

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

DX 30999 Melbourne

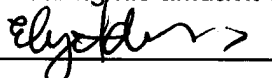
Tel 9614 1011 Fax 9614 4661

Ref CCHM:120338387

(Clint.Hinchen@allens.com.au)

This is the **Exhibit** marked '**CCH-15**' 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-15': a true copy of the
orders of Justice Davies in the
Solara Rights Proceeding dated
16 December 2011**

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

LIST D
S CI 2011 06606

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 AND ORS ACCORDING
TO THE SCHEDULE ATTACHED

Defendants

GENERAL FORM OF ORDER

JUDGE OF THE COURT: The Honourable Justice Davies

DATE MADE: 16 December 2011

ORIGINATING PROCESS: Originating Motion

HOW OBTAINED: On application by summons filed 6 December 2011

ATTENDANCE: Ms. W. Harris of Senior Counsel with
Mr. M. Rush of Counsel for the Plaintiff.
Mr. S. Tang, the Solicitor for the First Defendant.
Ms. L. Pascoe, the Solicitor for the Second and
Third Defendants.
Mr. G. Bigmore of Queens Counsel with
Mr. S. Hopper of Counsel for Robert Bugden and
Elizabeth Bugden.

OTHER MATTERS: In relation to paragraph 9 of this order, the Plaintiff
reserves its right to:

- (i) review the legal costs and disbursements incurred by the Fourth Defendants in this proceeding;
- (ii) form a view about the reasonableness of those legal costs and disbursements; and
- (iii) challenge any such legal costs and disbursements which the Plaintiff regards as not being reasonably incurred.



THE COURT ORDERS THAT:

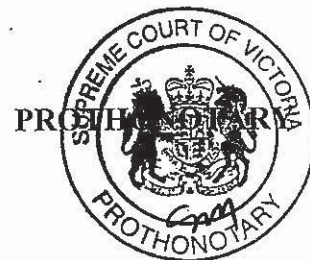
1. Pursuant to Rule 45.05 of the *Supreme Court (General Civil Procedure) Rules* 2005, the requirements of Rules 5.03(1) and 8.02 are dispensed with.
2. Pursuant to rule 45.05 of the *Supreme Court (General Civil Procedure) Rules* 2005, the Plaintiff has leave to proceed by originating motion in form 5C.
3. Pursuant to rule 16.01(2) of the *Supreme Court (General Civil Procedure) Rules* 2005, Robert Bugden and Elizabeth Bugden are appointed as representatives of the Growers in the 2005 Timbercorp Citrus Project (ARSN 114 091 299).
4. The persons appointed as representatives pursuant to paragraph 3 are joined as the Fourth Defendants in the proceeding pursuant to Rule 9.02' and/or Rule 9.06(b) of the *Supreme Court (General Civil Procedure) Rules* 2005.
5. The Plaintiff is granted leave to file and serve an amended originating motion on the Defendants on a date to be fixed:
 - (a) incorporating a declaration as to what, if any, right the Growers represented by the Fourth Defendants have to the sale proceeds held on trust by the Second and Third Defendants pursuant to paragraph 4 of the orders made by the Honourable Justice Davies on 26 February 2010 in proceeding No. SCI 2010 398 (*Orders*); and
 - (b) amending paragraph 5 of the originating motion to read "A declaration as to how the sale proceeds held on trust by the Second and Third Defendants pursuant to paragraph 4 of the orders ought to be distributed between the Plaintiff and the First and Fourth Defendants".
6. Subject to any further order of the Court, this proceeding is managed and heard together with proceeding number S CI 2011 6604.
7. Until further order, the Second and Third Defendants are excused from taking any step in the proceeding, including court appearances, but may do so in relation to the following matters:
 - (a) their rights to be paid their remuneration and expenses from the sale proceeds held on trust by the Second and Third Defendants pursuant to paragraph 4 of the orders (the *Funds*) (to the extent that remuneration and those expenses have not already been paid);
 - (b) any allegations made about the Second and Third Defendants' personal conduct during their appointment and, in particular, with respect to the sale of the assets the proceeds of which represent the Funds; and



- (c) To ensure disposal in full of the Funds currently held on trust by the Second and Third Defendants including the Funds and the money payable under the Crop Sale Agreement.
8. Each party serve a copy of all documents filed in this proceeding on the TGG Citrus Committee Inc. at the same time as the document is served upon a party to the proceeding.
9. The Second and Third Defendants, being the receivers of the First Defendant, pay from the Funds to Clarendon Lawyers, the solicitors for the Fourth Defendants, the legal costs and disbursements incurred in this proceeding by the Fourth Defendants on a solicitor and client basis pursuant to Rule 63.32(2)(a) of the *Supreme Court (General Civil Procedure) Rules 2005* within 14 days of presentation to the Second and Third Defendants by Clarendon Lawyers of:
- (a) a tax invoice for Clarendon Lawyers' legal costs and disbursements in relation to this proceeding; and
- (b) a bill of costs on a solicitor and client basis, prepared and certified by an appropriately qualified costs consultant to be agreed by the parties.
10. The proceeding is listed for further directions at 10.00am on 24 February 2012.
11. The costs of today are reserved.
12. There is liberty to apply

DATE AUTHENTICATED: 30 December 2011

KK301211



SCHEDULE OF PARTIES

S CI 2011 06606

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

Firstnamed Defendant

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

Secondnamed Defendant

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

Thirddnamed Defendant

