

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

No.

BETWEEN:

**BOSI SECURITY SERVICES LIMITED (A.C.N. 009 413 852) as trustee for
AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED
(A.C.N. 005 357 522) and BOS INTERNATIONAL (AUSTRALIA) LIMITED (A.C.N.
066 601 250) and WESTPAC BANKING CORPORATION (A.C.N. 007 457 141)**

Plaintiff

and

**B.B OLIVES PTY LTD (IN LIQUIDATION)
(A.C.N. 083 992 367) & ORS (according to the attached Schedule)**

Defendants

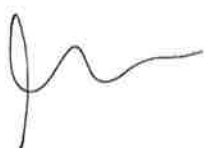
AFFIDAVIT OF ROSS WHYTE McCLYMONT

Date sworn: 16 March 2010
Filed on behalf of: The Plaintiff
Prepared by:
Blake Dawson
Level 26
181 William Street
MELBOURNE VIC 3000

Solicitor's Code: 53
DX: 187
Tel: (03) 9679 3000
Fax: (03) 9679 3111
Ref: 03-2010-2555
Attention: Mr R McClymont
Email: ross.mcclymont@blakedawson.com

I, **Ross Whyte McClymont** of 181 William Street, Melbourne, Lawyer, make oath and say that:

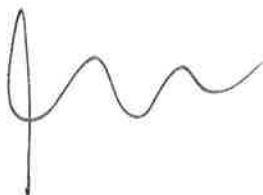
1. I am a Partner of Blake Dawson. I have the care and conduct of this proceeding on behalf of the Plaintiff.
2. I make this affidavit from my own knowledge save where otherwise stated. Where I depose to matters of information and belief, I believe those matters to be true.
3. I make this affidavit in support of the Plaintiff's summons dated 16 March 2010, seeking *inter alia*, orders that:



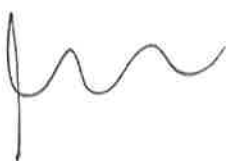
- (a) Michael Charles Vicary be appointed as the representative of the Growers in the 2006 Timbercorp Olive Project (ARSN 119 182 179);
- (b) Pamela Jan Dry be appointed as the representative of the Growers in the 2007 Timbercorp Olive Project (ARSN 123 155 715);
- (c) David Butterfield be appointed as the representative of the Growers in the 2008 Timbercorp Olive Project (ARSN 129 307 722);
- (d) the persons appointed as representatives of the Growers be joined as the seventh, eighth and ninth defendants in the proceeding pursuant to rule 9.02 and/or rule 9.06(b) of the *Supreme Court (General Civil Procedure) Rules 2005* (Vic);
- (e) the Plaintiff is granted leave to file and serve an amended originating motion on the defendants on or before 4pm on 26 March 2010:
 - (i) incorporating a declaration as to what, if any, right the Growers represented by the seventh, eighth and ninth defendants have to the sale proceeds held on trust by the first defendant pursuant to paragraph 8 of the Orders; and
 - (ii) amending paragraph 5 of the Originating Motion to read "A declaration as to how the sale proceeds held on trust by the first defendant pursuant to paragraph 8 of the Orders ought to be distributed between the plaintiff and the second, seventh, eighth and ninth defendants."
- (f) the Plaintiff be granted leave to proceed against B.B. Olives Pty Ltd (in liquidation) and Almond Land Pty Ltd (in liquidation) and Timbercorp Limited (in liquidation) pursuant to s.471B of the *Corporations Act 2001* (Cth);
- (g) paragraph 11 of the orders made by the Honourable Justice Croft be discharged, insofar as it relates to exhibit MAK-19 to the affidavit of Mark Anthony Korda sworn 10 November 2009 in proceeding No. 9998 of 2009; and
- (h) directions for the conduct of the proceeding.

Background to the proceeding

4. Timbercorp Securities Limited (in liquidation) (**TSL**) is the responsible entity of three olive schemes the subject of this proceeding. Those olive schemes are registered managed investment schemes under Part 5C of the *Corporations Act 2001* (Cth) (“the Act”) and are more properly described as:
 - (a) 2006 Timbercorp Olive Project (ARSN 119 182 179);
 - (b) 2007 Timbercorp Olive Project (ARSN 123 155 715); and,
 - (c) 2008 Timbercorp Olive Project (ARSN 129 307 722).
5. I refer to the schemes together as the “**Olive Schemes**”. In this affidavit I refer to each of the Olive Schemes individually by their year, for example, “2006 Olive Scheme”.
6. The members of the Olive Schemes are referred to under the constituent documents of the Olive Schemes as “**Growers**”, and I adopt that terminology here. The purpose of the Olives Schemes was the cultivation of olives for the production of olive oil for commercial sale.
7. Each of the Olive Schemes was governed by a suite of documents. The land used in the Olive Schemes was either owned by a Timbercorp Group company or an external landlord (**Land**). The Land the subject of this proceeding was owned by B.B. Olives Pty Ltd (in liquidation) (**BBO**) or Almond Land Pty Ltd (in liquidation) (**Almond Land**), both of which are Timbercorp Group companies.
8. Timbercorp Limited (in liquidation) (**TL**), TSL, Almond Land and BBO are all in liquidation. On 12 October 2009, those companies together with their liquidators (Mark Korda, Mark Mentha and Leanne Chesser), entered into a conditional sale and purchase deed (**Land SPD**) with Boundary Bend Limited (ACN 115 131 667) (**BBL**) to sell the “Olive Assets” as they are defined in the Land SPD. The Land SPD is part of an exhibit made confidential by paragraph 11 of the orders made by the Honourable Justice Croft on 12 November 2009 in proceeding No.9998 of 2009 (MAK-19 to the affidavit of Mark Anthony Korda sworn 10 November 2009). Accordingly, the Land SPD is not exhibited to this affidavit.



9. Also on 12 October 2009, BBO together with its liquidators Mark Korda and Mark Mentha, entered into a conditional sale and purchase deed (**Water SPD**) with BBL to sell the "Water Shares" as they are described in the Water SPD. The Water SPD is also part of an exhibit made confidential pursuant to paragraph 11 of the orders made by the Honourable Justice Croft on 12 November 2009 in proceeding No.9998 of 2009 (MAK-19 to the affidavit of Mark Anthony Korda sworn 10 November 2009). Accordingly, the Water SPD is not exhibited to this affidavit.
10. Certain of the Water Shares and Olive Assets sold pursuant to the Water SPD and Land SPD respectively were, until completion, subject to securities in favour of the Plaintiff. The Plaintiff is security trustee for a syndicate of banks comprised of Australia and New Zealand Banking Group Limited, Westpac Banking Corporation (**Westpac**) and BOS International Australia Limited.
11. I am informed by Michael Dawkins of the Plaintiff that the amount of the debt that was secured and was owed to the Plaintiff as at 15 February 2010 was \$216,272,436.48. I am also informed by Michael Dawkins of the Plaintiff that as at the date of swearing this affidavit, the Plaintiff has not received payment, in part or at all, of the \$216,272,436.48.
12. Some of the land owned by BBO and sold pursuant to the Land SPD was the subject of registered land mortgage No: AG323075S dated 30 December 2008 in favour of the Plaintiff (**the Real Property Mortgage**). Some of the "Water Shares" sold pursuant to the Water SPD were the subject of registered water mortgage No MOR001534 dated 30 December 2008 in favour of the Plaintiff (**the Water Mortgage**).
13. In addition to the land sold by BBO and Almond Land, the Olive Assets also included shares in BBL owned by TL. Those shares are "Charged Property" pursuant to a Featherweight Fixed and Floating Charge granted by Timbercorp to the Plaintiff and dated 15 December 2006 (**Charge**).
14. Almond Land was the owner of certain land sold pursuant to the Land SPD. That land was unencumbered.
15. I have caused a table to be prepared, which identifies the Land sold by BBO pursuant to the Land SPD, which was secured by the Real Property Mortgage. As that table



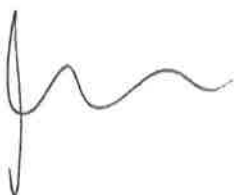
Chin Tenrich

discloses material contained within the Land SPD, I ask that the Court treat the table as being confidential. Now produced and shown to me marked "**Confidential Exhibit RWM-1**" is a true copy of that table.

16. I have also caused a table to be prepared, which identifies those Water Shares sold by BBO pursuant to the Water SPD, which were secured by the Water Mortgage. As that table discloses material contained within the Water SPD, I ask that the Court treat the table as being confidential. Now produced and shown to me marked "**Confidential Exhibit RWM-2**" is a true copy of that table.

