

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMERCIAL COURT

S ECI 2014 000419

BETWEEN

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

Plaintiff

and

PETER JOHN WHITE
AND ANOTHER AS SET OUT IN THE SCHEDULE

Defendants

BETWEEN

TIMBERCORP SECURITIES LIMITED (IN LIQUIDATION)
ACN 092 311 469

Plaintiff by Counterclaim

and

PETER JOHN WHITE
AND ANOTHER AS SET OUT IN THE SCHEDULE

Defendants by Counterclaim

**DEFENCE AND COUNTERCLAIM OF THE SECOND DEFENDANT AND PLAINTIFF BY
COUNTERCLAIM
(TO THE FURTHER AMENDED STATEMENT OF CLAIM)**

Date of document: 31/08/2016
Filed on behalf of: the Second Defendant and Plaintiff by Counterclaim

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DEFENCE

To the Plaintiff's Further Amended Statement of Claim dated 29 August 2016, the Second Defendant (**TSL**) says as follows:

- 1 It admits paragraph 1.
- 2 It admits paragraph 2.
- 3 It admits paragraph 3.



4 It does not plead to paragraph 4 as it contains no material allegations of fact against it.

5 It does not plead to paragraph 5 as it contains no material allegations of fact against it.

6 It does not plead to paragraph 6 as it contains no material allegations of fact against it.

7 It does not plead to paragraph 7 as it contains no material allegations of fact against it.

8 It does not plead to paragraph 8 as it contains no material allegations of fact against it.

9 It does not plead to paragraph 9 as it contains no material allegations of fact against it.

10 It admits paragraph 10.

11 It does not plead to paragraph 11 as it contains no material allegations of fact against it.

12 It does not plead to paragraph 12 as it contains no material allegations of fact against it.

13 It does not plead to paragraph 13 as it contains no material allegations of fact against it.

14 It does not plead to paragraph 14 as it contains no material allegations of fact against it.

15 It does not plead to paragraph 15 as it contains no material allegations of fact against it.

16 It does not plead to paragraph 16 as it contains no material allegations of fact against it.

17 It does not plead to paragraph 17 as it contains no material allegations of fact against it.

18 It admits paragraph 18.

19 It admits paragraph 19.

20 It admits paragraph 20.

21 As to paragraph 21:

(a) it admits that the Amended Defence of the First Defendant (**Mr White**) dated 29 August 2016 pleads the no loan defence;

(b) it otherwise does not admit paragraph 21.

22 As to paragraph 22:

(a) it admits that the Plaintiff disputes the no loan defence;

- (b) it otherwise does not admit paragraph 22.

23 As to paragraph 23:

- (a) it admits that Mr White alleges in paragraph 5A of the Defence that, by reason of the matters referred to in paragraphs 76A to 76C of the Defence, the debit and credit entries by way of journal voucher 504786 and the alleged receipt entry by TSL in TIMS as referred to in paragraph 10(a) above (the **payment**) do not and cannot constitute the payment required by Loan Agreement L0025841;
- (b) says further that the effect of paragraph 76C of the Defence is that Mr White denies that he ever obtained lots or became a Grower in the relevant Projects; and
- (c) denies the allegations made by Mr White in paragraph 76C of his Defence, and otherwise refers to and relies on paragraphs 23A to 23T below.

23A Mr White is precluded, by principles of:

- (a) abuse of process; and/or
- (b) issue estoppel and/or Anshun estoppel,

from raising the allegations in paragraph 76C of his Defence.

Particulars

TSL refers to the fact that Mr White was a group member, within the meaning of Part IVA of the *Supreme Court Act 1986* (Vic), in proceeding SCI 9807 of 2009 in this Court (the **Woodcroft-Brown proceeding**).

In respect of the project documents relating to the 2007/08 Second Supplementary Timberlot Project, Mr White's allegations constitute an abuse of process, by reason that:

- (i) by January 2009, TSL, pursuant to clause 4 of the Agreement for Sub-Lease, had identified 52 properties that would meet the land selection criteria described in the Independent Forester's Report reproduced in the Product Disclosure Statement for the 2007/08 Single Payment Timberlot Project (**Timberlot Project**);
- (ii) TSL, pursuant to clause 4 of the Agreement for Sub-Lease, had secured or entered into 59 leases for land upon which to establish the timberlots for growers in the Timberlot Project;
- (iii) TSL, pursuant to the Timberlot Management Agreement, undertook Establishment Services in relation to such land;

- (iv) in September 2009, the liquidators entered into, and caused TSL and the other Timbercorp entities to enter into a conditional sale and purchase deed for the sale of assets of TSL's forestry schemes;
- (v) in 29 September 2009, the Supreme Court of Victoria approved the sale on the terms of the conditional sale and purchase deed (S CI 2009 09299).
- (vi) on 4 December 2009, the liquidators of TSL commenced proceeding SCI 2009 10514 in the Supreme Court of Victoria seeking directions pursuant to s 511 of the Act for the distribution of the proceeds from the sale of the assets of TSL's forestry schemes to growers, including proceeds from the sale of the assets of the Timberlot Project to growers in that project (the **Net Sale Proceeds**);
- (vii) the abovementioned proceeding was premised upon the Agreement for Sub-Lease and the Timberlot Management Agreement being binding, valid and enforceable as between TSL and each grower (including Mr White);
- (viii) the "Timbercorp Growers' Group" and the "Timbercorp Reference Group" appeared by counsel in the abovementioned proceeding and made submissions to the Court premised upon the Agreement for Sub-Lease and the Timberlot Management Agreement being binding, valid and enforceable as between TSL and each grower (including Mr White);
- (ix) on 17 December 2009, Davies J delivered reasons (*Re Timbercorp Securities Limited (in liq)* [2009] VSC 608) and made orders in the abovementioned proceeding that the liquidators of TSL were justified in procuring TSL as responsible entity of the Timberlot Project to apportion part of the Net Sale Proceeds between members of the Timberlot Project;
- (x) pursuant to those orders TSL made distributions from the Net Sale Proceeds to or on account of growers in the Timberlot Project, including Mr White;
- (xi) by clause 6 of L0025841 Loan Explanation and Loan Terms, Mr White assigned to the Plaintiff all rights, title and interest in any debt or monetary obligation owed to Mr White by TSL under or in relation to his investment in the Timberlot Project;
- (xii) by reason of Mr White's denial of indebtedness under Loan Agreement L0025841, Mr White has refused to release his portion of the Net Sale Proceeds to the Plaintiff;
- (xiii) in the premises, TSL has held and continues to hold \$1,866.10 (together with interest accrued) on trust for Mr White from the Net Sale Proceeds of forestry assets from the Timberlot Project;
- (xiv) at all times Mr White has maintained a claim to, alternatively failed to disclaim, said funds held in trust.

