

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

LIST E

SCI 2009 10699

BETWEEN:

BOSI SECURITY SERVICES LIMITED (ACN 009 413 852) as trustee for
AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED
(ACN 005 357 522) and BOS INTERNATIONAL (AUSTRALIA) LIMITED
(ACN 066 601 250) and WESTPAC BANKING CORPORATION
(ACN 007 457 141)

Plaintiff

and

AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED
(ACN 005 357 522) & ORS (according to the attached Schedule)

Defendants

CERTIFICATE IDENTIFYING EXHIBIT

Date of document: 3 March 2010
Filed on behalf of: the Second, Third and Fourth Defendants

Prepared by:
ARNOLD BLOCH LEIBLER
Lawyers and Advisers
Level 21
333 Collins Street
MELBOURNE 3000

Solicitor's Code: 54
DX 38455 Melbourne
Tel: 9229 9999
Fax: 9229 9900
Ref: []

(Leon Zwier lwzier@abl.com.au/
Lucy Kirwan lkirwan@abl.com.au)

This is the exhibit marked '**MAK-63**' now produced and shown to MARK ANTHONY
KORDA at the time of swearing this affidavit on 3 March 2010.

Before me: 

LUCY HANNAH KIRWAN
Arnold Bloch Leibler
Level 21, 333 Collins Street
Melbourne 3000
An Australian Legal Practitioner within the
meaning of the Legal Practitioners Act 2004

Exhibit 'MAK-63'

**Orders of Justice Robson made on 21
August 2009**

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

COMMERCIAL COURT
CORPORATIONS LIST

LIST E
No. 7114 of 2009

IN THE MATTER of TIMBERCORP SECURITIES LIMITED (UNDER
ADMINISTRATION) (ACN 092 311 469)

BETWEEN:

TIMBERCORP SECURITIES LIMITED (UNDER
ADMINISTRATION) (ACN 092 311 469) IN ITS
CAPACITY AS RESPONSIBLE ENTITY OF EACH OF
THE MANAGED INVESTMENTS SCHEMES LISTED
IN SCHEDULE 1 and others
(according to the schedule attached)

Plaintiffs

GENERAL FORM OF ORDER

JUDGE: The Honourable Justice Robson

DATE MADE: 20 August 2009

ORIGINATING PROCESS: Originating Process of the Plaintiffs filed 4 June 2009

HOW OBTAINED: On the hearing of the Originating Process dated 4 June 2009

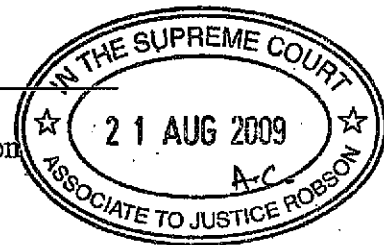
ATTENDANCE: Mr P D Crutchfield of Counsel with Mr O Bigos of Counsel for the Plaintiffs

Mr G T Bignmore, one of Her Majesty's Counsel with Mr M Galvin of Counsel for the Plaintiffs to the Originating Processes of 6 July 2009 described as the Timbercorp Growers Group

Mr I G Waller of Senior Counsel with Mr S J Hibble of Counsel for ASIC as *amicus curiae*

OTHER MATTERS: The Second and Third Plaintiffs, by their counsel, undertake to:

a) convene a meeting of the executive of the Timbercorp Growers Group, which comprises



Christopher Garnaut, David Haintz, Kerree Bezencon, Neil White and Darren Steinhardt every fortnight until the sale process referred to in paragraph (b) is finalised;

- b) give an update at that meeting in relation to the process for the sale of assets (being the assets in relation to the Project of each of the Almond Schemes, including all or any of the Project Property or the Project's scheme property (as defined in the *Corporations Act 2001* (Cth)) and any other property vested in members of the Almond Schemes which relates to the Almond Schemes), but without disclosing any information that is confidential; and
- c) consult with the executive of the Timbercorp Growers Group after the receipt of all bids under the sale process and before entering into any contract for the sale of these assets, on the provision of confidentiality undertakings from members of the committee of inspection in a form approved by the Second and Third Plaintiffs, including providing information on the amounts offered by the bidders (without identifying bidders), the payment terms of such offers and the amount to be apportioned between the assets and the schemes.

(The expressions **Project** and **Project Property** have the meanings given to them in the respective Almond Schemes' constitutions.)

THE COURT DIRECTS THAT:

1. Pursuant to s 511 of the *Corporations Act 2001* (Cth) (**Act**), the Second and Third Plaintiffs (**Korda and Chesser**) are justified in causing the First Plaintiff (**TSL**) in its capacity as the responsible entity of each of:
 - a) 2001 Timbercorp Almond Project (ARSN 095 649 746);
 - b) 2002 Timbercorp Almond Project (ARSN 099 611 935);
 - c) 2003 Timbercorp Almond Project (ARSN 103 197 299);
 - d) 2004 Timbercorp Almond Project (ARSN 108 336 670);
 - e) 2005 Timbercorp Almond Project (ARSN 112 935 092);
 - f) 2006 Timbercorp Almond Project (ARSN 118 387 974); and



g) 2007 Timbercorp Almond Project (ARSN 122 511 040),

(together, **Almond Schemes**),

to amend the constitution of each of the Almond Schemes pursuant to s 601GC(1)(b) of the Act by executing a deed in the form contained in **Schedule 1** for each of the constitutions.