The dispute the subject of this proceeding

17. The sale the subject of the Land SPD was conditional upon *inter alia*:
- (a) the release of the Plaintiff's securities in accordance with the Land SPD; and
 - (b) obtaining the directions from the Court referred to in the Land SPD.
18. In order to satisfy the condition precedent identified in paragraph 17(b) above, the liquidators of *inter alia* TL and TSL issued an application on 10 November 2009 (proceeding no. 9998 of 2008). After a hearing on 11 November 2009, the Honourable Justice Croft made orders on 12 November 2009 which satisfied the condition precedent identified in paragraph 17(b) above (**Orders**). Now produced and shown to me marked "**RWM-3**" is a true copy of the Orders.
19. Pursuant to paragraph 9 of the Orders, the Plaintiff released its Real Property Mortgage, Water Mortgage and Charge (in part), in accordance with the Land SPD immediately prior to completion of the Land SPD on 11 January 2010. The Water SPD also completed on 11 January 2010.
20. On or about 18 February 2010 I received a letter from John Stragalinos of Corrs Chambers Westgarth (who act for the vendors under the Land SPD and Water SPD) informing me that net sale proceeds from the Land SPD and Water SPD were as at 10 February 2010:
- (a) held by BBO in an account with Westpac, in the sum of \$1,940,791.61; and

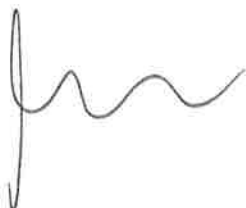
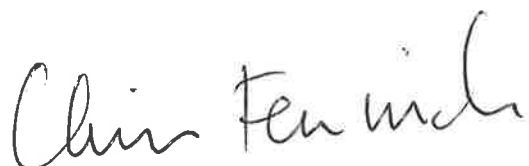



- (b) held by BBO in a 90 day term deposit with Westpac, in the sum of \$21,500,000.00.

(together, **the Net Sale Proceeds**)

Now produced and shown to me marked "**RWM-4**" is a true copy of the letter I received from John Stragalinos of Corrs Chambers Westgarth dated 18 February 2010.

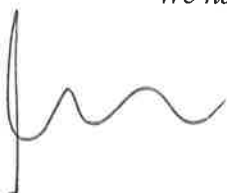
21. Accordingly, the Net Sale Proceeds are now being held on trust by BBO pursuant to paragraph 8 of the Orders. I am instructed by Silvana Larobina of Corrs Chambers Westgarth and believe that the consideration paid for the unencumbered land sold by Almond Land under the Land SPD is included in the Net Sale Proceeds.
22. There is a marked difference of opinion between the Plaintiff and the Growers as to:
 - (a) the extent to which the Growers have an interest in the Olive Assets the subject of the Land SPD;
 - (b) the extent to which the Growers have an interest in the Water Shares the subject of the Water SPD;
 - (c) the extent to which the Growers have any interest in, or right to, the Net Sale Proceeds;
 - (d) the value of any such rights or interests; and
 - (e) therefore, the respective entitlements of the Plaintiff, Almond Land and the Growers to the Net Sale Proceeds.
23. This proceeding has therefore been commenced to determine:
 - (a) what, if any rights the Plaintiff, Almond Land and the Growers have to share in the Net Sale Proceeds; and
 - (b) how the Net Sale Proceeds ought to be distributed.

Representation of the Growers

24. In an affidavit sworn by Mark Anthony Korda in the Supreme Court of Victoria proceeding 7114 of 2009 on 4 June 2009 and published on the Korda Mentha website, Mr Korda deposes to the fact that:
 - (a) 351 Growers invested in the 2006 Olive Scheme;
 - (b) 471 Growers invested in the 2007 Olive Scheme; and,
 - (c) 815 Growers invested in the 2008 Olive Scheme.
25. Whilst it is to be expected that certain Growers invested in more than one Olive Scheme, it is apparent that there are potentially several hundred Growers who may have an interest in this proceeding.
26. The process of locating and serving each of the affected growers will therefore be expensive and time-consuming. For this reason, the Plaintiff seeks an order that representatives of the Growers be appointed, pursuant to rule 16.01(2) of the *Supreme Court (General Civil Procedure) Rules 2005* (Vic). This procedure has been adopted in respect of the Timbercorp Almond Projects the subject of proceeding No. SCI 2009 10699.
27. Clarendon Lawyers acted on behalf of the Timbercorp Growers Group in proceeding No.9998 of 2009. They are also acting on behalf of representatives of investors in the Timbercorp Almond Projects the subject of proceeding SCI 2009 10699. Maurice Blackburn acted on behalf of Kerree Anne Bezencon, an investor in certain of the Olive Schemes, in proceeding No. 9998 of 2009. On 5 February 2010, I wrote to Clarendon Lawyers and Maurice Blackburn in relation to the appointment of representative Growers in this proceeding. Now produced and shown to me marked “RWM-5” is a true copy of my letter to Clarendon Lawyers and Maurice Blackburn dated 5 February 2010.
28. On 12 February 2010, I received a letter from Herbert Geer. The letter relevantly stated that:

“We have been handed a copy of your letter dated 5 February 2010...



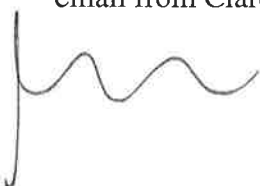

[W]e now act on behalf of TGG Almond Committee Inc. and Ms Kerree Bezencon.

We advise that we wish to be served with all papers in the proceedings.

We understand that Maurice Blackburn will not be acting in the matter."

Now produced and shown to me marked "**RWM-6**" is a true copy of the letter from Herbert Geer dated 12 February 2010.

29. On 18 February 2010, I received a reply to my letter dated 5 February 2010 from Clarendon Lawyers. Now produced and shown to me marked "**RWM-7**" is the letter from Clarendon Lawyers dated 18 February 2010.
30. I am informed by Chris Fenwick of Blake Dawson and believe that on 23 February 2010 he spoke with Tom May of Herbert Geer on the telephone. I am further informed by Chris Fenwick and believe that Mr May said to him that:
 - (a) he was seeking instructions from "the Bezencon Group" to:
 - (i) act in lieu of Maurice Blackburn in the almond proceeding (proceeding SCI 2009 10699);
 - (ii) nominate representative Growers in the olive proceeding; and,
 - (b) he would write to Blake Dawson again upon receipt of instructions.
31. On 11 March 2010, I received a further letter from Clarendon Lawyers. Now produced and shown to me marked "**RWM-8**" is the letter from Clarendon Lawyers dated 11 March 2010.
32. At the time of swearing this affidavit, I have not received a response to my letter dated 5 February 2010 from Maurice Blackburn.
33. I have also not received any further correspondence in relation to this proceeding from Herbert Geer since 12 February 2010.
34. I am informed by Chris Fenwick and believe that on 12 March 2010 he received an email from Clarendon Lawyers. Now produced and shown to me marked "**RWM-9**" is



Chris Fenwick

a true copy of the email received by Chris Fenwick from Clarendon Lawyers dated 12 March 2010.

35. On 12 March 2010, I wrote to Clarendon Lawyers and advised them that in the absence of any alternative representative Growers' proposal being provided by Herbert Geer, the Plaintiff proposed to apply to the Court for orders that the Growers nominated by Clarendon Lawyers for the 2006, 2007 and 2008 Olive Schemes be appointed as the representative defendants. Now produced and shown to me marked "**RWM-10**" is a true copy of my letter to Clarendon Lawyers dated 12 March 2010.

The conduct of the proceeding

36. In addition to seeking an order for the appointment of representatives pursuant to rule 16.01(2), the Plaintiff seeks directions in relation to the future conduct of the proceeding. The issues raised in the proceeding require an analysis of:
- (a) What rights, if any, do each of the Plaintiff, Almond Land and the Growers respectively have to the Net Sale Proceeds?
 - (b) In respect of any such rights, what valuation methodology should be adopted?
 - (c) How much, if any, of the Sale Proceeds is each of the Plaintiff, Almond Land and the Growers entitled to received?
37. Given the nature of the proceeding and the issues raised, the Plaintiff considers that the parties ought to file contentions of fact and law in relation to each issue, on a staged basis. Staging of the contentions would allow each party to address the subsequent issues, such as the appropriate valuation methodology, with the benefit of knowing how the other parties' contend their rights were created and what valuation methodology ought to be applied. This is the approach that has been adopted in the context of the Timbercorp Almond Projects the subject of proceeding SCI 2009 10699.
38. While it is not necessary at this stage to decide how the proceeding is best managed, I believe it is useful for the Court and the parties to consider methods by which the proceeding could progress to an early determination. One such method may be for the Court to determine the issue as to rights and valuation methodology before determining the quantum of distribution from the fund as between the Plaintiff, Almond Land and



Chris Fenwick

the Growers. Such approach would narrow the scope for factual controversy in the first instance at least, and may, depending upon the determination of the first and or second issue, render it unnecessary to decide the quantification issues.

Application to discharge the order in relation to the confidentiality of the Land SPD and Water SPD


39. As previously stated, the Land SPD and Water SPD comprise a confidential exhibit pursuant to paragraph 11 of the Orders (MAK-19 to the affidavit of Mark Anthony Korda sworn 10 November 2009).
40. In his affidavit sworn 10 November 2009 in proceeding No.9998 of 2009, Mark Anthony Korda sought an order that the Land SPD and Water SPD remain confidential on the basis that (at paragraph 80):

“if bidders or the market are able to see the bids other parties have made, and the agreement with BBL does not reach completion, it may prejudice any subsequent realisation”.

