

Form 5F

Rule 5.02(3)

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMERCIAL COURT

S ECI 2014 000425

BETWEEN

Timbercorp Finance Pty Ltd (In Liquidation) (ACN 054 581 190)

Plaintiff

and

Morag Lowe

Defendant

AMENDED ORIGINATING PROCESS–REDCREST

**Amended pursuant to leave granted by the orders of the Honourable Justice Judd made on
3 August 2016**

Date of document: ~~6/11/2014~~
20/7/2016 3/8/2016
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Date of filing: 6/11/2014

TO THE DEFENDANT

TAKE NOTICE that this proceeding has been brought against you by the Plaintiff for the claim set out in this originating process. This originating process has been filed electronically in the Court's Case Management System known as RedCrest.

Under the Rules of the Court, this originating process is deemed to be a writ.

IF YOU INTEND TO DEFEND the proceeding, or if you have a claim against the Plaintiff which you wish to have taken into account at the trial, YOU MUST GIVE NOTICE of your intention by filing an appearance in the manner and within the proper time for appearance stated below.



IF YOU FAIL to file an appearance in the proper manner and within the proper time, the Plaintiff may OBTAIN JUDGMENT AGAINST YOU on the claim without further notice.

IF the Plaintiff claims a debt only and you pay that debt, namely, \$869,970.09 and \$2,300.00 for legal costs to the Plaintiff or the Plaintiff's solicitor within the proper time for appearance, this proceeding will come to an end. Notwithstanding the payment you may have the costs taxed by the Court.

AMENDED STATEMENT OF CLAIM

1. The Plaintiff is and was at all material times:
 - (a) a corporation duly incorporated and registered pursuant to the *Corporations Act 2001* (Cth) (**the Act**); and
 - (b) a company carrying on the business of providing finance, financial services and financial accommodation.
2. On or about 23 April 2009, the board of directors of the Plaintiff resolved to appoint administrators to the Plaintiff pursuant to s. 436A of the Act and Mark Anthony Korda and Craig Peter Shepard were so appointed.
3. On 29 June 2009, a meeting of creditors of the Plaintiff was convened pursuant to s. 439A of the Act. The creditors voting at the meeting resolved that the Plaintiff be wound up pursuant to s. 439C(c) of the Act and Mark Anthony Korda and Craig Peter Shepard became the liquidators.

2007/08 TIMBERCORP (SINGLE PAYMENT) TIMBERLOT PROJECT (the 2007/08

Single Payment Timberlot Project)

Loan Agreement L0026664

4. On or about 11 June 2008 the Defendant applied to the Plaintiff for a loan (**L0026664 Loan Application**) in the amount of \$360,360.00 (**L0026664 Loan Amount**) to fund part of the cost of ~~his~~ her initial investment in the 2007/08 Single Payment Timberlot Project being a registered managed investment scheme operated by Timbercorp

Securities Limited (in Liquidation) (TSL).

PARTICULARS

The L0026664 Loan Application is in writing and contained in:

- (i) a document titled "2008 Timbercorp Projects Finance Package Loan Application Form"; and
- (ii) a document titled "2007 Timbercorp Projects Finance Package Loan Explanation and Loan Terms" (**L0026664 Loan Explanation and Loan Terms**).

The L0026664 Loan Application was executed by the Defendant.

Copies of the documents are in the possession of the solicitors for the Plaintiff and can be inspected by prior appointment during ordinary business hours.

5. By executing the L0026664 Loan Application, the Defendant acknowledged, confirmed and agreed *inter alia* that:

- (a) she had read and understood the L0026664 Loan Explanation and Loan Terms provided with the L0026664 Loan Application;
- (b) the Plaintiff made no recommendation in connection with any investment in the 2007/08 Single Payment Timberlot Project ;
- (c) the Plaintiff recommended to the Defendant that she:
 - (i) obtain independent professional advice as to whether any investment in the 2007/08 Single Payment Timberlot Project was an appropriate investment or was fit for any particular purpose that is required or is of a nature or quality to achieve any result that is desired; and
 - (ii) review the potential risks of any investment in the 2007/08 Single Payment Timberlot Project and of borrowing money to acquire that investment with ~~his~~ her own legal and financial advisers;

- (d) ~~his~~ her obligation to pay all interest on, and to repay, the L0026664 Loan Amount applied regardless of the success or failure of any investment in the 2007/08 Single Payment Timberlot Project or of the rate of return of income or capital from that investment or of the consequences of that investment or any act, conduct, dealing, omission, statement, representation or warranty by TSL or any other person; and
- (e) she could not claim or exercise any set-off, counterclaim or any similar right of defence in relation to any amounts that may be due and payable by ~~him~~ her in connection with the 2007/08 Single Payment Timberlot Project loan agreement.

(collectively, **L0026664 Loan Acknowledgments**)

PARTICULARS

The L0026664 Loan Acknowledgments are contained at page 7 of the L0026664 Loan Application under the heading "IMPORTANT ACKNOWLEDGEMENTS".

- 6. By completing and submitting the L0026664 Loan Application, the Defendant offered to borrow the L0026664 Loan Amount from the Plaintiff on the terms specified therein on the basis that the terms contained in the L0026664 Loan Explanation and Loan Terms would regulate the loan agreement between ~~him~~ her and the Plaintiff if ~~his~~ her L0026664 Loan Application was accepted.
- 7. In pursuance of the L0026664 Loan Application the Plaintiff accepted the Defendant's offer to borrow the L0026664 Loan Amount and agreed to lend to ~~him~~ her the L0026664 Loan Amount (**Loan Agreement L0026664**).

PARTICULARS

The Plaintiff's acceptance is partly in writing and partly to be implied.

Insofar as it is in writing, it is contained in the L0026664 Letter of Acceptance, enclosing the L0026664 Loan Details, referred to below in these particulars.

Insofar as it is to be implied, it is to be implied from the Plaintiff paying the L0026664 Loan Amount as referred to below in these particulars.

Loan Agreement L0026664 is partly in writing and partly to be implied.

The written part is comprised of:

- (i) L0026664 Loan Application;
- (ii) L0026664 Loan Explanation and Loan Terms; and
- (iii) Letter of acceptance from the Plaintiff to the Defendant dated 30 June 2008 (**L0026664 Letter of Acceptance**), enclosing a document titled "Loan Terms - Details" signed on behalf of the Defendant by ~~his~~ her attorney on 30 June 2008 (**L0026664 Loan Details**).

Copies of the documents are in the possession of the Plaintiff's solicitors and can be inspected by prior appointment during ordinary business hours.

