Korda Mentha

(a) Documents examined and summary attachment and table

I have examined the Affidavits of Mark Korda of Korda Mentha relating to the 2001, 2002, 2003, 2004, 2006, 2007 and 2008 Olive Schemes.

I have summarized the information from the attachments entitled "Exhibit MAK-6" from each of the documents and this summary is included in this report as Attachment 1.

I have also examined the assumptions used in the Viability Analyses entitled "Exhibit MAK-8" from each of the documents as they relate to the timing and amount of what is considered a 'mature' or maximum crop from each of the Olive Schemes. This data is included in this report as Table 1.

(b) Olive and Olive Oil Yields

The MAK-6 and MAK-8 Exhibits rely upon projected yields of olive oil to calculate income from each project for 2010 for MAK-6 and in subsequent years for MAK-8.

For the 2010 calculations MAK-6 relies upon projections contained both in the text of the Affidavits section 9.3 (b) and in MAK-6. These projections agree in each Olive Scheme except for the 2006 and 2007 Olive Schemes. In these cases the yields used to calculate the projected returns for 2010 ('2010 Crop Variables and Assumptions' 'MAK-6') are different from those contained in sections 9.3 (b). I am not able to determine why this is the case but the differences are significant – 1546 litres of olive oil v 440 litres of olive oil for the 2006 Scheme and 999 litres of olive oil v 1425 litres of olive oil for the 2007 Scheme.

The projected yields of olives from which the oil is to be extracted are not contained in MAK-6 or MAK-8 for any Scheme. For my purposes of commenting on the assumptions I have calculated estimated yields of olives on the basis of an extraction rate of 18% of oil volume per weight that is equal to 180 litres of oil per tonne of olives. Such an extraction rate is commonly achieved in the industry.

If actual data on olive yields were available for crops to date from these Schemes this would assist in making commentary on the comparative performance of the Timbercorp Olive Schemes against industry benchmarks. In particular the results from the recently

completed 2009 harvest would assist in assessing the performance of the Olive Schemes as well checking such outcomes against the forecasts included in the Affidavits.

Notwithstanding the above comments the olive oil yields used to calculate the likely returns in 2010 for each of the Schemes are within industry norms and would be considered reasonable if somewhat conservative yields.

Given reasonable weather and effective management the industry goals for high standards olive orchards are about 3000 litres of oil per ha and this has been reported to me as having been achieved and exceeded in the past on similar olive orchards but I am not aware of data showing this as an average yield from any orchards in Australia to date. There are few mature olive orchards at present done in the way that the Timbercorp Schemes are set up and such data will accumulate over the next few years as these Groves mature.

In the Exhibits MAK-8 and summarized by me in this report in Table 1 there are assumptions about when the orchards in the Timbercorp Olive Schemes will reach maturity and therefore full production.

Table 1 Assumptions for each Olive Scheme from Korda Mentha Exhibits "MAK-8"

| Olive Project | 2001 | 2002 | 2003 | 2004 | 2006 | 2007 | 2008 |
|---------------------------|------|------|------|------|------|------|------|
| Est. Year of mature yield | 2014 | 2014 | 2014 | 2013 | 2014 | 2015 | 2015 |
| Litres of oil per ha | 2580 | 2596 | 2580 | 2560 | 2744 | 2744 | 2700 |
| Tonnes of olives per ha | 14.3 | 14.4 | 14.3 | 14.2 | 15.2 | 15.2 | 15.0 |

Note: tonnes of olives per ha assumes an oil yield of 18% volume per weight.

I question why, despite there being up to 7 years difference in the time of planting of the trees, that there are only up to 2 years difference in the assumed time to maturity of the orchards. I would normally expect that trees planted in for example 2001 would mature sooner than those planted in 2006 and several years ahead of those planted in 2008. This is significant as it will affect the considerations of future financial performance of the groves. I am unable to determine why the time to maturity in the MAK-8 calculations is considered so similar for trees with such marked differences in age but it concerns me.

The mature olive oil yields used in Exhibits MAK-8 and my extrapolated mature olive yield projections would be considered within industry norms for modern Australian olive orchards. I note that the mature yield estimates for the Schemes located at Boundary Bend are higher than those for the Schemes located at Boort. This may reflect slightly warmer conditions expected at Boundary Bend and/or more productive mixes of olive tree varieties planted in later years of the period from 2001 to 2008 that were based on the improving information on varietal performance as the Australian olive industry developed.