41. As the Land SPD and Water SPD have reached completion, the justification for retaining confidentiality over the Land SPD and Water SPD no longer exists. Furthermore, the Growers will require access to the Land SPD and Water SPD to identify the Olive Assets and Water Shares affected by the sale to BBL. Accordingly, on 12 March 2010, I wrote to Johnson Winter & Slattery, the solicitors for BBL, seeking their consent to an order discharging paragraph 11 of the Orders, insofar as it related to exhibit MAK-19 to the affidavit of Mark Anthony Korda sworn 10 November 2009. Now produced and shown to me marked “**RWM-11**” is a true copy of my letter to Johnson Winter & Slattery, dated 12 March 2010.

Conclusion

42. For the above reasons the Plaintiff seeks the orders referred in the summons dated 16 March 2010.



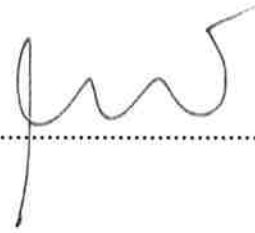
Sworn at Melbourne
in the State of Victoria this 16th day
of March 2010
before me:

Chris Fenwick

Name:

CHRIS MARSDEN FENWICK
Blake Dawson
181 William Street, Melbourne Vic. 3000
An Australian legal practitioner within the
meaning of the Legal Profession Act 2004

)
)
)
)



SCHEDULE

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

No.

BETWEEN:

**BOSI SECURITY SERVICES LIMITED (A.C.N. 009 413 852) as trustee for
AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED
(A.C.N. 005 357 522) and BOS INTERNATIONAL (AUSTRALIA) LIMITED
(A.C.N. 066 601 250) and WESTPAC BANKING CORPORATION (A.C.N.007 457 141)**
Plaintiff
and

**B.B OLIVES PTY LTD (IN LIQUIDATION)
(A.C.N. 083 992 367)**
First Defendant
and

ALMOND LAND PTY LTD (IN LIQUIDATION) (A.C.N 091 460 392)
Second Defendant
and

TIMBERCORP LIMITED (IN LIQUIDATION) (A.C.N. 055 185 067)
Third Defendant
and

**MARK ANTHONY KORDA
(in his capacity as liquidator of Almond Land Pty Ltd (in liquidation))
(in his capacity as liquidator of B.B. Olives Pty Ltd (in liquidation))**
Fourth Defendant
and

**LEANNE KYLIE CHESSER
(in her capacity as liquidator of Almond Land Pty Ltd (in liquidation))**
Fifth Defendant
and

**MARK FRANCIS XAVIER MENTHA
(in his capacity as liquidator of B.B. Olives Pty Ltd (in liquidation))**
Sixth Defendant

Rule 43.06(3)

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

No.

BETWEEN:

**BOSI SECURITY SERVICES LIMITED (A.C.N. 009 413 852) as trustee for
AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED (A.C.N. 005 357 522) and BOS
INTERNATIONAL (AUSTRALIA) LIMITED (A.C.N. 066 601 250) and WESTPAC BANKING
CORPORATION (A.C.N. 007 457 141)** Plaintiff

- and -

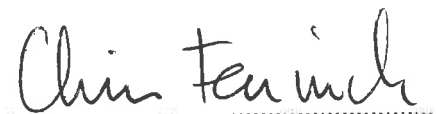
**B.B OLIVES PTY LTD (IN LIQUIDATION) (A.C.N. 083 992 367) & ORS (according to the
attached Schedule)** Defendants

CERTIFICATE IDENTIFYING EXHIBIT

Date sworn: 16 March 2010
Filed on behalf of: The Plaintiff
Prepared by:
Blake Dawson
Level 26
181 William Street
Melbourne VIC 3000
Australia

Solicitor's Code: 53
DX: 187
Tel: (03) 9679 3000
Fax: (03) 9679 3111
Ref: 03-2010-2555
Attention: Ross McClymont
Email: ross.mcclymont@blakedawson.com

This is the exhibit marked "RWM-3" now produced and shown to Ross Whyte McClymont at the
time of swearing his affidavit on 16 March 2010.



CHRIS MARSDEN FENWICK

Blake Dawson

181 William Street, Melbourne Vic. 3000
An Australian legal practitioner within the
meaning of the Legal Profession Act 2004

Exhibit RWM-3

Orders of Croft J made on 12 November 2009

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

No. 9998 of 2009

B E T W E E N:

IN THE MATTER OF TIMBERCORP SECURITIES LIMITED (in liquidation) (ACN 092 311 469)

TIMBERCORP SECURITIES LIMITED (in liquidation) (ACN 092 311 469) in its capacity as responsible entity of the managed investments schemes listed in Schedule 1 and ors according to the Schedule.

Plaintiffs

GENERAL FORM OF ORDER

JUDGE: The Honourable Justice Croft

DATE MADE: 12 November 2009

ORIGINATING PROCESS: Originating process of the Plaintiffs filed 10 November 2009

HOW OBTAINED: On the hearing of the originating process on 11 November 2009

ATTENDANCE: Mr L Zwier and Ms B Toy-Cronin, Solicitors for the Plaintiffs
Mr GT Bigmore of Her Majesty's Counsel and Mr SG Hopper of Counsel for the Timbercorp Growers Group
Mr TD Cordiner for Kerree Anne Bezencon
Ms S Hibble of Counsel for the Australian Securities and Investments Commission
Mr PE Anastassiou of Senior Counsel and Mr RG Craig of Counsel for Westpac Banking Corporation, BOS International Australia Limited and Australia and New Zealand Banking Group Limited

OTHER MATTERS: Each of the Plaintiffs and Boundary Bend Limited have entered into sale and purchase deeds on 12 October 2009 (SPDs) which form Confidential Exhibits MAK-18 and MAK-19 to the Affidavit of Mark Anthony Korda sworn 10 November 2009 (**Affidavit**).

THE COURT ORDERS THAT:



The Third (Korda) and Fourth (Chesser) Plaintiffs (in their capacity as Liquidators of the First Plaintiff (TSL)) are justified in procuring the First Plaintiff as responsible entity of the managed investment schemes listed in Schedule 1 of this order (**Registered Schemes**) to enter into and perform the SPDs and extinguishing all of the rights of Growers' (investors in the schemes set on in schedules 1 and 2 of this order)

in respect of the assets the subject of the SPDs (**Growers Rights**).

2. The Third (Korda) and Fifth (Mentha) Plaintiffs (in their capacity as liquidators of the Second Plaintiff (OML)) are justified in procuring the Second Plaintiff as manager of the Unregistered Olive Scheme to enter into and perform the SPDs and extinguishing all of the Grower Rights.
3. The Third and Fourth Plaintiffs (in their capacity as liquidators of the First Plaintiff) are justified in making, doing and executing such documents or things to give effect to the extinguishment of all of the Grower Rights in order to perform the SPDs.
4. The Third and Fifth Plaintiffs (in their capacity as liquidators of the Second Plaintiff) are justified in making, doing and executing such documents or things to give effect to the extinguishment of all of the Grower Rights in order to perform the SPDs.
5. The Third (Korda) and Fifth (Mentha) Plaintiffs (in their capacity as Liquidators of the Second Plaintiff (OML)) are justified in disclaiming in respect of the unregistered managed investment scheme listed in Schedule 2 of this order (**Unregistered Olive Scheme**) the Project and Management Agreement as defined in the Affidavit (**PMA**) and the Licence and Joint Venture Agreements (as defined in the Affidavit) and to the extent necessary have leave to do so pursuant to section 568 of the *Corporations Act* 2001 (*Cth*).

THE COURT ORDERS, DECLARES AND DIRECTS THAT:

6. The:
 - (a) Third (Korda) and Fourth (Chesser) Plaintiffs in their capacity as liquidators of the First (TSL), Sixth (Timbercorp) and Eighth (Almond Land) Plaintiffs; and
 - (b) Third (Korda) and Fifth (Mentha) Plaintiffs in their capacity as liquidators of the Second (OML), Seventh (OLPL), Ninth (BBO), Tenth (Olivecorp Processing) and Eleventh (Boort Estate) Plaintiffs –

may enter into and perform:

- (i) the SPDs; and
- (ii) any document referred to, in connection with, or necessary to give effect to the SPDs.

7. Upon completion of any sale under the Boort SPDs the net proceeds of sale after payment of selling costs and expenses, retentions (if any) and the costs and expenses of the liquidators of the First, Second and Sixth to Eleventh Plaintiffs referable to the preservation and realisation of the assets the subject of the SPDs, as approved by the committee of inspection of the Seventh Plaintiff and the Secured Creditors (as that term is defined in paragraph 19 of the Affidavit), or order of the Court (**Net Boort Proceeds**) are to be held by the Seventh Plaintiff in an interest bearing trust account with an Australian bank (as defined in section 9 of the *Corporations Act*), pending the hearing and determination by the Court of a proceeding to determine which person or persons have any rights to all or any part of the Net Boort Proceeds, and to be held on trust for the person or persons who are able to establish such a right, or until further order of the Court.