Insofar as Loan Agreement L0026664 is to be implied, it is to be implied from ~~by: (i) the Plaintiff paying/advancing the L0026664 Loan Amount on or about 30 June 2008 by paying it to TSL (or as it directed) for the balance of the Defendant's application money and loan application fee as described in the L0026664 Loan Application; and~~

~~(ii) the Defendant, having received the L0026664 Letter of Acceptance enclosing the L0026664 Loan Details, commencing on 29 August 2008 to make loan repayments of \$5,373.29 to the Plaintiff as specified in the L0026664 Loan Details.~~

8. There were terms of Loan Agreement L0026664 as follows:

- (a) "*balance owing on your loan account*" meant, at any time, the difference between all amounts credited and all amounts debited to the Defendant under Loan Agreement L0026664 at that time and when this amount would be calculated for the end of a day, it would include all debits and credits assigned to that day;

- (b) *"business day"* meant any day (other than a Saturday or a Sunday) banks were open for business in Victoria (**Business Day**);
- (c) *"costs"* included charges and expenses, and costs, charges and expenses in connection with legal and other advisers on a full indemnity basis;
- (d) *"higher interest rate"* meant a per annum interest rate of 13.20% (**L0026664 Higher Interest Rate**);
- (e) *"instalment"* meant a monthly principal and interest instalment of \$5,373.29 (**L0026664 Instalment**);
- (f) *"loan account"* meant an account the Plaintiff would establish in the Defendant's name for recording all transactions in connection with Loan Agreement L0026664 (**L0026664 Loan Account**);
- (g) *"loan amount"* meant the L0026664 Loan Amount;
- (h) *"loan expiry date"* meant the date ending 96 months from 30 June 2008 (**L0026664 Loan Expiry Date**);
- (i) *"loan term"* meant 96 months from 30 June 2008 (**L0026664 Loan Term**);
- (j) *"lower interest rate"* meant a per annum rate of interest fixed at 9.50% for the L0026664 Loan Term (**L0026664 Lower Interest Rate**);
- (k) *"total amount owing"* (**L0026664 Total Amount Owing**) meant, at any time, the balance owing on the L0026664 Loan Account at that time, plus:
 - (i) all accrued interest charges, default interest charges and other amounts which the Defendant was obliged to pay under Loan Agreement L0026664 but which had not been debited to the L0026664 Loan Account at that time (including insurance); and
 - (ii) all money which the Defendant would or may owe the Plaintiff in the future under Loan Agreement L0026664.

PARTICULARS

- (i) The terms referred to in sub-paragraphs 8(a) to 8(c) are express and contained in cl. 11 of the L0026664 Loan Explanation and Loan Terms.
 - (ii) The terms referred to in sub-paragraphs 8(d) and 8(e) are express and contained in cl. 11 of the L0026664 Loan Explanation and Loan Terms and in the section headed “Loan Terms – Details” in Loan Agreement L0026664 Loan Details.
 - (iii) The term referred to in sub-paragraph 8(f) is express and contained in cl. 11 of the L0026664 Loan Explanation and Loan Terms.
 - (iv) The terms referred to in sub-paragraphs 8(g) to 8(j) are express and contained in cl. 11 of the L0026664 Loan Explanation and Loan Terms and in the section headed “Loan Terms – Details” in Loan Agreement L0026664 Loan Details.
 - (v) The term referred to in sub-paragraph 8(k) is express and contained in cl. 11 of the L0026664 Loan Explanation and Loan Terms.
9. There were further terms of Loan Agreement L0026664 as follows:
- (a) the Plaintiff agreed to lend the Defendant the L0026664 Loan Amount by paying it to TSL (or as TSL directed) as payment of the balance for the Defendant's lots and ~~his~~ her loan application fee as described in the L0026664 Loan Explanation and Loan Terms;
 - (b) interest charges for each day would be calculated at the daily percentage rate on the balance owing on the L0026664 Loan Account for the end of that day;
 - (c) the daily percentage rate would be the L0026664 Higher Interest Rate for that day divided by 365, but if the Defendant paid interest on the due date and was not in default at that time, the Plaintiff would accept interest charges calculated at the L0026664 Lower Interest Rate;

- (d) interest charges would accrue daily from and including the date the Plaintiff paid the L0026664 Loan Amount under the term referred to in sub-paragraph 9(a) above;
- (e) the Plaintiff could charge interest at the L0026664 Higher Interest Rate on any other amount which was not paid on time, which charges would accrue daily and the Defendant would pay them to the Plaintiff when asked;
- (f) the Plaintiff could debit any of these amounts to the L0026664 Loan Account without first notifying the Defendant;
- (g) the Defendant's obligation to pay on time would not be cancelled by the provisions of the terms in sub-paragraphs 9(b) to 9(f) above;
- (h) the Defendant would repay to the Plaintiff all amounts the Defendant borrowed from the Plaintiff and the Defendant would pay the Plaintiff interest charges;
- (i) the Defendant would pay the L0026664 Instalments of \$5,373.29 over the L0026664 Loan Term;
- (j) each L0026664 Instalment was due and payable on the last Business Day of each month, with the first L0026664 Instalment due on the last Business Day of the month in which the L0026664 Loan Term commenced;
- (k) the Defendant would pay the Plaintiff the L0026664 Total Amount Owing on the earlier of the date the final L0026664 Instalment was due, the L0026664 Loan Expiry Date or, if the Defendant was in default, on the date it became due for payment *inter alia* under the terms set out in sub-paragraphs 9(p) to 9(r) below;
- (l) the Defendant would pay the Plaintiff the Plaintiff's costs in enforcing Loan Agreement L0026664 after the Defendant was in default;
- (m) the Plaintiff could debit any of these amounts to the L0026664 Loan Account on or after the date the Plaintiff paid them or the date they become due or payable by the Defendant or the Plaintiff (whichever is earlier) without first notifying the Defendant;

- (n) the Defendant would indemnify the Plaintiff against liability, loss or costs the Plaintiff may suffer or incur:
 - (i) if the Defendant defaulted under Loan Agreement L0026664;
 - (ii) in connection with actions, proceedings, claims and demands in connection with Loan Agreement L0026664;
- (o) any amount the Defendant was obliged to pay the Plaintiff under Loan Agreement L0026664 in respect of which a time for payment was not stated, would be payable when the Plaintiff asked;
- (p) the Defendant would be in default if:
 - (i) the Defendant did not pay on time all amounts due under Loan Agreement L0026664;
 - (ii) the Defendant did something she agreed not to do, or did not do something she agreed to do under Loan Agreement L0026664;
- (q) if the Defendant was in default, the L0026664 Total Amount Owing would be payable on demand;
- (r) after a default occurred, the Plaintiff could sue the Defendant for the L0026664 Total Amount Owing; and
- (s) the agreement was governed by the laws of Victoria and both the Defendant and the Plaintiff agreed to submit to the non-exclusive jurisdiction of the courts of that State.

PARTICULARS

- (i) The term referred to in sub-paragraph 9(a) is express and contained in cl. 1 of the L0026664 Loan Explanation and Loan Terms.
- (ii) The terms referred to in sub-paragraphs 9(b) to 9(g) are express and contained in cl. 2 of the L0026664 Loan Explanation and Loan Terms.