In respect of the project documents relating to the 2007 Almond Project (**2007 Almond Project**), Mr White's allegations constitute an abuse of process and/or are precluded by issue estoppel, by reason that:

- (i) on 18 September 2009, the liquidators of (inter alia) TSL and Almond Land Pty Ltd caused (inter alia) TSL and Almond Land Pty Ltd to

enter into a conditional sale and purchase deed for the sale of assets in the 2007 Almond Project;

- (ii) on 9 October 2009, the Supreme Court of Victoria approved the sale on the terms of the conditional sale and purchase deed;
- (iii) on 2 December 2009, the sale was completed and the rights of the growers in relation to the land used in the 2007 Almond Project were extinguished;
- (iv) there were competing claims to the funds derived from the sale of assets in the 2007 Almond Project, and on 15 December 2009 proceeding no S CI 2009 10699 in the Supreme Court of Victoria (the **Almond Land Rights Proceeding**) was commenced to determine those claims;
- (v) on 22 December 2009, Davies J made an order pursuant to r 16.01(2) of the *Supreme Court (General Civil Procedure) Rules 2005* that David Butterfield be appointed as representative defendant for the growers in the 2007 Almond Project in the Almond Land Rights Proceeding;
- (vi) the premise of the representative defendant for the growers in the 2009 Almond Project in the Almond Land Rights Proceeding in contending that the growers had rights to the proceeds of sale from the assets of the 2007 Almond Project was that the Sub-Lease and Management Agreement were valid and binding upon TSL and the growers in the 2007 Almond Project;
- (vii) in reasons delivered on 15 June 2011, Davies J accepted the representative grower's submission that under the Almond Project Sub-Lease the growers' interest in land, capital works and trees is proprietary (*BOSI Security Services Limited v Australia and New Zealand Banking Group Limited* [2011] VSC 255);
- (viii) by notice of appeal dated 11 July 2011, David Butterfield as representative defendant for the growers in the 2007 Almond Project appealed the judgment and orders made by Davies J, but did not challenge the finding made in (vi) above;
- (ix) on 25 July 2012, a compromise of the Almond Land Rights Proceeding was reached, expressed to be conditional on (among other things) the Supreme Court of Victoria approving the compromise and ordering that it shall be binding on the absent persons represented by the representative party appointed pursuant to r 16.01(2) of the *Supreme Court (General Civil Procedure) Rules 2005*;
- (x) by clause 6 of the deed of compromise, growers in the 2007 Almond Project were to be given notice of the compromise;
- (xi) by order made on 31 August 2012, Judd J directed that any absent person represented in the Almond Land Rights Proceeding who proposes to raise an objection to the approval of the compromise was to file and serve affidavit material upon which he or she sought to rely;
- (xii) on 12 December 2012, Judd J made orders approving the compromise and pursuant to r 16.01(4) of the *Supreme Court (General Civil Procedure) Rules 2005* made it binding on the growers in the 2007 Almond Project, including Mr White;

- (xiii) further, on 12 December 2012, Judd J ordered, with the consent of the representative for the growers in the 2007 Almond Project, that TSL be joined as a party to the appeal from the Almond Land Rights Proceeding;
- (xiv) in the premises, an issue estoppel arises between TSL and the growers in the 2007 Almond Project (including Mr White) precluding either party from contending that the Almond Project Sub-Lease and the Almondlot Management Agreement were not legally binding as between them;
- (xv) pursuant to the orders of Judd J made on 12 December 2012, TSL made distributions to or on account of growers in the 2007 Almond Project, including Mr White;
- (xvi) by clause 6 of L0025841 Loan Explanation and Loan Terms, Mr White assigned to the Plaintiff all rights, title and interest in any debt or monetary obligation owed to Mr White by TSL under or in relation to his investment in the 2007 Almond Project;
- (xvii) by clause 4 of the deed of compromise, TSL was to hold any distribution payable to a grower in the 2007 Almond Project against whom the Plaintiff made claim, unless the grower authorised payment to the Plaintiff or the court made orders;
- (xviii) by reason of Mr White's denial of indebtedness under Loan Agreement L0025841, Mr White has refused to authorise the release of his distribution in relation to his investment in the 2007 Almond Project;
- (xix) in the premises, TSL has held and continues to hold \$1,056.32 (together with accrued interest) on trust for Mr White from the compromise;
- (xx) at all times Mr White has maintained a claim to, alternatively failed to disclaim, said funds held in trust.

In respect of the project documents relating to the 2008 Olive Project (**2008 Olive Project**), Mr White's allegations constitute an abuse of process, by reason that:

- (i) on 12 October 2009, the liquidators of B.B. Olives Pty Ltd entered into a conditional sale and purchase deed for the sale of assets in the 2008 Olive Project;
- (ii) on 11 January 2010, the sale was completed and the rights of the growers in relation to land used in the 2008 Olive Project were extinguished;
- (iii) there were competing claims to the funds derived from the sale in the 2008 Olive Project, and on 16 March 2010 proceeding S CI 2010 1534 in the Supreme Court of Victoria (the **BB Olives Rights Proceeding**) was commenced to determine those claims;
- (iv) on 22 March 2010, Davies J made an order pursuant to r 16.01(2) of the *Supreme Court (General Civil Procedure) Rules 2005* that David Butterfield be appointed as representative defendant for the growers in the 2008 Olive Project in the BB Olives Rights Proceeding;
- (v) the premise of the representative defendant for the growers in the 2008 Olive Project in the BB Olives Rights Proceeding in contending that the growers in the 2008 Olive Project had a right to the proceeds of sale from the assets of the 2008 Olive Project was that the Licence

Agreement and the Grovelot Management Agreement were valid and binding upon TSL and the growers in the 2008 Olive Project, including Mr White;

- (vi) on 25 July 2012, a compromise of the BB Olives Rights Proceeding was reached, expressed to be conditional on (among other things) the Supreme Court of Victoria approving the compromise and ordering that it shall be binding on the absent persons represented by the representative party appointed pursuant to r 16.01(2) of the *Supreme Court (General Civil Procedure) Rules 2005*;
- (vii) by clause 6 of the deed of compromise, growers in the 2008 Olive Project were to be given notice of the compromise;
- (viii) by order made on 31 August 2012, Judd J directed that any absent person represented in the BB Olives Rights Proceeding who proposes to raise an objection to the approval of the compromise was to file and serve affidavit material upon which he or she sought to rely;
- (ix) on 12 December 2012, Judd J made orders approving the compromise and pursuant to r 16.01(4) of the *Supreme Court (General Civil Procedure) Rules 2005* made it binding on the growers in the 2008 Olive Project, including Mr White;
- (x) pursuant to the orders of Judd J made on 12 December 2012, TSL made distributions to or on account of growers in the 2008 Olive Project, including Mr White;
- (xi) by clause 6 of L0025841 Loan Explanation and Loan Terms, Mr White assigned to the Plaintiff all rights, title and interest in any debt or monetary obligation owed to Mr White by TSL under or in relation to his investment in the 2008 Olive Project;
- (xii) by clause 4 of the deed of compromise, TSL was to hold any distribution payable to a grower against whom the Plaintiff made claim, unless the grower authorised payment to the Plaintiff or the court made orders;
- (xiii) by reason of Mr White's denial of indebtedness under Loan Agreement L0025841, Mr White has refused to authorise the release of his distribution in relation to his investment in the 2008 Olive Project;
- (xiv) in the premises, TSL has held and continues to hold \$1,386.45 (together with interest accrued) on trust for Mr White from the compromise;
- (xv) at all times Mr White has maintained a claim to, alternatively failed to disclaim, said funds held in trust.