(c) Olive Oil Prices

The projected olive oil sales prices in the Exhibits MAK-6 for each Scheme are \$4.75 wholesale or \$4.55 per litre farm-gate.

The sales costs that are the difference between the wholesale and farm-gate prices are equivalent to 4%.

The anticipated olive oil prices will depend on the market supply and demand at the time of sale but they are within reasonable industry expectations.

The sales cost of 4% of wholesale is at the higher end of the range of industry expectations and could be subject to negotiation for such a large volume of olive oil.

(d) Costs

(d)1. General Comments

The costs as described in Exhibits MAK-6 and as set out in Attachment 1 of this report are not what I would consider a detailed analysis of the costs of operating an olive orchard. While they relate to various contractual arrangements they do not contain the normal breakdown of fuel, labour, harvesting, fertilizer and machinery costs that enable accurate comparisons with other operations.

The data in Table 1 show significant differences between Schemes in items such as processing and licence fees but I do not have sufficient information to comment specifically on these other than to point out the significant differences.

It would be useful in assessing the performance of these olive orchards to have a detailed breakdown of actual costs.

It may also be the case that some of the differences relate to whether capital equipment such as harvesting and processing machinery is owned by the Schemes or whether such services are obtained from contractors. For example there appears to be a marked difference in the costs of processing the olives between the Schemes located at Boort and those located at Boundary Bend.

For the purposes of commenting on costs are they relate to industry benchmarks I will deal with water and capital costs, licence fees and other operating costs separately.

(d)2. Water and Capital Costs

The MAK-6 and MAK-8 projections make assumptions about the costs of temporary water and the amount that might be required.

The assumed price of \$350 per megalitre for temporary water is in my opinion at the higher end of the range of anticipated temporary water prices in the current environment. My experience and discussions with others in the industry indicate a range of from \$200 to \$350 per megalitre as likely sales prices in the immediate future for temporary water.

The assumptions made in the MAK-8 analysis are in my opinion flawed because they assume an ongoing price of \$350 per megalitre even when allocations are increased. In my opinion when allocations increase the price reduces markedly and so for example if the allocations increased from 40% to 80% of secure water entitlements the price for temporary water would drop to a fraction of the price of water that applies when allocations are limited to 40% of permanent water rights.

(d)3. Licence Fees

The Licence Fees are described in the Affidavits as paying for the necessary infrastructure and capital works to operate the olive groves.

These range from \$2000 to \$4025 per ha across the Olive Schemes. I am not aware of why there is such a variation in these costs but they are significant and clearly affect the ability of the Scheme's income to exceed the costs.

(d)4. Operating Costs

For the purposes of calculating these on a per ha basis I have examined the data from Exhibit MAK-6 for each Scheme and added the costs for processing, storage, TIM Management Fee, Admin Fee, Farm Operating Costs, Technical Fee, BB Management

Fee and AOA Levy. I have excluded Sales and Related Costs, Temp Water and Licence Fees. These data are presented in Table 2.

Table 2 Projected Operating Costs per Ha for 2010 for the Timbercorp Olive Schemes from Exhibits MAK-6

| Olive Scheme | 2001 | 2002 | 2003 | 2004 | 2006 | 2007 | 2008 |
|---------------------------------|------|------|------|------|------|------|------|
| Total Operating costs \$ per ha | 7682 | 7511 | 8272 | 7805 | 8048 | 5894 | 4134 |

I will now compare these projected operating costs with other industry examples. Apart from my industry experience there are three comparative sources of data that I have used for comparison.

The first source is data that I have reviewed that is the basis of a forthcoming cost/benefit analysis being done by the NSW Department of Primary Industry for a 200 ha irrigated olive grove. The second source is data I have obtained from olive groves I am familiar with in South Australia of about 200 ha in size. The third is data I am familiar with from olive groves of over 400 ha in size in Victoria. The details of the individual groves are commercial in confidence but the data are drawn from actual costs on these orchards over the last few years and are presented in Table 3.

