

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

LIST B

SCI 2009 10091

BETWEEN

**TIMBERCORP LIMITED (IN LIQUIDATION)**  
**ACN 055 185 067**

Plaintiff

and

**CADOGAN ESTATES (AUSTRALIA) PTY LTD**  
**ACN 008 715 053**

First Defendant

**ITC LIMITED**  
**ACN 069 762 634**

Second Defendant

**AMENDED STATEMENT OF CLAIM**  
**Pursuant to leave granted by Justice Judd on 4 December 2009**

Date of document: ~~13 November~~ 4 December 2009

Filed on behalf of: the Plaintiffs

Prepared by:

**ARNOLD BLOCH LEIBLER**

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(Leon Zwier - lzwier@abl.com.au)

- 1 The plaintiff (**Timbercorp**) is and was at all material times a company duly incorporated in accordance with the laws of Victoria.
- 2 Timbercorp is in liquidation and the liquidators are Mark Anthony Korda and Leanne Kylie Chesser of KordaMentha Pty Ltd ACN 100 169 391 (**Liquidators**).
- 3 The First Defendant (**Cadogan**) is and was at all material times a company duly incorporated according to law ~~and a trading corporation within the meaning of the Trade Practices Act 1974 (Cth).~~
- 4 The Second Defendant (**ITC**) is and was at all material times a company duly incorporated according to law.

## The Leases

45 Cadogan is the lessee of the land described in Schedule 1 (Warren Hill Premises) and the registered proprietor of the land described in Schedule 2 (Snaigow Premises).

56 On or about 15 March 2000, Cadogan sub-leased the Warren Hill Premises to Timbercorp, for a term of twelve years commencing on 15 March 2000 (Warren Hill Lease).

### PARTICULARS

~~A copy of the Lease may be inspected by appointment of the offices of the Plaintiff's solicitors.~~

7 On or about 21 May 1999 Cadogan leased the Snaigow Premises to Timbercorp for a term of twelve years commencing on 15 March 1999 (Snaigow Lease).

~~6The Premises are located in the State of Western Australia.~~

8 ITC is the lessee of the land described in Schedule 3 (Walker Premises).

9 On or about 27 June 1997 ITC sub-leased the Walker Premises to Timbercorp for a term of twelve years commencing on 18 November 1996 (Walker Lease).

### PARTICULARS

A copy of the Warren Hill Lease, the Snaigow Lease and the Walker Lease may be inspected by appointment of the offices of the Plaintiff's solicitors.

10 The Warren Hill, Snaigow and Walker Premises are located in the State of Western Australia.

11 The Warren Hill, Snaigow and Walker Premises are leased for the purpose of growing, tending and harvesting a plantation or plantations of eucalyptus trees (Plantations).

812 The Plantations formed part of a Managed Investment Scheme registered pursuant to Part 5C of the *Corporations Act 2001* (Cth) for the cultivation of eucalyptus trees (1999 Forestry Scheme).

## Warren Hill Lease

~~14~~13 The Warren Hill Lease includes the following covenants on the part of Timbercorp, regarding payment of rent, termination and assignment, relevant to these proceedings:

- (a) Timbercorp will pay Cadogan the annual rent in advance in equal successive quarterly instalments on or before ~~15-30~~ June, ~~15-30~~ September, ~~15-31~~ December and ~~15-31~~ March (**Warren Hill Annual Rental Instalments**) (Clause 4.1).
- (b) Cadogan may terminate the Warren Hill Lease with immediate effect if Timbercorp is in arrears in respect of one quarterly instalment of annual rent and such arrears are not paid in full within three months after Cadogan has served a written notice on Timbercorp requesting payment (Clause 9.1).
- (c) Except as expressly provided in clause 9 of the Warren Hill Lease, neither Timbercorp or Cadogan are entitled to terminate or rescind the Warren Hill Lease and Cadogan will not be entitled to re-enter the Warren Hill Premises or forfeit the Warren Hill Lease at any time prior to the expiration of the term (as extended or renewed) (Clause 9.7).

