

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

LIST E

S CI 2010 971

**IN THE MATTER OF THE MANAGED INVESTMENT  
SCHEMES LISTED IN SCHEDULE 1**

**TIMBERCORP SECURITIES LIMITED (IN LIQUIDATION)  
ACN 092 311 469 IN ITS CAPACITY AS RESPONSIBLE ENTITY  
OF THE MANAGED INVESTMENT SCHEMES LISTED IN SCHEDULE 2  
AND ORS ACCORDING TO SCHEDULE 1**

Plaintiffs

and

**TGG ALMOND COMMITTEE INC (A0053489A)  
AND ORS ACCORDING TO SCHEDULE 1**

Defendants

**AMENDED ORIGINATING PROCESS**

Amendment Pursuant to the Order Justice Davies

Date of document: 23 February 7 April 2010  
Filed on behalf of: the Plaintiffs

26-03-2010

Prepared by:  
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**A. DETAILS OF APPLICATION**

This application is made under the inherent jurisdiction of the Court and under sections 1041H, 1324 and 1325 of the *Corporations Act 2001* (Cth) (**Act**) and/or sections 52, 80 and 87 of the *Trade Practices Act 1974* (Cth) and sections 36 and 37 of the *Supreme Court Act 1986* (Vic).

On the facts stated in the supporting affidavit ~~to be~~ sworn by Mark Anthony Korda on 24 February 2010, the Plaintiffs seek the following orders -

- 1 A declaration that the meetings listed in Schedule 3 (**Meetings**), of members (**Members**) of the managed investment schemes listed in Schedule 2 (**Schemes**), and the resolutions purported to have been passed at the Meetings, are invalid as:
- (a) they Meetings were not ~~have not been called~~ and arranged by Members who hold interests carrying at least 5% of the votes that may be cast at a meeting of Members, in contravention of s 252D(1) of the Act;
  - (b) at least 21 days' notice of the Meetings was not given to all the Members, in contravention of s 252F of the Act;
  - (c) written notice of the Meetings was not given to each Member, nor each Director of the responsible entity, in contravention of s 252G(1) of the Act;
  - (d) notice of the Meetings was not given to each Member in the manner prescribed by s 252G(3) of the Act;
  - (e) notice of resolutions proposed at the Meetings was not in writing and signed by members giving the notice, in contravention of s 252L of the Act;
  - (f) the Meetings were adjourned for one month or more and a new notice was not sent, in contravention of s 252K of the Act;
  - (g) Meetings for more than one Scheme were held concurrently;
  - (h) a quorum was not present at the Meetings;
  - (i) a poll was not taken in relation to a purported resolution to remove the responsible entity, in contravention of ss 601FM and 253J of the Act;
  - (j) the proposed replacement responsible entity, Mediterranean Olives Estate Limited (ACN 091 024 396), does not hold a financial services licence authorising it to operate the Schemes, in contravention of ss 601FK and 601FA of the Act.
- 2 A declaration that in sending the purported notices of the Meetings, the Defendants have engaged in misleading or deceptive conduct in contravention of s 1041H of the Act and/or s 52 of the *Trade Practices Act 1974* (Cth) and that accordingly the Meetings are invalid.

3 Costs.

4 Such further or other orders as the Court deems fit.

DATE: 7 April 2010

  
**ARNOLD BLOCH LEIBLER**  
 Solicitors for the Plaintiffs

This application will be heard by Justice Davies in Court No 2, Supreme Court, 450 Little Bourke Street, Melbourne at 10.00am on 24 February 2010.

**B. NOTICE TO DEFENDANTS**

TO: The Defendants,

C/- Tom May, Herbert Geer, Level 20, 385 Bourke Street, Melbourne VIC 3000; and  
C/- Kerree Bezencon, 953 Don Road Healesville VIC 3777

If you or your legal practitioner do not appear before the Court at the time shown above, the application may be dealt with, and an order made, in your absence. As soon after that time as the business of the Court will allow, any of the following may happen:

- (a) the application may be heard and final relief given;
- (b) directions may be given for the future conduct of the proceeding;
- (c) any interlocutory application may be heard.

Before appearing before the Court, you must file a notice of appearance, in the prescribed form, in the office of the Prothonotary and serve a copy of it on the plaintiff.

*Note:* Except with the leave of the Court, a defendant that is a corporation cannot appear at a hearing otherwise than by a legal practitioner.

**C. APPLICATION FOR WINDING UP ON GROUND OF INSOLVENCY**

Not applicable.

**D. FILING**

Date of filing:



This originating process is filed by Arnold Bloch Leibler of Level 21, 333 Collins Street, Melbourne, VIC, 3000, solicitors for the Plaintiffs.

**E. SERVICE**

The plaintiffs' address for service is C/- Arnold Bloch Leibler of Level 21, 333 Collins Street, Melbourne, VIC, 3000.

It is intended to serve a copy of this originating process on each defendant and on any person listed below:

Australian Securities and Investments Commission; and

Timbercorp Growers Group, by their solicitors Clarendon Lawyers.