23B Further or alternatively, in respect of the Timberlot Project:

- (a) on or about 2 June 2008, Mr White signed the application form to become a grower in 23 timberlots, and thereby appointed TSL as his attorney to enter into on his behalf the Agreement to Sub-Lease and the Timberlot Management Agreement in respect of the timberlots for which he applied;

- (b) on or before 13 June 2008, Mr White's application was approved by TSL and information recording Mr White's investment in respect of 23 timberlots was entered by TSL in the Timbercorp Information Management System (**TIMS**) database;
- (c) thereafter, the TIMS database recorded Mr White as being a grower in the Timberlot Project, and therefore bound by the 2007/08 Timbercorp (Single Payment) Timberlot Project Constitution (**Timberlot Constitution**) and a party to the Timberlot Management Agreement, the Agreement to Sub-Lease and any Sub-Lease subsequently entered into in relation to the 23 timberlots;
- (d) on 13 June 2008, TSL wrote to Mr White and informed him that his application for timberlots in the Timberlot Project had been accepted;
- (e) TSL in its personal capacity and TSL as agent for each participant grower executed the Agreement for Sub-Lease and the Timberlot Management Agreement;
- (f) the schedule to the Agreement for Sub-Lease was comprised by the electronic record of growers in the TIMS database, which included Mr White;
- (g) TSL attached to the Agreement for Sub-Lease a schedule of participant growers that named Mr White.

23C Further or alternatively, in respect of the Timberlot Project, Mr White is precluded from raising the allegations in paragraph 76C of his Defence, because:

- (a) on or about 2 June 2008, Mr White offered to TSL to participate in the Timberlot Project as a grower of timber on 23 timberlots on the terms contained in the PDS for the Timberlot Project and the "2008 Timbercorp MultiChoice Application Package" by:
 - (i) executing and submitting to TSL the "2008 Timbercorp MultiChoice Application Package";
 - (ii) making payment of \$7,084.04 to TSL; and
 - (iii) obtaining finance for payment of \$63,755.96 to TSL (or as it directs);
- (b) by executing the "2008 Timbercorp MultiChoice Application Package" Mr White acknowledged, confirmed, and agreed *inter alia* that:

- (i) he had read the PDS for the Timberlot Project;
 - (ii) he will be bound by the Constitution of the Project;
 - (iii) TSL will own or lease the land used in the Timberlot Project, and TSL will take and register head leases over the land in its name;
 - (iv) he will lease from TSL at least three identifiable allotments of land of approximately one third of a hectare each on which the Timberlot Project is managed;
 - (v) he will engage TSL to establish and manage the timberlots, and harvest and sell his wood on his behalf;
 - (vi) he will enter into the Grower Agreements, being the Agreement for Sub-lease, Sub-leases, and Timberlot Management Agreement, as summarised in the PDS for the Timberlot Project;
 - (vii) he will pay an application fee of \$3,080 (inclusive of GST) per timberlot and such other fees as set out in part 4 of the PDS for the Timberlot Project:
- (c) on or before 13 June 2008, TSL accepted Mr White's offer referred to in (a) above, and, further, TSL commenced performing its obligations to Mr White in relation to his 23 timberlots under the Agreement to Sub-lease and the Timberlot Management Agreement including by identifying and continuing to identify land that would be the subject of the grant of rights to Mr White, taking steps to arrange a Sub-Lease granting rights in land for the use of Mr White on the terms of the Agreement to Sub-Lease, entering into, and maintaining, head leases over land that TSL had identified for the purpose of the Timberlot Project and commencing to perform the Establishment Services and Plantation Services and managing the land on the terms set out in the 2007/08 Timberlot Management Agreement;
- (d) in the premises, in relation to his 23 timberlots Mr White is bound by the terms specified in the Timberlot Constitution, and is bound as between him and TSL by the terms in the Agreement for Sub-lease and the Timberlot Management Agreement as annexed to the Timberlot Constitution.

23D Further or alternatively, in respect of the 2007 Almond Project, Mr White is precluded from raising the allegations in paragraph 76C of his Defence, because:

- (a) on or about 2 June 2008, Mr White signed the application form to become a grower in eight almondlots, and thereby appointed TSL as his attorney to enter into on his behalf the Almond Project Sub-Lease and the Almondlot Management Agreement in respect of the almondlots for which he applied;
- (b) on or before 13 June 2008, Mr White's application was approved by TSL and information recording Mr White's investment in respect of eight almondlots was entered in the TIMS database;
- (c) thereafter, the TIMS database recorded Mr White as being a grower in the 2007 Almond Project, and therefore bound by the 2007 Almond Project Constitution (**Almond Constitution**) and a party to the Almond Project Sub-Lease and the Almondlot Management Agreement in relation to the eight almondlots;
- (d) on 13 June 2008, TSL wrote to Mr White and informed him that his application for almondlots in the 2007 Almond Project had been accepted;
- (e) TSL in its personal capacity and TSL as agent for each participant grower executed the Almond Project Sub-Lease and the Almondlot Management Agreement;
- (f) the schedule to the Almond Project Sub-Lease was comprised by the electronic record of growers in the TIMS database, which included Mr White;
- (g) TSL attached to the Almond Project Sub-Lease a schedule that names Mr White;

23E Further or alternatively, in respect of the 2007 Almond Project, Mr White is precluded from raising the allegations in paragraph 76C of his Defence, because:

- (a) on or about 2 June 2008, Mr White offered to TSL to participate in the 2007 Almond Project as a grower of almonds on eight almondlots on the terms contained in the PDS for the 2007 Almond Project and the "2008 Timbercorp MultiChoice Application Package" by:
 - (i) executing and submitting to TSL the "2008 Timbercorp MultiChoice Application Package";
 - (ii) making payment of \$7,199.94 to TSL; and
 - (iii) obtaining finance for payment of \$64,800.06 to TSL (or as it directs);
- (b) by executing the "2008 Timbercorp MultiChoice Application Package" Mr White acknowledged, confirmed, and agreed *inter alia* that:

