

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

S CI 2011

**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 2004 TIMBERCORP CITRUS
PROJECT (ARSN 108 887 538) AND THE 2005 TIMBERCORP CITRUS PROJECT (ARSN
114 091 299) AND ORS ACCORDING TO THE SCHEDULE**
Plaintiffs

CERTIFICATE IDENTIFYING EXHIBIT

Date of document: 28 February 2011
Filed on behalf of: the Plaintiffs

Prepared by:
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This is the exhibit marked "MAK-7" now produced and shown to **MARK ANTHONY KORDA**
at the time of swearing his affidavit on 28 February 2011.

MEAGAN LOUISE GROSE
Arnold Bloch Leibler
Level 21, 333 Collins Street
Melbourne 3000
An Australian Legal Practitioner within the
meaning of the Legal Profession Act 2004

Before me: 

Exhibit "MAK-7"

**Email from Kerree Bezencon to Antony Munro
dated 27 October 2010 and attached letter from
Chris Day to Michael Fung dated 26 October
2010**

Filed on behalf of the Plaintiffs
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Meagan Grose

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From: Kerree Bezencon <kerree@siger.com.au>

Date: 27 October 2010 9:23:08 PM AEDT

To: 'Antony Munro' <amunro@kordamentha.com>, 'Sam Baillieu' <sbaillieu@ocfunds.com.au>

Subject: FW: 2010 - 2004 & 2005 Citrus Fruit - PwC Kangara - 25 October.doc

Dear Antony and Sam (for Alan Fischer),

Copy to you as noted in letter of Chris Day.

Regards

Kerree

Kerree A Bezencon, Director
B.Ec (Accounting & Finance),
ASIA (Gr Dip Applied Finance & Investment),
CPA (Certified Practising Accountant) PFP (Specialist in Financial Planning),
CFP (Certified Financial Planner),
SSA (Specialist SMSF Advisor)

26 October 2010

Mr M Fung
Partner
PriceWaterhouseCoopers
2 Southbank Boulevard
Southbank Vic 3006

Dear Michael

KANGARA PROPERTY

I refer to our meeting in Melbourne on 1 October 2010 and our various emails since that date.

As you are aware, Food And Beverage Australia Limited ("FABAL") is seeking to work with PriceWaterhouseCoopers ("PwC"), Align Funds Management Limited ("Align") and CostaExchange Limited ("Costa") to benefit the growers that have an interest in the 2004 Timbercorp Citrus Project ARSN: 108 887 538 and the 2005 Timbercorp Citrus Project ARSN: 114 091 299 ("Citrus Projects").

FABAL has been asked to take the responsible entity ("RE") role for each these projects. Members have called a meeting and proxies have been received by those members to allow the current RE role to be changed from Timbercorp Securities Limited (in liquidation) to FABAL. As far as we are aware, KordaMentha do not oppose the change of RE at this time.

After receiving letters from your advisers, Allens Arthur Robinson, on 9 September 2010, the members and FABAL adjourned the original meeting date in order to have discussions with the principal parties involved above. Several meetings have occurred since that date.

Background

FABAL is a medium size RE with 11 projects under management in viticulture and horticulture. FABAL operates under AFSL: 246650. FABAL uses a different business model to that of Timbercorp Limited, Great Southern Limited and Rewards Group Limited for its operations.

FABAL has been operating since 1982 and in the corporate agribusiness space since 1994. FABAL is debt free and seeks to work in projects that have scale and markets for Australian agriculture products. We can provide further information if you wish. Alternatively, you can visit our website at www.fabal.com.au.

As you are aware, we have previously worked with members of the 2006 Timbercorp Avocado Project ARSN: 119 199 941 and the 2007 Timbercorp Avocado & Fruit Project ARSN:124 932 510 to achieve a similar aim to that proposed by these Citrus Projects. Over the past 12 months, we have successfully transitioned this role and worked effectively with a mortgagee in possession of the land and water to orchestrate a sale of the affected properties from OIM#4 Pty Ltd and OIM#6 Pty Ltd.

