

IN THE FEDERAL COURT OF AUSTRALIA
VICTORIA DISTRICT REGISTRY

No. VID 541 of 2009

IN THE MATTER OF TIMBERCORP SECURITIES LIMITED (IN LIQUIDATION)
(ACN 092 311 469)

AND

IN THE MATTER OF TIMBERCORP LIMITED (IN LIQUIDATION)
(ACN 055 185 067)

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

Plaintiffs

WA CHIP & PULP CO. PTY LTD
and OTHERS (ACN 008 720 518)

Defendants

CERTIFICATE IDENTIFYING EXHIBIT


This is the exhibit marked "IRD-1" now produced and shown to **IAN ROBERT DELROY** at the time of swearing his affidavit on 28th July 2009.

BARBARA PEARL NOBLE
LL.B.

Barrister & Solicitor

SHADDICKS LAWYERS

18 Adelaide Street, Busselton WA 6280
Ph: (08) 9752 1699

Before me: 

An Australian Legal Practitioner within the
Meaning of the Legal Profession Act 2004.

Filed on behalf of:

The Third Defendant

Prepared by:

TAYLOR SMART

Barristers & Solicitors

1 Regal Place

EAST PERTH WA 6004

(Kerin F Smart)

Tel: 08 9218 8170

Fax: 9325 2895

Ref: KFS:KS:

ksmart@westnet.com.au

Ian Delroy

From: Neil Delroy
Sent: Friday, 3 July 2009 11:24 AM
To: 'Andrew Malarkey (amalarkey@kordamentha.com)'; 'Nick Courtney'
Cc: Ian Delroy; 'David Clark (dclark@clarkwhyte.com)'; 'Kerin Smart (ksmart@westnet.com.au)'
Subject: Jasper Farms - leases

Dear Andrew and Nick

We are in receipt of the letter from Mark Korda date July 2 regarding the leases. You have previously advised an intention to disclaim the leases but the letter from Mark is not clear in this regard. Could you please confirm that you are disclaiming the leases for the Jasper Farms land and water? We are of the view that under the Corporations Act that if you do not disclaim the lease you are taken to have adopted the lease and thus are liable to comply with the leases including all rents.

If not could you please clarify what you mean by the letter? If you are not disclaiming the leases then you have obligations as per clause 7.1 of the lease contract including "The lessee, at its cost and expense, must cultivate, maintain and manage the Avocado Trees, the Avocado Orchard, and land generally, in good workmanlike and commercially responsible manner and to a standard consistent with Best Horticultural practice including the following...."

The lease with Jasper Farms Holdings place obligations on the lessee that both exceed the lease costs in dollar terms and also that have far greater impacts on the lessor than those under a plantation lease. The cost of maintaining the operation is approximately \$45,000 per week. Horticultural leases require constant inputs including irrigation, fertiliser, spraying, pruning etc to maintain the trees. This is a very different situation to that of a timber lot in that horticultural operations cannot be left unattended even for relatively short periods without significant and in some cases irreparable damage occurring.

If your letter of July 2 proposes that the lease is not cancelled but at the same time you propose you are not in occupation of land or maintaining the orchard then we believe that any court action to confirm this position needs a horticultural project to be presented. It is inappropriate to use a timber plantation lessor (Plantation Land Limited) in your court hearing with Justice Finkelstein on July 6 to argue the contrary position in regards to horticultural land leases.

Could you please supply the contact details of those arguing the contrary position? We have not been able to find any documents on your web site as your letter states.

Unless you can clarify this with us further to our satisfaction we will not accept that a ruling made with a timber plantation lessor arguing the contrary is applicable to our leases.

To avoid the cost of litigation please confirm by return email that you are disclaiming the leases.

If you are not disclaiming the leases we require a separate court action in regards our leases as they are materially different to the plantation leases. This action should be conducted in Western Australia as our lease requires actions to be conducted in Western Australia.

Your sincerely

Neil Delroy

Jasper Farms Holdings Pty Ltd

From: Nick Courtney [mailto:ncourtney@kordamentha.com]

Sent: Thursday, 2 July 2009 5:48 PM

To: Ian Delroy

Cc: Neil Delroy; Andrew Malarkey

Subject: RE: Jasper Farms

Ian,

Please find attached a lease letter that was sent to Timbercorp landlords today.

Regards,

Nick Courtney | Associate Director
KordaMentha | Level 24, 333 Collins Street, Melbourne VIC 3000
t +61 3 8623 3424 | f +61 3 8623 3399
e ncourtney@kordamentha.com | w www.kordamentha.com

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Please consider the environment before printing this email

From: Ian Delroy [mailto:Ian@agribusiness.com.au]

Sent: Thursday, 2 July 2009 6:17 PM

To: Andrew Malarkey; Nick Courtney

Cc: Neil Delroy; ksmart@westnet.com.au; dclark@clarkwhyte.com

Subject: Jasper Farms

Importance: High

Andrew and Nick

Yesterday you stated that it is the intention of the liquidators to disclaim the leases relating to the Jasper Farms Avocado Project, unless Jasper Farms, as lessors, were prepared to give a "rent free period" to the liquidators of between 7 to 14 days (7 days in Nicks email and 14 days per Andrews verbal request).

We have advised you that Jasper Farms is not prepared to do this.

We have today sent to Timber Corp a Notice of Demand for outstanding rental as at 30 June 2009. A copy of the notice is enclosed.

Please note that Jasper Farms will hold Timber Corp Ltd and the liquidators (Korda Mentha) liable for all such outstanding rentals plus rental accruing from and including 1 July 2009 until receipt of a notice of disclaimer from the liquidators.

Kindly advise the liquidators intentions by return, as we are a small company, and it is inequitable and unreasonable that we should be left in a state of uncertainty whilst expenses continue to accrue.