- (i) he had read the PDS for the 2007 Almond Project;
 - (ii) he will be bound by the Constitution of the Project;
 - (iii) TSL will own or lease the land used in the Project, and TSL will take and register head leases over the land in its name;
 - (iv) he will lease from TSL allotments of land on which the Project is managed;
 - (v) he will engage TSL to establish and manage the almondlots, and harvest and sell his almonds on his behalf;
 - (vi) he will enter into the Grower Agreements, being the Almond Project Sub-Lease and the Almondlot Management Agreement, as summarised in the PDS;
 - (vii) he will pay an application fee of \$9,000 (inclusive of GST) per almondlot and such other fees as set out in part 4 of the PDS;
- (c) on 13 June 2008, TSL accepted Mr White's offer and, further, TSL commenced performing its obligations to Mr White in relation to his eight almondlots under the Almond Project Sub-Lease and the Almondlot Management Agreement including by allocating rights in land for the use of Mr White on the terms of the Almond Project Sub-Lease and not allocating those rights in land to any other person, maintaining a head lease over the land that TSL had identified as being the subject of the grant of rights to Mr White under the Almond Project Sub-Lease, and managing that land by cultivating and maintaining almond trees in accordance with the Management Plan referred to in the Almondlot Management Agreement;
- (d) in the premises, in relation to his allotted eight almondlots Mr White is bound by the terms specified in the Almond Constitution, and is bound as between him and TSL by the terms in the Almond Project Sub-Lease and the Almondlot Management Agreement as annexed to the Almond Constitution.

23F Further or alternatively, in respect of the 2008 Olive Project, Mr White is precluded from raising the allegations in paragraph 76C of his Defence, because:

- (a) on or about 2 June 2008, Mr White signed the application form to become a grower in 15 grovelots, and thereby appointed TSL as his attorney to enter into

on his behalf the Licence Agreement and the Grovelot Management Agreement in respect of the grovelots for which he applied;

- (b) on or before 13 June 2008, Mr White's application was approved by TSL and information recording Mr White's investment in respect of 15 grovelots was entered in the TIMS database;
- (c) thereafter, the TIMS database recorded Mr White as being a grower in the 2008 Olive Project, and therefore bound by the 2008 Olive Project Constitution (**Olive Constitution**) and a party to the Licence Agreement and the Grovelot Management Agreement in relation to the 15 grovelots;
- (d) on 13 June 2008, TSL wrote to Mr White and informed him that his application for grovelots in the 2008 Olive Project had been accepted;
- (e) TSL in its personal capacity and TSL as agent for each participant grower executed the Licence Agreement and the Grovelot Management Agreement;
- (f) the schedule to the Almond Project Sub-Lease was comprised by the electronic record of growers in the TIMS database, which included Mr White.

23G Further or alternatively, in respect of the 2008 Olive Project, Mr White is precluded from raising the allegations in paragraph 76C of his Defence, because:

- (a) on 2 June 2008, Mr White offered to TSL to participate in the 2008 Olive Project as a grower of olives on 15 grovelots on the terms contained in the PDS for the 2008 Olive Project and the "2008 Timbercorp MultiChoice Application Package" by:
 - (i) executing and submitting to TSL the "2008 Timbercorp MultiChoice Application Package";
 - (ii) making payment of \$8,550.02 to TSL; and
 - (iii) obtaining finance for payment of \$76,949.98 to TSL (or as it directs);
- (b) by executing the "2008 Timbercorp MultiChoice Application Package" Mr White acknowledged, confirmed, and agreed *inter alia* that:
 - (i) he had read the PDS for the Olive Project;
 - (ii) he will be bound by the Constitution of the Project;

- (iii) TSL will own or lease the land used in the Project, and TSL will take head leases over the land in its name;
 - (iv) he will take a licence from TSL over allotments of land on which the Project is managed;
 - (v) he will engage TSL to establish and manage the grovelots, and harvest and sell his olives on his behalf;
 - (vi) he will enter into the Grower Agreements, being the Licence Agreement and the Grovelot Management Agreement, as summarised in the PDS;
 - (vii) he will pay an application fee of \$5,700 (inclusive of GST) per grovelot and such other fees as set out in part 4 of the PDS,
- (c) on or before 13 June 2013, TSL accepted Mr White's offer and, further, TSL commenced performing its obligations to Mr White in relation to his 15 grovelots under the Licence Agreement and the Grovelot Management Agreement including by allocating rights in land for the use of Mr White on the terms of the Licence Agreement and not allocating those rights in land to any other person, maintaining a head lease over the land that TSL had identified as being the subject of the grant of rights to Mr White under the Licence Agreement, and managing that land by cultivating and maintaining olive trees in accordance with the Management Plan referred to in the Grovelot Management Agreement ;
- (d) in the premises, in relation to his allotted 15 grovelots Mr White is bound by the terms specified in the Olive Constitution, and is bound as between him and TSL by the terms in the Licence Agreement and the Grovelot Management Agreement as annexed to the Olive Constitution.

231 Further or alternatively:

- (a) under clauses 11(a) and 11(d) of each of the Almonds Constitution, the Olives Constitution, and the Timberlot Constitution, TSL had power to receive and hold the Application Moneys and to use them in discharging the Participant Grower's or Grower's obligations under the Licence Agreement or Sub-Lease or Agreement for Sub-Lease (as the case may be) and the Almondlot Management Agreement, Grovelot Management Agreement, or the Timberlot Management Agreement (as the case may be) and under the Constitution, and to execute any deed, agreement, certificate or other document and to do

all such things as are necessary or desirable to further TSL's powers under clause 11;

- (b) under clauses 18.2(b) and 19.1 of the Almonds Constitution and the Olives Constitution and clause 16A.2 of the Timberlot Constitution, each Participant Grower or Grower may obtain a copy of its Licence Agreement or Sub-Lease or Agreement for Sub-Lease (as the case may be) and the Almondlot Management Agreement, Grovelot Management Agreement, or the Timberlot Management Agreement (as the case may be) by written request to TSL;
- (c) under clause 19.1 of the Almonds Constitution and the Olives Constitution and clause 16A.2 of the Timberlot Constitution, each Participant Grower or Grower has the right to inspect and copy any document or other information relevant to the activities of TSL on its behalf;
- (d) under clause 23.1 of the Almonds Constitution, clause 23.1 of the Olives Constitution and clause 21.1 of the Timberlot Constitution, TSL is not liable for any loss or damage to any person (including any Participant Grower or Grower) arising out of any matter unless in respect of that matter it acted both otherwise than in accordance with the relevant Constitution and its duties and without a belief held in good faith that it was acting in accordance with the relevant Constitution and its duties, and TSL may decide how and when to exercise its powers in its absolute discretion;
- (e) by reason of the matters set out in sub-paragraphs (a) to (d) above, TSL was reasonably satisfied of the fact that the Licence Agreements, Sub-Lease and Agreements for Sub-Lease and the Almondlot Management Agreement, Grovelot Management Agreement ~~or~~ and the Timberlot Management Agreement were in the form required by the relevant Constitution and had~~have~~ been duly entered into by all parties, as inter alia, the Licence Agreements, Sub-Lease and Agreements for Sub-Lease and the Almondlot Management Agreement, Grovelot Management Agreement ~~and~~ the Timberlot Management Agreement were executed in the form of the Second and Third Schedules to the relevant Constitution, and the names of Mr White appeared at the relevant time on an electronic database known as TIMS in the hands of TSL, which contained the relevant details of his Almondlots, Grovelots and Timberlots, and TSL had a power of attorney granted by Mr White to enter into the Licence Agreements, Sub-Lease and Agreements for Sub-Lease and the