~~Termination of the whole or any part of the Lease in accordance with clause 9 will be without prejudice to any rights or obligations which may have accrued prior to the date of termination (Clause 9.6).~~

- (d) Timbercorp may, with Cadogan's consent (which must not be unreasonably withheld) assign or transfer the Warren Hill Lease upon Timbercorp arranging (at its own cost) for the assignee to enter into a Deed of Covenant with Cadogan under which the assignee agrees to comply with and be bound by the provisions of the Warren Hill Lease as if they were the named Lessee under the Warren Hill Lease (clause 12.2(b)).

14 Timbercorp paid each Warren Hill Annual Rental Instalment to Cadogan from the commencement of the Warren Hill Lease up to and including the Warren Hill Annual Rental Instalment paid on 31 March 2009 and complied with the other substantive terms of the Warren Hill Lease until at least 23 April 2009.

~~9 On or about 20 August 2001, the Lease was varied at law, such that the Annual Rental Instalments payable under Clause 4.1 of the Lease would fall due and be paid on 30 June, 30 September, 31 December and 31 March of each year.~~

#### **PARTICULARS**

~~The variation was in writing and comprised a letter from Cadogan to Timbercorp dated 20 August 2001 and signed by David Nuttal, who was at the time a Director and the Company Secretary of Cadogan.~~

~~A copy of the letter dated 20 August 2001 may be inspected by appointment at the offices of the Plaintiff's solicitors.~~

~~10 Further or alternatively, the terms of the Warren Hill Lease were varied by way of an equitable variation such that the Annual Rental Instalments payable under Clause 4.1 of the Lease would fall due and be paid on 30 June, 30 September, 31 December and 31 March of each year.~~

#### **PARTICULARS**

~~The variation was both oral and in writing and comprised a conversation, or series of conversations, between Gideon Meltzer of Timbercorp and David Nuttal of Cadogan and a letter from Cadogan to Timbercorp dated 20 August 2001 and signed by David Nuttal, who was at the time a Director and the Company Secretary of Cadogan.~~

~~A copy of the letter dated 20 August 2001 may be inspected by appointment at the offices of the Plaintiff's solicitors.~~

~~11 Timbercorp performed its obligation to pay rent consistently with the parties' agreement to vary the Lease in that it paid the Annual Rental Instalments on 30 June, 30 September, 31 December and 31 March of each year.~~

#### **PARTICULARS**

~~The plaintiff refers to and repeats the particulars to paragraph 18 below.~~

~~12 Cadogan accepted Timbercorp's payment of rent on 30 June, 30 September, 31 December and 31 March of each year.~~

~~13 Further or alternatively, Cadogan represented to Timbercorp that it would not require payment of the Annual Rental Instalments until 30 June, 30 September, 31 December and 31 March of each year (**Representation**).~~

~~14 The Representation was a continuing representation and continued from 20 August 2001 until 22 June 2009 when the Purported Default Notice (as described in paragraph 21 below) was served (**Continuing Representation**).~~

~~15 Relying on the Representation and Continuing Representation, Timbercorp assumed that Cadogan would not require payment of the Annual Rental Instalments until 30 June, 30 September, 31 December or 31 March of each year and would not rely on the non-payment of rent on 15 June, 15 September, 15 December and 15 March of each year as a breach permitting termination of the Lease.~~

~~16 Cadogan knew or intended that Timbercorp would rely on the Representation and the Continuing Representation.~~

~~18 Timbercorp paid the Annual Rental Instalments on 30 September, 31 December, 31 March and 30 June commencing on 30 September 2000 with the final payment on 31 March 2009 for the period to 30 June 2009.~~

### **PARTICULARS**

~~(a) the Annual Rental Instalments were paid by way of cheque on 30 September 2000, 31 December 2000 and 31 March 2001; and,~~

~~(b) the Annual Rental Instalments were paid by electronic funds transfer on 30 June 2001, 30 September 2001, 31 December 2001, 31 March 2002, 30 June 2002, 30 September 2002, 31 December 2002, 31 March 2003, 30 June 2003, 30 September 2003, 31 December 2003, 31 March 2004, 30 June 2004, 30 September 2004, 31 December 2004, 31 March 2005, 30 June 2005, 30 September 2005, 31 December 2005, 31 March 2006, 30 June 2006, 30 September 2006, 31 December 2006, 31 March 2007, 30 June 2007, 30 September 2007, 31 December 2007, 31 March 2008, 30 June 2008, 30 September 2008, 31 December 2008, and 31 March 2009.~~