And to post this document on the websites of KordaMentha and Arnold Bloch Leibler

**SCHEDULE 1  
SCHEDULE OF PARTIES**

**TIMBERCORP SECURITIES LIMITED (IN LIQUIDATION)**  
**ACN 092 311 469**  
First Plaintiff

**MARK ANTHONY KORDA**  
Second Plaintiff

**LEANNE KYLIE CHESSER**  
Third Plaintiff

and

**TGG ALMOND COMMITTEE INC**  
**(A0053489A)**  
First Defendant

**TGG OLIVE COMMITTEE INC**  
**(A0053490J)**  
Second Defendant

**TGG CITRUS COMMITTEE INC**  
**(A0053635L)**  
Third Defendant

**KERREE ANNE BEZENCON**  
Fourth Defendant

**SCHEDULE 2  
MANAGED INVESTMENT SCHEMES**

- 1      2001 Timbercorp Almond Project (ARSN 095649746)
- 2      2002 Timbercorp Almond Project (ARSN 099 611 935)
- 3      2003 Timbercorp Almond Project (ARSN 103 197 299)
- 4      2004 Timbercorp Almond Project (ARSN 108 336 670)
- 5      2005 Timbercorp Almond Project (ARSN 112 935 092)
- 6      2006 Timbercorp Almond Project (ARSN 118387974)
- 7      2007 Timbercorp Almond Project (ARSN 122511 040)
- 8      2004 Timbercorp Citrus Project (ARSN 108 887 538)
- 9      2005 Timbercorp Citrus Project (ARSN 114 091 299)
- 10     2001 Timbercorp Olive Project (ARSN 094 382 082)
- 11     2002 Timbercorp Olive Project (ARSN 098 233 455)
- 12     2003 Timbercorp Olive Project (ARSN 104 648 473)
- 13     2004 Timbercorp Olive Project (ARSN 108744378)
- 14     2006 Timbercorp Olive Project (ARSN 119 182 179)
- 15     2007 Timbercorp Olive Project (ARSN 123 155 715)
- 16     2008 Timbercorp Olive Project (ARSN 129 307 722)

**SCHEDULE 3  
DETAILS OF MEETINGS**

<b>Scheme</b>	<b>Time and date of Meeting</b>	<b>Place of Meeting</b>
2001 Timbercorp Almond Project ARSN 095 649 746	25 February 2010 at 12:00 noon	Power House Function Centre, Aughtie Drive, Albert Park Lake
2002 Timbercorp Almond Project ARSN 099 611 935	25 February 2010 at 12:00 noon	Power House Function Centre, Aughtie Drive, Albert Park Lake
2003 Timbercorp Almond Project ARSN 103 197 299	25 February 2010 at 12:00 noon	Power House Function Centre, Aughtie Drive, Albert Park Lake
2004 Timbercorp Almond Project ARSN 108 336 670	25 February 2010 at 12:00 noon	Power House Function Centre, Aughtie Drive, Albert Park Lake
2005 Timbercorp Almond Project ARSN 112 935 092	25 February 2010 at 12:00 noon	Power House Function Centre, Aughtie Drive, Albert Park Lake
2006 Timbercorp Almond Project ARSN 118 387 974	25 February 2010 at 12:00 noon	Power House Function Centre, Aughtie Drive, Albert Park Lake
2007 Timbercorp Almond Project ARSN 122 511 040	25 February 2010 at 12:00 noon	Power House Function Centre, Aughtie Drive, Albert Park Lake
2004 Timbercorp Citrus Project ARSN 108 887 538	25 February 2010 at 12:00 noon	Power House Function Centre, Aughtie Drive, Albert Park Lake
2005 Timbercorp Citrus Project ARSN 114 091 299	25 February 2010 at 12:00 noon	Power House Function Centre, Aughtie Drive, Albert Park Lake
2001 Timbercorp Olive Project ARSN 094 382 082	25 February 2010 at 12:00 noon	Power House Function Centre, Aughtie Drive, Albert Park Lake
2002 Timbercorp Olive Project ARSN 098 233 455	25 February 2010 at 12:00 noon	Power House Function Centre, Aughtie Drive, Albert Park Lake
2003 Timbercorp Olive Project ARSN 104 648 473	25 February 2010 at 12:00 noon	Power House Function Centre, Aughtie Drive, Albert Park Lake

2004 Timbercorp Olive Project ARSN 108 744 378	25 February 2010 at 12:00 noon	Power House Function Centre, Aughtie Drive, Albert Park Lake
2006 Timbercorp Olive Project ARSN 119 182 179	25 February 2010 at 12:00 noon	Power House Function Centre, Aughtie Drive, Albert Park Lake
2007 Timbercorp Olive Project ARSN 123 155 715	25 February 2010 at 12:00 noon	Power House Function Centre, Aughtie Drive, Albert Park Lake
2008 Timbercorp Olive Project ARSN 129 307 722	25 February 2010 at 12:00 noon	Power House Function Centre, Aughtie Drive, Albert Park Lake