8. Upon completion of any sale under the Boundary Bend SPDs the net proceeds of sale (after payment of selling costs and expenses, retentions (if any) and the costs and expenses of the liquidators of the First, Second and Sixth to Eleventh Plaintiffs referable to the preservation and realisation of the assets the subject of the SPDs, as approved by the committee of inspection of the Ninth Plaintiff and the Secured Creditors (as that term is defined in paragraph 19 of the Affidavit), or order of the Court (**Net Boundary Bend Proceeds**) are to be held by the Ninth Plaintiff in an interest bearing trust account with an Australian bank (as defined in section 9 of the Corporations Act), pending the hearing and determination of a proceeding to determine which person or persons have any rights to all or any part of the Net Boundary Bend Proceeds, and to be held on trust for the person or persons who are able to establish such a right, or until further order of the Court.
9. Insofar as each of the Secured Creditors have any rights to the assets the subject of the SPDs, whether under their securities over those assets or otherwise, nothing in the release of those securities upon completion of the SPDs will prejudice those rights for the purposes of their claim to all or any part of the Net Boort Proceeds and/or Net Boundary Bend Proceeds.
10. Insofar as the Growers have any rights to the assets the subject of the SPDs nothing in order 1-5 above, or any action taken thereunder by the Third, Fourth and Fifth Plaintiffs, will prejudice those rights for the purposes of their claim to all or any part of the Net Boort Proceeds and/or Net Boundary Bend Proceeds.
11. Exhibits MAK-14, MAK-15, MAK-17, MAK-18, MAK-19, MAK-30, MAK-31 and MAK-32 to the Affidavit be kept confidential.
12. The interlocutory process of John Angus Horden dated 10 November 2009 be dismissed.
13. Costs be reserved.

DATE AUTHENTICATED:

- 3 DEC. 2009



The Honourable Justice Croft



SCHEDULE 1

1. 2001 Timbercorp Olive Project (ARSN 094 382 082)
2. 2002 Timbercorp Olive Project (ARSN 098 233 455)
3. 2003 Timbercorp Olive Project (ARSN 104 648 473)
4. 2004 Timbercorp Olive Project (ARSN 108 744 378)
5. 2006 Timbercorp Olive Project (ARSN 119 182 179)
6. 2007 Timbercorp Olive Project (ARSN 123 155 715)
7. 2008 Timbercorp Olive Project (ARSN 129 307 722)

SCHEDULE 2

1. 2000 Timbercorp Olive Project (Private Offer) (Unregistered)

SCHEDULE OF PARTIES

TIMBERCORP SECURITIES LIMITED (IN LIQUIDATION) (ACN 092 311 469)
IN ITS CAPACITY AS RESPONSIBLE ENTITY OF EACH OF THE
MANAGED INVESTMENTS SCHEMES LISTED IN SCHEDULE 1
First Plaintiff

OLIVECORP MANAGEMENT LTD (IN LIQUIDATION) (ACN 089 542 343)
IN ITS CAPACITY AS MANAGER OF THE UNREGISTERED
MANAGED INVESTMENT SCHEME LISTED IN SCHEDULE 2
Second Plaintiff

MARK ANTHONY KORDA
Third Plaintiff

LEANNE KYLIE CHESSER
Fourth Plaintiff

MARK FRANCIS XAVIER MENTHA
Fifth Plaintiff

TIMBERCORP LIMITED (IN LIQUIDATION) (ACN 055 185 067)
Sixth Plaintiff

OLIVECORP LAND PTY LTD (IN LIQUIDATION) (ACN 090 141 512)
Seventh Plaintiff

ALMOND LAND PTY LTD (IN LIQUIDATION) (ACN 091 460 392)
Eighth Plaintiff

B.B. OLIVES PTY LTD (IN LIQUIDATION) (ACN 083 992 367)
Ninth Plaintiff

OLIVECORP PROCESSING FACILITY PTY LTD (IN LIQUIDATION) (ACN 098 581 081)
Tenth Plaintiff

BOORT ESTATE PTY LTD (IN LIQUIDATION) (ACN 101 679 716)
Eleventh Plaintiff

Dated: 12 November 2009

Rule 43.06(3)

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

No.

BETWEEN:

**BOSI SECURITY SERVICES LIMITED (A.C.N. 009 413 852) as trustee for
AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED (A.C.N. 005 357 522) and BOS
INTERNATIONAL (AUSTRALIA) LIMITED (A.C.N. 066 601 250) and WESTPAC BANKING
CORPORATION (A.C.N. 007 457 141)** Plaintiff

- and -

**B.B OLIVES PTY LTD (IN LIQUIDATION) (A.C.N. 083 992 367) & ORS (according to the
attached Schedule)**

Defendants

CERTIFICATE IDENTIFYING EXHIBIT

Date sworn: 16 March 2010
Filed on behalf of: The Plaintiff
Prepared by:
Blake Dawson
Level 26
181 William Street
Melbourne VIC 3000
Australia

Solicitor's Code: 53
DX: 187
Tel: (03) 9679 3000
Fax: (03) 9679 3111
Ref: 03-2010-2555
Attention: Ross McClymont
Email: ross.mcclymont@blakedawson.com

This is the exhibit marked "RWM-4" now produced and shown to Ross Whyte McClymont at the
time of swearing his affidavit on 16 March 2010.



CHRIS MARSDEN FENWICK
Blake Dawson

181 William Street, Melbourne Vic. 3000
An Australian legal practitioner within the
meaning of the Legal Profession Act 2004

Exhibit RWM-4

Letter from Corrs Chambers Westgarth dated 7

December 2009

Our reference
JS/SL/TIMB15190-9062761

Bourke Place
600 Bourke Street Melbourne VIC 3000
GPO Box 9925 VIC 3001
Tel (03) 9672 3000
Fax (03) 9672 3010
www.corrs.com.au

**CORRS
CHAMBERS
WESTGARTH**
lawyers

Sydney
Melbourne
Brisbane
Perth

18 February 2010

By email: chris.fenwick@blakedawson.com
/ ross.mcclymont@blakedawson.com

Mr Ross McClymont / Mr Chris Fenwick
Blake Dawson
Level 26
181 William Street
MELBOURNE VIC 3000

Contact
Silvana Larobina (03) 9672 3168
Email: silvana.larobina@corrs.com.au

Partner
John Stragalinis

Dear Sirs

BOSI Security Services Limited as trustee for Australia and New Zealand Banking Group Limited and BOS International (Australia) Limited and Westpac Banking Corporation v Australia and New Zealand Banking Group Limited and Ors Supreme Court of Victoria Proceeding No. S Ci 2009 10699

We refer to your letter dated 4 February 2010. In relation to the questions raised in your letter, we are instructed as follows:

- 1 The account details for the accounts holding the Net Boort Proceeds and Net Boundary Bend Proceeds (as those terms are defined in order 7 and 8 of the Orders of Croft J made 12 November 2009 in Supreme Court Proceeding No. 9998 of 2009) are listed below. Note these accounts are held with Westpac Banking Corporation:

(a) Net Boort Proceeds:

Account Name: Olivecorp Land P/L (in liq) (**Olivecorp Account**)
Account Number: 033-002 290647

- On 11 January 2010, sale proceeds of \$32,567,821 were deposited into the Olivecorp Account and on 27 January 2010 the deposit plus interest of \$3,610,069.98 was transferred into the Olivecorp Account.
- On 29 January 2010, \$34,000,000 was transferred from the Olivecorp Account into a term deposit in the name of "Olivecorp Land Pty Ltd (In Liquidation)" Account Number 033-002 30-2687 (being a 90 day term deposit with Westpac, interest rate of 5.1%pa, expiry 29/4).
- Account balance in the Olivecorp Account as at 10 February 2010 was \$2,189,764.92.

18 February 2010

Blake Dawson

BOSI Security Services Limited as trustee for Australia and New Zealand Banking Group Limited and BOS International (Australia) Limited and Westpac Banking Corporation v Australia and New Zealand Banking Group Limited and Ors
Supreme Court of Victoria Proceeding No. S Ci 2009 10699

CORRS
CHAMBERS
WESTGARTH
lawyers

(b) Net Boundary Bend Proceeds:

Account Name: B.B. Olives P/L (in liq) (**B.B. Olives Account**)
Account Number: 033-002 290620

- On 11 January 2010, sale proceeds of \$21,076,536.40 were deposited into the B.B. Olives Account on 27 January 2010 the deposit plus interest of \$2,356,571.96 was transferred into the B.B. Olives Account.
- On 29 January 2010, \$21,500,000 was transferred from the B.B. Olives Account into a term deposit in the name of "B.B. Olives Pty Ltd (In Liquidation)" Account Number 033-002 30-2695 (being a 90 day term deposit with Westpac, interest rate of 5.1%pa, expiry 29/4).
- Account balance in the B.B. Olives Account as at 10 February 2010 was \$1,940,791.61.