Almondlot Management Agreement, Grovelot Management Agreement and the Timberlot Management Agreement and otherwise do such other things, as TSL in its absolute discretion considered necessary or desirable in order to give effect to clause 8.7 or clause 7.7 (as the case may be), and otherwise TSL relies on paragraphs 23A to 23T.

23J Further or alternatively, clauses 8.2(a), (d) and (f) of the Timberlot Constitution were satisfied by reason that:

- (a) TSL had in place compliance policies and procedures to ensure TSL complied with the Timberlot Constitution, including clauses 8.2(a), (d) and (f);
- (b) the reports generated pursuant to TSL's compliance policies and procedures in relation to the Timberlot Project, including reports to the board of directors of TSL, identified no breaches of the Timberlot Constitution.

23K Further or alternatively, clause 9.2(a) of the Almond Constitution was satisfied by reason that:

- (a) TSL had in place compliance policies and procedures to ensure TSL complied with the Almond Constitution, including clause 9.2;
- (b) the reports generated pursuant to TSL's compliance policies and procedures in relation to the 2007 Almond Project, including reports to the board of directors of TSL, identified no breaches of the Almond Constitution.

23L Further or alternatively, clause 9.2 of the Olive Constitution was satisfied by reason that:

- (a) TSL had in place compliance policies and procedures to ensure TSL complied with the Olive Constitution, including clause 9.2;
- (b) the reports generated pursuant to TSL's compliance policies and procedures in relation to the 2008 Olive Project, including reports to the board of directors of TSL, identified no breaches of the Olive Constitution.

23N Further or alternatively:

- (a) by executing the application for the relevant Project and making payments to TSL or arranging finance, Mr White represented to TSL or otherwise induced TSL to believe that he had agreed to be bound by, and would enter into and would not deny as valid, binding and enforceable agreements, the relevant Sub-Lease or Agreement for Sub-Lease or Licence Agreement and the relevant Management Agreement;

- (b) to the knowledge of Mr White and in reliance on the representation or assumption and to TSL's detriment, TSL provided the use of lots and services to Mr White in respect of the relevant Project and distributed to him or his account proceeds of realisations of scheme property of the Projects;
- (c) Mr White has failed to fulfil the representation or assumption in that he now denies that relevant Sub-Lease or Agreement for Sub-Lease or Licence Agreement and the relevant Management Agreement are valid, binding and enforceable agreements as between TSL and Mr White;
- (d) as a consequence of TSL acting on the representation or assumption and as a consequence of Mr White failing to fulfil that representation or assumption, TSL will suffer a detriment if Mr White is permitted to deny as valid, binding and enforceable agreements, the relevant Sub-Lease or Agreement for Sub-Lease or Licence Agreement and the relevant Management Agreement;
- (e) in the premises, Mr White has acted unconscionably and is estopped from raising the allegations in paragraph 76C of his Defence.

23O Further or alternatively, if the balance of the Application Moneys for lots was not paid (which is denied):

- (a) both TSL and Mr White mistakenly assumed that Mr White obtained lots, was a Grower and was a party to the Agreement for Sub-Lease in respect of the Timberlot Project;
- (b) TSL acted (pursuant to this common mistaken assumption, or alternatively otherwise) as if it had entered into the Agreement for Sub-Lease with Mr White on the terms of the Agreement for Sub-Lease in respect of 23 timberlots known as YYY2917, YYY2918, YYY2919, YYY2920, YYY2921, YYY2922, YYY2923, YYY2924, YYY2925, YYY2926, YYY2927, YYY2928, YYY2929, YYY2930, YYY2931, YYY2932, YYY2933, YYY2934, YYY2935, YYY2936, YYY2937, YYY2938, YYY2939 (**Mr White's Timberlots**), by:
 - (i) issuing a statement to Mr White describing the Timberlots;
 - (ii) identifying and continuing to identify land that would be the subject of the grant of rights to Mr White in respect of the Timberlots;
 - (iii) taking steps to arrange a Sub-Lease granting rights in land for the use of Mr White on the terms of the Agreement for Sub-Lease;

- (iv) performing obligations under the Agreement for Sub-Lease in relation to Mr White's Timberlots;
 - (v) entering into, and maintaining, head leases over land that TSL had identified for the purpose of the Timberlot Project;
 - (vi) commencing to perform the Establishment Services and Plantation Services on the terms set out in the 2007/8 Timberlot Management Agreement;
 - (vii) managing the land that TSL had identified as being the subject of the grant of rights to Mr White under the Agreement for Sub-Lease on the terms set out in the Timberlot Management Agreement;
- (c) Mr White also acted (pursuant to this common mistaken assumption, or alternatively otherwise) as if he had entered into an Agreement for Sub-Lease with TSL on the terms of the Agreement for Sub-Lease in respect of Mr White's Timberlots by:
- (i) directing the Plaintiff to make payment to TSL in the amount of \$63,756 in payment of application moneys which would be applied in discharge of fees payable by Mr White to TSL under the Timberlot Management Agreement, which debt was premised upon TSL and Mr White being parties to the Agreement for Sub-Lease;
 - (ii) directing his accountant to claim tax deductions for fees paid to TSL payable by Mr White to TSL under the Timberlot Management Agreement;
 - (iii) maintaining a right to vote, alternatively, failing to disclaim a right to vote, as a member of the Timberlot Project, on 7 August 2009, in relation to a non-binding resolution that the Liquidators of TSL request that the Federal Court of Australia grant them a power of sale;
 - (iv) maintaining a claim to, alternatively failing to disclaim, funds held in trust from the sale proceeds of Timberlots from the Project;
 - (v) in the circumstances, both TSL and Mr White knew that the other was acting, and intended that the other act, on the basis that they were parties to the Agreement for Sub-Lease;

- (d) it would now be unjust to TSL, and to its detriment, to allow Mr White to deny the mistaken common assumption made by TSL and Mr White, as pleaded above;
- (e) by reason of the matters set out in sub-paragraphs (a) to (d) above, Mr White is estopped from denying that he was a party to the Agreement for Sub-Lease and Management Agreement, or asserting that TSL could not be reasonably satisfied that the Agreement for Sub-Lease was in a form required by the Constitution duly entered into by all parties;
- (f) further or alternatively, by reason of the conduct and the intention of TSL and Mr White referred to in sub-paragraphs (a) to (c) above, Mr White is estopped from from raising the allegations in paragraph 76C of his Defence.