Current Position (our understanding)

Members of the Citrus Projects acting through the TGG Citrus Committee Inc ("Citrus Committee") would like FABAL to take on the RE role from 9 November 2010.

This Citrus Committee wishes for the current arrangements under a crop sale deed entered into between Align, PwC and CostaExchange to continue until its natural expiry in June 2011.

PwC are representing the interests of the debenture holders to the Timbercorp Orchard Trust ("TOT") are seeking to sell the Kangara Property (consisting of 11 titles and one water licence) as soon as possible to return the funds to the bondholders.

After becoming the RE, FABAL wants to then work with PwC and growers to find a solution that will allow a rational and timely change of ownership. We understand the position of PwC and Allens in relation to the certainty that they have if they are able to terminate the leases of the current growers of the Citrus Projects and sell the property unencumbered by the grower's rights and interests in the property. We do not agree that a sale of this basis will provide certainty for the land owner or the bond holders.

FABAL and the Citrus Committee believe that the members do not wish to interfere with this crop sale deed. While I am not privy to the agreement between the parties to the crop sale deed at this time, members of the Committee of Inspection, who have valid access to this agreement have explained to us that a poison pill clause(s) exist to terminate the crop sale agreement if a change of RE is effected. In our meeting, you agreed that such a clause exists and that it could be activated if FABAL were to become RE.

We are aware that you have been negotiating with one party interested in acquiring the land but that you have not been able to secure a sale of the land due to a difference in the offered sale price to your expectations. We are also aware that Costa have a first right of refusal and potentially a last right of refusal on any offer made on the land. Accordingly, any offer would need to consider Costa's position and their continuation of the crop sale agreement..

Water Issues

We are aware that the property has attached (to it) Water Licence 827 carrying shares with a right to more than 8.8GL of water to be drawn from the River Murray (South Australian) pool on an annual basis.

However, the recent Murray Darling Basin Authority "Guide to the proposed Basin Plan" has determined that between 26% and 37% of all water entitlements may need to be reduced along the length of the MDBA system. In net effect, South Australian general security licences may need to be reduced by around 35% on present indications in the Guide. If this was carried out, Kangara may lose up to 3.1GL of its 8.8GL of water licence thus putting the responsibility to a new owner to purchase or lease new water entitlements for the Kangara property after this reduction. Our research shows that Kangara will require all of its current allocation by 2012.

This creates a major issue for any new purchaser.

Indicative EoI

FABAL, through the proposed company, Australian Sunrise Citrus Limited ("ASC") is willing to participate in the change of ownership by making an offer for the property in the ranges of \$12.5 million (water issues at large) to \$16.0 million (water issues resolved). The difference between the two offers is the potential effect of losing between 26% and 35% of the water from the property in the 2012 financial year, the year that South Australia is expected to review its plan

A full EoI will be prepared for PwC if you require this prior to 9 November 2010.

Interest of Growers

The above offer would allow the interest of the growers to be accommodated in a new corporate structure so that any potential conflict between the Receiver and Manager acting for the debenture holders and growers could be dealt with in advance of any potential court action being taken to recover the grower entitlement to the sales proceeds above.

Request

Prior to the meeting on 9 November 2010, we would like to receive a copy of the crop sale deed so that we can be informed on the issues relating to the termination clauses (poison pill).

Further, we would like PwC to confirm that they will work with FABAL to provide a solution for both debenture holders (many of whom are also growers with a shared interest) and all other growers.

FABAL is well underway and currently involved with the financing process to ensure that this is a serious and well considered offer. We are assisting with both our own contacts (with the substantial resources of European super funding) and other interested financial parties to produce firm documentation to support this proposal. To do this, obviously these parties are looking for the assurance of PwC support for the crop-sale agreement.

Equally they are also looking for PwC co-operation around a timely and reasonable process, so that concrete documentation can be provided with such certainty. They are aiming to avoid legal battles through inclusion of the various parties, which should alleviate unnecessary depletion/criticism of debenture holders funds.