- (iii) The terms referred to in sub-paragraphs 9(h) to 9(k) are express and contained in cl. 3 of the L0026664 Loan Explanation and Loan Terms.
 - (iv) The terms referred to in sub-paragraphs 9(l) to 9(o) are express and contained in cl. 4 of the L0026664 Loan Explanation and Loan Terms.
 - (v) The terms referred to in sub-paragraphs 9(p) to 9(r) are express and contained in cl. 7 of the L0026664 Loan Explanation and Loan Terms.
 - (vi) The term referred to in sub-paragraph 9(s) is express and contained in cl. 9 of the L0026664 Loan Explanation and Loan Terms.
10. The Plaintiff paid the L0026664 Loan Amount to TSL (or as it directed) as payment of the balance for the Defendant's lots, by:
- (a) the following:
 - (i) a debit entry of \$945,812 (which included the L0026664 Loan Amount) on 18 July 2008 to an account in the general ledger of the Plaintiff named "Loan Control Account" and numbered 51-1221, by way of a journal voucher numbered 513914 entered in the Great Plains accounting software maintained by the Plaintiff and TSL;
 - (ii) a credit entry of \$945,812 (which included the L0026664 Loan Amount) on 18 July 2008 to an account in the general ledger of the Plaintiff named "Loan – Timbercorp Securities Ltd" and numbered 51-1208, by way of the same journal voucher;
 - (iii) a debit entry of \$945,812 (which included the L0026664 Loan Amount) on 18 July 2008 to an account in the general ledger of TSL named "Loan – Timbercorp Finance Pty Ltd" and numbered 12-1200, by way of the same journal voucher;
 - (iv) a credit entry of \$945,812 (which included the L0026664 Loan Amount) on 18 July 2008 to an account in the general ledger of TSL named

“Suspense New Loans Advanced” and numbered 12-7234, by way of the same journal voucher;

(v) TSL recording in its “Timbercorp Information Management System”, on 30 June 2008, the settlement of the Defendant’s balance liabilities to TSL (following payment of his deposit) recorded in invoice 2279677 issued 30 June 2008; or

- (b) ~~On or about 30 June~~ 2 July 2008, the L0026664 Loan Amount being ~~was~~ paid to Trust Company of Australia Limited as custodian and agent for TSL; or
- (c) both (a) and (b).

and thereby loaned it to the Defendant in accordance with the terms of the Loan Agreement L0026664.

11. Between 29 August 2008 and 29 May 2009 the Defendant paid L0026664 Instalments to the Plaintiff under Loan Agreement L0026664.
12. On or about 1 July 2009, the Defendant defaulted under Loan Agreement L0026664 by failing to pay the L0026664 Instalment when due and payable.

PARTICULARS

The Defendant failed to pay the L0026664 Instalment due on the last Business Day of the month of June 2009.

13. By reason of the foregoing paragraph:
 - (a) the Defendant was at all times from 1 July 2009 in default under Loan Agreement L0026664; and
 - (b) the L0026664 Total Amount Owing under Loan Agreement L0026664 was payable on demand.

14. On 19 March 2010 the Plaintiff made a demand for the L0026664 Total Amount Owing under Loan Agreement L0026664 as at 2 March 2010 to be paid by the Defendant within 7 days of service of the demand (**L0026664 Demand**).

PARTICULARS

The L0026664 Demand is in writing, a copy of which is in the possession of the Plaintiff's solicitors and may be inspected by prior appointment.

15. The Defendant failed and/or neglected and/or refused to pay the amount so demanded within 7 days or at all.
16. By letter dated 2 May 2014 the Plaintiff wrote to the Defendant, *inter alia*, confirming that she remained in default of ~~his~~ her payment obligations under Loan Agreement L0026664, advising the L0026664 Total Amount Owing as at 31 March 2014, and notifying of the Plaintiff's intention to issue proceedings 14 days from the date of the letter (**L0026664 Notice of Intention to Sue**).

PARTICULARS

The L0026664 Notice of Intention to Sue is in writing, a copy of which is in the possession of the Plaintiff's solicitors and may be inspected by prior appointment.

17. By reason of the matters aforesaid, the Defendant is and remains indebted to the Plaintiff for the L0026664 Total Amount Owing, as at 30 September 2014 being the sum of \$648,638.06 plus costs and interest calculated at the L0026664 Higher Interest Rate thereupon at 13.20% per annum being \$234.58 per day.

2008 OLIVE EARLY PROJECT (2008 Olive Early Project)

Loan Agreement L0026036

18. On or about 11 June 2008 the Defendant applied to the Plaintiff for a loan (**L0026036 Loan Application**) in the amount of \$92,340.00 (**L0026036 Loan Amount**) to fund

part of the cost of ~~his~~ her initial investment in the 2008 Olive Early Project being a registered managed investment scheme operated by Timbercorp Securities Limited (in Liquidation) (**TSL**).

PARTICULARS

The L0026036 Loan Application is in writing and contained in:

- (i) a document titled "2008 Timbercorp Projects Finance Package Loan Application Form"; and
- (ii) a document titled "2007 Timbercorp Projects Finance Package Loan Explanation and Loan Terms" (**L0026036 Loan Explanation and Loan Terms**).

The L0026036 Loan Application was executed by the Defendant.

Copies of the documents are in the possession of the solicitors for the Plaintiff and can be inspected by prior appointment during ordinary business hours.

19. By executing the L0026036 Loan Application, the Defendant acknowledged, confirmed and agreed *inter alia* that:

- (a) she had read and understood the L0026036 Loan Explanation and Loan Terms provided with the L0026036 Loan Application;
- (b) the Plaintiff made no recommendation in connection with any investment in the 2008 Olive Early Project;
- (c) the Plaintiff recommended to the Defendant that she:
 - (i) obtain independent professional advice as to whether any investment in the 2008 Olive Early Project was an appropriate investment or was fit for any particular purpose that is required or is of a nature or quality to achieve any result that is desired; and

- (ii) review the potential risks of any investment in the 2008 Olive Early Project and of borrowing money to acquire that investment with ~~his~~ her own legal and financial advisers;
- (d) ~~his~~ her obligation to pay all interest on, and to repay, the L0026036 Loan Amount applied regardless of the success or failure of any investment in the 2008 Olive Early Project or of the rate of return of income or capital from that investment or of the consequences of that investment or any act, conduct, dealing, omission, statement, representation or warranty by TSL or any other person; and
- (e) she could not claim or exercise any set-off, counterclaim or any similar right of defence in relation to any amounts that may be due and payable by ~~him~~ her in connection with the 2008 Olive Early Project loan agreement.

(collectively, **L0026036 Loan Acknowledgments**)

PARTICULARS

The L0026036 Loan Acknowledgments are contained at page 7 of the L0026036 Loan Application under the heading "IMPORTANT ACKNOWLEDGEMENTS".

- 20. By completing and submitting the L0026036 Loan Application, the Defendant offered to borrow the L0026036 Loan Amount from the Plaintiff on the terms specified therein on the basis that the terms contained in the L0026036 Loan Explanation and Loan Terms would regulate the loan agreement between ~~him~~ her and the Plaintiff if ~~his~~ her L0026036 Loan Application was accepted.
- 21. In pursuance of the L0026036 Loan Application the Plaintiff accepted the Defendant's offer to borrow the L0026036 Loan Amount and agreed to lend to ~~him~~ her the L0026036 Loan Amount (**Loan Agreement L0026036**).

PARTICULARS

The Plaintiff's acceptance is partly in writing and partly to be implied.

Insofar as it is in writing, it is contained in the L0026036 Letter of Acceptance, enclosing the L0026036 Loan Details, referred to below in these particulars.

Insofar as it is to be implied, it is to be implied from the Plaintiff paying the L0026036 Loan Amount as referred to below in these particulars.

Loan Agreement L0026036 is partly in writing and partly to be implied.

