

**IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMERCIAL COURT**

No. S CI 2014 02972

BETWEEN

TIMBERCORP FINANCE PTY LTD (IN LIQUIDATION) (ACN 054 581 190)

Plaintiff

and

**DOUGLAS JAMES COLLINS & OTHERS
(according to attached Schedule of Parties)**

Defendants

**DEFENCE TO PLAINTIFF BY COUNTERCLAIM'S CLAIM DATED 12
SEPTEMBER 2016**

Date of document: 14 September 2016
Filed on behalf of the First Defendant and
Second Defendant

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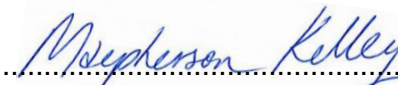
The First and Second Defendants by Counterclaim (**Mr & Mrs Collins**) by way of defence to the Plaintiff by Counterclaim's claim dated 12 September 2016 and filed pursuant to leave granted 2 September 2016 says as follows:

1. Mr & Mrs Collins deny that they make allegations against the Plaintiff by Counterclaim in paragraph 76C of Mr & Mrs Collins' Amended Defence to Further Amended Statement of Claim filed 5 September 2016 (the **Defence to Timbercorp Finance**).
2. Further, Mr & Mrs Collins deny that in paragraph 76C of the Defence to Timbercorp Finance they deny that they ever obtained lots or became Growers in the 2008 Olive Project.
3. Further, the issue of whether Mr & Mrs Collins ever obtained lots or became Growers in the 2008 Olive Project:
 - (a) was not part of the trial of the proceeding of Timbercorp Finance's claim against them of indebtedness;
 - (b) is not an issue capable of settling the real dispute finally, namely Timbercorp Finance's claim against them of indebtedness; and

- (c) therefore, is not a real question for determination in this proceeding, nor a question that needs to be determined for the purposes of determining Timbercorp Finance's claim against them of indebtedness.
4. By reason of the matters referred to above, insofar as the Plaintiff by Counterclaim in its prayer for relief seeks a declaration:
- (a) there is no basis for the seeking of such a declaration in circumstances where Mr & Mrs Collins do not deny that they obtained lots or became Growers in the 2008 Olive Project;
- (b) there is no justiciable issue as between Mr & Mrs Collins and Timbercorp Securities on the question of whether Mr & Mrs Collins obtained lots or became Growers in the 2008 Olive Project, and therefore there is no occasion for the exercise of judicial power; and
- (c) the making of such a declaration would be in response to a hypothetical and therefore it is inappropriate for the Court to make any such declaration (*Bass v Permanent Trustee Co Ltd* (1999) 198 CLR 334).
5. They otherwise deny the allegations therein and repeat the matters pleaded in paragraphs 1 to 89 of their Defence to Timbercorp Finance.

Dated: 14 September 2016

Michael D Wyles
Fleur Shand
Dion Fahey


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M&K Lawyers Group Pty Ltd
Solicitors for the First Defendant and
Second Defendant

SCHEDULE OF PARTIES

Dated: 14 September 2016

No. S CI 2014 02972

TIMBERCORP FINANCE PTY LTD (IN LIQUIDATION) (ACN 054 581 190)

Plaintiff

DOUGLAS JAMES COLLINS

First Defendant

JANET ANN COLLINS

Second Defendant

TIMBERCORP SECURITIES LIMITED (IN LIQUIDATION) (ACN 092 311 469)

Third Defendant

AND BETWEEN

TIMBERCORP SECURITIES LIMITED (IN LIQUIDATION) (ACN 092 311 469)

Plaintiff by Counterclaim

DOUGLAS JAMES COLLINS

First Defendant by Counterclaim

JANET ANN COLLINS

Second Defendant by Counterclaim

TIMBERCORP FINANCE PTY LTD (IN LIQUIDATION) (ACN 054 581 190)

Third Defendant by Counterclaim