2 Please see **attached** schedule listing the assets sold in the sale of the Timbercorp Almond Assets to Olam Orchards Australia Limited (**Olam Orchards**) pursuant to the Sale and Purchase Deed executed on 18 September 2009 (**Almond SPD**). In relation to the information contained in the attached schedule, we are instructed as follows (defined terms have the same meaning as in the Almond SPD):

- (a) the value attributed to the Almond Assets in the attached schedule, reflects the value which was attributed to those assets by Olam Orchards at the time the Almond SPD was entered into on 18 September 2009. That value was the value attributed to the assets in Olam Orchard's bid documents;
- (b) on 2 December 2010 settlement of the Almond sale took place;
- (c) between the date of executing the Almond SPD and settlement Olam Orchards nominated the consideration to be attributed to the Water Rights and the Properties for the purposes of the transfer instruments and the relevant statutory declarations as follows:

Water Rights	\$73,675,218	
Properties	\$54,324,782	(which amount also includes consideration for non-dutiable chattels – as stipulated in the Transfer of Land dated 2/12/2009)
	<u>\$128,000,000</u>	

Olam Orchard's solicitors required these changes following receipt of stamp duty advice.

18 February 2010

Blake Dawson

**BOSI Security Services Limited as trustee for Australia and
New Zealand Banking Group Limited and BOS International
(Australia) Limited and Westpac Banking Corporation v
Australia and New Zealand Banking Group Limited and Ors
Supreme Court of Victoria Proceeding No. S Ci 2009 10699**



- (d) in relation to the definition of the "Almond Assets" generally, the category of assets to be sold included assets which could be definitively identified (eg the Properties, Water Rights, Almond Orchards and Almond Contracts) and those which could only be defined by reference to a described class. This latter category included Information, Almond IP and Owned Equipment which Olam Orchards required in order to operate the Almond Business. In respect of these classes, we were instructed that the Liquidators did not have adequate records available to them to separately identify each asset in the class or to determine whether those assets in fact existed;
- (e) in order to resolve this issue it was agreed with Olam Orchards that those asset classes would be defined conceptually rather than by reference to specific assets. In doing so, it was acknowledged by the Liquidators that due to the nature of the information available, no sensible attempt could be made in the timeframes available to identify which entities within the Timbercorp group would be the sellers of these conceptual asset classes. Instead, all of the Timbercorp companies that could conceivably hold such assets were listed as sellers in order to "cover the field". Timbercorp Securities Limited (In Liquidation) (TSL) was included in that list of sellers on the basis that TSL, in its capacity as responsible entity could conceivably have developed and own information or intellectual property relevant to the ongoing operation of the Almond Business that should be transferred to Olam Orchards. This approach was discussed and agreed by Olam Orchards and its legal advisers.
- (f) in respect of Owned Equipment, whilst asset registers were available, without a comprehensive physical inspection of all assets located on the orchards, the Liquidators and Olam Orchards did not have confidence that the asset registers were accurate. On that basis we were instructed that the Owned Equipment could not be defined by reference to the asset registers. Olam Orchards was concerned to ensure that equipment, in particular water infrastructure, owned by the Timbercorp group that may not be covered by the definition of Properties (eg if that equipment could not be considered a fixture) would be transferred to them. The definition of Owned Equipment that was ultimately agreed and appears in the executed version of the SPD therefore covers a very specific asset class, being assets owned by the Sellers and located on the Properties or located on other land under licences and relating predominately to the operations conducted on the Properties.

We will respond to your queries in relation to the Boort and Boundary Bend Olive sales in a separate letter as we are awaiting final instructions from our clients.

18 February 2010

Blake Dawson

**BOSI Security Services Limited as trustee for Australia and
New Zealand Banking Group Limited and BOS International
(Australia) Limited and Westpac Banking Corporation v
Australia and New Zealand Banking Group Limited and Ors
Supreme Court of Victoria Proceeding No. S Ci 2009 10699**

**CORRS
CHAMBERS
WESTGARTH**
lawyers

Yours faithfully

Corrs Chambers Westgarth

A handwritten signature in black ink, appearing to be 'J Stragalinos', written over a circular stamp or seal.

John Stragalinos
Partner

attachments

Sale and Purchase Deed (Almond Assets) dated 18 September 2009 ("Almond SPD") and Sale and Purchase Deed - AMPL Assets dated 2 December 2009 ("AMPL SPD")
List of Almond Assets sold and value attributed to assets

ALMOND ASSETS (As defined in Almond SPD and AMPL SPD)	SELLER	VALUE ATTRIBUTED
1) WATER RIGHTS		
- Nenandie / Narcoovya	Almond Land Pty Ltd (In Liq)	\$31,488,000.00
- Other water (Carina, Mitchells, Westmores, Annuello, Menegazzo)	Almond Land Pty Ltd (In Liq)	\$50,164,000.00
2) LAND & OTHER		
- Nenandie / Narcoovya		
- Other land (Carina, Mitchells, Westmores, Annuello, Menegazzo)		\$15,512,000.00
		\$30,836,000.00
a) the Properties		
Annuello		
Volume 9071 Folio 270	Almond Land Pty Ltd (In Liq)	
Volume 9150 Folio 580	Almond Land Pty Ltd (In Liq)	
Volume 10977 Folio 016	Almond Land Pty Ltd (In Liq)	
Carina		
Volume 10874 Folio 092	Almond Land Pty Ltd (In Liq)	
Volume 10874 Folio 093	Almond Land Pty Ltd (In Liq)	
Volume 10710 Folio 237	Almond Land Pty Ltd (In Liq)	
Menegazzo		
Volume 9429 Folio 973	Almond Land Pty Ltd (In Liq)	
Volume 8581 Folio 939	Almond Land Pty Ltd (In Liq)	
Volume 8560 Folio 458	Almond Land Pty Ltd (In Liq)	
Volume 7420 Folio 813	Almond Land Pty Ltd (In Liq)	
Volume 9421 Folio 203	Almond Land Pty Ltd (In Liq)	
Volume 8454 Folio 067	Almond Land Pty Ltd (In Liq)	
Volume 9491 Folio 231	Almond Land Pty Ltd (In Liq)	
Volume 7678 Folio 095	Almond Land Pty Ltd (In Liq)	
Volume 9210 Folio 031	Almond Land Pty Ltd (In Liq)	
Volume 10950 Folio 378	Almond Land Pty Ltd (In Liq)	

ALMOND ASSETS (As defined in Almond SPD and AMPL SPD)	SELLER	VALUE ATTRIBUTED
Volume 9746 Folio 465	Almond Land Pty Ltd (In Liq)	
Volume 9193 Folio 257	Almond Land Pty Ltd (In Liq)	
Volume 10960 Folio 119	Almond Land Pty Ltd (In Liq)	
Mitchell's		
Volume 9661 Folio 440	Almond Land Pty Ltd (In Liq)	
Volume 11079 Folio 455	Almond Land Pty Ltd (In Liq)	
Volume 11079 Folio 601	Almond Land Pty Ltd (In Liq)	
Westnores		
Volume 10371 Folio 548	Almond Land Pty Ltd (In Liq)	
Volume 10371 Folio 549	Almond Land Pty Ltd (In Liq)	
Volume 11031 Folio 469	Almond Land Pty Ltd (In Liq)	
Volume 8228 Folio 204	Almond Land Pty Ltd (In Liq)	
Volume 9520 Folio 746	Almond Land Pty Ltd (In Liq)	
Volume 9520 Folio 747	Almond Land Pty Ltd (In Liq)	
Volume 11062 Folio 241	Almond Land Pty Ltd (In Liq)	
Volume 11062 Folio 243	Almond Land Pty Ltd (In Liq)	
Nenandie		
Volume 10867 Folio 468	Almond Land Pty Ltd (In Liq)	
Volume 10867 Folio 472	Almond Land Pty Ltd (In Liq)	
Volume 10867 Folio 473	Almond Land Pty Ltd (In Liq)	
Volume 10867 Folio 462	Almond Land Pty Ltd (In Liq)	
Volume 10923 Folio 772	Almond Land Pty Ltd (In Liq)	
Volume 10867 Folio 454	Almond Land Pty Ltd (In Liq)	
Volume 10867 Folio 455	Almond Land Pty Ltd (In Liq)	
b) the Water Rights	see above	
c) the Almond Orchards	Almond Land Pty Ltd (In Liq)	
d) the benefit of the Almond Contracts	Almond Land Pty Ltd (In Liq)	
e) the benefit of the Authorisations	Almond Land Pty Ltd (In Liq)	

ALMOND ASSETS (As defined in Almond SPD and AMPL SPD)	SELLER	VALUE ATTRIBUTED
Authorisations means the authorisations, approvals, registrations, consents, permits, licences, certifications or exemptions listed in schedule 3	Timbercorp Ltd (In Liq)	
f) the sellers' interest in the benefit of the Irrigation Report and the Almond Report	Almond Land Pty Ltd (In Liq)	
g) the Information	Timbercorp Limited (In Liq)	
	Almond Land Pty Ltd (In Liq)	
h) the Almond IP	Almond Land Pty Ltd (In Liq)	
i) the Owned Equipment	Almond Land Pty Ltd (In Liq)	
j) AMPL Assets	Almond Management Pty Ltd (In Liq)	
	TOTAL:	\$128,000,000.00

Rule 43.06(3)

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

No.