~~19 At no time in the period between 15 September 2000 and 31 March 2009 did Cadogan ever serve a written notice on Timbercorp requesting payment of an Annual Rental Instalment on 31 March, 30 June, 30 September or 31 December of each year.~~

### **Snaigow Lease**

15 The Snaigow Lease includes the following covenants on the part of Timbercorp, regarding payment of rent, termination and assignment, relevant to these proceedings:

- (a) Timbercorp will pay Cadogan the annual rent in advance in equal successive quarterly instalments on or before 30 June, 30 September, 31 December and 31 March (**Snaigow Annual Rental Instalments**) (Clause 4.1).
- (b) Cadogan may terminate the Snaigow Lease with immediate effect if Timbercorp is in arrears in respect of one quarterly instalment of annual rent and such arrears are not paid in full within three months after Cadogan has served a written notice on Timbercorp requesting payment (Clause 9.1).
- (c) Except as expressly provided in clause 9 of the Snaigow Lease, neither Timbercorp or Cadogan are entitled to terminate or rescind the Snaigow Lease and Cadogan will not be entitled to re-enter the Snaigow Premises or forfeit the Snaigow Lease at any time prior to the expiration of the term (as extended or renewed) (Clause 9.7).
- (d) Timbercorp may, with Cadogan's consent (which must not be unreasonably withheld) assign or transfer the Snaigow Lease upon Timbercorp arranging (at its own cost) for the assignee to enter into a Deed of Covenant with Cadogan under which the assignee agrees to comply with and be bound by the provisions of the Snaigow Lease as if they were the named Lessee under the Snaigow Lease (clause 12.2(b)).

16 Timbercorp paid each Snaigow Annual Rental Instalment from the commencement of the Snaigow Lease up to and including the Snaigow Annual Rental Instalment paid on 31 March 2009 and complied with the other substantive terms of the Snaigow Lease until at least 23 April 2009.

### **Walker Lease**

17 The Walker Lease includes the following covenants on the part of Timbercorp, regarding payment of rent, termination and assignment, relevant to these proceedings:

(e) Timbercorp will pay ITC the annual rent in advance in equal successive quarterly instalments on or before 30 June, 30 September, 31 December and 31 March (**Walker Annual Rental Instalments**) (Clause 4.1).

(f) ITC may terminate the Walker Lease with immediate effect if Timbercorp is in arrears in respect of one quarterly instalment of annual rent and such arrears are not paid in full within three months after ITC has served a written notice on Timbercorp requesting payment (Clause 10.1).

(g) Timbercorp may, with ITC's consent (which must not be unreasonably withheld) assign or transfer the Walker Lease upon Timbercorp arranging (at its own cost) for the assignee to enter into a Deed of Covenant with ITC under which the assignee agrees to comply with and be bound by the provisions of the Walker Lease as if they were the named Lessee under the Walker Lease (clause 14.2).

18 Timbercorp paid each Walker Annual Rental Instalment from the commencement of the Walker Lease up to and including the Walker Annual Rental Instalment paid on 31 March 2009 and complied with the other substantive terms of the Walker Lease until at least 23 April 2009.

### **Administration and Liquidation of Timbercorp and Non-Payment of Rent**

2019 On or about 23 April 2009, the Liquidators were appointed as voluntary administrators of Timbercorp ~~and TSL~~.

2120 On or about 25 June 2009, Cadogan purported to issue a notice of default to Timbercorp alleging Timbercorp was in breach of the Warren Hill Lease for non-payment of the Warren Hill Annual Rental Instalment due on 15 June 2009 and requiring payment of the outstanding rent within three months from service of the notice (**Purported Default Notice**).

### **PARTICULARS**

The Purported Default Notice was in writing and dated 22 June 2009. The Purported Default Notice was received by Timbercorp on 25 June 2009.

2221 The Purported Default Notice was invalid in that it alleged a breach of the Lease that had not been committed, in that Timbercorp was not required to pay the Annual Rental Instalment until 30 June 2009.

