

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

LIST E

No. SCI2009 10699

**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

**AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED  
(A.C.N. 005 357 522) & ORS (according to the attached Schedule)**

Defendants

**AMENDED ORIGINATING MOTION**

Amended pursuant to the Orders of the Honourable Justice Davies made 22 December 2009

Date of document: 23 December 2009

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: RWM CHFE

Attention: Mr R McClymont

Email: ross.mcclymont@blakedawson.com

**TO THE DEFENDANTS**

**TAKE NOTICE** that this proceeding by originating motion has been brought against you by the plaintiff for the relief or remedy set out below.

**IF YOU INTEND TO DEFEND** the proceeding you must attend before the Court at the time and place named in the summons served with this originating motion.

**FILED**



**THIS ORIGINATING MOTION** is to be served within one year from the date it is filed or within such further period as the Court orders.

**THE PLAINTIFF SEEKS THE FOLLOWING ORDERS:**

1. Pursuant to Rule 45.05 of the *Supreme Court (General Civil Procedure) Rules 2005* (Vic) the requirements of Rules 5.03(1) and 8.02 are dispensed with.
2. Pursuant to Rule 45.05 of the *Supreme Court (General Civil Procedure) Rules 2005* (Vic) the plaintiff has leave to proceed by originating motion in Form 5C.
3. A declaration as to what, if any, right the plaintiff has to the sale proceeds held on trust by the second defendant pursuant to paragraph 7 of the orders made by the Honourable Justice Robson on 9 October 2009 in proceeding No. 9408 of 2009 (**Orders**).
4. A declaration as to what, if any, right the first defendant has to the sale proceeds held on trust by the second defendant pursuant to paragraph 7 of the Orders.
5. A declaration as to what, if any right the Growers represented by the fifth, sixth, seventh and eight defendants have to the sale proceeds held on trust by the second defendant pursuant to paragraph 7 of the Orders.
6. A declaration as to how the sale proceeds held on trust by the second defendant pursuant to paragraph 7 of the Orders ought to be distributed between the plaintiff and the first, fifth, sixth, seventh and eighth defendants.
7. Any other order the Court deems fit.

DATE

23 December 2009

Blake Dawson

**Blake Dawson**

Solicitors for the Plaintiff

1. Place of trial – Melbourne.
2. This originating motion was filed for the plaintiff by Blake Dawson, of Level 26, 181 William Street, Melbourne VIC 3000.
3. The address of the plaintiff is Level 27, 45 Clarence Street, Sydney NSW 2000.
4. The address for service of the plaintiff is at the offices of Blake Dawson, of Level 26, 181 William Street, Melbourne VIC 3000.
5. The address of the first defendant is Level 14, 100 Queen Street, Melbourne VIC 3000.
6. The address of the second defendant is Level 8, 461 Bourke Street, Melbourne VIC 3000.
7. The address of the third defendant is Level 24, 333 Collins Street, Melbourne, VIC 3000.
8. The address of the fourth defendant is Level 24, 333 Collins Street, Melbourne, VIC 3000.
9. The address of the fifth, sixth, seventh and eighth defendants is at the offices of Clarendon Lawyers, of Level 17, Rialto North Tower, 525 Collins Street, Melbourne, VIC, 3000.



**SCHEDULE**

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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

**AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED  
(A.C.N. 005 357 522)**

First Defendant

and

**ALMOND LAND PTY LTD (IN LIQUIDATION) (A.C.N 091 460 392)**

Second Defendant

and

**MARK ANTHONY KORDA  
(in his capacity as liquidator of Almond Land Pty Ltd (in liquidation))**

Third Defendant

and

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

Fourth Defendant

and

**GRAHAM GOLDENBERG  
(as the representative of the Growers in the 2002 Timbercorp Almond Project (ARSN 099 611 935))**

and

**CHRISTOPHER MARK LITTLE  
(as the representative of the Growers in the 2005 Timbercorp Almond Project (ARSN 112 935 092))**

Sixth Defendant



and

**CONSTANTINE MOSHOPOULOS**

**(as the representative of the Growers in the 2006 Timbercorp Almond Project (ARSN 118 387 974)**

Seventh Defendant

and

**DAVID BUTTERFIELD**

**(as the representative of the Growers in the 2002 Timbercorp Almond Project (Private Offer No.1) and the 2007 Timbercorp Almond Project (ARSN 122 511 040)**

Eighth Defendant

