

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

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

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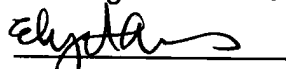
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Ref CCHM:120338387

(Clint.Hinchen@allens.com.au)

This is the **Exhibit** marked '**CCH-13**' 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-13': a true copy of the
orders of Justice Judd in the
Kangara Rights Proceeding
dated 19 July 2013**

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

LIST B
No. S CI 2013 1478

BETWEEN:

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 AND MANAGER APPOINTED) (ACN 105 684 231) IN ITS CAPACITY AS THE RESPONSIBLE ENTITY OF THE TIMBERCORP ORCHARD TRUST Defendant



ORDER



JUDGE OF THE COURT: The Honourable Justice Judd

DATE MADE: 19 July 2013

ORIGINATING PROCESS: Originating motion dated 25 March 2013

HOW OBTAINED: On return of the summons filed on 27 June 2013

ATTENDANCE: Ms W Harris SC with Mr M Rush of counsel for the Plaintiff
Mr R Craig of counsel for the First Defendant
Mr S Hopper of counsel for Gregory Westaway, Robert Bugden and Elizabeth Bugden
Ms K Bezencon for the TGG Citrus Committee Inc

OTHER MATTERS: The Court retains general supervision over fees and the first defendant will retain an opportunity to approach the Court if any need to invoke the Court's jurisdiction to review fees arises.

THE COURT ORDERS THAT:

1. Pursuant to rule 45.05 of the Supreme Court (General Civil Procedure) Rules 2005 (Vic) the requirements of Rules 5.03(1) and 8.02 are dispensed with.

2. Pursuant to rule 45.05 of the Supreme Court (General Civil Procedure) Rules 2005 (Vic) the Plaintiff has leave to proceed by originating motion in Form 5C.
3. Pursuant to rule 16.01(2) of the Supreme Court (General Civil Procedure) Rules 2005 (Vic):
 - (a) Gregory Westaway is appointed as the representative of the Growers (defined in paragraph 6 of the First Affidavit of Clinton Charles Hinchon sworn 26 June 2013 (Hinchon Affidavit)) in the 2004 Timbercorp Citrus Project (ARSN 108 887 538); and
 - (b) Robert Bugden and Elizabeth Bugden is appointed as the representatives of the Growers in the 2005 Timbercorp Citrus Project (ARSN 114 091 299).
4. The persons appointed pursuant to paragraph 3 above are joined as the Second and Third Defendants in the proceeding pursuant to rule 9.02 and/or rule 9.06(b) of the Supreme Court (General Civil Procedure) Rules 2005 (Vic).
5. The Plaintiff is granted leave to file and serve an amended originating motion on the Defendants on a date to be fixed:
 - (a) amending paragraph 3 of the Originating Motion to read "A declaration as to what, if any, right the Plaintiff has to the sale proceeds held on trust by the First Defendant pursuant to paragraph 3 of the orders made by the Honourable Justice Judd on 15 March 2011 in proceeding No. SCI 2011 888 (Net Sale Proceeds)";
 - (b) incorporating an order for a declaration as to what, if any, right the Growers represented by the Second and Third Defendants have to the Net Sale Proceeds; and
 - (c) amending paragraph 4 of the Originating Motion to read "A declaration as to how the Net Sale Proceeds ought to be distributed between the Plaintiff and the Growers represented by the Second and Third Defendants".
6. Unless the Court otherwise orders, the First Defendant shall pay from the Net Sale Proceeds:
 - (a) to Allens (the solicitors for the Plaintiff), the legal costs and disbursements incurred in this proceeding by the Plaintiff on an indemnity basis pursuant to the fee agreement between Allens and the plaintiff (in confidential exhibit CCH-37 to the Hinchon Affidavit) and pursuant to Rule 63.30.1 of the Supreme Court (General Civil Procedure) Rules 2005 (Vic) within 14 days of presentation to the First Defendant of:



- (i) a tax invoice for the legal costs and disbursements incurred by the Plaintiff in relation to this proceeding; and
 - (ii) a bill of costs on an indemnity basis, prepared and certified by an appropriately qualified costs consultant to be agreed by the parties; and
- (b) to Macpherson + Kelley Lawyers (the solicitors for the Second and Third Defendants), the legal costs and disbursements incurred in this proceeding by the Second and Third Defendants on an indemnity basis pursuant to the fee agreement between Macpherson + Kelley Lawyers and the Second and Third Defendants (in exhibits MJF-1 and MJF-6 to the affidavit of Michael Fernon of 18 July 2013) and pursuant to Rule 63.30.1 of the Supreme Court (General Civil Procedure) Rules 2005 (Vic) within 14 days of presentation to the First Defendant of:



- (i) a tax invoice for the legal costs and disbursements incurred by the Second and Third Defendants in relation to this proceeding; and
- (ii) a bill of costs on an indemnity basis, prepared and certified by an appropriately qualified costs consultant to be agreed by the parties.

7. Pursuant to item 19(k) of the Supreme Court Scale of Costs at Appendix A of the Supreme Court (General Civil Procedure) Rules 2005 (Vic), for the purposes of this proceeding and unless the Court otherwise orders:
- (a) the hourly and daily fee for the Senior Counsel retained on behalf of the Plaintiff is certified at the amounts stated in paragraph 63 of the Hinchin Affidavit; and
 - (b) the hourly and daily fee for Senior Counsel retained on behalf of the Second and Third Defendants is certified at the amounts stated in paragraph 3(a) of exhibit CCH-40 to the Hinchin Affidavit.
8. Until further order, the First Defendant is excused from taking any step in the proceeding, including court appearances, but may do so in relation to the following matters:
- (a) his right to be paid remuneration and expenses from the Net Sale Proceeds (to the extent that remuneration and those expenses have not already been paid);
 - (b) any allegations made about the First Defendant's personal conduct during his appointment and, in particular, with respect to the sale of the assets the proceeds of which represent the Net Sale Proceeds; and
 - (c) to ensure disposal in full of the Net Sale Proceeds currently held on trust by the First Defendant.

9. Subject to the payment of the Commercial Court entry fee, the proceeding be returned and heard before the Commercial Court.
10. Ms Kerree Bezencon is given leave to appear on behalf of the TGG Citrus Committee Inc.
11. At the same time a party serves any document filed in the proceeding, that party shall also serve a copy of the document on the TGG Citrus Committee Inc.
12. Subject to any further order from the Court, this proceeding be managed and heard together with proceeding No. SCI 2013 1477.
13. Until further order, Confidential Exhibits CCH-37 to the Hinchin Affidavit filed in this proceeding be kept confidential.
14. The proceeding is listed for further directions at 10.00am on 6 September 2013.
15. Costs are reserved.

DATE AUTHENTICATED: **9 August 2013**



A handwritten signature in purple ink, appearing to read "Justice Judd", written over a horizontal line.

The Hon. Justice Judd