BETWEEN:

**BOSI SECURITY SERVICES LIMITED (A.C.N. 009 413 852) as trustee for
AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED (A.C.N. 005 357 522) and BOS
INTERNATIONAL (AUSTRALIA) LIMITED (A.C.N. 066 601 250) and WESTPAC BANKING
CORPORATION (A.C.N. 007 457 141)** Plaintiff

- and -

**B.B OLIVES PTY LTD (IN LIQUIDATION) (A.C.N. 083 992 367) & ORS (according to the
attached Schedule)**

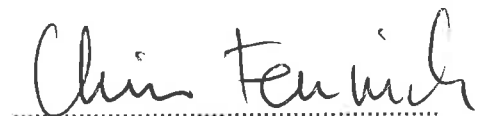
Defendants

CERTIFICATE IDENTIFYING EXHIBIT

Date sworn: 16 March 2010
Filed on behalf of: The Plaintiff
Prepared by:
Blake Dawson
Level 26
181 William Street
Melbourne VIC 3000
Australia

Solicitor's Code: 53
DX: 187
Tel: (03) 9679 3000
Fax: (03) 9679 3111
Ref: 03-2010-2555
Attention: Ross McClymont
Email: ross.mcclymont@blakedawson.com

This is the exhibit marked "RWM-5" now produced and shown to Ross Whyte McClymont at the
time of swearing his affidavit on 16 March 2010.



CHRIS MARSDEN FENWICK
Blake Dawson
181 William Street, Melbourne Vic. 3000
An Australian legal practitioner within the
meaning of the Legal Profession Act 2004

Exhibit RWM-5

Letter to Clarendon Lawyers and Maurice

Blackburn dated 5 February 2010

BY EMAIL

Level 26
181 William Street
Melbourne VIC 3000
Australia

Blake Dawson

Mr B Murphy
Maurice Blackburn
Level 10, 456 Lonsdale Street
MELBOURNE VIC 3000

Mr M Fernon
Clarendon Lawyers
Level 17, Rialto North Tower
525 Collins Street
MELBOURNE VIC 3000

T 61 3 9679 3000
F 61 3 9679 3111
DX 187 Melbourne

GPO Box 4958
Melbourne VIC 3001
Australia

www.blakedawson.com

5 February 2010

Our reference
RWM CHFE

Partner
Ross McClymont
T 61 3 9679 3025
ross.mcclymont@blakedawson.com

Contact
Chris Fenwick
T 61 3 9679 3148
chris.fenwick@blakedawson.com

Dear Mr Murphy and Mr Fernon

BOSI Security Services Limited v Australia and New Zealand Banking Group Limited & Ors
Supreme Court of Victoria Proceeding No SCI 2009 10699 (Almond Proceeding)

As we foreshadowed to Her Honour Justice Davies on 18 December 2009 in the Almond Proceeding:

1. the sale of the Timbercorp olive assets, pursuant to inter alia the Boundary Bend SPD, completed on 11 January 2010; and
2. our client now proposes to commence a proceeding in similar terms to the Almond Proceeding in relation to the net proceeds of the Boundary Bend SPD (**Olive Proceeding**).

As in the Almond Proceeding, we propose to issue a summons seeking, *inter alia*, the appointment of a representative grower or growers in relation to the relevant olive schemes (being the 2006 to 2008 Timbercorp olive schemes) pursuant to order 16 of the *Supreme Court (General Civil Procedure) Rules 2005*.

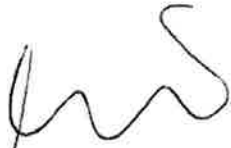
As in the Almond Proceeding, it appears to us that having growers represented by two sets of lawyers in the Olive Proceeding would cause unnecessary duplication, delay and expense.

Therefore, we suggest that you confer and seek to resolve your position on grower representation in the relevant olive schemes as soon as possible. We ask that you identify by close of business on Friday 12 February 2010 those persons or entities your clients propose to be the representative grower or growers in relation to the Olive Proceeding.

In the absence of agreement being reached, our client reserves the right to issue the Olive Proceeding and a summons seeking the appointment of representative growers for the purposes of the Olive Proceeding.

If you have any questions then please do not hesitate to contact us.

Yours faithfully



Ross McClymont
Partner
T 61 3 9679 3025
ross.mcclymont@blakedawson.com



Chris Fenwick
Senior Associate
T 61 3 9679 3148
chris.fenwick@blakedawson.com

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

No.

BETWEEN:

**BOSI SECURITY SERVICES LIMITED (A.C.N. 009 413 852) as trustee for
AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED (A.C.N. 005 357 522) and BOS
INTERNATIONAL (AUSTRALIA) LIMITED (A.C.N. 066 601 250) and WESTPAC BANKING
CORPORATION (A.C.N. 007 457 141)** Plaintiff

- and -

**B.B OLIVES PTY LTD (IN LIQUIDATION) (A.C.N. 083 992 367) & ORS (according to the
attached Schedule)**

Defendants

CERTIFICATE IDENTIFYING EXHIBIT

Date sworn: 16 March 2010
Filed on behalf of: The Plaintiff
Prepared by:
Blake Dawson
Level 26
181 William Street
Melbourne VIC 3000
Australia

Solicitor's Code: 53
DX: 187
Tel: (03) 9679 3000
Fax: (03) 9679 3111
Ref: 03-2010-2555
Attention: Ross McClymont
Email: ross.mcclymont@blakedawson.com

This is the exhibit marked "RWM-6" now produced and shown to Ross Whyte McClymont at the
time of swearing his affidavit on 16 March 2010.



.....
CHRIS MARSDEN FENWICK
Blake Dawson
181 William Street, Melbourne Vic. 3000
An Australian legal practitioner within the
meaning of the Legal Profession Act 2004

Exhibit RWM-6

Letter from Herbert Geer dated 12 February 2010

herbertgeer

Your Ref:

Our Ref: AHM:1339176

Partner: Tom May

Writer:

Email: tmay@herbertgeer.com.au

D 9641 8917

F 9642 4435

12 February 2010

BY FACSIMILE TRANSMISSION: 9679 3111

Blake Dawson
GPO Box 4958
MELBOURNE VIC 3000

Attention: Mr McClymont

Dear Sir

Supreme Court of Victoria Proceeding SCI 2009 10699 (Almonds)

We have been handed a copy of your letter dated 5 February 2010 regarding the above matter, and advise that we now act on behalf TGG Almond Committee Inc. and Ms Kerree Bezencon.

We advise that we wish to be served with all papers in the proceedings.

We understand that Maurice Blackburn will not be acting in the matter. We also understand that Clarendon may wish to be involved in the proceedings

Yours faithfully

HERBERT GEER



Rule 43.06(3)

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

No.

BETWEEN:

**BOSI SECURITY SERVICES LIMITED (A.C.N. 009 413 852) as trustee for
AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED (A.C.N. 005 357 522) and BOS
INTERNATIONAL (AUSTRALIA) LIMITED (A.C.N. 066 601 250) and WESTPAC BANKING
CORPORATION (A.C.N. 007 457 141)** Plaintiff

- and -

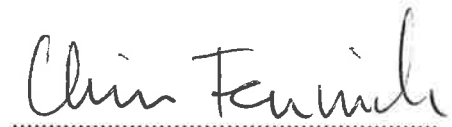
**B.B OLIVES PTY LTD (IN LIQUIDATION) (A.C.N. 083 992 367) & ORS (according to the
attached Schedule)** Defendants

CERTIFICATE IDENTIFYING EXHIBIT

Date sworn: 16 March 2010
Filed on behalf of: The Plaintiff
Prepared by:
Blake Dawson
Level 26
181 William Street
Melbourne VIC 3000
Australia

Solicitor's Code: 53
DX: 187
Tel: (03) 9679 3000
Fax: (03) 9679 3111
Ref: 03-2010-2555
Attention: Ross McClymont
Email: ross.mcclymont@blakedawson.com

This is the exhibit marked "RWM-7" now produced and shown to Ross Whyte McClymont at the
time of swearing his affidavit on 16 March 2010.



CHRIS MARSDEN FENWICK
Blake Dawson
181 William Street, Melbourne Vic. 3000
An Australian legal practitioner within the
meaning of the Legal Profession Act 2004

Exhibit RWM-7

Letter from Clarendon Lawyers dated 18

February 2010



18 February 2010

Level 17 Rialto North Tower
525 Collins Street Melbourne
Victoria 3000 Australia

T 03 8681 4400 F 03 8681 4499
www.clarendonlawyers.com.au
ABN 43 704 593 249

Our Ref: MAB:MAB:0900460

Messrs Chris Fenwick and Ross McClymont
Blake Dawson
Level 26
181 William Street
MELBOURNE VIC 3000

Dear Sirs

BOSI Security Services Limited v ANZ Bank & Ors

We refer to your letter of 5 February 2010.

We are advised that Maurice Blackburn are no longer acting for the TGG Almond Committee Inc and that Herbert Geer is now acting.

We have had a discussion with Herbert Geer and are unable to reach agreement on who should represent the growers interests.

