

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

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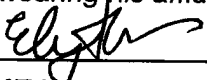
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(Clint.Hinchen@allens.com.au)

This is the **Exhibit** marked '**CCH-28**' 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-28': a true copy of the
frequently asked questions
document**

**Timbercorp Orchard Trust
Meeting of Debenture Holders**

Frequently Asked Questions

**Defined terms in this document have the same meaning as the defined terms in the Explanatory Memorandum accompanying the Notice of Meeting*

1 How many debentures do I own?

If you are uncertain about the number of debentures you own, please call the hotline on 1300 850 505 (within Australia) or +61 (3) 9415 4000 (outside Australia) for clarification.

2 When will a distribution be made to Debenture Holders?

If the Special Resolutions are passed by Debenture Holders, and the Court subsequently approves the Compromises before 30 June 2014, the Trustee expects to be in a position to make a distribution to Debenture Holders in or about July 2014.

3 What is the anticipated return per debenture under the Compromises and how was this estimated figure calculated?

The debentures were issued at a face value of \$100 each. The Trustee presently estimates that, if the Compromises are approved by the Debenture Holders and the Court by the respective dates set out in the deeds of compromise, the anticipated return to Debenture Holders will be approximately 38 cents in the dollar, based on a return of principal (and excluding any interest that may have accrued post-issue).

A breakdown of the Trustee's calculation of the estimated return is set out in the Schedule to the Explanatory Memorandum along with accompanying notes.

It is important for Debenture Holders to appreciate that it is difficult to estimate accurately at the present time the amount of the costs and expenses that will be deducted from the Funds prior to the distribution to Debenture Holders. Some of those costs and expenses are yet to be incurred. Accordingly, the range provided by the Trustee in the Schedule should be regarded by Debenture Holders as an indicative best estimate, provided to give Debenture Holders guidance on their potential return per debenture under the Compromises. The actual return to Debenture Holders may be above or below this range. Based on the best information presently available to the Trustee, the actual return to Debenture Holders under the Compromises should not be materially outside that range.

4 Are there any tax consequences for me as a result of the Compromises?

There may be tax consequences for you, depending on your individual circumstances. You should ask your own financial or tax advisor.

5 Can I have a copy of the deeds of compromise?

The executed deeds of compromise are available online at:

www.thetrustcompany.com.au/corporate/debt-capital-markets/timbercorp-orchard-trust/

or by calling the hotline on 1300 850 505 (within Australia) or +61 (3) 9415 4000 (outside Australia).

6 What are the Kangara Rights Proceeding and the Bella Vista Rights Proceeding and how do they relate to me?

The Kangara Rights Proceeding and the Bella Vista Rights Proceeding are legal proceedings which are currently before the Supreme Court of Victoria. These proceedings concern the net proceeds arising from the sale of the Kangara Assets and the Bella Vista Assets. The purpose of these proceedings is to resolve the dispute as to how the Funds held on trust by the Receivers are to be apportioned between the Trustee (representing the interests of Debenture Holders), the growers in the various projects the subject of each proceeding and other interested parties.

If the Compromises set out in the deeds of compromise in each proceeding are approved by Debenture Holders and by the Court, the Funds will be distributed in accordance with the Compromises and in the manner contemplated in the Schedule to the Explanatory Memorandum.

7 Who are the parties involved in the Kangara Rights Proceeding and the Bella Vista Rights Proceeding?

The parties to the respective proceedings are the Trustee, the Receiver (as stakeholder of the Funds) and individual growers appointed by the Court to represent the interests of all growers in the relevant projects the subject of the respective proceedings.

8 Where can I find copies of the court documents filed in the Kangara Rights Proceeding and the Bella Vista Rights Proceeding?

Copies of the court documents filed by the parties to date in the proceedings can be viewed at: www.abl.com.au/timbercorp/currentapplications.htm.

9 What are the "Compromises" reached by the parties to the Kangara Rights Proceeding and the Bella Vista Rights Proceeding?

Under the terms of the deeds of compromise, the "Compromise" involves:

- (a) first, the making of the following payments out of the Funds (in accordance with clause 4 of each deed):
 - (i) **to the Receiver:** for his unpaid remuneration and expenses in connection with or arising from his appointment as receiver and manager of Align, his management, maintenance and (in accordance with the deeds of compromise) disbursement of the Funds, and his costs of and incidental to the Court approval applications for the Compromises and the two proceedings generally (the quantum of which will either be agreed by the Trustee or approved by the Court);
 - (ii) **to TSL:** to be held on trust for distribution to the growers in accordance with their entitlements, a settlement sum representing approximately 5% of the relevant gross sale proceeds of the Kangara Assets and the Bella Vista Assets, being:
 - (A) the amount of \$1,043,321 under the deed of compromise in the Kangara Rights Proceeding; and
 - (B) the amount of \$385,000 under the deed of compromise in the Bella Vista Rights Proceeding;
 - (iii) **to the Trustee:** the balance of the Funds for distribution to the Debenture Holders following payment of its remuneration and expenses.
- (b) secondly, each party giving a release to all other parties (in accordance with clause 5 of each deed) from any further claim in relation to their respective entitlements to the Funds and the allocation and disbursement of the Funds.

