

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

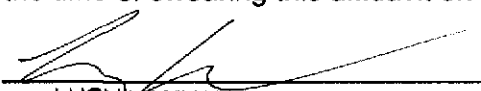
CERTIFICATE IDENTIFYING EXHIBIT

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 lwier@abl.com.au/
Lucy Kirwan lkirwan@abl.com.au)

This is the exhibit marked '**MAK-73**' 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 2000

Exhibit 'MAK-73'

**Copy of Amended Originating Process dated
6 October 2009**

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

LIST E

No 9408 of 2009

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

TIMBERCORP SECURITIES LIMITED
(IN LIQUIDATION) ACN 092 311 469
IN ITS CAPACITY AS RESPONSIBLE ENTITY OF THE
MANAGED INVESTMENTS SCHEMES LISTED IN SCHEDULE 1
AND ORS ACCORDING TO THE SCHEDULE

Plaintiffs

AMENDED ORIGINATING PROCESS

Date of document: 6 October 2009
Filed on behalf of: the Plaintiffs

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: 01-1499489
(Leon Zwier lzwier@abl.com.au)
Bridgette Toy-Cronin btoycronin@abl.com.au)

A. DETAILS OF APPLICATION

This application is made under sections 477(2B), 511 and 568(1A) of the *Corporations Act 2001* (Cth) (the Act).

On the facts stated in the supporting affidavit of Mark Anthony Korda sworn on 5 October 2009 (Affidavit) the Plaintiffs seek the following orders:

- 1 That the Court approves entry by the Third (Korda) and Fourth (Chesser) Plaintiffs in their capacity as liquidators of the First (TSL), Second (Almond Management), Fifth (Timbercorp) and Sixth (Almond Land) Plaintiffs pursuant to s 477(2B) of the Act, into:

- (a) the sale and purchase deed between each of the Plaintiffs and Olam Orchards Australia Pty Limited and Olam International Limited which forms Confidential Exhibit MAK-14 to the Affidavit or a document substantially in that form (**Sale and Purchase Deed**); and
 - (b) any agreement referred to, in connection with, or necessary to give effect to the Sale and Purchase Deed.
- 2 The Third (Korda) and Fourth (Chesser) Plaintiffs (in their capacity as Liquidators of the First (TSL) Plaintiff) seek directions pursuant to section 511 of the Act that they are justified in procuring the First Plaintiff as responsible entity of the managed investment schemes listed in Schedule 1 of this *Originating Process* (**Almond Schemes**) to enter into and perform the Sale and Purchase Deed and extinguishing the Growers' rights.
- 3 The Third (Korda) and Fourth (Chesser) Plaintiffs (in their capacity as Liquidators of the First Plaintiff) seek directions pursuant to section 511 of the Act that they are justified in entering into an agreement with the Sixth (Almond Land) Plaintiff to accept \$6m to extinguish Growers' rights in accordance with the terms of the Bank Offer as defined in the Affidavit.
- 4 The Third (Korda) and Fourth (Chesser) Plaintiffs (in their capacity as Liquidators of the Second (Almond Management) Plaintiff) seek leave pursuant to section 568(1A) to disclaim the Project and Management Agreement as defined in the Affidavit (**PMA**) in respect of the unregistered managed investment scheme listed in Schedule 2 of this *Originating Process* (**Unregistered Almond Scheme**).
- 5 The Third (Korda) and Fourth (Chesser) Plaintiffs (in their capacity as Liquidators of the Second Plaintiff (Almond Management)) seek directions pursuant to section 511 of the Act that they are justified in disclaiming pursuant to section 568 of the Act the PMA in respect of the Unregistered Almond Scheme and to enter into and perform the Sale and Purchase Deed and extinguishing Growers' rights.
- 6 The Third (Korda) and Fourth (Chesser) Plaintiffs (in their capacity as Liquidators of the Second Plaintiff (Almond Management)) seek directions pursuant to section 511 of the Act that they are justified in entering into an agreement with the Sixth Plaintiff (Almond Land) to accept \$6m to extinguish Growers' rights in accordance with the terms of the Bank Offer as defined in the Affidavit.
- 7 Exhibits MAK-9, MAK-10, MAK-13, MAK-14, MAK-23 and MAK-25 to the Affidavit be kept confidential.

8 Such further or other orders as the Court deems fit.

DATE: 5 October 2009

Arnold Bloch Leibler

ARNOLD BLOCH LEIBLER
Solicitors for the Plaintiffs

This originating process will be heard by Justice Robson in Court No. 1, Supreme Court, 450 Little Bourke Street, Melbourne at 10:30 am on 6 October 2009.

C. FILING

This originating process is filed by Arnold Bloch Leibler of Level 21, 333 Collins Street, Melbourne, VIC, 3000, solicitors for the applicant.

E. SERVICE

The plaintiffs' address for service is C/- Arnold Bloch Leibler, Level 21, 333 Collins Street, Melbourne, VIC, 3000.

It is intended to serve as a courtesy a copy of this originating process on the following persons.

Australian Securities and Investments Commission (**ASIC**);

Timbercorp Growers Group (**TGG**) by its solicitors Clarendon Lawyers;

Ian Menzies Carson, the Special Purpose Liquidator (**SPL** or **Carson**) by his solicitors Mallesons;

Australia and New Zealand Banking Group Ltd (**ANZ**) by its solicitors Allens Arthur Robinson (**AAR**);

BOSI Securities Services Limited (**BOSI**) by its solicitors Blake Dawson; and

Commonwealth Bank of Australia (**CBA**) by its solicitors Henry Davis York.

SCHEDULE OF PARTIES

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

ALMOND MANAGEMENT PTY LTD (IN LIQUIDATION) (ACN 094 468 845)
IN ITS CAPACITY AS MANAGER OF THE UNREGISTERED
MANAGED INVESTMENT SCHEME LISTED IN SCHEDULE 2
Second Plaintiff

MARK ANTHONY KORDA
Third Plaintiff

LEANNE KYLIE CHESSER
Fourth Plaintiff

TIMBERCORP LIMITED (IN LIQUIDATION) (ACN 055 185 067)
Fifth Plaintiff

ALMOND LAND PTY LTD (IN LIQUIDATION) (ACN 091 460 992)
Sixth Plaintiff

SCHEDULE 1

1. 2002 Timbercorp Almond Project (ARSN 099 611 935)
2. 2005 Timbercorp Almond Project (ARSN 112 935 092)
3. 2006 Timbercorp Almond Project (ARSN 118 387 974)
4. 2007 Timbercorp Almond Project (ARSN 122 511 040)

SCHEDULE 2

1. 2002 Timbercorp Almond Project (Private Offer) (Unregistered)