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	No of pages 08 incl. this page

To Bridgette Toy -Cronin Ref BXT LZ 011499489	Organisation Arnold Bloch Leibler	Facsimile 9229 9900
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Our Ref PGJ:M01H:5549616

Dear Ms Toy-Cronin

Plantation Land Limited ats Timbercorp Limited (in liquidation) & Timbercorp Securities Limited (in liquidation)
Supreme Court Proceeding No 8870 of 2009

We attach by way of service, our client's Defence.

This document is being transmitted to facsimile number 9229 9900 from facsimile number 03 9288 0666.

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Yours sincerely


Maddocks

enc

Rule 14.04

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

LIST B
No. 8870 of 2009

BETWEEN

TIMBERCORP LIMITED (IN LIQUIDATION)
ACN 055 185 067

First Plaintiff

and

TIMBERCORP SECURITIES LIMITED (IN LIQUIDATION)
ACN 092 311 469

Second Plaintiff

and

PLANTATION LAND LIMITED ACN 090 443 333

Defendant

DEFENCE

Date of document: 25 September 2009
Filed on behalf of: the defendant
Prepared by:
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Lawyers
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Attention: Marelda Hibberd

E-mail Address: marelda.hibberd@maddocks.com.au

In answer to the plaintiffs' Statement of Claim indorsed on the writ and dated 11 September 2009,
the defendant says as follows:

1. The defendant does not plead to paragraphs 1 and 2 as they make no allegations of fact or law against it.
2. The defendant admits the allegation contained in paragraph 3.
3. The defendant admits the allegations contained in paragraph 4.
4. The defendant does not admit the allegations contained in paragraphs 5 and 6.

5. The defendant admits the allegation contained in paragraph 7.
6. Subject to the production of the Leases described in Schedule 1 to the Statement of Claim, the defendant admits the allegations contained in paragraphs 8, 9 and 10.
7. The defendant admits that clause 2 of the Lease attached as Schedule 3 to the Statement of Claim states that the defendant leased the Premises for the term of the Lease for the purpose of growing, tending and harvesting a plantation or plantations of eucalyptus trees, and otherwise does not admit the allegations contained in paragraph 11.
8. Save that the defendant admits that covenants regarding ownership and use of the Plantations are contained in clauses 2, 4.1, 6.2, 10 and 11 of the Lease attached as Schedule 3 to the Statement of Claim, the defendant does not admit the allegations contained in paragraph 12. Further, the defendant will rely on the full terms and effect of the Lease attached as Schedule 3 to the Statement of Claim at trial.
9. Save that the defendant admits that clause 3.1 and clause 8.1 of the Lease attached as Schedule 3 to the Statement of Claim contain covenants on the part of the first plaintiff (**Timbercorp**) or the second plaintiff (**TSL**) regarding payment of rent, the defendant does not admit the allegations contained in paragraph 13. Further, the defendant will rely on the full terms and effect of the Lease attached as Schedule 3 to the Statement of Claim at trial.
10. Save that the defendant admits that clause 8.5 of the Lease attached to Schedule 3 to the Statement of Claim includes a covenant regarding termination, rescission, re-entry and forfeiture of the Lease, the defendant does not admit the allegations contained in paragraph 14. Further, the defendant will rely on the full terms and effect of the Lease attached as Schedule 3 to the Statement of Claim at trial and particularly clause 9.3.

11. As to paragraphs 15 to 18 of the Statement of Claim, the defendant says that it is not a party to the Sub-Leases and it otherwise does not admit the allegations contained in paragraphs 15 to 18.
12. The defendant does not plead to paragraphs 19 and 20 as they make no allegation of fact or law against it.
13. The defendant admits paragraphs 21 and 22.
14. The defendant does not plead to paragraphs 23 to 25 as they make no allegations of fact or law against it.
15. The defendant does not admit the allegations contained in paragraphs 26 and 27 and says further that:
 - (a) pursuant to clause 11.2(b) of the Leases, the defendant is only required to consent to assignment of the Leases by Timbercorp and TSL where the assignee agrees to be bound by all of the provisions of the Leases;
 - (b) the conditions of sale of the interests of Timbercorp and TSL under the Leases do not require the purchaser to be bound by all of the provisions of the Leases; and
 - (b) by reason of the material breach of the Leases committed by Timbercorp and TSL set out in paragraph 27 below, even if the Leases had not been validly terminated (which they have), the defendant would not have been obliged to comply with clause 11.2(b) of the Leases and provide consent to an assignment of the Leases to a purchaser of Timbercorp's and TSL's interest under the Leases.

