

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

Olive Schemes
SCI 2011 6777
SCI 2010 1354

Citrus Schemes
SCI 2011 6606

COMMERCIAL COURT

LIST

BETWEEN

BOSI SECURITY SERVICES LIMITED (ACN 009 413 852) AS TRUSTEE FOR AUSTRALIA AND NEW
ZEALAND BANKING GROUP LIMITED (ACN 005 357 522) AND BOSI INTERNATIONAL (AUSTRALIA)
LIMITED (ACN 066 601 250) AND WESTPAC BANKING CORPORATION(ACN 007457 141) & ORS
(according to attached schedule)

Plaintiff

AND

B.B.OLIVES PTY LTD (IN LIQUIDATION) (ACN 083 992 367) & ORS (according to attached
Schedule).

Defendant

AND

TGG CITRUS INC. A0053635L

Defendant

AND

TGG OLIVE INC. A0053490J

Defendant

AFFIDAVIT OF KERREE ANNE BEZENCON

Date of document : 18th September, 2012.

Filed by the Applicant

Telephone: 0419 509 557

Reference:

Email: kerree@siger.com.au

I, **Kerree Anne Bezencon**, of 953 Don Road, Healesville in the State of Victoria, Accountant, make oath and say:

1. I swear this affidavit in support of my and the Second and Third Applicant's application in this proceeding and am authorised to swear this affidavit on behalf of the Second and Third Applicant.
2. Except where I otherwise indicate, I make this application from my own knowledge. Where I depose to matters from information or belief, I believe those matters to be true.
3. The purpose of this affidavit is to object to the compromise in relation to the citrus and olive growers and to allow the arguments for these growers rights to be contended and addressed in a separate hearing - not to assume they are the same as the almond case, nor that the same arguments apply to the citrus and olives
4. An Entity of which I am a director is a member (usually referred to as a grower) in the 2005 Timbercorp Citrus Project (ASRN 114 091 299) (**Scheme**). I personally am also a grower in various almond and olive schemes. I have been the accountant for approximately 30 other growers in various Timbercorp Projects.
5. I am currently on the Committee of Inspection to represent growers views to the liquidators
6. I am also the chairperson of the TGG Citrus Committee Inc TGG Olive Committee Inc (**Committees**), which are incorporated associations formed for the sole purpose of representing growers in the Timbercorp Citrus Olives Projects and of seeking to secure and advance the growers' interests.
7. In particular, the constitution of the Committee states that the purposes of the Committee are:

" 1. To seek representation on behalf of Growers involved in the Timbercorp Managed Investment Schemes that are managed by the responsible

Managed Investment Schemes that are managed by the responsible entity known as Timbercorp Securities Limited, which is now in liquidation.

- 2. To facilitate meetings with Growers to provide updates relating to the status of their projects and to also seek their opinions on the relevant issues involved.*
- 3. To seek funds from the above Growers and their financial advisers to provide payment for such representation. In addition such funds would also be available to reimburse committee members for such outlays as interstate travel (by Senior Committee Members), postage, phone and other incidental out of pocket expenses.*
- 4. Such representation would include legal, financial and independent expert advice to pursue outcomes to seek to secure and advance Grower's interests in these projects. Such advice sought would be to provide Growers with potential options regarding the legal and financial structures that may be able to be applied to these projects.*
- 5. To communicate on behalf of Growers with the current administrator of these projects, (Korda Mentha) and any other relevant stakeholders.*
- 6. To provide an ongoing communication role to keep Growers and their financial advisers updated on the performance of their projects.*
- 7. To consider the establishment of a web site for Grower updates."*
8. The other senior committee members of the Committee were growers or financial planners with clients who were growers in the Timbercorp Citrus Olives & Almonds Projects.
9. As chairperson of the Committee, I am also in regular email and/or telephone contact with approximately 1,800 financial advisers and accountants who obtain views from their grower clients and communicate them to me. We have a database covering over 80% of olive growers and 96% of citrus growers with whom we are in contact.

CLARENDONS & GARNAUT NOT REPRESENTATIVE OF GROWERS INTERESTS

10. Clarendons choice of representative olive and citrus growers as well as almonds are clients of Mr Chris Garnaut and he has their proxy. Clarendons are therefore under instructions effectively from Mr Garnaut. Thus the advice by counsel will reflect the instructions given by Mr Garnaut. Mr Garnaut, and his colleague Owen Lennie, would

appear conflicted and compromised because of their numerous property syndicate dealings with the very banks that are against the growers.