23P Further or alternatively, if the balance of the Application Moneys for lots was not paid as alleged by Mr White (which is denied):

- (a) on or about 2 June 2008, Mr White signed the Application Form to become a grower in 23 Timberlots under the Timberlot Project, which application form was sent to TSL;
- (b) on about 13 June 2008, Mr White's application was approved by TSL and information recording Mr White's investment in respect of 23 Timberlots was entered in the TIMS database;
- (c) thereafter, TSL entered Mr White in the Register of Growers for the Timberlot Project which was maintained on the TIMS database;
- (d) consequently, the TIMS database recorded Mr White as being a grower in the Timberlot Project, and therefore bound by the Timberlot Constitution and a party to the Timberlot Management Agreement, the Agreement to Sub-Lease and any Sub-Lease subsequently entered into in relation to the 23 Timberlots;
- (e) on about 30 June 2008, TSL issued a Timbercorp MultiChoice Statement to Mr White that recorded Mr White's investment in respect of 23 Timberlots;
- (f) TSL and Mr White mistakenly assumed that Mr White was a party to the Agreement for Sub-Lease;

- (g) TSL acted (pursuant to this common mistaken assumption, or alternatively otherwise) as if TSL and Mr White had entered into an Agreement for Sub-Lease on the terms of the Agreement for Sub-Lease in respect of Mr White's Timberlots, by performing its obligations under Loan Agreement L0025841 in that variously on 18 June 2008, 19 June 2008 and 25 June 2008 the Timbercorp Group accounts record the Plaintiff discharging part of Mr White's liability to TSL for fees payable by Mr White to TSL under the Timberlot Management Agreement, in the amount of \$63,756;
- (h) Mr White also acted (pursuant to this common mistaken assumption, or alternatively otherwise) as if TSL and Mr White had entered into an Agreement for Sub-Lease on the terms of the Agreement for Sub-Lease in respect of Mr White's Timberlots, by:
 - (i) directing the Plaintiff to make payment to TSL in the amount of \$63,756, in payment of application moneys which would be applied in discharge of fees payable by Mr White to TSL under the Timberlot Management Agreement, which debt was premised upon TSL and Mr White being parties to the Agreement for Sub-Lease;
 - (ii) declaring to the Plaintiff that he owns the Timberlots (or will own them upon TSL's allocation) and assigning to the Plaintiff all rights, title and interest in any debt or monetary obligation owed to Mr White by TSL under or in relation to his investment in the 2007/08 Timberlot Project;
 - (iii) directing his accountant to claim tax deductions for fees paid to TSL payable by Mr White to TSL under the Timberlot Management Agreement;
 - (iv) maintaining a right to vote, alternatively, failing to disclaim a right to vote, as a member of the Timberlot Project, on 7 August 2009, in relation to a non-binding resolution that the Liquidators of TSL request that the Federal Court of Australia grant them a power of sale;
 - (v) maintaining a claim to, alternatively failing to disclaim, funds held in trust from the sale proceeds of Timberlots from the Timberlot Project;

- (i) in the circumstances, ~~both~~ TSL and Mr White knew that the other was acting, and intended that the other act, on the basis that TSL and Mr White were parties to the Agreement for Sub-Lease;
- (j) it would now be unjust to TSL ~~the Plaintiff~~, and to its detriment, to allow Mr White to deny the mistaken common assumption made by TSL and Mr White that they were parties to the Agreement for Sub-Lease; and
- (k) by reason of the matters set out in sub-paragraphs (a) to (j) above, Mr White is estopped from raising the allegations in paragraph 76C of his Defence;
- (l) further or alternatively, by reason of the conduct and the intention of TSL and Mr White referred to in sub-paragraphs (a) to (i) above, Mr White is estopped from raising the allegations in paragraph 76C of his Defence.

23Q Further or alternatively, if the balance of the Application Moneys was not paid as alleged by Mr White (which is denied):

- (a) both TSL and Mr White mistakenly assumed that Mr White was a party to the 2007 Almond Project Sub-Lease;
- (b) TSL acted (pursuant to this common mistaken assumption, or alternatively otherwise) as if TSL had granted Mr White a sub-lease on the terms of the Almond Project Sub-Lease in respect of the almondlots known as MEN1C 4595, MEN1C 4596, MEN1C 4597, MEN1C 4598, MEN1C 4599, MEN1C 4600, MEN1C 4601, MENC1C 4602 (**Mr White's Almondlots**), by:
 - (i) issuing a statement to Mr White identifying the Almondlots that TSL had granted to Mr White under the Almond Project Sub-Lease;
 - (ii) allocating rights in land for the use of Mr White on the terms of the Almond Project Sub-Lease and not allocating those rights in land to any other person;
 - (iii) performing obligations under the Sub-Lease in relation to Mr White's Almondlots;
 - (iv) maintaining a head lease over the land that TSL had identified as being the subject of the grant of rights to Mr White under the Almond Project Sub-Lease;

- (v) managing the land that TSL had identified as being the subject of the grant of rights to Mr White under the Almond Project Sub-Lease on the terms set out in the Almondlot Management Agreement, by cultivating and maintaining trees on, and generally managing, that land in accordance with the Management Plan referred to in the Almondlot Management Agreement and carrying out and performing Mr White's obligations under the Sub-Lease;
- (c) Mr White also acted (pursuant to this common mistaken assumption, or alternatively otherwise) as if TSL had granted him a sub-lease on the terms of the Almond Project Sub-Lease in relation to the Mr White's Almondlots, by:
 - (i) directing the Plaintiff to make payment to TSL in the amount of \$64,800, in payment of application moneys which would be applied in discharge of fees payable by Mr White to TSL under the Almondlot Management Agreement, which debt was premised upon TSL and Mr White being parties to the Almond Project Sub-Lease;
 - (ii) directing his accountant to claim tax deductions for fees paid to TSL payable by Mr White to TSL under the Almondlot Management Agreement;
 - (iii) maintaining a right to vote, alternatively, failing to disclaim a right to vote, as a member of the 2007 Almond Project, on 31 July 2009, in relation to a resolution that the scheme not be wound up;
 - (iv) maintaining a claim to, alternatively failing to disclaim, funds held in trust from the sale proceeds of Almondlots from the 2007 Almond Project;
- (d) in the circumstances, both TSL and Mr White knew that the other was acting, and intended that the other act, on the basis that they were parties to the Almond Project Sub-Lease;
- (e) it would now be unjust to TSL, and to its detriment, to allow Mr White to deny the mistaken common assumption made by TSL and Mr White, as pleaded above;
- (f) by reason of the matters set out in sub-paragraphs (a) to (e) above, Mr White is estopped from raising the allegations in paragraph 76C of his Defence; and

- (g) further or alternatively, by reason of the conduct and the intention of TSL and Mr White referred to in sub-paragraphs (a) to (c) above, Mr White is estopped from raising the allegations in paragraph 76C of his Defence.