2322 On or about 29 June 2009 the creditors of Timbercorp resolved to liquidate Timbercorp.

23 On 30 June 2009, Timbercorp failed to pay:

(a) the Warren Hill Annual Rental Instalment of \$25,117.66 due on that date, in accordance with the terms of the Warren Hill Lease (**Warren Hill July Quarter Instalment**);

(b) the Snaigow Annual Rental Instalment of \$40,714.22 due on that date, in accordance with the terms of the Snaigow Lease (**Snaigow July Quarter Instalment**);

21(c) the Walker Annual Rental Instalment of \$13,390.07 due on that date, in accordance with the terms of the Walker Lease (**Walker July Quarter Instalment**);

2524 Cadogan has not issued a Purported Default Notice in respect of the non-payment of the Warren Hill July Quarter Instalment.

25 On 1 July 2009, ITC issued a notice of default to Timbercorp alleging Timbercorp was in breach of the Walker Lease for non-payment of the Walker Annual Rental Instalment due on 30 June 2009 and requiring payment of the outstanding rent within three months from service of the notice (Walker Default Notice). On 3 July 2009,

26 Cadogan issued a notice of default to Timbercorp alleging Timbercorp was in breach of the Snaigow Lease for non-payment of the Snaigow Annual Rental Instalment due on 30 June 2009 and requiring payment of the outstanding rent within three months from service of the notice (Snaigow Default Notice).

## Liquidators' Sale Process

2627 On or about 31 July 2009 the Liquidators sought expressions of interest in the sale or recapitalisation of the 1999 Forestry Scheme's assets and the assets of other

Timbercorp forestry schemes, including the Warren Hill Lease, the Snaigow Lease and the Walker Lease (**Timbercorp Sale Process**).

2728 Final bids for the Timbercorp Sale Process closed on 18 September 2009.

2829 On 30 September 2009 a confidential contract was entered into with the preferred bidder, Australian Bluegum Plantations Pty Ltd (**Purchaser**) (**Sale Contract**) and settlement of the Sale Contract took place on 2 November 2009.

2930 The assets the subject of the Sale Contract include the Warren Hill Lease, the Snaigow Lease and the Walker Lease.

3031 Pursuant to the terms of the Sale Contract, the Purchaser agreed to take assignment of, and enter into a Deed of Assignment in respect of, inter alia, –the Warren Hill Lease, the Snaigow Lease and the Walker Lease and to comply with, and be bound by, the terms of the Warren Hill Lease, the Snaigow Lease and the Walker Lease.

32 The Purchaser is a solvent company with the capacity to meet its obligations as lessee or sub-lessee under each of the Leases.

3133 Also on 30 September 2009 Cadogan purported to terminate the Warren Hill Lease.

### **PARTICULARS**

The purported termination was by way of letter dated 30 September 2009. A copy of the letter may be inspected by appointment at the offices of the Plaintiff's solicitors (**Purported Termination Notice**)

3234 The Purported Termination Notice was invalid and of no effect.

### **PARTICULARS**

(a) The Purported Termination Notice relied on the Purported Default Notice which was, in itself, invalid and of no effect;

(b) The Plaintiff refers to and repeats paragraph 2121.

32 By the matters set out in paragraphs 11 to 19 above and 40 and 41 below, Cadogan is estopped from:

~~(a)relying on the Purported Default Notice or the Purported Termination Notice to terminate the Lease;~~

~~(b)contending that the Purported Default Notice and Purported Termination Notice operate so as to terminate the Lease;~~

~~(c)denying that the Lease exists;~~

~~(d)denying that the Lease remains on foot; and/or~~

~~(e)seeking to terminate the Lease based on Timbercorp's non-compliance with the Purported Default Notice.~~

~~33Further or alternatively, by issuing the Purported Default Notice and the Purported Termination Notice Cadogan sought to unconscionably depart from the Representation and the Continuing Representation.~~

~~34Further, insofar as the Representation and the Continuing Representation related to future matters, Timbercorp relies on s 51A of the *Trade Practices Act 1974* (Cth) and/or s 4 of the *Fair Trading Act 1999* (Vic).~~

~~35Insofar as each of the Representation and the Continuing Representation was as to matters of existing fact it was false from the time when Cadogan decided to serve, or alternatively served, the Purported Default Notice.~~

