

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 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:120339854

(Clint.Hinchen@allens.com.au)

This is the **Exhibit** marked '**CCH-18**' 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-18': a true copy of the
letter from Allens to Sandhurst
dated 3 April 2013**

Adams, Elyse

From: Adams, Elyse
Sent: Wednesday, 3 April 2013 6:43 PM
To: Hayden.Williams@bendigobank.com.au
Cc: Hinchey, Clint; Salvo, Alicia
Subject: Supreme Court of Victoria Proceeding No SCI 1477 of 2013
Attachments: CD - Originating motion (Bella Vista).PDF; Document.pdf

Dear Mr Williams

Please see the attached letter and its enclosure.

Regards

Elyse Adams
Lawyer
Allens

Allens > < Linklaters

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101 Collins Street
Melbourne VIC 3000 Australia
www.allens.com.au

Date 3 April 2013

ABN 47 702 595 758

From Clint Hinchin / Alicia Salvo

101 Collins Street
Melbourne VIC 3000 Australia
T +61 3 9614 1011
F +61 3 9614 4661

To **Hayden Williams**, Manager, Corporate Trusts,
Sandhurst Trustees Limited, Docklands

Email Hayden.Williams@bendigobank.com.au

Correspondence
GPO Box 1776
Melbourne VIC 3001 Australia
DX 30999 Melbourne

www.allens.com.au

Confidential Email

Dear Mr Williams

Bella Vista Rights Proceeding

Supreme Court of Victoria Proceeding No SCI 1477 of 2013

Please see attached.

Attach

Our Ref 120338387:120339854

ansm A0124831193v2 120339854 3.4.2013

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3 April 2013

Hayden Williams
Manager, Corporate Trusts
Sandhurst Trustees Limited
Level 5, 120 Harbour
Esplanade
Docklands VIC 3008

By Email

Dear Mr Williams

Bella Vista Rights Proceeding

Supreme Court of Victoria Proceeding No SCI 1477 of 2013

1. Background

We act for The Trust Company (Nominees) Limited.

As you are aware, on 7 February 2011, the Honourable Justice Davies made various orders in Supreme Court Proceeding No SCI 7029 of 2010 (**Orders**) regarding the sale of the Bella Vista property and associated water rights. A copy of the Orders is attached and terms defined in the Orders apply to this letter.

Completion of the Land Sale Contract occurred on 2 March 2011 and completion of the Water Sale Contract occurred on 8 June 2011. In accordance with paragraph 3 of the Orders, Michael Fung in his capacity as receiver and manager of the assets charged by Align Funds Management Limited in its capacity as the responsible entity of the Timbercorp Orchard Trust (**Align**) currently holds the Net Sale Proceeds on trust in an interest bearing account 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. That proceeding (defined as the Bella Vista Rights Proceeding in section 2 below) has now been commenced by our client as secured creditor.

2. The Bella Vista Rights Proceeding

We attach for your reference the originating motion for Supreme Court of Victoria Proceeding No SCI 1477 of 2013 (**Bella Vista Rights Proceeding**) which was filed on behalf of our client on 25 March 2013.

As you will note, Mr Fung has been joined as a defendant to the proceeding in his capacity as "stakeholder" of the Net Sale Proceeds which he currently holds on trust.

Our Ref 120338387:120339854

ansm A0124831193v2 120339854 3.4.2013

Our client proposes to issue shortly an application by summons (supported by affidavit) seeking, among other things, directions and orders for:

- (a) the appointment of growers as representatives for each of the 2004 and 2005 Table Grape Projects pursuant to order 16 of the *Supreme Court (General Civil Procedure) Rules 2005* (Vic) (**Rules**); and
- (b) the joinder of those appointed representatives as defendants to the proceeding pursuant to rule 9.02 and/or rule 9.06(b) of the Rules.

Our client does not propose to seek orders for the joinder of any other parties.

3. Sandhurst's role

In accordance with the terms of the Annuity Bond Trust Deed [2] entered into between Align (formerly Orchard Investments Management Limited) and Sandhurst Trustees Limited (**Sandhurst**) on 3 December 2003 (**Sandhurst Trust Deed**), Align issued unsecured annuity bonds to bondholders. Sandhurst holds on trust for the benefit of the bondholders their right to enforce Align's obligation to repay the annuity bonds.

The amount of our client's secured debt exceeds the current balance of the Net Sale Proceeds. As such, regardless of the amount (if any) of the Net Sale Proceeds the Court orders is payable to the growers in the Bella Vista Rights Proceeding, there will be no surplus for payment to Align by our client in accordance with the terms of the Timbercorp Orchard Trust Debenture Trust Deed dated 17 October 2003. It follows that there will also be no surplus for payment to Sandhurst in accordance with the terms of the Sandhurst Trust Deed.

