

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

List B

S CI 2013 01478

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 ORS (ACCORDING TO THE SCHEDULE ATTACHED)

Defendants

CERTIFICATE IDENTIFYING EXHIBIT

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Date of document: 21 March 2014

Filed on behalf of: The plaintiff

Prepared by:

**Allens**

Lawyers

101 Collins Street

Melbourne VIC 3000

Solicitor code: 21455

DX 30999 Melbourne

Tel 9614 1011 Fax 9614 4661

Ref CCHM:120338387

(Clint.Hinchen@allens.com.au)

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This is the **Exhibit** marked '**CCH-12**' now produced and shown to **Clinton Charles Hinchen** at the time of swearing his affidavit on 21 March 2014.

Before me 

**ELYSE KATE ADAMS**

of 101 Collins Street, Melbourne  
Victoria 3000

An Australian Legal Practitioner  
within the meaning of the  
Legal Profession Act 2004

**'CCH-12': a true copy of the  
orders of Justice Judd in  
proceeding No SCI 2011 888  
dated 15 March 2011**

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



LIST B  
No. 888 of 2011

**BETWEEN:**

TIMBERCORP SECURITIES LIMITED (IN LIQUIDATION) (ACN 092 311 469)  
IN ITS CAPACITY AS RESPONSIBLE ENTITY OF THE 2004 TIMBERCORP  
CITRUS PROJECT (ARSN 108 887 538) AND THE 2005 TIMBERCORP CITRUS  
PROJECT (ARSN 114 091 299) AND ORS ACCORDING TO THE SCHEDULE

**ORDER**



JUDGE OF THE COURT: The Honourable Justice Judd

DATE MADE: 15 March 2011

ORIGINATING PROCESS: Writ

HOW OBTAINED: On the hearing of the Originating Process filed 28 February 2011

ATTENDANCE: Dr O Bigos of Counsel, for the Plaintiffs  
Ms W Harris of Senior Counsel and T Clarke of Counsel,  
for the Receivers and Managers of Align Funds  
Management Limited in its capacity as the responsible  
entity of the Timbercorp Orchard Trust (ARSN 106 557 297)  
Mr M Galvin of Counsel for the Citrus Committee Inc  
Ms C Armstrong, solicitor, for the Timbercorp Growers  
Group

OTHER MATTERS: Align Funds Management Limited (Receivers & Managers Appointed) in its capacity as the responsible entity of the Timbercorp Orchard Trust (ARSN 106 557 297) (**TOT RE**) has entered into a sale and purchase contract dated 3 December 2010 in respect of land known as 'Kangara' with Agriproperty Pty Ltd and Kingston Estate Pty Ltd (**Land Sale Contract**) which forms confidential exhibit PWK-43 to the affidavit of Paul William Kirk sworn 23 February 2011 (**Kirk Affidavit**). **TOT RE** has also entered into a sale and purchase agreement dated 4 January 2011 in respect of the Victorian water rights associated with the Kangara property with the Commonwealth Government (**Water Sale Contract**) which forms confidential exhibit PWK-

47 of the Kirk Affidavit. The Land Sale Contract and Water Sale Contract are referred to collectively as the Sale Contracts.

The receivers of the assets charged by TOT RE are Paul William Kirk and Michael Fung (**Receivers**).

**THE COURT ORDERS, DECLARES AND DIRECTS THAT:**

1. The Second and Third Plaintiffs (in their capacity as liquidators of the First Plaintiff) are justified in procuring the First Plaintiff, as responsible entity of the 2004 Timbercorp Citrus Project (ARSN 108 887 538) and the 2005 Timbercorp Citrus Project (ARSN 114 091 299) (**Citrus Projects**), to terminate or surrender each relevant Grower licence and to extinguish all of the rights of Growers (investors in the Citrus Projects) in respect of the assets the subject of the Sale Contracts (**Grower Rights**), any such termination or surrender to be effective on, and from, completion of the Sale Contracts.
2. The Second and Third Plaintiffs (in their capacity as liquidators of the First Plaintiff) are justified in making, doing and executing such documents or things to give effect to the extinguishment of all of the Grower Rights upon the completion of the Sale Contracts.
3. Upon completion of each of the Sale Contracts, the net proceeds of sale (after payment of the Receivers' selling costs and expenses, retentions (if any), the costs and expenses of the Receivers referable to the preservation and realisation of the assets the subject of the Sale Contracts, and the costs and expenses of the liquidators of the First Plaintiff which are to be reimbursed by the Receivers in accordance with the Kangara Grower Rights Deed (as defined in the Kirk Affidavit) (**Net Sale Proceeds**) are to be held by the Receivers in an interest bearing trust account with an Australian bank (as defined in section 9 of the Corporations Act 2001 (Cth)), pending the hearing and determination by the Court of a proceeding to determine which person or persons have any rights to all or any part of the Net Sale Proceeds, and to be held on trust for the person or persons who are able to establish such a right, or until further order of the Court.

4. Insofar as Trust Company (Nominees) Limited (ACN 004 134 441) has any rights to the assets the subject of the Sale Contracts, whether under its securities over those assets or otherwise, nothing in the release of those securities upon completion of the Sale Contracts will prejudice those rights for the purposes of its claim to all or any part of the Net Sale Proceeds.
5. Insofar as the Growers have any rights to the assets the subject of the Sale Contracts nothing in orders 1 and 2 above, or any action taken thereunder by the Second and Third Plaintiffs, will prejudice those rights for the purposes of their claim to all or any part of the Net Sale Proceeds.
6. Exhibits PWK12, PWK14, PWK17, PWK18, PWK19, PWK20, PWK23, PWK26, PWK43, PWK44, PWK45, and PWK47 to the Kirk Affidavit and exhibits ASM-1, ASM-2 and ASM-4 to the affidavit of Antony Scott Munro dated 2 March 2011 are to remain confidential until 28 days after completion of both the Land Sale Contract and the Water Sale Contract.
7. Costs are reserved.

DATE AUTHENTICATED:        **15 March 2011**



  
**The Hon. Justice Judd**