

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

LIST B  
S CI 2013 01477

BETWEEN

**THE TRUST COMPANY (NOMINEES) LIMITED (ACN 000 154 441)**

Plaintiff

and

**MICHAEL FUNG IN HIS CAPACITY AS RECEIVER AND MANAGER OF ALIGN FUNDS  
MANAGEMENT LIMITED (RECEIVER AND MANAGER APPOINTED) (ACN 105 684 231)  
IN ITS CAPACITY AS THE RESPONSIBLE ENTITY OF THE TIMBERCORP ORCHARD  
TRUST AND OTHERS ACCORDING TO THE ATTACHED SCHEDULE**

Defendants

**SECOND AFFIDAVIT OF LEANNE KYLIE CHESSER  
(BELLA VISTA RIGHTS PROCEEDING)**

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Date of document: 8 May 2014  
Filed on behalf of: Timbercorp Securities Ltd (in liquidation) (ACN 092 311 469)

Prepared by:  
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I, **LEANNE KYLIE CHESSER** of Level 24, 333 Collins Street, Melbourne in the State of Victoria, Chartered Accountant, **MAKE OATH AND SAY** that:

- 1 I am, with Mark Anthony Korda, the liquidator of Timbercorp Securities Limited (in liquidation) (ACN 092 311 469) (TSL).
- 2 I am authorised by Mr Korda to make this affidavit on his behalf. References in this affidavit to "we", "us", "our" or "ourselves" and "Liquidators" are references to Mr Korda and me.



- 3 Except where I otherwise indicate, I make this affidavit from my own knowledge. Where I depose to matters from information and belief, I believe those matters to be true.
- 4 I have previously sworn an affidavit in this proceeding on 27 March 2014 (**My First Affidavit**). I defined a number of terms in My First Affidavit and I adopt those definitions in this affidavit.
- 5 At paragraph 32 of My First Affidavit, I stated that:
- "I am informed by Ms Moodie that, in accordance with the Agreed Protocol, as a telephone call is received on the Hotline or an email is sent to the Grower Email Facility, the Timbercorp Grower Management Team document, in the Timbercorp database, that telephone call or email and the response to that telephone call or email by the Timbercorp Grower Management Team. The information documented is then downloaded into a report document in spread sheet form (**Communications Report**). The Timbercorp Grower Management Team also indicate in that Communications Report whether the telephone call or email requires a response or further action on behalf of the Representative Growers."
- 6 The completed Communications Reports for the period from 3 March 2014 to 23 March 2014 are exhibited to the Second Affidavit of Yu-chiao Hsueh affirmed on 25 March 2014 at confidential exhibit **YCH-5**.
- 7 Since My First Affidavit, the Timbercorp Grower Management Team have continued to monitor the Hotline and the Grower Email Facility and to complete Communications Reports in accordance with the Agreed Protocol. I am informed by Ms Moodie that, on 11 April 2014 a completed Communications Report was emailed by her to Macpherson + Kelley Lawyers and a further completed Communications Report was emailed by her to Arnold Bloch Leibler on 6 May 2014.
- 8 I am informed by Jing Chang of Arnold Bloch Leibler that on 6 May 2014, she emailed Macpherson + Kelley Lawyers the completed Communications Report sent by Ms Moodie on 6 May 2014.
- 9 A copy of the Communications Report for the period from 24 March 2014 to 10 April 2014 is exhibited to the Third Affidavit of Yu-chiao Hsueh affirmed on 17 April 2014 at confidential exhibit **YCH-7**.



10 A copy of the Communications Report for the period from 11 April 2014 to 5 May 2014 is exhibited to the Fourth Affidavit of Yu-chiao Hsueh affirmed on 7 May 2014 at confidential exhibit **YCH-8**.

11 At paragraph 25 of my First Affidavit, I stated that:

"I am informed by Ms Moodie, that:

(a) in relation to the 10 email 'bounce backs', a copy of the Short Letter to Growers had also been sent to each of those Growers by post and none of the letters were returned; and

(b) in relation to the 16 letters that were returned, the Short Letter to Growers had also been sent to six of those Growers by email and none of these had "bounced back". The Timbercorp Grower Management Team is following up with the remaining 10 Growers to obtain current email and/or postal address details."

12 I am informed by Ms Moodie that, in relation to those remaining 10 Growers which the Timbercorp Grower Management Team followed up:



(a) one Grower was contacted by phone and the Short Letter to Growers and First Notice to Growers was sent to the postal address provided by the Grower;

(b) eight Growers were sent the Short Letter to Growers and First Notice to Growers by an alternate email and none of these emails "bounced back"; and

(c) in relation to one Grower who had declared bankruptcy, the Short Letter to Growers and First Notice to Growers was sent to the Grower's trustee in bankruptcy by email.

**SWORN** at Melbourne  
in the State of Victoria  
by **LEANNE KYLIE CHESSER**  
this 8<sup>th</sup> day of May 2014

Before me:

  
  
**XIU JING CHAN**  
Arnold Black Laidlaw  
Level 21, 333 Collins Street  
Melbourne 3000  
An Australian Legal Practitioner within the  
meaning of the Legal Profession Act 2004

## **SCHEDULE**

**THE TRUST COMPANY (NOMINEES) LIMITED (ACN 000 154 441)**

Plaintiff

and

**MICHAEL FUNG IN HIS CAPACITY AS RECEIVER AND MANAGER OF ALIGN FUNDS  
MANAGEMENT LIMITED (RECEIVER AND MANAGER APPOINTED) (ACN 105 684 231)  
IN ITS CAPACITY AS THE RESPONSIBLE ENTITY OF THE TIMBERCORP ORCHARD  
TRUST2**

First Defendant

and

**ANTHONY CORMICK IN HIS CAPACITY AS REPRESENTATIVE OF THE GROWERS IN  
THE 2004 TIMBERCORP TABLE GRAPE PROJECT (ARSN 108 648 086)**

Second Defendant

and

**JEYARASA RASIAH AND ANNE RASIAH IN THEIR CAPACITY AS THE  
REPRESENTATIVES OF THE GROWERS IN THE 2005 TIMBERCORP TABLE GRAPE  
PROJECT (ARSN 113 512 236)**

Third Defendant