

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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Melbourne VIC 3000

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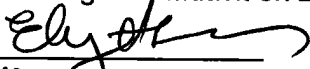
Tel 9614 1011 Fax 9614 4661

Ref CCHM:120339854

(Clint.Hinchen@allens.com.au)

This is the **Exhibit** marked '**CCH-29**' 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-29': a true copy of the
letter from Allens to ASIC dated
24 February 2014**

Date 24 February 2014 ABN 47 702 595 758

From Clint Hinchin / Elyse Adams 101 Collins Street
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Confidential Email

Dear Ms MacKenzie

Bella Vista and Kangara Apportionment Proceedings

Please see attached.

Attach

Our Ref CCHM:EUAM:120338387

euam A0128153555v4 120338387 19.2.2014

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24 February 2014

Corrine MacKenzie
Senior Analyst
Australian Securities & Investments Commission

By Email

Dear Ms MacKenzie

Bella Vista and Kangara Apportionment Proceedings

We act on behalf of The Trust Company (Nominees) Limited (***The Trust Company***) in Supreme Court of Victoria Proceeding Nos. S CI 2013 1477 and S CI 2013 1478 (respectively, the ***Bella Vista Rights Proceeding*** and the ***Kangara Rights Proceeding***).

In this letter, the ***Bella Vista and Kangara Apportionment Proceedings*** means, collectively, the Bella Vista Rights Proceeding and the Kangara Rights Proceeding.

This letter is written on behalf, and with the authority, of the parties in each of the Bella Vista and Kangara Apportionment Proceedings, and Timbercorp Securities Limited (in liquidation) (***TSL***), and is copied to the solicitors for each of those parties.

The purpose of this letter is to:

- notify the Australian Investments & Securities Commission (***ASIC***) that deeds of compromise, in each case subject to court approval, have recently been executed by each of the parties to each of the Bella Vista and Kangara Apportionment Proceedings and TSL; and
- seek confirmation as to:
 - whether ASIC wishes to sight the deeds of compromise on a confidential basis;
 - what level of involvement, if any, ASIC wishes to have in the process of notification of the respective compromises to growers in each of the relevant Timbercorp managed investment schemes (as those terms are defined in Schedule 1 to this letter);
 - what level of involvement, if any, ASIC wishes to have in overseeing the process by which the representative growers in each of the Bella Vista and Kangara Apportionment Proceedings address any comments, questions or objections raised by growers in relation to the compromises, the approval applications or the individual circumstances of growers;

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- whether ASIC wishes to participate in any directions hearings relating to the approval applications; and
- whether ASIC wishes to participate at the hearing of the approval applications to report to the Court on the above mentioned processes or in relation to any other matters concerning the compromises.

Background

The Bella Vista and Kangara Apportionment Proceedings are two further apportionment proceedings in relation to the collapse of the Timbercorp Group (as defined in Schedule 1 to this letter). We are aware that you are familiar with the background to the collapse of the Timbercorp Group in the context of the previous five Resolved Timbercorp Apportionment Proceedings (as defined in Schedule 1 to this letter), however we have included the relevant details in the Schedule for your ease of reference.

Status of the Bella Vista and Kangara Apportionment Proceedings

As noted above, deeds of compromise, in each case subject to court approval and in substantially the same form as the deeds of compromise executed in the Resolved Timbercorp Apportionment Proceedings, have recently been executed by each of the parties to the Bella Vista and Kangara Apportionment Proceedings and TSL. The purpose of these deeds of compromise is to resolve those proceedings.

In general terms, the compromises entered into in respect of the Bella Vista and Kangara Apportionment Proceedings provide that:

- approximately 5% of the gross sale proceeds of the subject assets are to be apportioned between the growers in those schemes based on a rateable distribution in accordance with the number of lots held by the growers in each scheme; and
- The Trust Company apply the remaining net sale proceeds in reduction of its secured debt (including interest and costs).

Unlike the deeds of compromise in the Resolved Timbercorp Apportionment Proceedings, the deeds of compromise in respect of the Bella Vista and Kangara Apportionment Proceedings do not provide for any remaining funds to be distributed to the landowning entities of the relevant properties the subject of the proceeding as the amount of the net sale proceeds available will not be sufficient to fully discharge the security held by The Trust Company. Accordingly, there will be no remaining funds for distribution to the landowner.