FABAL and the Citrus Committee, in conjunction with the financiers, have the Grower support to negotiate an agreement that avoids costly court costs by coming to a compromise. This will enable us to minimise the legal costs in determining the proportion of the sale proceeds. This will benefit also the debenture holders and hopefully reflect well on PwC.

Outcome

The change of the RE to FABAL will allow the separation of responsibilities of KordaMentha into solely that of liquidator of the Timbercorp group of companies and not conflict with their role as RE.

FABAL, as RE, is working in the best interest of growers. However, FABAL recognises that by providing a solution for the growers, this can also achieve the aims of all other parties - the debenture holders, Align, FABAL, Costa and PwC.

The major outcome sought here is to have the growers interests recognised while allowing for the land to be sold on a timely basis and still achieve the maximum price for growers and debenture holders.

The arrangement between PwC and FABAL can allow for an orderly sale for the debenture holders that maximises the return to the debenture holders and provides more certainty to the final funds received on the sale for the debenture holders.

Co-operation that minimises court actions and brings parties together in agreement would be sought. FABAL as the RE represents all the growers and can help achieve this. In this case, so many debenture holders are also growers with both parties' interests being aligned in obtaining the best sale price.

The proposal will still allow for participation in the purchase by growers and debenture holders, along with interested financiers.

Conclusion

FABAL wishes to work with PwC, Align & CostaExchange to allow for the following:

- (1) the orderly transition of the RE role;
- (2) the continuation of the crop sale deed until 30 June 2011 (at the earliest);
- (3) the timely sale or other disposal of the land and water with growers interests noted and the acquisition of the land and water rights outlined in the Appendix;
- (4) certainty for PwC, growers and other parties in relation to proceeds from sale by mutual agreement of parties., facilitated by an independent RE;
- (5) minimisation of costly legal battles and issues around selling at too low a price (eg. recent KM court case);
- (6) the crop-sale agreement to continue and interested parties to co-operate in a solution - they are one year closer to being a cash flow positive enterprise with increased yields which should also alleviate selling at too low a price; and
- (7) finalise and provide firm documentation of interested funders/ underwriters in support of the proposal.

We are happy to provide a more detailed proposal

If you require any further information in relation to the above, please do not hesitate to contact Dim Georgiadis or myself.

Yours sincerely



Chris Day

Chief Executive Officer

cc: Mr C Hichen
Partner
Allens Arthur Robinson
Level 27, 530 Collins Street
Melbourne Vic 3000

Mr M Whittle
Senior Associate
Allens Arthur Robinson

Alan Fischer/Sam Baillieu
Directors
Align Funds Management Limited
Level 33, 360 Collins Street
Melbourne Vic 3000

Kerree Bezencon
Representative
Timbercorp Growers Group Citrus Committee

Antony Munro
Director
KordaMentha
Level 24, 333 Collins Street
Melbourne Vic 3000

APPENDIX

The following descriptions, as we understand it, are the assets available for sale for the Kangara Property.

KANGARA PROPERTY		
LAND DESCRIPTION	GENERAL NAME	AREA
CT 5097/564	Allotment 51	52.90
CT 5097/565	Allotment 52	50.97
CT 5097/566	Allotment 53	92.31
CT 5097/567	Allotment 54	113.60
CT 5131/62	Allotment 55	479.80
CT 5509/65	Allotment 282	20.23
CT 5509/66	Unknown	
CT 5509/68	Allotment 283	40.47
CT 5709/698	Allotment 102	
CT 5171/743	Allotment 9	598.14
CT 6018/804	Allotment 11	
CT 6018/805	Allotment 12	
CT 6018/806	Allotment 13	
CT 6018/807	Allotment 14	
WATER DESCRIPTION	OTHER DESCRIPTION	
Licence No. 827	Water Allocation No. SA827-1-10009; Water Resource Works Approval No. 172707; and Site Use Approval No. 172708	
CONSUMPTIVE POOL		
River Murray		

We request that you confirm that this is the available assets for us to acquire.