

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

SCI 2013 01477

THE TRUST COMPANY (NOMINEES) LIMITED (ACN 004 134 441)

Plaintiff

and

MICHAEL FUNG IN HIS CAPACITY AS RECEIVER AND MANAGER OF ALIGN
FUNDS MANAGEMENT LIMITED (RECEIVER & MANAGER APPOINTED)
(ACN 105 684 231) IN ITS CAPACITY AS THE RESPONSIBLE ENTITY OF THE
TIMBERCORP ORCHARD TRUST & ORS

Defendants

FOURTH AFFIDAVIT OF YU-CHIAO HSUEH

Date of document: 7 May 2014
Filed on behalf of: The Second and Third Defendants
Macpherson + Kelley
Lawyers
Level 22, 114 William Street
MELBOURNE VIC 3000

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I, **YU-CHIAO HSUEH** of Level 22, 114 William Street, Melbourne, solemnly and sincerely declare and affirm that:

- 1 I am an employee of the firm Macpherson + Kelley Lawyers (**M+K Lawyers**), the solicitors for the Second and Third Defendants, being the persons appointed as representatives of all of the growers in the Timbercorp project of which they are a member (together the **Representative Growers**). I have carriage of this matter on behalf of the Representative Growers under the supervision of my principal, Michael Fernon, and I am authorised to make this affidavit on their behalf.
- 2 Except where otherwise indicated, I make this affidavit from my own knowledge. Where I depose to matters from information or belief, I believe those matters to be true.
- 3 I refer to my previous affidavits in this proceeding dated 25 March 2014 (**Second Affidavit**) and 17 April 2014 (**Third Affidavit**). Unless otherwise stated, this affidavit adopts the capitalised defined terms in my Second Affidavit and Third Affidavit.
- 4 I make this further affidavit in connection with the application for approval of the Deed of Compromise.

Further Results of the Grower Notification and Consultation Process

- 5 On 6 May 2014, I received an email from Ms Jing Chang of Arnold Bloch Leibler attaching a spreadsheet prepared by TSL which recorded details of all telephone, email and facsimile communications with growers for the period from 11 April 2014 to 5 May 2014



(5 May Communication Spreadsheet). I have read the 5 May Communication Spreadsheet and note that since 11 April 2014, there has been one grower who requested information in relation to the particulars of their investment such as how many lots they had invested in or which scheme they had invested in. Now produced and shown to me marked **confidential exhibit YCH-8**) is a true copy of the email from Ms Chang of ABL to me attaching the 5 May Communication Spreadsheet.

- 6 Confidential exhibit **YCH-8** is contained in a sealed envelope and the Representative Growers will make an application for an order that they be kept confidential as the 5 May Communication Spreadsheet contains growers' personal information.

Return to Sender notifications

- 7 I refer to paragraph 25 of my Second Affidavit. The reference to 12 Return to Sender notifications should have read 13 Return to Sender notifications.
- 8 I refer to paragraph 5 of my Third Affidavit. The reference to four Return to Sender notifications should have read one Return to Sender notification.
- 9 Since I affirmed my Third Affidavit, I believe based on my examination of the 5 May Communication Spreadsheet that there has been one additional Return to Sender notification received by TSL.
- 10 Accordingly, as at 5 May 2014, I believe that there have been a total of 15 Return to Sender notifications received by TSL based upon my examination of the Communication Spreadsheets.
- 11 Based on my examination of the Communication Spreadsheets and discussions with Ms Jing Chang of Arnold Bloch Leibler, solicitors for TSL, I understand that TSL has contacted all of the growers and provided them with the Letters to Growers and First Notice to Participant Growers to alternative mail or email addresses.

Affirmed by **YU-CHIAO HSUEH**

at Melbourne in the State of Victoria)

this 7th day of May 2014)

Before me: [Signature]

BEFORE ME.....
Anne Louise McCartney
An Australian Legal Practitioner
(within the meaning of the Legal Profession Act 2004)
Level 22, 114 William St, Melbourne Vic 3000