Our client's position is that:

- (a) the scheme documents for the olive schemes are substantially similar, if not identical, to the scheme documents for the almond schemes;
- (b) the arguments in favour of the olive growers in the apportionment proceedings would be the same as the arguments for the almond growers in the current proceedings;
- (c) the arguments to be submitted by the banks are likely to be the same;
- (d) the TGG lawyers have already spent a considerable amount of time in reviewing documents and preparing submissions.

For all these reasons, the TGG representatives should act for the olive growers.

We will let you have the names of the TGG's grower representatives shortly.

Yours faithfully



Michael Fernon
Director

Enc
Direct Tel: 03 8681 4419
Email: michael.fernon@clarendonlawyers.com.au

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

No.

BETWEEN:

**BOSI SECURITY SERVICES LIMITED (A.C.N. 009 413 852) as trustee for
AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED (A.C.N. 005 357 522) and BOS
INTERNATIONAL (AUSTRALIA) LIMITED (A.C.N. 066 601 250) and WESTPAC BANKING
CORPORATION (A.C.N. 007 457 141)** Plaintiff

- and -

**B.B OLIVES PTY LTD (IN LIQUIDATION) (A.C.N. 083 992 367) & ORS (according to the
attached Schedule)** Defendants

CERTIFICATE IDENTIFYING EXHIBIT

Date sworn: 16 March 2010
Filed on behalf of: The Plaintiff
Prepared by:
Blake Dawson
Level 26
181 William Street
Melbourne VIC 3000
Australia

Solicitor's Code: 53
DX: 187
Tel: (03) 9679 3000
Fax: (03) 9679 3111
Ref: 03-2010-2555
Attention: Ross McClymont
Email: ross.mcclymont@blakedawson.com

This is the exhibit marked "RWM-8" now produced and shown to Ross Whyte McClymont at the
time of swearing his affidavit on 16 March 2010.

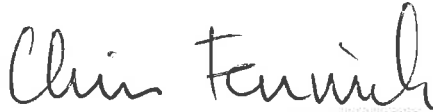

CHRIS MARSDEN FENWICK
Blake Dawson
181 William Street, Melbourne Vic. 3000
An Australian legal practitioner within the
meaning of the Legal Profession Act 2004

Exhibit RWM-8

**Letter from Clarendon Lawyers dated 11 March
2010**



11 March 2010

Level 17 Rialto North Tower
525 Collins Street Melbourne
Victoria 3000 Australia

T 03 8681 4400 F 03 8681 4499
www.clarendonlawyers.com.au
ABN 43 704 593 249

Our Ref: MJF:MJF:0900460

Chris Fenwick
Blake Dawson
Level 26
181 William Street
MELBOURNE VIC 3000
By email: chris.fenwick@blakedawson.com

Dear Mr Fenwick

Timbercorp Securities Limited (in liquidation): Olive schemes

We refer to your letter of 5 February 2010.

The grower defendants who agree to be nominated as representative of growers on behalf of the Timbercorp Growers Group in the olive schemes are as follows:

Scheme	Nominated Representative
2001 Olives	Pauline Emma Hammer 311/6 Victoria Street ST KILDA VIC 3182
2002 Olives	David Sydney Butterfield Level 2 428 Little Bourke Street MELBOURNE VIC 3000
2003 Olives	Graham Goldenberg Level 2 649 Bridge Road RICHMOND VIC 3121
2004 Olives	Manissa Pty Ltd (ACN 065 103 317) Level 13 10 Queens Road MELBOURNE VIC 3004
2006 Olives	Michael Charles Vicary Suite 1, Ashwood Hill Estate 35 Greenmont Close ASHGROVE QLD 4060
2007 Olives	Pamela Jan Dry 1 Timbertop Ridge WARRANDYTE VIC 3113

You will note that two of the persons are already defendants in the almond proceedings.



As with the existing defendants, the nominated persons are prepared to be representative defendants on the basis that their costs will be paid out of the fund on an indemnity basis.

Yours faithfully

Michael Fernon
Director

Enc

Direct Tel: 03 8681 4419

Email: michael.fernon@clarendonlawyers.com.au

Rule 43.06(3)

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

No.

BETWEEN:

**BOSI SECURITY SERVICES LIMITED (A.C.N. 009 413 852) as trustee for
AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED (A.C.N. 005 357 522) and BOS
INTERNATIONAL (AUSTRALIA) LIMITED (A.C.N. 066 601 250) and WESTPAC BANKING
CORPORATION (A.C.N. 007 457 141)** Plaintiff

- and -

**B.B OLIVES PTY LTD (IN LIQUIDATION) (A.C.N. 083 992 367) & ORS (according to the
attached Schedule)** Defendants

CERTIFICATE IDENTIFYING EXHIBIT

Date sworn: 16 March 2010
Filed on behalf of: The Plaintiff
Prepared by:
Blake Dawson
Level 26
181 William Street
Melbourne VIC 3000
Australia

Solicitor's Code: 53
DX: 187
Tel: (03) 9679 3000
Fax: (03) 9679 3111
Ref: 03-2010-2555
Attention: Ross McClymont
Email: ross.mcclymont@blakedawson.com

This is the exhibit marked "RWM-9" now produced and shown to Ross Whyte McClymont at the
time of swearing his affidavit on 16 March 2010.



CHRIS MARSDEN FENWICK
181 William Street, Melbourne Vic. 3000
An Australian legal practitioner within the
meaning of the Legal Profession Act 2004

Exhibit RWM-9

Email from Clarendon Lawyers to Chris Fenwick

dated 12 March 2010

Fenwick Chris 3148

From: Michael Fernon [Michael.Fernon@clarendonlawyers.com.au]
Sent: Friday, 12 March 2010 10:40 AM
To: Fenwick Chris 3148
Subject: RE: Timbercorp Olive schemes apportionment

Chris

The 2008 nominee is David Butterfield. You have his details.

regards

Michael Fernon | Director

Clarendon Lawyers | Level 17 North, Rialto, 525 Collins Street, Melbourne 3000
T + 61 3 8681 4419 | **F** + 61 3 8681 4488 | **M** + 61 417 543 373
www.clarendonlawyers.com.au

This email is confidential. If you are not the intended recipient, you must not disclose or use the information contained in it. If you have received this email in error, please notify us immediately and delete the document. Clarendon Lawyers is not responsible for any changes made to a document, other than those made by Clarendon Lawyers, or for the effect of those changes on the document's meaning. Clarendon Lawyers accepts no liability for any damage caused by this email or its attachments due to viruses interference interception corruption or unauthorised access.

From: chris.fenwick@blakedawson.com [mailto:chris.fenwick@blakedawson.com]
Sent: Thursday, 11 March 2010 5:44 PM
To: Michael Fernon
Cc: Celia Armstrong; Billy Dwyer
Subject: RE: Timbercorp Olive schemes apportionment

BLAKE DAWSON

Confidential (see notice below)

Michael

Thanks for your letter.

Are you able to nominate a representative Grower for the 2008 olive scheme?

Regards

Chris Fenwick
Senior Associate
Blake Dawson

T 61 3 9679 3148
F 61 3 9679 3111
M 0419 494 651
chris.fenwick@blakedawson.com
www.blakedawson.com

181 William Street Melbourne VIC 3000 Australia
DX 187 Melbourne

From: Michael Fernon [mailto:Michael.Fernon@clarendonlawyers.com.au]
Sent: Thursday, 11 March 2010 4:07 PM

14/03/2010

To: Fenwick Chris 3148
Cc: Celia Armstrong; Billy Dwyer
Subject: Timbercorp Olive schemes apportionment

Chris

Please see the attached letter

Michael Fernon | Director

Clarendon Lawyers | Level 17 North, Rialto, 525 Collins Street, Melbourne 3000
T + 61 3 8681 4419 | **F** + 61 3 8681 4488 | **M** + 61 417 543 373
www.clarendonlawyers.com.au

This email is confidential. If you are not the intended recipient, you must not disclose or use the information contained in it. If you have received this email in error, please notify us immediately and delete the document. Clarendon Lawyers is not responsible for any changes made to a document, other than those made by Clarendon Lawyers, or for the effect of those changes on the document's meaning. Clarendon Lawyers accepts no liability for any damage caused by this email or its attachments due to viruses interference interception corruption or unauthorised access.

NOTICE

This email and any attachments are confidential and may contain legally privileged information or copyright material. You should not read, copy, use or disclose them without authorisation. If you are not an intended recipient, please contact us at once by return email and then delete both messages. We do not accept liability in connection with transmission of information using the internet. This notice should not be deleted or altered.

Message protected by MailGuard: e-mail anti-virus, anti-spam and content filtering.
<http://www.mailguard.com.au>

[Report this message as spam](#)

Message protected by MailGuard: e-mail anti-virus, anti-spam and content filtering.
<http://www.mailguard.com.au>

Rule 43.06(3)

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

No.