11. Neither the Clarendon representatives nor Garnaut have been involved in any of the proceedings nor shown any interest in citrus and olive growers projects, grower representative action groups and Committees and cannot be said to represent them. It is unlikely therefore that Chris Garnaut as proxy of representative growers reflects the sentiment of all the other growers, whereas the TGG Citrus & Olive Committees do

THE DEBATE & JUSTICE

12. I have represented growers and attended many of the court hearings and have observed something of the way the legal system operates. I do not possess the legal knowledge of a solicitor nor the eloquence of barristers.
13. All those present in court appear to know the rules of this "debating game" and I am at a severe disadvantage. Please excuse my lack of ability in this presentation, and if I offend it is not intentional.
14. It appears to me as an onlooker, as a game of words, something like a school debate run at a higher level. The debaters can take either side and argue the merits of that side, and tomorrow may argue the exact opposite. The best debater, the most eloquent and forceful debater wins. The bar table is a friendly table at which adversaries today may well be working with each other tomorrow. I should not be affronted that in the face of utterly serious and life threatening decisions, jokes are made and banalities are discussed amongst the debaters - it seems to bring some calmness and some ordinariness/ sanity to their world of words. But it deeply upsets those of us who are the victims, whose voice is totally dependent on the barristers voice and conviction.
15. No morality about the position is taken.
16. It appears that in all this game of words, in all this debating, the truth is lost and often not even sought- it is a sadly forgotten player. Yes - I can see that it is the game that is all important. Who will win the war of words - that is the focus amongst this crawling ant-hill of lawyers & barristers. Once debated, we can all go home or across the road for a beer or wine and start all over again on Monday. Life goes on.
17. Whilst this might be understandable, I stand to implore a different approach. I stand to ask you all, and you Justice Judd in particular to see past the debate game to the very plight of many growers who I have spoken to and who seem bewildered to continually get the short straw in the argument. Where is justice they ask?
18. I understood that the law comprises of not just the rules of legislation but also is made on the hop as it were, by new and good arguments that can be developed as new law emerges with changed circumstances and arguments. Many of the cases that create a precedent are based, I think, on new ways of looking at things especially in relation to the law of equity/justice.
19. I implore you - who know the game - to look through my totally inadequate abilities in this regard and seek that rare essence of justice and equity - and help the argument that might be presented somewhat in an unsophisticated manner but has merit and can, with help be developed.

MOTIVATION

20. I do believe that one should not just do the right thing, but we should raise the bar and do it for the right motivation. If you do the right thing because it is only because of fear of being caught for doing otherwise, that's the lowest standard to adopt. If you give a gift to help someone because it makes you feel good about your generosity that's only slightly better. If you do it with the motive that it's the best thing for the other, then we will have achieved the ultimate - it is that approach that I am pleading with you to adopt
21. So that I am transparent, I note that all the players in this debate are being rewarded for their efforts and being well paid, I am not receiving any payment for this affidavit - in fact all this is costing me - in both time and money.
22. There is obviously certainly a self-interested motive by all the debaters to make money. This is not unreasonable, but I here really urge you all to make this NOT the primary motive - there is no test, only your heart will know the truth . Only you will know what you will tell your children/wife about your day, when you reach home.
23. Lastly, there is a choice, between doing good and doing just a job and this choice rests with you - the consequences to the growers dire - some will lose their homes, their retirement dreams, their kids education, their sanity - more than one is deeply depressed with little hope to redo their lives

TAX , GROWERS BEST INTERESTS & ACCESS TO INFORMATION

24. One of the greatest misconceptions is that all growers invested all in the name of tax. Our experience and data files indicate that the majority of investors were super funds where the tax advantage is minimal. They invested because of the annuity like income stream that suited very well the long-term time frame of superannuants - some 20-30 years.
22. There has been much talk about "the best interests of the growers." Many have decided that growers are voiceless, powerless or need to be patronised, they are often given little information while the lawyers or liquidators decide what is in the growers best interest. But these are accountants or lawyers who are generally conservative people, deciding our fate, always looking for so-called "certainty," according to court affidavits - and prefer certainty , even where it is the certainty of nothing. How is that in our best interests?
22. The growers however are not conservative and did not chose certainty when investing in agriculture - one of the most volatile investments of all - in that it varies greatly from the standard mean, much like equities. Over long-term time frames the probability of a loss in such volatile assets approaches zero according to actuaries. Adding to this, this asset class is very much uncorrelated to other assets classes and is regarded as aiding the diversity and minimising the risks of a model portfolio.
25. Thus, many of us took a calculated risk with these investments. Many appreciated the issues after reading in the PDS about the various risks that we might face - of climate, pest, water, AUD dollar, price variations, operating costs variations etc (forgetting here

the issue of the one risk generally not highlighted of the RE going into liquidation) We are grown-ups, we made choices and we need to be given the same degree of information required at the time of investing as now with the "compromise".