The written part is comprised of:

- (i) L0026036 Loan Application;
- (ii) L0026036 Loan Explanation and Loan Terms; and
- (iii) Letter of acceptance from the Plaintiff to the Defendant dated 14 June 2008 (**L0026036 Letter of Acceptance**), enclosing a document titled "Loan Terms - Details" signed on behalf of the Defendant by ~~his~~ her attorney on 14 June 2008 (**L0026036 Loan Details**).

Copies of the documents are in the possession of the Plaintiff's solicitors and can be inspected by prior appointment during ordinary business hours.

Insofar as Loan Agreement L0026036 is to be implied, it is to be implied from ~~by: (i) the Plaintiff paying advancing the L0026036 Loan Amount on or about 30 June 2008 by paying it to TSL (or as it directed) for the balance of the Defendant's application money and loan application fee as described in the L0026036 Loan Application; and~~

~~(ii) the Defendant, having received the L0026036 Letter of Acceptance enclosing the L0026036 Loan Details, commencing on 29 August 2008 to make loan repayments of \$1,194.86 to the Plaintiff as specified in the L0026036 Loan Details.~~

22. There were terms of Loan Agreement L0026036 as follows:

- (a) "*balance owing on your loan account*" meant, at any time, the difference between all amounts credited and all amounts debited to the Defendant under Loan Agreement

L0026036 at that time and when this amount would be calculated for the end of a day, it would include all debits and credits assigned to that day;

- (b) “*business day*” meant any day (other than a Saturday or a Sunday) banks were open for business in Victoria (**Business Day**);
- (c) “*costs*” included charges and expenses, and costs, charges and expenses in connection with legal and other advisers on a full indemnity basis;
- (d) “*higher interest rate*” meant a per annum interest rate of 13.20% (**L0026036 Higher Interest Rate**);
- (e) “*instalment*” meant a monthly principal and interest instalment of \$1,194.86 (**L0026036 Instalment**);
- (f) “*loan account*” meant an account the Plaintiff would establish in the Defendant's name for recording all transactions in connection with Loan Agreement L0026036 (**L0026036 Loan Account**);
- (g) “*loan amount*” meant the L0026036 Loan Amount;
- (h) “*loan expiry date*” meant the date ending 120 months from 30 June 2008 (**L0026036 Loan Expiry Date**);
- (i) “*loan term*” meant 120 months from 30 June 2008 (**L0026036 Loan Term**);
- (j) “*lower interest rate*” meant a per annum rate of interest fixed at 9.50% for the L0026036 Loan Term (**L0026036 Lower Interest Rate**);
- (k) “*total amount owing*” (**L0026036 Total Amount Owing**) meant, at any time, the balance owing on the L0026036 Loan Account at that time, plus:
 - (i) all accrued interest charges, default interest charges and other amounts which the Defendant was obliged to pay under Loan Agreement L0026036 but which had not been debited to the L0026036 Loan Account at that time (including insurance); and

- (ii) all money which the Defendant would or may owe the Plaintiff in the future under Loan Agreement L0026036.

PARTICULARS

- (i) The terms referred to in sub-paragraphs 22(a) to 22(c) are express and contained in cl. 11 of the L0026036 Loan Explanation and Loan Terms.
- (ii) The terms referred to in sub-paragraphs 22(d) and 22(e) are express and contained in cl. 11 of the L0026036 Loan Explanation and Loan Terms and ~~in the section headed "Loan Terms – Details" in Loan Agreement L0026036~~ Loan Details.
- (iii) The term referred to in sub-paragraph 22(f) is express and contained in cl. 11 of the L0026036 Loan Explanation and Loan Terms.
- (iv) The terms referred to in sub-paragraphs 22(g) to 22(j) are express and contained in cl. 11 of the L0026036 Loan Explanation and Loan Terms and ~~in the section headed "Loan Terms – Details" in Loan Agreement L0026036~~ Loan Details.
- (v) The term referred to in sub-paragraph 22(k) is express and contained in cl. 11 of the L0026036 Loan Explanation and Loan Terms.

23. There were further terms of Loan Agreement L0026036 as follows:

- (a) the Plaintiff agreed to lend the Defendant the L0026036 Loan Amount by paying it to TSL (or as TSL directed) as payment of the balance for the Defendant's lots and ~~his~~ her loan application fee as described in the L0026036 Loan Explanation and Loan Terms;
- (b) interest charges for each day would be calculated at the daily percentage rate on the balance owing on the L0026036 Loan Account for the end of that day;
- (c) the daily percentage rate would be the L0026036 Higher Interest Rate for that day divided by 365, but if the Defendant paid interest on the due date and was not in

default at that time, the Plaintiff would accept interest charges calculated at the L0026036 Lower Interest Rate;

- (d) interest charges would accrue daily from and including the date the Plaintiff paid the L0026036 Loan Amount under the term referred to in sub-paragraph 23(a) above;
- (e) the Plaintiff could charge interest at the L0026036 Higher Interest Rate on any other amount which was not paid on time, which charges would accrue daily and the Defendant would pay them to the Plaintiff when asked;
- (f) the Plaintiff could debit any of these amounts to the L0026036 Loan Account without first notifying the Defendant;
- (g) the Defendant's obligation to pay on time would not be cancelled by the provisions of the terms in sub-paragraphs 23(b) to 23(f) above;
- (h) the Defendant would repay to the Plaintiff all amounts the Defendant borrowed from the Plaintiff and the Defendant would pay the Plaintiff interest charges;
- (i) the Defendant would pay the L0026036 Instalments of \$1,194.86 over the L0026036 Loan Term;
- (j) each L0026036 Instalment was due and payable on the last Business Day of each month, with the first L0026036 Instalment due on the last Business Day of the month in which the L0026036 Loan Term commenced;
- (k) the Defendant would pay the Plaintiff the L0026036 Total Amount Owing on the earlier of the date the final L0026036 Instalment was due, the L0026036 Loan Expiry Date or, if the Defendant was in default, on the date it became due for payment *inter alia* under the terms set out in sub-paragraphs 23(p) to 23(r) below;
- (l) the Defendant would pay the Plaintiff the Plaintiff's costs in enforcing Loan Agreement L0026036 after the Defendant was in default;

- (m) the Plaintiff could debit any of these amounts to the L0026036 Loan Account on or after the date the Plaintiff paid them or the date they become due or payable by the Defendant or the Plaintiff (whichever is earlier) without first notifying the Defendant;
- (n) the Defendant would indemnify the Plaintiff against liability, loss or costs the Plaintiff may suffer or incur:
 - (i) if the Defendant defaulted under Loan Agreement L0026036;
 - (ii) in connection with actions, proceedings, claims and demands in connection with Loan Agreement L0026036;
- (o) any amount the Defendant was obliged to pay the Plaintiff under Loan Agreement L0026036 in respect of which a time for payment was not stated, would be payable when the Plaintiff asked;
- (p) the Defendant would be in default if:
 - (i) the Defendant did not pay on time all amounts due under Loan Agreement L0026036;
 - (ii) the Defendant did something she agreed not to do, or did not do something she agreed to do under Loan Agreement L0026036;
- (q) if the Defendant was in default, the L0026036 Total Amount Owing would be payable on demand;
- (r) after a default occurred, the Plaintiff could sue the Defendant for the L0026036 Total Amount Owing; and
- (s) the agreement was governed by the laws of Victoria and both the Defendant and the Plaintiff agreed to submit to the non-exclusive jurisdiction of the courts of that State.