~~36By reason of the matters referred to in paragraphs 11 to 19 above Cadogan engaged, in trade or commerce, in conduct which was misleading or deceptive or was likely to mislead or deceive, in contravention of s 52 of the *Trade Practices Act 1974* (Cth) and/or s 9 of the *Fair Trading Act 1999* (Vic).~~

~~37By reason of the matters set out in paragraph 37 above Timbercorp:~~

~~(a)has suffered, alternatively is likely to suffer, loss and damage;~~

~~(b)seeks and is entitled to an order pursuant to s 87 of the *Trade Practices Act 1974* (Cth) and/or s 158 of the *Fair Trading Act 1999* (Vic) that the Purported Termination Notice be set aside and is of no effect.~~

## **PARTICULARS**

~~If the Lease is terminated (which is denied) and not transferred under the Sale Contract, the purchase price payable under the Sale Contract will be reduced.~~

3935 Timbercorp tendered payment of the Warren Hill July Quarter Instalment and part of the Warren Hill Annual Rental Instalment due on 30 September 2009 (**Warren Hill October Quarter Instalment**) on 2 October 2009 and caused the remaining part of the Warren Hill October Quarter Instalment to be paid on or about 12 November 2009.

### **PARTICULARS**

~~(a)~~ On 2 October 2009, Timbercorp paid Cadogan by way of electronic funds transfer:

- (i) \$25,117.66 for the Warren Hill July Quarter Instalment; and
- (ii) \$9,009.60 for part of the Warren Hill October Quarter Instalment for the period being 1 October 2009 to 2 November 2009; and

~~(b)~~ On 12 November 2009, Timbercorp caused an electronic funds transfer of \$16,108.06 to be made to Cadogan for the period being 3 November 2009 - 31 December 2009.

36 Timbercorp tendered payment of the Snaigow July Quarter Instalment and part of the Snaigow Annual Rental Instalment due on 30 September 2009 (**Snaigow October Quarter Instalment**) on 2 October 2009 and caused the remaining part of the Snaigow October Quarter Instalment to be paid on or about 11 November 2009.

### **PARTICULARS**

On 2 October 2009, Timbercorp paid Cadogan by way of electronic funds transfer:

- (i) \$40,714.22 for the Snaigow July Quarter Instalment; and
- (ii) \$14,604.01 for part of the Snaigow October Quarter Instalment for the period being 1 October 2009 to 2 November 2009; and

On 11 November 2009, Timbercorp caused an electronic funds transfer of \$26,110.21 to be made to Cadogan for the period being 3 November 2009 - 31 December 2009.

4037 Cadogan accepted the payments described in paragraph 3535 and 3636 and has not returned them to Timbercorp.

### **PARTICULARS**

Copies of the records of the payments described in paragraph 3535 are available for inspection by appointment at the offices of the Plaintiff's solicitors.

4138 The payments of rent described in paragraph 3535 and 3636 above cured all and any defaults alleged in the Purported Default Notice (which default is denied) and the Snaigow Default Notice.

~~42 Pursuant to the terms of the Sale Contract, the Purchaser will pay that portion of the October Quarter Instalment from 2 November to 31 December 2009, upon assignment of the Lease.~~

39 On 27 November 2009 the Supreme Court of Victoria made orders, by consent, granting relief from forfeiture of the Warren Hill Lease.

40 Timbercorp tendered payment of the Walker July Quarter Instalment and part of the Walker Annual Rental Instalment due on 30 September 2009 (Walker October Quarter Instalment) on 2 October 2009 and caused the remaining part of the Walker October Quarter Instalment to be paid on or about 2 November 2009.

### **PARTICULARS**

On 2 October 2009, Timbercorp paid ITC by way of electronic funds transfer:

(i) \$13,720.27 for the Walker July Quarter Instalment; and

(ii) \$4,921.40 for part of the Walker October Quarter Instalment for the period being 1 October 2009 to 2 November 2009; and

On 2 November 2009, Timbercorp caused an electronic funds transfer of \$8,798.87 to be made to ITC for the period being 3 November 2009 - 31 December 2009.

41 ITC accepted the payments described in paragraph 39 and has not returned them to Timbercorp.

### **PARTICULARS**

Copies of the records of the payments described in paragraph 39 are available for inspection by appointment at the offices of the Plaintiff's solicitors.