BETWEEN:

**BOSI SECURITY SERVICES LIMITED (A.C.N. 009 413 852) as trustee for
AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED (A.C.N. 005 357 522) and BOS
INTERNATIONAL (AUSTRALIA) LIMITED (A.C.N. 066 601 250) and WESTPAC BANKING
CORPORATION (A.C.N. 007 457 141)** Plaintiff

- and -

**B.B OLIVES PTY LTD (IN LIQUIDATION) (A.C.N. 083 992 367) & ORS (according to the
attached Schedule)**

Defendants

CERTIFICATE IDENTIFYING EXHIBIT

Date sworn: 16 March 2010
Filed on behalf of: The Plaintiff
Prepared by:
Blake Dawson
Level 26
181 William Street
Melbourne VIC 3000
Australia

Solicitor's Code: 53
DX: 187
Tel: (03) 9679 3000
Fax: (03) 9679 3111
Ref: 03-2010-2555
Attention: Ross McClymont
Email: ross.mcclymont@blakedawson.com

This is the exhibit marked "RWM-10" now produced and shown to Ross Whyte McClymont at the
time of swearing his affidavit on 16 March 2010.



CHRIS MARSDEN FENWICK
Blake Dawson
181 William Street, Melbourne, Vic. 3000
An Australian legal practitioner within the
meaning of the Legal Profession Act 2004

Exhibit RWM-10

Letter to Clarendon Lawyers dated 12 March

2010

BY EMAIL

Level 26
181 William Street
Melbourne VIC 3000
Australia

Blake Dawson

Mr M Fernon
Clarendon Lawyers
Level 17, Rialto North Tower
525 Collins Street
MELBOURNE VIC 3000

T 61 3 9679 3000
F 61 3 9679 3111
DX 187 Melbourne
GPO Box 4958
Melbourne VIC 3001
Australia
www.blakedawson.com

12 March 2010

Dear Mr Fernon

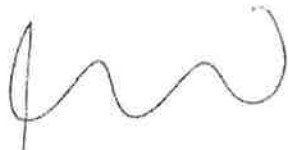
BOSI Security Services Limited (as trustee for Australia and New Zealand Banking Group Limited (ANZ) and BOS International (Australia) Limited and Westpac Banking Corporation) -v- Growers in the 2006, 2007 and 2008 Timbercorp Olive Schemes (Proposed Proceeding)

We refer to your letter dated 11 March 2010 and your email to Chris Fenwick sent on 12 March 2010, which were in response to our letter to you dated 5 February 2010 (also sent to Maurice Blackburn) in relation to the appointment of representative Growers in the Proposed Proceeding.

Maurice Blackburn did not respond to our letter. We did receive a letter from Herbert Geer on 12 February 2010 indicating that they now act on behalf of TGG Almond Committee Inc and Ms Kerree Bezencon and that Maurice Blackburn would not be acting in the Almond and Olive proceedings. However, Herbert Geer have not proposed any representative growers.

In these circumstances, our client proposes to apply to the Court for orders that the Growers nominated by you for the 2006, 2007 and 2008 Olive Schemes be appointed as representative defendants in the proceeding.

Yours faithfully



Ross McClymont
Partner
T 61 3 9679 3025
ross.mcclymont@blakedawson.com



Chris Fenwick
Senior Associate
T 61 3 9679 3148
chris.fenwick@blakedawson.com

Our reference
RWM CHFE

Partner
Ross McClymont
T 61 3 9679 3025
ross.mcclymont
@blakedawson.com

Contact
Chris Fenwick
T 61 3 9679 3148
chris.fenwick
@blakedawson.com

Rule 43.06(3)

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

No.

BETWEEN:

**BOSI SECURITY SERVICES LIMITED (A.C.N. 009 413 852) as trustee for
AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED (A.C.N. 005 357 522) and BOS
INTERNATIONAL (AUSTRALIA) LIMITED (A.C.N. 066 601 250) and WESTPAC BANKING
CORPORATION (A.C.N. 007 457 141)**
Plaintiff

- and -

**B.B OLIVES PTY LTD (IN LIQUIDATION) (A.C.N. 083 992 367) & ORS (according to the
attached Schedule)**

Defendants

CERTIFICATE IDENTIFYING EXHIBIT

Date sworn: 16 March 2010
Filed on behalf of: The Plaintiff
Prepared by:
Blake Dawson
Level 26
181 William Street
Melbourne VIC 3000
Australia

Solicitor's Code: 53
DX: 187
Tel: (03) 9679 3000
Fax: (03) 9679 3111
Ref: 03-2010-2555
Attention: Ross McClymont
Email: ross.mcclymont@blakedawson.com

This is the exhibit marked "RWM-11" now produced and shown to Ross Whyte McClymont at the
time of swearing his affidavit on 16 March 2010.



CHRIS MARSDEN FENWICK

Blake Dawson
181 William Street, Melbourne Vic. 3000
An Australian legal practitioner within the
meaning of the Legal Profession Act 2004

Exhibit RWM-111

Letter to Johnson Winter & Slattery dated 12

March 2010

BY EMAIL

Level 26
181 William Street
Melbourne VIC 3000
Australia

Blake Dawson

Ms C Burdett
Partner
Johnson Winter & Slattery
Level 38, 530 Collins Street
MELBOURNE VIC 3000

T 61 3 9679 3000
F 61 3 9679 3111
DX 187 Melbourne

GPO Box 4958
Melbourne VIC 3001
Australia

www.blakedawson.com

12 March 2010

Dear Ms Burdett

BOSI Security Services Limited (ACN 009 413 852) as trustee for Australia and New Zealand Banking Group Limited (ACN 005 357 522) and BOS International (Australia) Limited (ACN 066 601 250) and Westpac Banking Corporation (ACN 007 457 141) (BOSI) v Growers in the 2006, 2007 and 2008 Timbercorp Olive Schemes (Proposed Proceeding)

We act on behalf of BOSI in relation to the Proposed Proceeding. Copies of the draft Originating Motion, Summons and Affidavit of Ross McClymont are enclosed with this letter.

Our reference
RWM CHFE

Partner
Ross McClymont
T 61 3 9679 3025
ross.mcclymont@blakedawson.com

Contact
Chris Fenwick
T 61 3 9679 3148
chris.fenwick@blakedawson.com

We understand that you acted on behalf of Boundary Bend Limited (**BBL**) in relation to BBL's purchase of the Boundary Bend "Olive Assets" from Timbercorp Limited (in liquidation) (**TL**), Timbercorp Securities Limited (in liquidation) (**TSL**), Almond Land Pty Ltd (in liquidation) (**Almond Land**), BB Olives Pty Ltd (in liquidation) (**BB Olives**), and Olivecorp Land Pty Ltd (in liquidation) (**Olivecorp**) (the **Boundary Bend Transaction**).

As you are aware, the Boundary Bend Transaction occurred pursuant to a Sale and Purchase Deed (Olive Assets – BBE) and a Contract for sale of Water Shares (together, **SPDs**) executed on 12 October 2009.

On 10 November 2009, the liquidators of, inter alia, TL, TSL, Almond Land, BB Olives and Olivecorp (**Liquidators**) filed an application in the Supreme Court of Victoria seeking, inter alia, an order that they be directed to enter into and perform the SPD. In support of that application, the Liquidators filed and served the affidavit of Mark Korda sworn on 10 November 2009. The SPDs were confidential exhibit MAK-19 to Mr Korda's affidavit. At paragraph 80 of his affidavit, Mr Korda relevantly deposed:

"I consider that the SPDs should remain confidential as if bidders or the market are able to see the bids other parties have made, and the agreement with BBL does not reach completion, it may prejudice any subsequent realisation."

On 12 November 2009 the Honourable Justice Croft of the Supreme Court of Victoria ordered:

1. the Liquidators to enter into and perform the SPDs;
2. that the sale proceeds from the Boundary Bend Transaction be held on

trust by Olivecorp pending the hearing and determination of a proceeding (**Rights Proceeding**) to determine which person or persons have any rights to the sale proceeds (paragraph 7 of the Orders); and

3. that exhibit MAK-19 to Mr Korda's affidavit be kept confidential (paragraph 11 of the Order).

(**Orders**)

A copy of the Orders is attached.

We note that the Boundary Bend Transaction completed on 11 January 2010 and that the sale proceeds are now being held by Olivecorp, pursuant to paragraph 8 of the Orders.

The Proposed Proceeding to be commenced by BOSI is to be the Rights Proceeding for the purpose of paragraph 8 of the Orders. In these circumstances, it is our view that in the course of conducting the Proposed Proceeding, it will be necessary to disclose the SPDs to other parties in the proceeding. This is because the SPDs identify the Olive Assets sold and, therefore, the way in which each of the Olive Schemes are affected by the Boundary Bend Transaction.

In our view, the justification for maintaining confidentiality over the SPD no longer exists, as disclosure of the SPD can no longer pose a risk to settlement. Therefore, we seek your client's consent to discharge paragraph 11 of the Orders, insofar as it related to the SPDs.

We would be grateful for your prompt response.

Yours faithfully



Ross McClymont
Partner
T 61 3 9679 3025
ross.mcclymont@blakedawson.com



Chris Fenwick
Senior Associate
T 61 3 9679 3148
chris.fenwick@blakedawson.com