PARTICULARS

- (i) The term referred to in sub-paragraph 23(a) is express and contained in cl. 1 of the L0026036 Loan Explanation and Loan Terms.

- (ii) The terms referred to in sub-paragraphs 23(b) to 23(g) are express and contained in cl. 2 of the L0026036 Loan Explanation and Loan Terms.
- (iii) The terms referred to in sub-paragraphs 23(h) to 23(k) are express and contained in cl. 3 of the L0026036 Loan Explanation and Loan Terms.
- (iv) The terms referred to in sub-paragraphs 23(l) to 23(o) are express and contained in cl. 4 of the L0026036 Loan Explanation and Loan Terms.
- (v) The terms referred to in sub-paragraphs 23(p) to 23(r) are express and contained in cl. 7 of the L0026036 Loan Explanation and Loan Terms.
- (vi) The term referred to in sub-paragraph 23(s) is express and contained in cl. 9 of the L0026036 Loan Explanation and Loan Terms.

24. The Plaintiff paid the L0026036 Loan Amount to TSL (or as it directed) as payment of the balance for the Defendant's lots by:

(a) the following:

- (i) a debit entry of \$938,059 (which included the L0026036 Loan Amount) on 20 June 2008 to an account in the general ledger of the Plaintiff named "Loan Control Account" and numbered 51-1221, by way of a journal voucher numbered 506988 entered in the Great Plains accounting software maintained by the Plaintiff and TSL;
- (ii) a credit entry of \$938,059 (which included the L0026036 Loan Amount) on 20 June 2008 to an account in the general ledger of the Plaintiff named "Loan – Timbercorp Securities Ltd" and numbered 51-1208, by way of the same journal voucher;
- (iii) a debit entry of \$938,059 (which included the L0026036 Loan Amount) on 20 June 2008 to an account in the general ledger of TSL named "Loan – Timbercorp Finance Pty Ltd" and numbered 12-1200, by way of the same journal voucher;

- (iv) a credit entry of \$938,059 (which included the L0026036 Loan Amount) on 20 June 2008 to an account in the general ledger of TSL named "Suspense New Loans Advanced" and numbered 12-7234, by way of the same journal voucher;
 - (v) TSL recording in its "Timbercorp Information Management System", on 14 June 2008, the settlement of the Defendant's balance liabilities to TSL (following payment of his deposit) recorded in invoice 2266088 issued 14 June 2008; or
 - (b) ~~On or about 30~~ On or about 19 June 2008 the L0026036 Loan Amount was being paid to Trust Company of Australia Limited as custodian and agent for TSL; or
 - (c) both (a) and (b).
- and thereby loaned it to the Defendant in accordance with the terms of the Loan Agreement L0026036.
25. Between 29 August 2008 and 29 May 2009 the Defendant paid L0026036 Instalments to the Plaintiff under Loan Agreement L0026036.
26. On or about 1 July 2009, the Defendant defaulted under Loan Agreement L0026036 by failing to pay the L0026036 Instalment when due and payable.

PARTICULARS

- The Defendant failed to pay the L0026036 Instalment due on the last Business Day of the month of June 2009.
27. By reason of the foregoing paragraph:
- (a) the Defendant was at all times from 1 July 2009 in default under Loan Agreement L0026036; and
 - (b) the L0026036 Total Amount Owing under Loan Agreement L0026036 was payable on demand.

28. On 19 March 2010 the Plaintiff made a demand for the L0026036 Total Amount Owing under Loan Agreement L0026036 as at 2 March 2010 to be paid by the Defendant within 7 days of service of the demand (**L0026036 Demand**).

PARTICULARS

The L0026036 Demand is in writing, a copy of which is in the possession of the Plaintiff's solicitors and may be inspected by prior appointment.

29. The Defendant failed and/or neglected and/or refused to pay the amount so demanded within 7 days or at all.
30. By letter dated 2 May 2014 the Plaintiff wrote to the Defendant, *inter alia*, confirming that she remained in default of ~~his~~ her payment obligations under Loan Agreement L0026036, advising the L0026036 Total Amount Owing as at 31 March 2014, and notifying of the Plaintiff's intention to issue proceedings 14 days from the date of the letter (**L0026036 Notice of Intention to Sue**).

PARTICULARS

The L0026036 Notice of Intention to Sue is in writing, a copy of which is in the possession of the Plaintiff's solicitors and may be inspected by prior appointment.

31. By reason of the matters aforesaid, the Defendant is and remains indebted to the Plaintiff for the L0026036 Total Amount Owing, as at 30 September 2014 being the sum of \$170,575.09 plus costs and interest calculated at the L0026036 Higher Interest Rate thereupon at 13.20% per annum being \$61.69 per day.

Loan Agreement L0027409

32. The Defendant applied to the Plaintiff for a loan (**L0027409 Loan Application**) in the amount of \$26,730.00 (**L0027409 Loan Amount**) to fund the payment of loan fees, management costs, rent and other amounts owing by the Defendant to Timbercorp Securities Limited (in Liquidation) (**TSL**) relating to ~~his~~ her Stage 2 investment in the

2008 Olive Early Project (**L0027409 Loan and Project Fees**) being a registered managed investment scheme operated by TSL.

PARTICULARS

The L0027409 Loan Application is in writing and contained in:

- (i) a document titled “Timbercorp 2008 On-Going Finance Package Loan Application Form”; and
- (ii) a document titled “2008 Timbercorp Projects Finance Package Loan Explanation and Loan Terms” (**L0027409 Loan Explanation and Loan Terms**).

The L0027409 Loan Application was executed by the Defendant.

Copies of the documents are in the possession of the solicitors for the Plaintiff and can be inspected by prior appointment during ordinary business hours.

33. By executing the L0027409 Loan Application, the Defendant acknowledged, confirmed and agreed *inter alia* that:

- (a) she had read and understood the L0027409 Loan Explanation and Loan Terms provided with the L0027409 Loan Application;
- (b) the Plaintiff made no recommendation in connection with any investment in the 2008 Olive Early Project;
- (c) the Plaintiff recommended to the Defendant that she:
 - (i) obtain independent professional advice as to whether any investment in the 2008 Olive Early Project was an appropriate investment or was fit for any particular purpose that is required or is of a nature or quality to achieve any result that is desired; and

- (ii) review the potential risks of any investment in the 2008 Olive Early Project and of borrowing money to acquire that investment with ~~his~~ her own legal and financial advisers;
- (d) ~~his~~ her obligation to pay all interest on, and to repay, the L0027409 Loan Amount applied regardless of the success or failure of any investment in the 2008 Olive Early Project or of the rate of return of income or capital from that investment or of the consequences of that investment or any act, conduct, dealing, omission, statement, representation or warranty by TSL or any other person; and
- (e) she could not claim or exercise any set-off, counterclaim or any similar right of defence in relation to any amounts that may be due and payable by ~~him~~ her in connection with the 2008 Olive Early Project loan agreement.