42 The payments of rent described in paragraph 39 above cured all and any defaults alleged in the Walker Default Notice.

43 The Purchaser has agreed to meet all rental and other obligations under the Warren Hill, Snaigow and Walker Leases following assignment of the Warren Hill, Snaigow and Walker Leases to the Purchaser.

44 From ~~On or about~~ on or before 14 October 2009, Timbercorp has sought Cadogan's consent to the assignment of the Warren Hill Lease and the Snaigow Lease to the Purchaser.

### **PARTICULARS**

(d) The first request was made by the Liquidators of Timbercorp both orally and in writing prior to 14 October 2009;

(e) The second request was by way of letter from ~~the~~ Timbercorp's solicitors, Arnold Bloch Leibler, to Cadogan's solicitors Warren Syminton Ralph dated 14 October 2009;

(f) The third request was by way of letter from Timbercorp's solicitors, Arnold Bloch Leibler to Cadogan's solicitors Warren Syminton Ralph dated 12 November 2009;

(g) The fourth request was by way of letter from Timbercorp's solicitors, Arnold Bloch Leibler to Cadogan's solicitors Warren Syminton Ralph dated 3 December 2009;

A copy of the se letters may be inspected by appointment at the offices of the Plaintiff's solicitors.

45 Cadogan has failed, refused or neglected to consent to the assignment of the Warren Hill Lease and the Snaigow Lease.

46 From on or about 30 October 2009, Timbercorp has sought ITC's consent to the assignment of the Walker Lease to the Purchaser.

### **PARTICULARS**

- (a) The first request was made by the Liquidators of Timbercorp orally and in writing prior to 30 October 2009;
- (b) The second request was by way of letter from Timbercorp's solicitors, Arnold Bloch Leibler, to ITC's solicitors Cullen Babington Hughes dated 2 November 2009;
- (c) The third request was by way of letter from Timbercorp's solicitors, Arnold Bloch Leibler, to ITC's solicitors Cullen Babington Hughes dated 6 November 2009;
- (d) The fourth request was by way of letter from Timbercorp's solicitors, Arnold Bloch Leibler, to ITC's solicitors Cullen Babington Hughes dated 25 November 2009; and
- (e) The fifth request was by way of letter from Timbercorp's solicitors, Arnold Bloch Leibler, to ITC's solicitors Cullen Babington Hughes dated 3 December 2009.

47 ITC has failed, refused or neglected to consent to the assignment of the Walker Lease.

~~43 On or about 20 October 2009, Cadogan informed Timbercorp that it considered it owned the Plantations.~~

### **PARTICULARS**

~~The statement was made in a letter dated 20 October 2009 from Cadogan's lawyers, Warren Syminton Ralph, to Timbercorp's lawyers, Arnold Bloch Leibler.~~

~~A copy of this letter may be inspected by appointment at the offices of the Plaintiff's solicitors.~~

~~44 The failure of Timbercorp to pay the July Quarter Instalment on time was due to the insolvency of Timbercorp and Timbercorp subsequently paid, and Cadogan have accepted, the July Quarter Instalment and part of the October Quarter Instalment as alleged in paragraphs 39 and 40 above.~~

~~45 Alternatively, if the Purported Termination Notices operated so as to forfeit the Lease, Timbercorp seeks relief from forfeiture of the Lease and it is just and equitable to grant such relief in the circumstances.~~

### PARTICULARS

~~Timbercorp relies on, inter alia, the matters referred to in paragraphs 11 to 19 above; the terms of the Lease; the fact that the forfeiture in respect of which relief is sought is a forfeiture for non-payment of rent; the limited right of termination expressly provided for in clause 9.7 of the Lease; the entitlement of Timbercorp under clause 12 of the Lease to assign or transfer the Lease with the consent of Cadogan which must not be unreasonably withheld; the terms of the Sale Contract and, in particular, those parts that relate to transfer of the Lease; the consequences under the Sale Contract if relief is not granted; Cadogan's contention that it will be entitled to the Plantations if the Lease have been validly terminated and Timbercorp is not entitled to relief from forfeiture; the fact that following the settlement of the Sale Contract and assignment of the Lease, a new tenant will be responsible for paying the remainder of the October Quarter Instalment and the ongoing rent and performing the other covenants under the Lease.~~

48 Timbercorp is suffering and will continue to suffer loss and damage as a result of the refusal of Cadogan and ITC, respectively, to consent to the assignment of the Warren Hill, Snaigow and Walker Leases.