10 Is there an alternative to the compromise agreement?

Further court action:

The alternative available to the Trustee is to progress the proceedings to a hearing and final determination by the Court as to which party or parties are entitled to the Funds.

A timetable has not been set down by the Court for the hearing of the Kangara Rights Proceeding and the Bella Vista Rights Proceeding, should the Compromises not be approved by the Debenture Holders. There are a number of preliminary steps which will need to be completed before a date for any hearing in either

proceeding is set. It is unlikely that the two proceedings would be heard before late 2014 or early 2015.

The Funds would therefore remain in trust, in an interest bearing account, until that time, absent any other proposal for a compromise approved by the Debenture Holders and the Court) less amounts deducted from time to time for the payment of legal costs of the Trustee and the grower representatives under the pre-emptive costs orders made by the Court on 19 July 2013.

11 Why is the Trustee recommending the Compromises rather than progressing the two proceedings to a final hearing by the Court?

The reasons for the Trustee making the recommendation are set out in detail in Section 8 of the Explanatory Memorandum.

12 What conditions have to be satisfied in order for the Compromises to proceed?

As a general comment, there are certain conditions precedent to the Compromises taking effect. In short, if each of the Special Resolutions is not passed by the Debenture Holders by 7 March 2014, or each of the Compromises is not approved by the Court and orders made by 30 June 2014 that the Compromise shall be binding on the absent growers represented by the appointed representative growers in each proceeding, neither Compromise will have any effect. In that respect the satisfaction of the conditions precedent in each Compromise is conditional on the satisfaction of the conditions precedent in the other. Set out below is more specific information about the conditions precedent.

The deed of compromise in the Kangara Rights Proceeding is conditional:

- (a) on approval by the Debenture Holders of:
 - (i) the "Compromise" set out in clause 2 of the deed of compromise in the Kangara Rights Proceeding by **7 March 2014**; and
 - (ii) the "Compromise" set out in clause 2 of the deed of compromise executed in the Bella Vista Rights Proceeding, **by 7 March 2014**;
- (b) approval by the Supreme Court of the "Compromise" in the Kangara Rights Proceeding and the granting of orders that the Compromise shall be binding on the absent growers who are represented by the appointed representative growers in that proceeding by **30 June 2014**; and
- (c) approval by the Supreme Court of the "Compromise" in the Bella Vista Rights Proceeding and the granting of orders that the Compromise shall be binding on the absent growers who are represented by the appointed representative growers in that proceeding by **30 June 2014**.

The deed of compromise in the Bella Vista Rights Proceeding is conditional on:

- (a) approval by the Debenture Holders of:
 - (i) the "Compromise" set out in clause 2 of the deed of compromise in the Bella Vista Rights Proceeding **by 7 March 2014**; and
 - (ii) the "Compromise" set out in clause 2 of the deed of compromise executed in the Kangara Rights Proceeding, **by 7 March 2014**;
- (b) approval by the Supreme Court of the "Compromise" in the Bella Vista Rights Proceeding and the granting of orders that the Compromise shall be binding on the absent growers who are represented by the appointed representative growers in the proceeding by **30 June 2014**; and
- (c) approval by the Supreme Court of the "Compromise" in the Kangara Rights Proceeding and the granting of orders that the Compromise shall be binding on the absent growers who are represented by the appointed representative growers in that proceeding by **30 June 2014**.

13 Do I have to attend the meeting of Debenture Holders?

Attendance is not compulsory. However, to satisfy the quorum requirements for the meeting, sufficient Debenture Holders need to be present (whether in person, by proxy or by corporate representative) who together hold 25% of all Outstanding Debentures (as defined in the Trust Deed).

As the outcome of the vote on the Special Resolutions will affect all Debenture Holders, your vote is important.

14 What is required to pass the Special Resolutions?

To pass a special resolution of Debenture Holders:

- there needs to be a quorum for a properly convened meeting which requires sufficient Debenture Holders, whether present in person or by proxy or by corporate representative, who together hold 25% of the amount of Outstanding Debentures (as defined in the Trust Deed);
- the resolution must be voted for by a majority of Debenture Holders who together hold not less than 75% of the votes held by all Debenture Holders entitled to vote at the meeting (in person, by proxy or by corporate representative).