In the circumstances, our client considers that the annuity bond holders do not have any interest in the outcome of the Bella Vista Rights Proceeding and therefore Sandhurst, as trustee for the annuity bond holders, is not a necessary party in accordance with order 9.03 of the Rules.

If Sandhurst has an alternative view and consider that it is a proper party to the Bella Vista Rights Proceeding, it can apply to the Court for leave to be joined as a defendant.

Please confirm by return correspondence by no later than **12 April 2013** what role (if any) Sandhurst proposes to take in the Bella Vista Rights Proceeding.

Yours sincerely



Clint Hinch

Partner
Allens
Clint.Hinch@allens.com.au
T +61 8 9488 8924

Alicia Salvo

Lawyer
Allens
Alicia.Salvo@allens.com.au
T +61 8 9488 8504

CC: Michael Fung (Receiver and Manager of Align Funds Management Limited in its capacity as the responsible entity of the Timbercorp Orchard Trust)
PricewaterhouseCoopers

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

LIST

SCI 2013 01477

B E T W E E N

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

**ORIGINATING MOTION BETWEEN PARTIES
(Bella Vista Rights Proceeding)**

Date of document: 25 March 2013

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:ANSM 120339854
(Clint.Hinchen@allens.com.au)



TO THE DEFENDANT

TAKE NOTICE that this proceeding by originating motion has been brought against you by the Plaintiff for the relief or remedy set out below.

ALSO TAKE NOTICE that the Plaintiff cannot continue with the proceeding except by order of the Court. You will be given notice by summons of any application for the order and until the summons is served you are not required to take any step in the proceeding.

FILED: 25 March 2013

Prothonotary



THIS ORIGINATING MOTION is to be served within one year from the date it is filed or within such further period as the Court orders.

THE PLAINTIFF SEEKS THE FOLLOWING ORDERS:

1. Pursuant to rule 45.05 of the *Supreme Court (General Civil Procedures) 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 Procedures) Rules 2005* (Vic) the Plaintiff has leave to proceed by originating motion in Form 5C.
3. A declaration as to what, if any, right the Plaintiff has to the sale proceeds held on trust by the Defendant pursuant to paragraph 3 of the orders made by the Honourable Justice Davies on 7 February 2011 in proceeding No. SCI 2010 07029 (**Orders**).
4. A declaration as to how the sale proceeds held on trust by the Defendant pursuant to paragraph 3 of the Orders ought to be distributed to the Plaintiff.
6. Any other order the Court deems fit.

DATE: 25 March 2013

Allens
Solicitors for the Plaintiff

1. Place of trial - Melbourne
2. This originating motion was filed for the Plaintiff by Allens, of 101 Collins Street, Melbourne, Victoria, 3000.
3. The address of the Plaintiff is Level 3, 530 Collins Street, Melbourne VIC 3000.
4. The address for service of the Plaintiff is at the offices of Allens, of 101 Collins Street, Melbourne, Victoria, 3000.
5. The address of Defendant is at the offices of PricewaterhouseCoopers, of Freshwater Place, Level 19, 2 Southbank Boulevard, Southbank VIC 3006.



Form 4A

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

S CI 2013

List

B E T W E E N

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

OVERARCHING OBLIGATIONS CERTIFICATION

Date of document: March 2013

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:ANSM 120338387
(Clint.Hinchen@allens.com.au)

I, STEN SILAVECKY, Head of Structured Finance Services, an organisational branch of the Plaintiff which is responsible for the care and conduct of this proceeding, am authorised to make this certification on the Plaintiff's behalf.

In accordance with section 41 of the *Civil Procedure Act 2010* (Vic), I certify to the Court that I have read and understood the overarching obligations set out in sections 16 to 26 of that Act and the paramount duty set out in section 16 of the Act.

DATE: 22/3 / 2013



STEN SILAVECKY on behalf of the
Plaintiff

Form 4B

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

S CI 2013

List

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

PROPER BASIS CERTIFICATION

Date of document: 25 March 2013

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:ANSM 120338387
(Clint.Hinchen@allens.com.au)

In accordance with section 42 of the *Civil Procedure Act 2010* (Vic), I, CLINTON CHARLES
HINCHEN, certify to the Court that, in relation to the Originating Motion, filed on behalf of the
Plaintiff, on the factual and legal material available to me at present:

(a) each allegation of fact in the document has a proper basis.

DATE: 25 March 2013



CLINTON CHARLES HINCHEN

Legal practitioner for the Plaintiff