(collectively, **L0027409 Loan Acknowledgments**)

PARTICULARS

The L0027409 Loan Acknowledgments are contained at page 8 of the L0027409 Loan Application under the heading "IMPORTANT ACKNOWLEDGEMENTS".

- 34. By completing and submitting the L0027409 Loan Application, the Defendant offered to borrow the L0027409 Loan Amount from the Plaintiff on the terms specified therein on the basis that the terms contained in the L0027409 Loan Explanation and Loan Terms would regulate the loan agreement between ~~him~~ her and the Plaintiff if ~~his~~ her L0027409 Loan Application was accepted.
- 35. In pursuance of the L0027409 Loan Application the Plaintiff accepted the Defendant's offer to borrow the L0027409 Loan Amount and agreed to lend to ~~him~~ her the L0027409 Loan Amount (**Loan Agreement L0027409**).

PARTICULARS

The Plaintiff's acceptance is partly in writing and partly to be implied.

Insofar as it is in writing, it is contained in the L0027409 Letter of Acceptance, enclosing the L0027409 Loan Details, referred to below in these particulars.

Insofar as it is to be implied, it is to be implied from the Plaintiff paying the L0027409 Loan Amount as referred to below in these particulars.

Loan Agreement L0027409 is partly in writing and partly to be implied.

The written part is comprised of:

- (i) L0027409 Loan Application;
- (ii) L0027409 Loan Explanation and Loan Terms; and
- (iii) Letter of acceptance from the Plaintiff to the Defendant dated 29 October 2008 (**L0027409 Letter of Acceptance**), enclosing a document titled "Loan Terms - Details" signed on behalf of the Defendant by ~~his~~ her attorney on 29 October 2008 (**L0027409 Loan Details**).

Copies of the documents are in the possession of the Plaintiff's solicitors and can be inspected by prior appointment during ordinary business hours.

Insofar as Loan Agreement L0027409 is to be implied, it is to be implied from ~~by: (i) the Plaintiff paying advancing the L0027409 Loan Amount on or about 31 October 2008 by paying it to TSL (or as it directed) on account of the L0027409 Loan and Project Fees; and~~

~~(ii) — the Defendant, having received the L0027409 Letter of Acceptance enclosing the L0027409 Loan Details, commencing on 28 November 2008 to make loan repayments of \$345.88 to the Plaintiff as specified in the L0027409 Loan Details.~~

36. There were terms of Loan Agreement L0027409 as follows:

- (a) *"balance owing on your loan account"* meant, at any time, the difference between all amounts credited and all amounts debited to the Defendant under Loan Agreement L0027409 at that time and when this amount would be calculated for the end of a day, it would include all debits and credits assigned to that day;
- (b) *"business day"* meant any day (other than a Saturday or a Sunday) banks were open for business in Victoria (**Business Day**);
- (c) *"costs"* included charges and expenses, and costs, charges and expenses in connection with legal and other advisers on a full indemnity basis;
- (d) *"higher interest rate"* meant a per annum interest rate of 13.20% (**L0027409 Higher Interest Rate**);
- (e) *"instalment"* meant a monthly principal and interest instalment of \$345.88 (**L0027409 Instalment**);
- (f) *"loan account"* meant an account the Plaintiff would establish in the Defendant's name for recording all transactions in connection with Loan Agreement L0027409 (**L0027409 Loan Account**);
- (g) *"loan amount"* meant the L0027409 Loan Amount;
- (h) *"loan expiry date"* meant the date ending 120 months from 31 October 2008 (**L0027409 Loan Expiry Date**);
- (i) *"loan term"* meant 120 months from 31 October 2008 (**L0027409 Loan Term**);
- (j) *"lower interest rate"* meant a per annum rate of interest fixed at 9.50% for the L0027409 Loan Term (**L0027409 Lower Interest Rate**);
- (k) *"total amount owing"* (**L0027409 Total Amount Owing**) meant, at any time, the balance owing on the L0027409 Loan Account at that time, plus:
 - (i) all accrued interest charges, default interest charges and other amounts which the Defendant was obliged to pay under Loan Agreement L0027409 but which

had not been debited to the L0027409 Loan Account at that time (including insurance); and

- (ii) all money which the Defendant would or may owe the Plaintiff in the future under Loan Agreement L0027409.

PARTICULARS

- (i) The terms referred to in sub-paragraphs 36(a) to 36(c) are express and contained in cl. 10 of the L0027409 Loan Explanation and Loan Terms.
- (ii) The terms referred to in sub-paragraphs 36(d) and 36(e) are express and contained in cl. 10 of the L0027409 Loan Explanation and Loan Terms and in the section headed "Loan Terms – Details" in Loan Agreement L0027409 Loan Details.
- (iii) The term referred to in sub-paragraph 36(f) is express and contained in cl. 10 of the L0027409 Loan Explanation and Loan Terms.
- (iv) The terms referred to in sub-paragraphs 36(g) to 36(j) are express and contained in cl. 10 of the L0027409 Loan Explanation and Loan Terms and in the section headed "Loan Terms – Details" in Loan Agreement L0027409 Loan Details.
- (v) The term referred to in sub-paragraph 36(k) is express and contained in cl. 10 of the L0027409 Loan Explanation and Loan Terms.

37. There were further terms of Loan Agreement L0027409 as follows:

- (a) the Plaintiff agreed to lend the Defendant the L0027409 Loan Amount by paying it to TSL (or as TSL directed) on account of the L0027409 Loan and Project Fees;
- (b) interest charges for each day would be calculated at the daily percentage rate on the balance owing on the L0027409 Loan Account for the end of that day;

- (c) the daily percentage rate would be the L0027409 Higher Interest Rate for that day divided by 365, but if the Defendant paid interest on the due date and was not in default at that time, the Plaintiff would accept interest charges calculated at the L0027409 Lower Interest Rate;
- (d) interest charges would accrue daily from and including the date the Plaintiff paid the L0027409 Loan Amount under the term referred to in sub-paragraph 37(a) above;
- (e) the Plaintiff could charge interest at the L0027409 Higher Interest Rate on any other amount which was not paid on time, which charges would accrue daily and the Defendant would pay them to the Plaintiff when asked;
- (f) the Plaintiff could debit any of these amounts to the L0027409 Loan Account without first notifying the Defendant;
- (g) the Defendant's obligation to pay on time would not be cancelled by the provisions of the terms in sub-paragraphs 37(b) to 37(f) above;
- (h) the Defendant would repay to the Plaintiff all amounts the Defendant borrowed from the Plaintiff and the Defendant would pay the Plaintiff interest charges;
- (i) the Defendant would pay the L0027409 Instalments of \$345.88 over the L0027409 Loan Term;
- (j) each L0027409 Instalment was due and payable on the last Business Day of each month, with the first L0027409 Instalment due on the last Business Day of the month in which the L0027409 Loan Term commenced;
- (k) the Defendant would pay the Plaintiff the L0027409 Total Amount Owing on the earlier of the date the final L0027409 Instalment was due, the L0027409 Loan Expiry Date or, if the Defendant was in default, on the date it became due for payment *inter alia* under the terms set out in sub-paragraphs 37(p) to 37(r) below;
- (l) the Defendant would pay the Plaintiff the Plaintiff's costs in enforcing Loan Agreement L0027409 after the Defendant was in default;