16. Save that the defendant admits that its servants and/or agents communicated with TSL and Timbercorp on or before 17 July 2009, it otherwise denies the allegations set out in paragraph 28.
17. The defendant does not admit the allegations contained in paragraph 29 and says further that:
 - (a) the service of the Notices was notification to Timbercorp and TSL that if payment of the July Quarter Instalment was not made within one month then the defendant would or would be likely to terminate the Leases; and
 - (b) in any event, the defendant was not required at law or otherwise to advise Timbercorp and TSL that it intended to terminate the Leases.
18. Save that the defendant admits that on or about 24 August 2009 it served notices terminating the Leases, it otherwise denies the allegations contained in paragraph 30.
19. The defendant does not plead to paragraph 31 as it makes no allegation of fact or law against it. The defendant says further that:
 - (a) it has terminated the Leases for reason of the failure of Timbercorp and TSL to pay annual rental under the terms of the Leases; and
 - (b) it has a claim for damages against Timbercorp and TSL for wrongful repudiation of the Leases.
20. The defendant does not admit the allegations contained in paragraphs 32 and 33.
21. The defendant does not plead to paragraph 34 as it makes no allegation of fact or law against it, and the defendant otherwise refers to and repeats the matters pleaded at paragraph 19(a) and (b) above.

22. The defendant does not plead to paragraph 35 as it makes no allegation of fact or law against it, and the defendant otherwise refers to and repeats the matters pleaded at paragraph 19(a) and (b) above and says further that Timbercorp and TSL have no existing Lease interests to assign.
23. The defendant denies paragraph 36 and says further that the Leases have been validly terminated by way of notices served by the defendant on or about 24 August 2009.
24. The defendant denies paragraph 37.
25. The defendant denies paragraph 38.
26. The defendant does not plead to paragraph 39 as it makes no allegation of fact or law against it.
27. Further, the defendant says that in addition to the failure to pay annual rental under the terms of the Leases, Timbercorp and TSL:
- (a) have committed a material breach of the Leases by reason of them entering into:
 - (i) voluntary administration on 23 April 2009; and
 - (ii) liquidation on 29 June 2009;
 - (b) have failed to comply with clause 4.2 of the Leases in that they have failed to comply with sound silvicultural and environmental practices adopted within the forestry industry and have failed to tend to the eucalyptus trees; and
 - (c) have stated to the defendant that from 2 July 2009 they do not intend to perform any obligations under the Leases (the **"non performance of obligations representation"**).

PARTICULARS

The non performance of obligations representation was made in a letter dated 2 July 2009 from the liquidator of Timbercorp and TSL to the defendant care of its lawyers in which it is stated that as and from 2 July 2009 they will not "perform any of the obligations under the Leases." A copy of the letter is in the possession of the lawyers for the defendants and may be inspected by appointment.

28. The non performance of obligations representation and the failure to pay annual rental under the terms of the Leases constitute representations as to future conduct.
29. Acting in reliance on the non performance of obligations representation and upon the failure to pay annual rental under the terms of the Leases, the defendant:
 - (a) served the Notices;
 - (b) terminated the Leases;
 - (c) has commenced a valuation and marketing strategy preparatory to the sale of some or all of the Premises; and
 - (d) expended time and money in undertaking the matters set out at subparagraphs (a) to (c) above.
30. By reason of the matters pleaded at paragraph 27(b), 28 and 29 above, Timbercorp and TSL are estopped from:
 - (a) acting contrary to the non performance of obligations representation;
 - (b) denying that the Leases have been validly terminated;

(c) seeking or claiming relief from forfeiture; and

(d) seeking or claiming any other relief sought in the Statement of Claim.

31. In the premises, the plaintiffs are not entitled to relief from forfeiture or to any other relief sought in the Statement of Claim.

Dated: 25 September 2009

Maddocks.

Maddocks
Solicitors for the defendant