Regards

Ian Delroy

Financial Controller

Agribusiness Research and Management

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Please consider the environment before printing this e-mail notice.

Arnold Bloch Leibler

Lawyers and Advisers

6 July 2009

By E-mail

Mr Neil Delroy
Jasper Farms Holdings Pty Ltd

Email : Neil@agribusiness.com.au

Your Ref
Our Ref LZ
File No. 011499489

Contact
Leon Zwier
Direct 61 3 9229 9646
Facsimile 61 3 9229 9603
lzwier@abl.com.au



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Dear Mr Delroy

Timbercorp Securities Limited (In Liquidation) and Timbercorp Limited (In Liquidation)

I have been asked by the liquidators of Timbercorp Securities Limited (In Liquidation) and Timbercorp Limited (In Liquidation) to respond to your email to Andrew Malarkey of Friday 3 July 2009.

Set out below are our instructions:-

- 1 The liquidators have not disclaimed the leases of the Jasper Farms or the water entitlements.
- 2 The liquidators have not personally adopted or ratified and will not personally adopt or ratify the leases of the Jasper Farms. Those leases have not been novated from the Timbercorp Group to the liquidators.
- 3 The liquidators are aware that prior to their appointment Timbercorp Securities Limited and Timbercorp entered into a large number of contractual agreements in the expectation that they would comply with their terms.
- 4 The liquidators are seeking to preserve the status quo in relation to the Timbercorp Securities Limited and Timbercorp leases without prejudicing the rights of lessors or growers. As a lessor you should obtain your own independent legal advice. Lessors are able to force a liquidator to make a decision on whether or not to disclaim a lease (see s 568 (8) of the Corporations Act). Please let us know when you have appointed lawyers as we are bound to deal with your lawyers and not your company.

MELBOURNE SYDNEY

Partners
Mark M Leibler AC
Henry D Lanzer
Joseph Borensztajn
Leon Zwier
Philip Chester
Ross A Paterson
Stephen L Sharp
Kenneth A Gray
Kevin F Frawley
Michael N Dodge
Jane C Sheridan
Steven Klein
Leonie R Thompson
Zaven Mardrossian
Jonathan M Wenig
Paul Sokolowski
Paul Rubenstein
Peter M Seidel
Alex King
John Mitchell
Nicole Gordon
Ben Mahoney
Sam Dollard
Lily Tell
Henry Skene
Andrew Silberberg
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Leigh De Jong
Lachlan Blake
Jorja Cleeland
Caroline Goulden
Matthew Lees
Genevieve Sexton
Lucy Kirwan
Nicholas Clifton
Lior Harel
Jeremy Leibler
Amelia Kelly
Bridgette Toy-Cronin
Benjamin Marshall

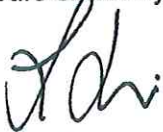
Consultants
Allan Fels AO
Steven M Skala

- 5 The liquidators accept that lessors will lodge proofs of debt in the liquidations of Timbercorp Securities Limited (In Liquidation) and Timbercorp Limited (In Liquidation) by which they will make claims for damages arising from any breaches of their leases. But these claims are not the personal liabilities of, or expenses incurred by, the liquidators. They arise from the failures of the Timbercorp companies.
- 6 The liquidators are aware that in horticultural projects the crops will waste without constant maintenance and regular expenditure. But the liquidators do not have the cash resources available to them to incur and pay those costs and expenses. The liquidators are engaging with parties who may wish to recapitalise some of the schemes or buy the properties on which some of the schemes are conducted. The liquidators appreciate that a solution for all stakeholders is time critical to avoid wastage and maximise the cash realisations for all stakeholders.
- 7 The liquidators also appreciate that from any of:-
 - (a) the proceeds of any realisation of the property from which horticultural projects are conducted; or
 - (b) the exercise of rights by lessors of the property on which horticultural projects are conducted, or
 - (c) the disclaimer of property by the liquidators from which horticultural projects are conducted

the key legal issue that needs to be determined by the Court is whether the Growers have any proprietary interest in the property. As you know all lessors acknowledged the interests of Growers in their leases. All secured creditors did likewise in relation to their securities. The liquidators currently intend to ask the Federal Court of Australia to convene a Court of three (3) judges to urgently hear and determine that legal issue, on the basis of an agreed Statement of Facts.
- 8 The liquidators appreciate that the timber schemes have different features from the horticultural schemes.
- 9 The legal issues that we will be asking the court to address on Monday 6 July relate to whether the liquidators are incurring a "use and occupancy" expense in the liquidations arising from their stated position of neutrality viz all the Timbercorp leases. Please note that all the court documents can be obtained from either the KordaMentha or ABL websites.
- 10 Plantation Land Limited (PLL) is opposing the liquidators. PLL's lawyers are Maddocks. PLL's counsel is Simon Rubenstein. The contact details are on the court documents filed by them. In addition ASIC is also appearing. I have copied PLL's lawyer (Phillip Jones/David Newman) and ASIC's lawyer (Andrew Tregear) to this email.

- 11 We appreciate that it may be more convenient for some litigants to litigate in the State or Territory in which they conduct their own business. However as you know the Timbercorp head office is in Melbourne. The Timbercorp business was managed from its Melbourne office. The liquidators are also Melbourne based. According the liquidators intend to litigate the proceedings in either the Supreme Court of Victoria or Federal Court of Australia Melbourne Registry.

Yours sincerely



Leon Zwier
Partner

cc Philip Jones / David Newman (Maddocks)
Email : Philip.Jones@maddocks.com.au
david.newman@maddocks.com.au

Andrew Tregear (ASIC)
Email : Andrew.Tregear@asic.gov.au