The deeds of compromise in respect of the Bella Vista and Kangara Apportionment Proceedings contain the same condition precedent as that contained in the deeds of compromise for the Resolved Timbercorp Apportionment Proceedings, namely that, as they were entered into by representative growers on behalf of the absent growers, the compromises must be approved by the Court as being in the best interests of the absent growers pursuant to rule 16.01(4) of the Rules (as defined in Schedule 1 to this letter).

The deeds of compromise also contain a further condition precedent requiring that the holders of the debentures issued by Align Funds Management in its capacity as responsible entity of the Timbercorp Orchard Trust (Receiver and Manager appointed) (**Debenture Holders**), the landowner on whose land the schemes were conducted, approve the compromises in each of the

Bella Vista and Kangara Apportionment Proceedings in accordance with the procedure described in the Timbercorp Orchard Trust Debenture Trust Deed dated 17 October 2003 (**Trust Deed**).

On 6 February 2014, and in accordance with the Trust Deed, The Trust Company issued a notice of meeting and other related documents in connection with the meeting to the Debenture Holders informing them that a meeting to vote on a resolution to approve the compromises in respect of the Bella Vista and Kangara Apportionment Proceedings will be held on 28 February 2014.

It is proposed that, in each of the Bella Vista and Kangara Apportionment Proceedings, following approval by the Debenture Holders on 28 February 2014, an application will be issued pursuant to rule 16.01(4) of the Rules for (among other things) approval of the relevant compromise and an order that it be binding on the absent persons represented by the appointed representative(s) (together, the **approval applications**).

Similar to the approach implemented in the Resolved Timbercorp Apportionment Proceedings, it is proposed that the approval applications will be made returnable before, and heard and determined concurrently by, the same approval judge in the trial division of the Supreme Court.

Notice to growers

In anticipation of a positive outcome at the meeting of Debenture Holders, the representative growers in each of the Bella Vista and Kangara Apportionment Proceedings are preparing to give appropriate notices to the growers they respectively represent in relation to the relevant compromise. It is intended that, in each case, these notices will (among other things):

- provide information about the relevant proceeding;
- explain that the interests of the growers are represented in the proceeding by the relevant representative growers(s);
- refer to the compromise reached between the parties and explain the key features of the relevant deed of compromise including the various payments contemplated under the compromise and the fact that the compromise is subject to court approval;
- explain that the compromise is considered by the representative grower(s) as being in the best interests of the growers;
- alert the growers to consider any potential tax consequences of the compromise;
- explain that, if the Court approves the compromise, the growers will be bound by the compromise in respect of their individual entitlements (if any) out of the relevant net sale proceeds;
- explain that, in connection with the proposed application to the Court for approval of the compromise:
 - a directions hearing is expected to take place shortly;
 - it is expected that, at that hearing, the approval judge will make orders confirming (among other things) the date of the hearing of the approval application; and
 - interested growers should consult a designated website to obtain confirmation of the hearing date for the approval application and other orders made by the approval judge at the directions hearing;
- explain when the growers may expect to receive a payment under the compromise;

- explain the consequences if the Court does not approve the compromise;
- explain to the growers what their options are in connection with the approval application;
- inform the growers that, without prejudice to any other course they may be advised to take, they may:
 - address any comments or questions in relation to the compromise, the approval application, or their individual circumstances;
 - raise any objection to the compromise,

to the relevant representative grower, and that a reply will be provided to their comments or questions and, as appropriate, their comments and objections will be noted for the purposes of the hearing of the approval application;
- refer the growers to a set of 'frequently asked questions' and related answers which they should review before considering whether it is necessary to ask any questions of the relevant representative growers relating to the compromise or in connection with the approval application; and
- inform the growers that a further notice will be provided to them as soon as practicable after it becomes known whether or not the Court has approved each of the compromises.

The parties would be grateful if ASIC would provide the confirmations sought above by return correspondence by email to the parties' respective solicitors (the details for whom are set out on the cover page to this letter).

We look forward to hearing from you.

Yours sincerely

Clint Hinchon

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SCHEDULE 1

Background

Timbercorp Limited (In Liquidation) (**Timbercorp**) and its subsidiary entities (together, the **Timbercorp Group**) conducted various agribusiness managed investment schemes across a number of properties involving, among other things, the management, cultivation, harvesting, processing and sale of almonds, olives and citrus. The managed investment schemes the subject of the Bella Vista and Kangara Apportionment Proceedings are listed in schedule 2 to this letter and referred to in this letter as the **Timbercorp managed investment schemes**.

The Timbercorp Group went into administration on 23 April 2009 and was placed into liquidation on 29 June 2009. Thereafter, the land on which the Timbercorp managed investment schemes were conducted was sold in a series of transactions each of which was approved by the Supreme Court of Victoria.