15 Once the Kangara and Bella Vista Rights Proceedings are resolved, will there be any other funds available for the payment of outstanding amounts owed to Debenture Holders?

No.

The only funds available for distribution to Debenture Holders are the Funds the subject of the Kangara Rights Proceeding and the Bella Vista Rights Proceeding. Once the Trustee receives the balance of the Funds in accordance with the Compromises and distributes the balance (less its own costs and expenses) to Debenture Holders, there will be no further funds available for distribution to Debenture Holders.

16 What happens if the Special Resolutions are not passed at the meeting of Debenture Holders?

If the Debenture Holders do not approve the Compromises by 7 March 2014 (or the Court does not approve the Compromises by 30 June 2014):

- the deeds of compromise will not have any effect;
- none of the parties to the deeds of compromise will have any right or entitlement as a result of, or by reason of, the parties having entered into the deeds of compromise or having conditionally agreed to the Compromises;
- the Kangara Rights Proceeding and the Bella Vista Rights Proceedings will each continue to a hearing, and the entitlements of the parties to the Funds will be determined by the Court (and the deeds of compromise cannot be referred to in evidence at the hearings of those proceedings).

A timetable has not been set down by the Court for the hearing of the Kangara Rights Proceeding and the Bella Vista Rights Proceeding, should the Compromises not be approved by the Debenture Holders. There are a number of preliminary steps which will need to be completed before a date for any hearing in either proceeding is set. It is unlikely that the two proceedings would be heard before late 2014 or early 2015. The Funds would therefore remain in trust, in an interest bearing account, until that time, absent any other proposal for a compromise approved by the Debenture Holders and the Court) less amounts deducted from time to time for the payment of legal costs of the Trustee and the grower representatives under the pre-emptive costs orders made by the Court on 19 July 2013 (which entitled these parties to be reimbursed for their costs of the proceedings out of the Funds).

17 If I do not support the Compromises, will I be bound by the Special Resolutions if they are passed?

If the Special Resolutions are passed by the requisite majority at a duly convened meeting, all Debenture Holders will be bound by that resolution regardless of whether they voted against the resolution or abstained from voting.

18 How does the anticipated return under the Compromises compare to the likely return to Debenture Holders if the two proceedings continue to a Court hearing and the Trustee is successful?

The anticipated return for Debenture Holders under the Compromises is still likely to be more favourable than if the proceedings continued to a Court hearing in which the Trustee is wholly successful.

It is not possible at this early stage in the two proceedings to anticipate with any certainty the costs that would be incurred by the parties in proceeding to a Court hearing, and accordingly the ultimate anticipated return per debenture under that scenario.

That said, even if the Trustee is ultimately successful at trial (such that the Court determined the Trustee was entitled to 100% of the balance of the Funds), it is likely that the legal costs incurred by the parties in the two proceedings in progressing them to a Court hearing would be significant. Those costs, as well as the additional fees and expenses would be incurred by the Trustee in progressing the proceedings to a Court hearing, would likely be deducted from the Funds. In the Trustee's view, those deductions from the Funds would be likely to exceed the amount payable to the growers under the Compromises (being 5% of the gross sale proceeds).

19 How much will the Growers get under the Compromises?

Approximately 5% of the gross proceeds of sale of the Kangara assets and the Bella Vista assets are being set aside for growers in the relevant projects under the Compromises, being \$1,043,321 for the Kangara Rights Proceeding and \$385,000 for the Bella Vista Rights proceeding.

The different gross sale proceeds realised from each of the sale transactions reflected how much the relevant buyers were prepared to pay for the relevant property and water rights. This varied depending on the location and value of the land, the age of the trees and other factors.

20 What happened in the Almond Land Rights Proceeding and the other Resolved Timbercorp Proceedings?

The Almond Land Rights Proceeding, which commenced in December 2009, concerned related Timbercorp managed investment schemes in which the competing claims of growers and secured creditors to the relevant net sale proceeds were considered by the Court. That proceeding progressed to a trial. The Court held in June 2011, that the secured creditors were entitled to the entire amount of the net sale proceeds the subject of that proceeding. The decision of the Court was appealed by the growers.

The Almond Land Rights Proceeding was one of five other rights proceedings involving competing claims of growers and secured creditors to the net sale proceeds of a number of properties formerly owned by companies in the Timbercorp Group which were the subject of various other projects registered as managed investment schemes (the **Resolved Timbercorp Proceedings**).