23R Further or alternatively, if the balance of the Application Moneys was not paid as alleged by Mr White (which is denied):

- (a) on or about 2 June 2008, Mr White signed the application form to become a grower in eight Almondlots under the Almonds Project, which application form was sent to TSL;
- (b) on about 13 June 2008, Mr White's application was approved by TSL and information recording Mr White's investment in respect of the eight Almondlots allocated to him was entered in the TIMS database;
- (c) thereafter, TSL entered Mr White in the Register of Growers for the 2007 Almond Scheme which was maintained on the TIMS database;
- (d) consequently, the TIMS database recorded Mr White as being a grower in the 2007 Almond Project, and therefore bound by the Almond Constitution and a party to both the Almondlot Management Agreement and the Almond Project Sub-Lease, in relation to the eight Almondlots allocated to him;
- (e) on about 30 June 2008, TSL issued a Timbercorp MultiChoice Statement to Mr White that recorded Mr White's investment in respect of the eight Almondlots;
- (f) TSL and Mr White mistakenly assumed that Mr White was a party to the Almond Project Sub-Lease;
- (g) TSL acted (pursuant to this common mistaken assumption, or alternatively otherwise) as if TSL had granted Mr White a sub-lease on the terms of the Almond Project Sub-Lease in respect of the eight Almondlots allocated to him, by performing its obligations under Loan Agreement L0025841 in that variously on 18 June 2008, 19 June 2008 and 25 June 2008 the Timbercorp Group accounts record the Plaintiff discharging part of Mr White's liability to TSL for fees payable by Mr White to TSL under the Almondlot Management Agreement, in the amount of \$64,800:

- (h) Mr White also acted (pursuant to this common mistaken assumption, or alternatively otherwise) as if TSL had granted him a Sub-Lease in relation to the eight Almondlots allocated to him, by:
 - (i) directing the Plaintiff to make payment to TSL in the amount of \$64,800, in payment of application moneys which would be applied in discharge of fees payable by Mr White to TSL under the Almondlot Management Agreement, which debt was premised upon TSL and Mr White being parties to the Almond Project Sub-Lease;
 - (ii) declaring to the Plaintiff that he owns the Almondlots (or will own them upon TSL's allocation) and assigning to the Plaintiff all rights, title and interest in any debt or monetary obligation owed to Mr White by TSL under or in relation to his investment in the 2007 Almond Project;
 - (iii) directing his accountant to claim tax deductions for fees paid to TSL payable by Mr White to TSL under the Almondlot Management Agreement;
 - (iv) maintaining a right to vote, alternatively, failing to disclaim a right to vote, as a member of the 2007 Almond Project, on 31 July 2009, in relation to a resolution that the scheme not be wound up;
 - (v) maintaining a claim to, alternatively failing to disclaim, funds held in trust from the sale proceeds of Almondlots from the 2007 Almond Project;
- (i) in the circumstances, TSL and Mr White knew that the other was acting, and intended that the other act, on the basis that TSL and Mr White were parties to the Almond Project Sub-Lease;
- (j) it would now be unjust to TSL, and to its detriment, to allow Mr White to deny the mistaken common assumption made by TSL and Mr White that they were parties to the Almond Project Sub-Lease;
- (k) by reason of the matters set out in sub-paragraphs (a) to (j) above, Mr White is estopped from raising the allegations in paragraph 76C of his Defence;
- (l) further or alternatively, by reason of the conduct and the intention of TSL and Mr White referred to in sub-paragraphs (a) to (i) above, Mr White is estopped from raising the allegations in paragraph 76C of his Defence.

23S Further or alternatively, if the balance of the Application Moneys was not paid as alleged by Mr White (which is denied):

- (a) both TSL and Mr White mistakenly assumed that Mr White was a party to the Licence Agreement under the 2008 Olive Project;
- (b) TSL acted (pursuant to this common mistaken assumption, or alternatively otherwise) as if TSL had granted Mr White a licence on the terms of the Licence Agreement in respect of the Grovelots known as GRO2 3357, GRO2 3358, GRO2 3359, GRO2 3360, GRO2 3361, GRO2 3362, GRO2 3363, GRO2 3364, GRO2 3365, GRO2 3366, GRO2 3367, GRO2 3368, GRO2 3369, GRO2 3370, and GRO2 3371 (**Mr White's Grovelots**), by:
 - (i) issuing a statement to Mr White identifying the Grovelots that TSL had granted to Mr White under the Licence Agreement;
 - (ii) allocating rights in land for the use of Mr White on the terms of the Licence Agreement and not allocating those rights in land to any other person;
 - (iii) performing obligations under the Licence Agreement in relation to Mr White's Grovelots;
 - (iv) maintaining a head lease over the land that TSL had identified as being the subject of the grant of rights to Mr White under the Licence Agreement;
 - (v) managing the land that TSL had identified as being the subject of the grant of rights to Mr White under the Licence Agreement on the terms set out in the 2008 Timbercorp Olive Project Grovelot Management Agreement, by cultivating and maintaining olive trees on, and generally managing, that land in accordance with the Management Plan referred to in the Grovelot Management Agreement and carrying out and performing Mr White's obligations under the Licence Agreement;
- (c) Mr White also acted (pursuant to this common mistaken assumption, or alternatively otherwise) as if TSL had granted him a licence on the terms of the Licence Agreement in relation to Mr White's Grovelots, by:

- (i) directing the Plaintiff to make payment to TSL in the amount of \$76,950, in payment of application moneys which would be applied in discharge of fees payable by Mr White to TSL under the Grovelot Management Agreement, which debt was premised upon TSL and Mr White being parties to the Licence Agreement;
- (ii) directing his accountant to claim tax deductions for fees paid to TSL payable by Mr White to TSL under the Grovelot Management Agreement;
- (iii) maintaining a right to vote, alternatively, failing to disclaim a right to vote, as a member of the 2008 Olive Project, on 17 August 2009, in relation to a resolution that the scheme not be wound up;
- (iv) maintaining a claim to, alternatively failing to disclaim, funds held in trust from the sale proceeds of Grovelots from the 2008 Olive Project;
- (v) maintaining a claim to, alternatively failing to disclaim, funds held in trust from the sale proceeds of assets from the 2008 Olive Project;
- (d) in the circumstances, both TSL and Mr White knew that the other was acting, and intended that the other act, on the basis that they were parties to the Licence Agreement;
- (e) it would now be unjust to TSL, and to its detriment, to allow Mr White to deny the mistaken common assumption made by TSL and Mr White, as pleaded above;
- (f) by reason of the matters set out in sub-paragraphs (a) to (e) ~~23(m)(i) to 23(m)(vi)~~ above, Mr White is estopped from raising the allegations in paragraph 76C of his Defence;
- (g) further or alternatively, by reason of the conduct and the intention of TSL and Mr White referred to in sub-paragraphs (a) to (c) above, Mr White is estopped from raising the allegations in paragraph 76C of his Defence.