2. Pursuant to s 511 of the Act, Korda and Chesser are justified in giving the undertakings.
3. If Korda and Chesser are of the view that the disclosure of the information referred to in the undertakings may prejudice the sale process, they may apply to the Court to be excused from this obligation.

THE COURT ORDERS THAT:

4. The application for the winding up of the Almond Schemes, and the interlocutory processes filed on behalf of Timbercorp Growers Group, be adjourned to a date to be fixed.
5. There be general liberty to apply granted to any person affected by these orders.
6. Costs be reserved.

DATE 20 August 2009



[Signature]
THE HONOURABLE JUSTICE ROBSON

SCHEDULE OF PARTIES

No. 7114 of 2009

BETWEEN:

TIMBERCORP SECURITIES LIMITED (UNDER
ADMINISTRATION) (ACN 092 311 469)

Corporation

- and -

TIMBERCORP SECURITIES LIMITED (UNDER
ADMINISTRATION) (ACN 092 311 469) IN ITS
CAPACITY AS RESPONSIBLE ENTITY OF EACH OF
THE MANAGED INVESTMENTS SCHEMES LISTED
IN SCHEDULE 1

Firstnamed Plaintiff

MARK ANTHONY KORDA

Secondnamed Plaintiff

LEANNE KYLIE CHESSE

Thirddnamed Plaintiff





Timbercorp Securities Limited (in liquidation)
ACN 092 311 489

Amendment Deed

[insert name of Project]
ARSN [insert]



Arnold Bloch Leibler
Ref: JCS:011499489
d:\ma\pcdocs\lab\731703\1

11

THIS DEED POLL is made on

2009

PARTIES

TIMBERCORP SECURITIES LIMITED (IN LIQUIDATION)
ACN 092 311 469
of Level 8, 461 Bourke Street, Melbourne 3000
("TSL")

BACKGROUND

- A TSL was appointed the responsible entity of the [insert name of Project] (ARSN insert) pursuant to the Constitution.
- B TSL is desirous of disposing of its assets including various leases granted by third parties.
- C In order to give clear and free title to the assignee of any lease, any sub-leases/licence and joint venture agreement of the leased land may be surrendered.
- D TSL considers it appropriate that it be granted the power to surrender each sub-lease/licence and joint venture agreement on behalf of the Growers.
- E On 18 August 2009, Justice Robson of the Supreme Court of Victoria directed TSL and the liquidators of TSL that the liquidators of TSL would be justified in executing or procuring TSL to execute a deed amending the Constitution, pursuant to section 601GC(1)(b) of the *Corporations Act*, in the form of this Deed.
- F In accordance with section 601GC of the *Corporations Act* and the directions of the Court, TSL has executed this deed to modify the Constitution in the manner set out in this deed.

AGREED TERMS

1 Definitions and interpretation

1.1 Definitions

In this deed, unless the context requires otherwise, terms that are defined in the Constitution have the same meaning and:

"**Constitution**" means the constitution dated [insert date] (as amended).

"**Effective Date**" means the date this deed is lodged with the Australian Securities and Investments Commission.

1.2 Interpretation

Clause 1.2 of the Constitution applies to the interpretation of this deed.



2 Amendment

The Constitution is amended with effect on and from the Effective Date by inserting after clause 11(f) the following clause:

"(fa) to assign, terminate, surrender or otherwise deal with any Sub-lease/Licence and Joint Venture Agreement;"

2.1 Remains in effect

Except as specifically amended by this document, all terms and conditions of the Constitution remain in full force and effect.

2.2 Read as a single document

With effect on and from the Effective Date:

- (a) the parties are bound by the Constitution as amended by this deed; and
- (b) the Constitution is to be read as a single integrated document incorporating those amendments.

3 General

3.1 Paramountcy of document

If this deed conflicts with any other document, agreement or arrangement, this document prevails to the extent of the inconsistency.

3.2 Attorneys

Each person who executes this deed on behalf of a party under a power of attorney warrants that he or she has no notice of the revocation of that power or of any fact or circumstance that might affect his or her authority to execute this document under that power.

3.3 Governing law and jurisdiction

This deed will be governed by and construed in accordance with the laws in force in the State of Victoria and each party submits to the non-exclusive jurisdiction of the courts of that State.

EXECUTED as a DEED

EXECUTED by **TIMBERCORP**)
SECURITIES LIMITED (in liquidation))
by being signed in its name and on its)
behalf by **MARK ANTHONY KORDA** in)
his capacity as liquidator in the presence)
of:)

Signature of witness

Signature of liquidator

Name of witness (print)



M