In approving each of the sale transactions, the Court, in each case, ordered (among other things) that:

- (a) the net sale proceeds be placed into trust pending a proceeding to determine the rights of the land owners, investors in the Timbercorp managed investment schemes (**growers**) and other interested parties to all, or any part, of those proceeds; and
- (b) neither the release of the secured creditors' securities upon completion of the sale contract, nor the extinguishment of the growers' rights, would prejudice those parties' respective rights to the assets sold insofar as they had such rights for the purpose of making a claim to all or any part of the net proceeds.

Against this background, and following the Resolved Timbercorp Apportionment Proceedings (as defined below), the Bella Vista and Kangara Apportionment Proceedings were commenced to determine how the net sale proceeds the subject of those proceedings were to be apportioned between the secured creditors, growers and other interested parties claiming an interest in those proceeds.

Each of the Bella Vista and Kangara Apportionment Proceedings includes (as applicable) one or more parties appointed pursuant to rule 16.01(2) of the *Supreme Court (General Civil Procedure) Rules 2005* (Vic) (**Rules**) as the representative of the growers in the Timbercorp managed investment schemes the subject of that proceeding (the **representative growers**).

As the determination of all the relevant apportionment proceedings concerning the collapse of the Timbercorp Group involves similar issues, it was considered appropriate for one such proceeding to be heard and determined first, with the intention that the result in that proceeding would then form the basis for determination of all other proceedings. This led to the hearing and determination of Supreme Court of Victoria Proceeding No. S CI 2009 10699 (**Almond Land Rights Proceeding**) in early 2011. By her judgment in that proceeding, her Honour Justice Davies of the Supreme Court of Victoria found that the growers in the Timbercorp managed investment schemes the subject of that proceeding were not entitled to any part of the net sale proceeds and that the full amount of the net sale proceeds should be paid to the secured creditors of the land owner.

Following the Almond Land Rights Proceeding, various related rights proceedings in relation to the collapse of the Timbercorp Group were commenced in the Supreme Court of Victoria to determine which person or persons had any rights to all or any part of the net sale proceeds held on trust from the sale of assets the subject of those proceedings. These proceedings were:

- (a) proceeding No. SCI 2011 6604 (the ***Liparoo and Yungera Rights Proceeding***);
- (b) proceeding No. SCI 2011 6606 (the ***Solara Rights Proceeding***);
- (c) proceeding No. SCI 2010 1354 (the ***BB Olives Rights Proceeding***); and
- (d) proceeding No. SCI 2011 6777 (the ***Fenceport Rights Proceeding***).

Together with the Almond Land Rights Appeal Proceeding, these proceedings are collectively referred to as the ***Resolved Timbercorp Apportionment Proceedings***. The Resolved Timbercorp Apportionment Proceedings were resolved prior to the issue of the Bella Vista and Kangara Apportionment Proceedings.

Compromise of the Resolved Timbercorp Apportionment Proceedings

As you may recall, on 25 July 2012, each of the parties to the Resolved Timbercorp Apportionment Proceedings agreed to a separate (but inter-connected) compromise in respect of each proceeding, whereby:

- approximately 5% of the gross sale proceeds of the subject assets were to be apportioned between the growers in those projects based on a rateable distribution in accordance with the number of lots held by the growers in each project;
- the secured creditors applied the remaining net sale proceeds to discharge their security (including interest and costs); and
- any remainder was to be distributed to the landowning entities of the relevant properties the subject of the proceeding.

As they were entered into by representative growers on behalf of the absent growers, the compromises in the Resolved Timbercorp Apportionment Proceedings had to be approved by the Court pursuant to rule 16.01(4) of the Rules as being in the best interests of the absent growers.

As you may recall, on 3 and 4 October 2012, his Honour Justice Judd heard concurrently the applications for the approval of the compromises the subject of each of the Resolved Timbercorp Apportionment Proceedings and, by orders dated 12 December 2012, approved the compromises as being in the best interests of the absent growers pursuant to rule 16.01(4) of the Rules.

SCHEDULE 2

Timbercorp managed investment schemes the subject of each of the Bella Vista and Kangara Apportionment Proceedings

Bella Vista Rights Proceeding

2004 Timbercorp Table Grape Project ARSN 108 684 086

2005 Timbercorp Table Grape Project ARSN 113 512 226

Kangara Rights Proceeding

2004 Timbercorp Citrus Project ARSN 108 887 538

2005 Timbercorp Citrus Project ARSN 114 091 299