23T Further or alternatively, if the balance of the Application Moneys was not paid as alleged by Mr White (which is denied):

- (a) on or about 2 June 2008, Mr White signed the application form to become a grower in 15 Grovelots, which application form was sent to TSL;

- (b) on about 13 June 2008, Mr White's application was approved by TSL and information recording Mr White's investment in respect of the 15 Grovelots allocated to him was entered in the TIMS database;
- (c) thereafter, TSL entered Mr White in the Register of Growers for the 2008 Olive Project which was maintained on the TIMS database;
- (d) consequently, the TIMS database recorded Mr White as being a grower in the 2008 Olive Project, and therefore bound by the Olives Constitution and a party to both the Grovelot Management Agreement and the Licence Agreement, in relation to the 15 Grovelots allocated to him;
- (e) on about 30 June 2008, TSL issued a Timbercorp MultiChoice Statement to Mr White that recorded Mr White's investment in respect of the 15 Grovelots;
- (f) TSL and Mr White mistakenly assumed that Mr White was a party to the Licence Agreement;
- (g) TSL acted (pursuant to this common mistaken assumption, or alternatively otherwise) as if TSL had granted Mr White licences on the terms of the Licence Agreement in respect of the 15 Grovelots allocated to him, by performing its obligations under Loan Agreement L0025841 in that variously on 18 June 2008, 19 June 2008 and 25 June 2008 the Timbercorp Group accounts record the Plaintiff discharging part of Mr White's liability to TSL for fees payable by Mr White to TSL under the Grovelot Management Agreement, in the amount of \$76,950;
- (h) Mr White also acted (pursuant to this common mistaken assumption, or alternatively otherwise) as if TSL had granted him licences in relation to the 15 Grovelots allocated to him, by:
 - (i) directing the Plaintiff to make payment to TSL in the amount of \$76,950, in payment of application moneys which would be applied in discharge of fees payable by Mr White to TSL under the Grovelot Management Agreement, which debt was premised upon TSL and Mr White being parties to the Licence Agreement;
 - (ii) declaring to the Plaintiff that he owns the Grovelots (or will own them upon TSL's allocation) and assigning to the Plaintiff all rights, title and

interest in any debt or monetary obligation owed to Mr White by TSL under or in relation to his investment in the 2008 Olive Project;

- (iii) directing his accountant to claim tax deductions for fees paid to TSL payable by Mr White to TSL under the Grovelot Management Agreement;
- (iv) maintaining a right to vote, alternatively, failing to disclaim a right to vote, as a member of the 2008 Olive Project, on 17 August 2009, in relation to a resolution that the scheme not be wound up;
- (v) maintaining a claim to, alternatively failing to disclaim, funds held in trust from the sale proceeds of Grovelots from the 2008 Olive Project;
- (vi) maintain a claim to, alternatively failing to disclaim, funds held in trust from the sale proceeds of assets from the 2008 Olive Project;
- (i) in the circumstances, TSL (on the one hand) and Mr White (on the other hand) knew that the other was acting, and intended that the other act, on the basis that TSL and Mr White were parties to the Licence Agreement;
- (j) it would now be unjust to TSL, and to its detriment, to allow Mr White to deny the mistaken common assumption made by TSL and Mr White that they were parties to the Licence Agreement; and
- (k) by reason of the matters set out in sub-paragraphs (a) to (j) above, Mr White is estopped from raising the allegations in paragraph 76C of his Defence;
- (l) further or alternatively, by reason of the conduct and the intention of TSL and Mr White referred to in sub-paragraphs (a) to (i) above, Mr White is estopped from raising the allegations in paragraph 76C of his Defence.

24 As to paragraph 24:

- (a) it admits that the Plaintiff disputes the allegations in paragraph 5A of the Defence;
- (b) it refers to and repeats paragraph 23 above;
- (c) it otherwise denies the allegations in paragraph 24.

25 As to paragraph 25:

- (a) it admits that in paragraph 25 the Plaintiff refers to and repeats the allegations in Mr White's Defence;
- (b) it otherwise denies the allegations in paragraph 25.

26 It admits paragraph 26.

27 It refers to and repeats paragraphs 23A to 23T above and otherwise denies paragraph 27.

28 It refers to and repeats paragraphs 23A to 23T—above and otherwise does not admit paragraph 28.

29 It refers to and repeats paragraphs 23A to 23T above and otherwise does not admit paragraph 29.

30 It refers to and repeats paragraphs 23A to 23T above and otherwise denies the allegations in paragraph 30.

31 It refers to and repeats paragraphs 23A to 23T above and otherwise denies the allegations in paragraph 31.

COUNTERCLAIM

32 TSL denies the allegations in paragraph 76C of Mr White's defence (and the paragraphs to which it refers), and refers to and repeats paragraphs 23A to 23T above.

AND THE PLAINTIFF BY COUNTERCLAIM CLAIMS AS AGAINST THE FIRST AND SECOND DEFENDANTS BY COUNTERCLAIM:

A A declaration that Mr White is precluded from denying – on the basis of the matters alleged in paragraph 76C of Mr White's defence (and the paragraphs to which it refers) – that:

- (i) the balance of Application Moneys were paid on his behalf to TSL for lots in the 2007/8 Timberlot Project, the 2007 Almond Project and the 2008 Olive Project; and
- (ii) consequently he obtained lots and became a Grower in those Projects.

B Costs.

C Such further or other order as the Court considers appropriate.

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Dated 31 August 2016

O Bigos

s/ Arnold Bloch Leibler

ARNOLD BLOCH LEIBLER

Solicitors for the Second Defendant and
Plaintiff by Counterclaim

SCHEDULE OF PARTIES

BETWEEN

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

Plaintiff

and

PETER JOHN WHITE

First Defendant

TIMBERCORP SECURITIES LIMITED (IN LIQUIDATION)
ACN 092 311 469

Second Defendant

AND BETWEEN

TIMBERCORP SECURITIES LIMITED (IN LIQUIDATION)
ACN 092 311 469

Plaintiff by Counterclaim

PETER JOHN WHITE

First Defendant by Counterclaim

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

Second Defendant by Counterclaim