- (m) the Plaintiff could debit any of these amounts to the L0027409 Loan Account on or after the date the Plaintiff paid them or the date they become due or payable by the Defendant or the Plaintiff (whichever is earlier) without first notifying the Defendant;
- (n) the Defendant would indemnify the Plaintiff against liability, loss or costs the Plaintiff may suffer or incur:
 - (i) if the Defendant defaulted under Loan Agreement L0027409;
 - (ii) in connection with actions, proceedings, claims and demands in connection with Loan Agreement L0027409;
- (o) any amount the Defendant was obliged to pay the Plaintiff under Loan Agreement L0027409 in respect of which a time for payment was not stated, would be payable when the Plaintiff asked;
- (p) the Defendant would be in default if:
 - (i) the Defendant did not pay on time all amounts due under Loan Agreement L0027409;
 - (ii) the Defendant did something she agreed not to do, or did not do something she agreed to do under Loan Agreement L0027409;
- (q) if the Defendant was in default, the L0027409 Total Amount Owing would be payable on demand;
- (r) after a default occurred, the Plaintiff could sue the Defendant for the L0027409 Total Amount Owing; and
- (s) the agreement was governed by the laws of Victoria and both the Defendant and the Plaintiff agreed to submit to the non-exclusive jurisdiction of the courts of that State.

PARTICULARS

- (i) The term referred to in sub-paragraph 37(a) is partly in writing and partly to be implied.

- (A) The written part is contained at page 5 of the L0027409 Loan Application which sets out the L0027409 Loan and Project Fees.
- (B) The term is to be implied by the following matters:
- (1) the express words contained in cl. 1 of the L0027409 Loan Explanation and Loan Terms which states that the Plaintiff lends the Defendant the L0027409 Loan Amount by paying it to TSL (or as TSL directs) as payment of the balance of the Defendant's invoice for ~~his~~ her lots and the loan application fee as described in the L0027409 Loan Application;
 - (2) the express words contained at page 5 of the L0027409 Loan Application as referred to in particular (A) above;
 - (3) In circumstances where:
 - (I) the Defendant did not apply for additional lots in the 2008 Olive Early Project at the time of the L0027409 Loan Application;
 - (II) the Defendant was liable for the L0027409 Loan and Project Fees at the time of the L0027409 Loan Application; and
 - (III) the Defendant applied for the L0027409 Loan Amount to fund payment of the L0027409 Loan and Project Fees₁;

the term should be implied to give the clauses referred to in (B)(1) and (2) herein their proper construction and meaning.

- (ii) The terms referred to in sub-paragraphs 37(b) to 37(g) are express and contained in cl. 2 of the L0027409 Loan Explanation and Loan Terms.
- (iii) The terms referred to in sub-paragraphs 37(h) to 37(k) are express and contained in cl. 3 of the L0027409 Loan Explanation and Loan Terms.
- (iv) The terms referred to in sub-paragraphs 37(l) to 37(o) are express and contained in cl. 4 of the L0027409 Loan Explanation and Loan Terms.
- (v) The terms referred to in sub-paragraphs 37(p) to 37(r) are express and contained in cl. 7 of the L0027409 Loan Explanation and Loan Terms.
- (vi) The term referred to in sub-paragraph 37(s) is express and contained in cl. 9 of the L0027409 Loan Explanation and Loan Terms.

38. ~~On or about 31 October 2008~~ The Plaintiff paid the L0027409 Loan Amount ~~was paid to TSL (or as at its directed ion) in as~~ payment of the balance of the L0027409 Loan and Project Fees by:

- (i) a debit entry of \$247,401.52 (which included the L0027409 Loan Amount) on 29 October 2008 to an account in the general ledger of the Plaintiff named "Loan Control Account" and numbered 51-1221, by way of a journal voucher numbered 528564 entered in the Great Plains accounting software maintained by the Plaintiff and TSL;
- (ii) a credit entry of \$247,401.52 (which included the L0027409 Loan Amount) on 29 October 2008 to an account in the general ledger of the Plaintiff named "Loan – Timbercorp Securities Ltd" and numbered 51-1208, by way of the same journal voucher;
- (iii) a debit entry of \$247,401.52 (which included the L0027409 Loan Amount) on 29 October 2008 to an account in the general ledger of TSL named "Loan – Timbercorp Finance Pty Ltd" and numbered 12-1200, by way of the same journal voucher;

- (iv) a credit entry of \$247,401.52 (which included the L0027409 Loan Amount) on 29 October 2008 to an account in the general ledger of TSL named "Suspense New Loans Advanced" and numbered 12-7234, by way of the same journal voucher;
- (v) TSL recording in its "Timbercorp Information Management System", on 29 October 2008, the settlement of the Defendant's balance liabilities to TSL (following payment of his deposit) recorded in invoice 2382224 issued 1 October 2008,

and thereby loaned it to the Defendant in accordance with the terms of the Loan Agreement L0027409.

- 39. Between 28 November 2008 and 29 May 2009 the Defendant paid L0027409 Instalments to the Plaintiff under Loan Agreement L0027409.
- 40. On or about 1 July 2009, the Defendant defaulted under Loan Agreement L0027409 by failing to pay the L0027409 Instalment when due and payable.

PARTICULARS

The Defendant failed to pay the L0027409 Instalment due on the last Business Day of the month of June 2009.

- 41. By reason of the foregoing paragraph:
 - (a) the Defendant was at all times from 1 July 2009 in default under Loan Agreement L0027409; and
 - (b) the L0027409 Total Amount Owing under Loan Agreement L0027409 was payable on demand.
- 42. On 19 March 2010 the Plaintiff made a demand for the L0027409 Total Amount Owing under Loan Agreement L0027409 as at 2 March 2010 to be paid by the Defendant within 7 days of service of the demand (**L0027409 Demand**).

PARTICULARS

The L0027409 Demand is in writing, a copy of which is in the possession of the Plaintiff's solicitors and may be inspected by prior appointment.

43. The Defendant failed and/or neglected and/or refused to pay the amount so demanded within 7 days or at all.
44. By letter dated 2 May 2014 the Plaintiff wrote to the Defendant, *inter alia*, confirming that she remained in default of ~~his~~ her payment obligations under Loan Agreement L0027409, advising the L0027409 Total Amount Owing as at 31 March 2014, and notifying of the Plaintiff's intention to issue proceedings 14 days from the date of the letter (**L0027409 Notice of Intention to Sue**).

PARTICULARS

The L0027409 Notice of Intention to Sue is in writing, a copy of which is in the possession of the Plaintiff's solicitors and may be inspected by prior appointment.

45. By reason of the matters aforesaid, the Defendant is and remains indebted to the Plaintiff for the L0027409 Total Amount Owing, as at 30 September 2014 being the sum of \$50,756.94 plus costs and interest calculated at the L0027409 Higher Interest Rate thereupon at 13.20% per annum being \$18.36 per day.

AND THE PLAINTIFF CLAIMS:

Loan Agreement L0026664

- A. \$648,638.06
- B. Interest at the L0026664 Higher Rate of Interest as defined in Loan Agreement L0026664 being \$234.58 per day, alternatively pursuant to statute.