INFORMATION ACCESS

26. This is clearly not the case at present. Too many hurdles are being put there to be able to easily access information. The initial letter from Clarendons carries no explanations whatsoever, but refers one onto 3 website - Clarendons, ABL & Timbercorp Korda Mentha - to get further information. Those people not computer literate or without net access are severely disadvantaged.
27. The grower must then scroll through numerous pdf's then print out the various 7 documents times 5 (the number of projects) ie 35 documents!! They are certainly not contained in just one document for each of these 5 interests, like a PDS. Then he/she must read them - over a ream of documents.
28. If they want to know the Barristers view, they must contact the 3 companies, find out the appropriate person, speak with them and request the document.
29. First they must read, understand, talk to a lawyer about signing a confidentiality agreement. Then after all that, and several days they might get the information - over 100 pages to read and digest.
30. Then they must go back into the web-site documents again, and find the phone number and/or the email address to lodge an objection. This all takes time and is not self evident.

NO ALTERNATE/CONTRARY VIEWS AIRED & CRITICAL INFO MISSING

31. They have not been provided with alternate views and the reasoning behind such.
32. Critical cash flow analysis is missing. Debate as to these pros and cons is therefore also missing.
33. No information is given about the basis for agreeing to the compromise - why should it be on a seeming proportion of sale proceeds - why not on the basis of the investment made by growers or some other point?

PROJECTS ARE NOT ALL THE SAME - CITRUS & OLIVE GROWERS

34. All projects are not the same. The structures do vary with each one and whilst there may be similarities, the total end picture can and is quite different - this should be acknowledged without using blanket rules applying 5% of sale proceeds to all projects.
35. There is much at stake for growers in the citrus and olive projects. No viability analysis has been done by any judge to ascertain if these projects are different to the almonds. To lump them together is a gross injustice. To not hear the arguments for their viability is unjust
36. Different locations and different farm properties yield different results.

37. Different produce yield different results - citrus, olives and almonds have very different factors.
38. Different marketers, their marketing and distributions yields different results.
39. Different operating costs yield different results
40. Different factors in the contracts yield different results. Different structures yield different results and inter-entity relationships
41. Different constitutions yield different results
42. Different arguments can be mounted for each project, yielding different results
43. Lumping them altogether simply does not do justice to the outcomes to growers
44. Olives and Citrus should have the same opportunity as Almond growers to present their significantly different arguments regarding the growers rights

04 & 05 CITRUS GROWERS SHOULD BE DEALT WITH TOGETHER

45. The Citrus growers in 05 share the property with 04 citrus growers. They should be dealt with at the same time in their own separate rights hearing, - rather than having extra costs for separate 04 & 05 legal hearings
46. Korda Mentha has never convened a meeting of citrus growers to discuss their options as was done for the almond and olive growers.
47. An amendment has been made to the constitution that allows the growers the ability to make requests to the RE (such as, that KM report to them more fully about the compromise etc). The Committee now seeks and proposes that a meeting should be conducted, as growers have not ever had this opportunity and the proposal be considered at a meeting of members of the Scheme called and convened by the First Plaintiff
48. I consider that it would be in the best interests of the growers in the Scheme for the First Plaintiff to convene a meeting of the members of the Scheme to consider the available compromise, the alternatives that might be argued and enable the almond growers and other to be fully informed of the alternate views

LACK OF INFORMATION

49. Lack of information has been a prevailing theme in all this. We can cite numerous incidences, if required. Clarendons have provided piecemeal information, despite court orders and though we represent significant numbers of growers, we are not being adequately informed, nor consulted
50. Clarendons were to keep the TGG Citrus & Olive & Almond Inc informed and involved in the process of the growers rights issues but we have clearly not been given any information nor opportunity for input in relation to the "compromises".
51. The TGG committees are severely disadvantaged and under-resourced to be able to legally insist on having access to this information. You Justice Judd would be aware, that in one previous proceeding we were at a severe disadvantage to be able to present our case - and lacked the requisite legal basis and time to argue many aspects. We probably should have stated a number of points but we were all awash and overwhelmed by the occasion. Lack of time and the expertise and resources has meant we are often disadvantaged.
52. This time we want our voice heard and the truth known. We will answer and provide any evidence that might be required, and seek any guidance in this respect, not being lawyers

NO URGENCY

53. As there is no pressing urgency, no crops are about to die (as if they ever were with crop sale agreements in place) we request that the olive and citrus proceedings regarding growers entitlements are dealt with separately with appropriate representation as to the various issues that are peculiar to these projects and products.