In December 2012, prior to the hearing of the appeal of the Almond Land Rights Proceeding and the trials of the other Timbercorp proceedings, the Court approved deeds of compromise executed by the parties in each of the five Resolved Timbercorp Proceedings. As a result, each compromise was binding on the growers represented in the relevant proceeding by the court appointed representative growers.

In the Resolved Timbercorp Proceedings, the Court held that the Compromises reached in those proceedings, involving a payment to growers of approximately 5% of the relevant gross sale proceeds, were in the best interests of all growers in the relevant projects.

Given the judgment in the Almond Land Rights Proceeding, and the similarities between the issues raised and the factual circumstances before the Court in the Resolved Timbercorp Proceedings and each of the Kangara Rights Proceeding and the Bella Vista Rights Proceeding, the Trustee considers that there is a meaningful reference point for a payment of approximately 5% of the gross sale proceeds as being an acceptable basis for the Court to approve the Compromises in the Kangara Rights Proceeding and the Bella Vista Rights Proceeding.

21 Do I need to sign any documents in relation to the Compromises?

No.

If the Special Resolutions are passed by Debenture Holders the Trustee will be empowered to execute all relevant documents on behalf of the Debenture Holders.

22 When will the Court decide whether to approve the Compromises?

If the Special Resolutions are passed by the Debenture Holders, the Trustee will apply to the Court to have the Compromises approved. The Trustee anticipates that a date for the hearing of that application will be set by the Court in late March or April 2014, with the prospect that the application will be heard in May or early June 2014 in anticipation of the Court making its decision by 30 June 2014.

You will continue to be kept informed of future developments regarding the progress of the Court application, and the date and outcome of the hearing. Updates will be posted by the Trustee on:

www.thetrustcompany.com.au/corporate/debt-capital-markets/timbercorp-orchard-trust/

23 What happens if the Debenture Holders pass the Special Resolutions but the Court does not approve the Compromises?

If the Debenture Holders pass the Special Resolutions but the Court does not approve the Compromises as being in the best interests of growers:

- the deeds of compromise cease to have any effect;
- none of the parties to the deeds of compromise will have any right or entitlement as a result of, or by reason of, the parties having entered into the deeds of compromise or having conditionally agreed to the Compromises;
- the Kangara Rights Proceeding and the Bella Vista Rights Proceedings will each continue to a hearing, and the entitlements of the parties to the Funds will be determined by the Court (and the deeds of compromise cannot be referred to in evidence at the hearings of those proceedings).

A timetable has not been set down by the Court for the hearing of the Kangara Rights Proceeding and the Bella Vista Rights Proceeding, should the Compromises not be approved by the Debenture Holders. There are a number of preliminary steps which will need to be completed before a date for any hearing in either proceeding is set. It is unlikely that the two proceedings would be heard before late 2014 or early 2015. The Funds would therefore remain in trust, in an interest bearing account, until that time, absent any other proposal for a compromise approved by the Debenture Holders and the Court) less amounts deducted from time to time for the payment of legal costs of the Trustee and the grower representatives under the pre-emptive costs orders made by the Court on 19 July 2013.

24 Will ASIC be involved in the Court approval process?

ASIC will be notified shortly of the Compromises and provided with information being sent by the Trustee to Debenture Holders for the purposes of the meeting of Debenture Holders to consider passing the Special Resolutions set out in the Notice of Meeting.

If the Special Resolutions are passed by Debenture Holders, and the Trustee then proceeds with an application for approval of the Compromises by the Court, ASIC will be kept informed by the Trustee in relation to all aspects of the application for approval and be provided with the Court documents filed by the parties.

It will be a matter for ASIC as to whether it chooses to appear or make any submissions to the Court in the approval applications in the Kangara Rights Proceeding and the Bella Vista Rights Proceeding.

25 How do I find out more?

The Deeds of Compromise, the Notice of Meeting, Explanatory Memorandum and Proxy Form are available on:

www.thetrustcompany.com.au/corporate/debt-capital-markets/timbercorp-orchard-trust/

The Court documents in the Kangara Rights Proceeding and the Bella Vista Rights Proceeding are located on www.abl.com.au/timbercorp/currentapplications.htm.

Alternatively, Debenture Holders can call the hotline facility that the Trustee has set up on 1800 783 447 (within Australia) or +61 (3) 9415 4000 (outside Australia), or email timbercorp@thetrustcompany.com.au. If the hotline staff cannot answer your question, they will refer it to the Trustee and its lawyers, Allens, and a response will then be provided to you as soon as practicable.

You will continue to be kept informed of future developments by the Trustee's further updates, posted on:

www.thetrustcompany.com.au/corporate/debt-capital-markets/timbercorp-orchard-trust/