### PARTICULARS

(a) Particulars of Timbercorp's loss and damage will be provided prior to the trial of these proceedings.

### **AND THE PLAINTIFF CLAIMS:**

~~A~~—Declarations:

~~(a)that the:~~

~~(i)Purported Default Notice; and~~

~~(ii)Purported Termination Notice;~~

~~are invalid and of no effect;~~

~~(b) that the defendant is estopped from relying on the defendant's Purported Default Notice or Purported Termination Notice or contending that the Purported Termination Notice operates so as to terminate the Lease; and~~

~~(c) that the Lease remains extant.~~

~~B — An order pursuant to s 87 of the *Trade Practices Act 1974* (Cth) and/or s 158 of the *Fair Trading Act 1999* (Vic) that the Purported Termination Notice be set aside and is of no effect.~~

~~C — An injunction restraining the defendant from taking any steps to terminate the Lease on the grounds that the plaintiff failed to comply with the Purported Default Notice or to take possession of the Premises or otherwise from interfering with the plaintiffs' quiet enjoyment thereof.~~

~~D — Alternatively, relief from forfeiture of the Lease on such conditions as the Court determines.~~

~~AE An injunction requiring the defendant to execute the assignment of the Lease to the Purchaser. An order that the first defendant, whether by itself, its servants or its agents, execute a deed of assignment in respect of each of the Warren Hill Lease and the Snaigow Lease and/or take such other steps as required to provide their consent to the assignment of each of the Warren Hill Lease and the Snaigow Lease to the Purchaser.~~

~~B An order that the second defendant, whether by itself, its servants or its agents, execute a deed of assignment in respect of the Walker Lease and/or take such other steps as required to provide their consent to the assignment of the Walker Lease to the Purchaser.~~

~~C Further or alternatively, damages.~~

~~GD Such costs orders as are appropriate.~~

~~HE Such further or other orders as the Court considers appropriate.~~

DATED: ~~13 November~~ 4 December 2009

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**ARNOLD BLOCH LEIBLER**  
Solicitors for the plaintiff

**SCHEDULE 1**

- ~~(iii)~~1 The premises more particularly described in the Warren Hill Lease being part of Volume 269 Folio 124A as shown on the plans annexed to the Warren Hill Lease.
- ~~(ii)~~2 The premises more particularly described in the Warren Hill Lease being part of Volume 1083 Folio 63 as shown on the plans annexed to the Warren Hill Lease.
- ~~(iii)~~3 The premises more particularly described in the Warren Hill Lease being part of Volume 1402 Folio 166 as shown on the plans annexed to the Warren Hill Lease.
- ~~(iv)~~4 The premises more particularly described in the Warren Hill Lease being part of Volume 1245 Folio 54 as shown on the plans annexed to the Warren Hill Lease.
- ~~(v)~~5 The premises more particularly described in the Warren Hill Lease being part of Volume 1229 Folio 711 as shown on the plans annexed to the Warren Hill Lease.
- ~~(vi)~~6 The premises more particularly described in the Warren Hill Lease being part of Volume 1323 Folio 685 as shown on the plans annexed to the Warren Hill Lease.

**SCHEDULE 2**

- 7        The premises more particularly described in the Snaigow Lease being part of Volume 1648 Folio 394 as shown on the plans annexed to the Snaigow Lease.
- 8        The premises more particularly described in the Snaigow Lease being part of Volume 1718 Folio 507 as shown on the plans annexed to the Snaigow Lease.
- 9        The premises more particularly described in the Snaigow Lease being part of Volume 1314 Folio 108 as shown on the plans annexed to the Snaigow Lease.
- 10       The premises more particularly described in the Snaigow Lease being part of Volume 2204 Folio 358 as shown on the plans annexed to the Snaigow Lease.

**SCHEDULE 3**

1 The premises more particularly described in the Walker Lease being part of Volume 1487 Folio 639 as shown on the plans annexed to the Walker Lease.