Loan Agreement L0026036

- C. \$170,575.09
- D. Interest at the L0026036 Higher Rate of Interest as defined in Loan Agreement L0026036 being \$61.69 per day, alternatively pursuant to statute.

Loan Agreement L0027409

- E. \$50,756.94
- F. Interest at the L0027409 Higher Rate of Interest as defined in Loan Agreement L0027409 being \$18.36 per day, alternatively pursuant to statute.
- G. Costs of the proceeding on a full indemnity basis pursuant to the terms of each of the respective Loan Agreements as defined.
- H. Such further or other orders as this Honourable Court deems fit.

RELIEF REMEDY CLAIMED

Payment of amounts totalling \$869,970.09 together with interest and costs.

1. Place of trial – Melbourne
2. Mode of trial – Judge alone
3. This originating process was filed for the Plaintiff by Mills Oakley Lawyers, solicitor, of Level 6, 530 Collins Street, Melbourne 3000.
4. The address of the Plaintiff is C/- KordaMentha Level 24, 333 Collins Street, Melbourne 3000.
5. The address for service of the Plaintiff is Mills Oakley Lawyers, Level 6, 530 Collins Street, Melbourne 3000.
6. The address of the Defendant is 8/8 Anderson Street, Port Hedland, Western Australia 6721.

SUBJECT MATTER OF CLAIM

Recovery action arising from default under loan agreements between Timbercorp Finance Pty Ltd (In Liquidation) and the Defendant.

CAUSES OF ACTION

Commercial Court

- ☒ Breach of Contract
- ☒ Costs
- ☒ Damages

Statutory Causes of Action

None

Other

None

FILING APPEARANCE

YOU OR YOUR SOLICITOR may file the appearance. An appearance is to be filed in accordance with the procedures and requirements set out in Schedule 2 to this originating process.

THE PROPER TIME TO FILE AN APPEARANCE is as follows—

- (a) where you are served with the originating process in Victoria, within 10 days after service;
- (b) where you are served with the originating process out of Victoria and in another part of Australia, within 21 days after service;
- (c) where you are served with the originating process in Papua New Guinea, within 28 days after service;
- (d) where you are served with the originating process in New Zealand under Part 2 of the Trans-Tasman Proceedings Act 2010 of the Commonwealth, within 30 working days (within the meaning of that Act) after service or, if a shorter or longer period has been fixed by the Court under section 13(1)(b) of that Act, the period so fixed;
- (e) in any other case, within 42 days after service of the originating process.

CASE MANAGEMENT

FIRST DIRECTIONS HEARING

TAKE NOTICE that a first directions hearing will be conducted on ~~21/11/2014~~ **6 March 2015** at **10:00am**, in Court 3, 450 Little Bourke Street Melbourne.

This directions hearing will be conducted by the allocated List Judge.

The name of the Judge and the location of the courtroom will be published on the Court's website by 4.30 pm on the day before the first directions hearing.

At the first directions hearing the parties, if represented, will be expected to appear by their legal practitioners. They should be ready to explain briefly, if requested, the nature of the dispute and the substantial questions in controversy, and to assist the Court to facilitate the just, efficient, timely and cost-effective resolution of the real issues in dispute in accordance with the **Civil Procedure Act 2010**.

If this originating process is a deemed writ, the Rules as to filing a defence apply regardless of the date of the first directions hearing.

SERVICE

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

TRIAL ESTIMATE

1 to 2 trial days

CIVIL PROCEDURE ACT CERTIFICATIONS

CERTIFICATION OF PRIOR OVERARCHING OBLIGATIONS CERTIFICATION

Rule 4.09.1

In accordance with section 41(5)(b) of the **Civil Procedure Act 2010**, I Lee Pascoe certify to the Court that Andrew Ryan, for and on behalf of the Plaintiff, is currently involved, or has been involved, in more than one civil proceeding and has personally made the overarching obligations

certification in other civil proceedings in the Court within 2 years prior to the date of this certification.

Date: 6 November 2014

Signed

s/ Lee Pascoe

PROPER BASIS CERTIFICATION

Rule 4.10

In accordance with section 42 of the **Civil Procedure Act 2010**, I ~~Lee Pascoe~~ Bridget Slocum of Mills Oakley ~~Lawyers~~, solicitors for the Plaintiff, certify to the Court that, on the factual and legal material available to me at present each allegation of fact in this document has a proper basis.

Date: ~~6 November 2014~~ 20 July 2016 3 August 2016

Signed

s/ ~~Lee Pascoe~~ Bridget Slocum

SCHEDULE 1

SCHEDULE OF PARTIES

Timbercorp Finance Pty Ltd (In Liquidation) (ACN 054 581 190)

Plaintiff

Morag Lowe

Defendant

SCHEDULE 2

FILING AN APPEARANCE IN REDCREST

RedCrest

All documents filed in this proceeding must be filed in RedCrest unless the Court has otherwise ordered in a particular case or unless documents cannot be filed in RedCrest because of an impediment affecting RedCrest itself or affecting general access to RedCrest.

These Instructions

The Notice of Appearance is an important document. These instructions set out the basic steps for filing a Notice of Appearance in RedCrest.

Self-represented persons – Filing a Notice of Appearance

A self-represented person who is served with an Originating Process–RedCrest and who wishes to contest the claim must–

1. Complete the Notice of Appearance–RedCrest (Form 8AB); and
2. Within the time stated in the Originating Process–RedCrest, deliver the Notice of Appearance to the Supreme Court Registry.

Assistance will be given by Registry staff to ensure that the Notice of Appearance is correctly completed. Registry staff will then file the Notice of Appearance into the electronic file for the proceeding. There will also be an instruction manual available at Registry for all users.

Persons Represented by a Solicitor – Filing a Notice of Appearance

A solicitor who is required to file a Notice of Appearance on behalf of a client must follow the steps below. These are described in more detail in the online instruction manual available on the RedCrest public homepage www.redcrest.com.au.

1. If you do not have a username and password for RedCrest, complete and submit the application form available on the RedCrest public homepage at: www.redcrest.com.au ("Username and Password Applications"), and await processing and email advice for the

assigned username and password. This should be provided usually within 24 hours (weekdays).

2. Assign your practitioner particulars to this case in accordance with the instruction manual.
3. Complete the Notice of Appearance–RedCrest (Form 8AB) using the online form available from the RedCrest public homepage.
4. File the Notice of Appearance–RedCrest in the case page file for the matter in the manner described in the online instruction manual.
5. If, by virtue of an order of the Court you are not required to file the Notice of Appearance–RedCrest in RedCrest or the Notice of Appearance cannot be filed in RedCrest because of an impediment affecting RedCrest itself or affecting general access to RedCrest, then you must file a Notice of Appearance–RedCrest (Form 8AB) in paper form or such other form or manner as the Prothonotary may allow at the Supreme Court Registry.
6. For further filings, follow the online instruction manual for the operation of RedCrest available on the RedCrest public homepage www.redcrest.com.au.

Any Questions?

If you have any questions, please call the RedCrest Help Desk or contact the Supreme Court Registry.

RedCrest Help Desk Contact Details: See RedCrest public homepage.

Supreme Court Registry Level 2, 436 Lonsdale St Melbourne, Tel: (03) 9603 9300 Hours. 9:30 am to 4:00 pm each business day.