54. My motivation is to seek a just outcome where growers are informed and given the information to make proper decisions and present the best argument for each project. We would want every opportunity to present complete and thorough analysis of the projects to the court in regards particularly to the viability of the growers projects

OBJECTIONS

55. Any objections we receive to the above compromise from growers in the Scheme will obviously be noted

Sworn at Noosaville in)
in the State of Queensland this)
18th day of September 2012)

Handwritten signature

Before me:

Handwritten signature of Paul Dwyer

PAUL DWYER.
SOLICITOR.
QUEENSLAND.

SCHEDULE OF PARTIES

BETWEEN

FENCEPORT PROPRIETARY LIMITED (ACN 139 604 121)

First Plaintiff

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

Second Plaintiff

MARK ANTHONY KORDA

(in his capacity as liquidator of Olivecorp Land Pty Ltd (in liquidation))

Third Plaintiff

MARK FRANCIS XAVIER MENTHA

(in his capacity as liquidator of Olivecorp Land Pty Ltd (in liquidation))

Fourth Plaintiff

- and -

CON MOSHOPOLOUS

(in his capacity as a Grower in the 2000 Timbercorp Olive Project (Private Offer)
(Unregistered))

First Defendant

PAULINE EMMA HAMMER

(in her capacity as a Grower in the 2001 Timbercorp Olive Project (ARSN 094 382 082))

Second Defendant

DAVID SYDNEY BUTTERFIELD

(in his capacity as a Grower in the 2002 Timbercorp Olive Project (ARSN 098 233 455))

Third Defendant

GRAHAM GOLDENBERG

(in his capacity as a Grower in the 2003 Timbercorp Olive Project (ARSN 104 648 473))

Fourth Defendant

SHUN KING LI

(in his capacity as a Grower in the 2004 Timbercorp Olive Project (ARSN 108 744 378))

Fifth Defendant

SCHEDULE OF PARTIES

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

Plaintiff

and

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

First Defendant

and

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

Second Defendant

and

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

Third Defendant

and

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

Fourth Defendant

and

**LEANNE KYLIE CHESSER
(in her capacity as liquidator of B.B. Olives Pty Ltd (in liquidation))**

Fifth Defendant

and

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

Sixth Defendant

and

MICHAEL CHARLES VICARY

(as the representative of the Growers in the 2006 Timbercorp Olive Project (ARSN 119 182 179))

Seventh Defendant

and

PAMELA JAN DRY

(as the representative of the Growers in the 2007 Timbercorp Olive Project (ARSN 123 155 715))

Eighth Defendant

and

DAVID BUTTERFIELD

(as the representative of the Growers in the 2008 Timbercorp Olive Project (ARSN 129 307 722))

Ninth Defendant

SCHEDULE OF PARTIES

BETWEEN

AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED (ACN 005 357 522)

Plaintiff

- and -

OIM#2 PTY LTD (RECEIVERS AND MANAGERS APPOINTED) (ACN 112 691 997) AS
TRUSTEE FOR TIMBERCORP ORCHARD TRUST #2

First Defendant

MICHAEL FUNG IN HIS CAPACITY AS RECEIVER AND MANAGER OF OIM#2 PTY
LTD (RECEIVERS AND MANAGERS APPOINTED) (ACN 112 691 997) IN ITS
CAPACITY AS TRUSTEE FOR TIMBERCORP ORCHARD TRUST #2

Second Defendant

PAUL WILLIAM KIRK IN HIS CAPACITY AS RECEIVER AND MANAGER OF OIM#2
PTY LTD (RECEIVERS AND MANAGERS APPOINTED) (ACN 112 691 997) IN ITS
CAPACITY AS TRUSTEE FOR TIMBERCORP ORCHARD TRUST #2

Third Defendant

ROBERT BUGDEN AND ELIZABETH BUGDEN (AS THE REPRESENTATIVES OF
THE GROWERS IN THE 2005 TIMBERCORP CITRUS PROJECT (ARSN 114 091 299))

Fourth Defendants