Table 3 Typical per Ha Operating Costs – Three Modern Australian Olive Groves

| Example | NSW 200 ha | SA 200 ha | VIC 400+ ha |
|-----------------------------|----------------------------|----------------------------|-------------|
| Assumed yield tonnes olives | 12 | 12 | 12 |
| Assumed yield l oil | 2160 | 2160 | 2160 |
| Harvesting cost \$ | 1350 | Incl. below in other costs | 800 |
| Processing Cost \$ | Incl. below in other costs | 2520 | 1200 |
| Other costs \$ | 4266 | 4020 | 1800-2500 |
| Total costs per ha \$ | 5616 | 6540 | 3800-4500 |

Notes:

- The yield selected for these examples is the same as that anticipated for the Timbercorp 2003 Scheme.
- The SA orchard owns its harvesting equipment. The VIC orchard owns its harvesting and processing equipment.
- The VIC orchard operating costs vary depending on labour inputs from year to year.

- These costs include administration and allowances for coverage of capital items where owned but exclude the costs of any temporary water or land rental.

It should be noted that none of these operations is close to the size of the Timbercorp groves. In my opinion groves of multiples of the size of those I am using for my sources of comparative data should be significantly more efficient in terms of cost than those that I have obtained data from for these examples - particularly the 200 ha orchards.

On the basis of these examples and based on my experience of the industry the projected operating costs in the Exhibits MAK-6 and MAK-8 for the Timbercorp Olive Schemes are well above industry norms and well outside what would be considered a reasonable range for these types of olive groves.

This is one of the major factors in determining whether income can exceed costs on these groves.

4.2 Matter B The variables which affect project solvency and viability

The variables which affect viability and therefore solvency of the Timbercorp Olive Schemes in my opinion relate to the costs and arrangements of these Schemes and whether these can be controlled so that income can exceed them.

The previous Section 4.1 of this report outlines the details of the costs, my opinions of the validity of the assumptions relating to water, the variation between Schemes in items such as licence fees and that in my opinion the operating costs are well above industry norms.

The after-sales and related costs income of the Timbercorp Schemes at a yield of 12 tonnes per ha of olives is projected for example for Scheme 3 in 2010 at \$9853 per ha. Taking the range of per ha operating costs from the other industry examples this leaves a net range of about \$3300 to \$6000 per ha to cover additional temporary water and rental on capital (licence fees).

In the Timbercorp Scheme arrangements as presented in MAK-6 the per ha costs of temporary water and licence fees range from \$3057 to \$5181 per ha.

On a historical basis the temporary water costs can be considered extraordinary and the assumptions in my opinion are at the high end of the range of anticipated costs. As previously discussed I am not aware of the reasons for the range of licence fees.

From my calculations and experience, at a less than mature yield of 12 tonnes per ha, the Timbercorp Schemes should generate income that exceeds reasonable costs.

4.3 Matter C Prospects for the projects in the short and longer term

From observations I have made over several years on casual visits to these Schemes, the Timbercorp Olive Schemes have been established to a high standard. Notwithstanding recent costs imposed by extraordinary water shortages and increases in input costs such as fuel and fertilizer, once they reach reasonable production levels as projected for 2010 in exhibits MAK-6 for most of the Schemes, revenue from oil sales should exceed costs based on current industry experience.

In the longer term yields should increase as the orchards mature.

I am also aware that these orchard produce olive oil of world-leading quality and this should over time enhance its marketability.

The issues that affect the prospects of these orchards are the costs inherent in current arrangements.

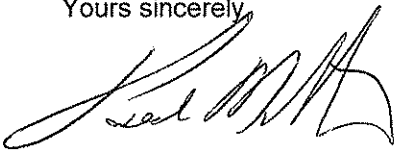
There are of course always agricultural risks associated with such intensive farming and any assumption of performance assumes effective management, favourable weather and the ability to effectively market the production. Thus my opinion in no way represents any warranty or guarantee of the current or future performance of the Timbercorp farms.

5 Declaration

I declare that:

- (a) I have made all enquiries which I believe are desirable and appropriate for this opinion;
and
- (b) no matters of significance which I regard as relevant have, to my knowledge, been withheld from the Court.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Paul Miller', with a stylized, flowing script.

Paul Miller