

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

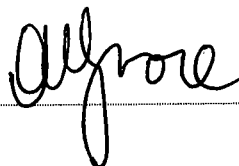
Prepared by:  
**ARNOLD BLOCH LEIBLER**  
Lawyers and Advisers  
Level 21  
333 Collins Street  
MELBOURNE 3000

Solicitor's Code: 54  
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Fax: 9229 9900  
Ref: 011572335  
(Leon Zwier - lzwier@abl.com.au)

This is the exhibit marked "MAK-9" 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-9"**

**Email from Chris Day to Jane Sheridan, with  
attachments, dated 29 October 2010**

Filed on behalf of the Plaintiffs  
**ARNOLD BLOCH LEIBLER**  
Lawyers and Advisers  
Level 21  
333 Collins Street  
Melbourne 3000

DX 38455 Melbourne  
Tel: 9229 9999  
Fax: 9229 9900  
Ref: 011572335  
(Leon Zwier)

MAK-9

**Meagan Grose**

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**From:** Jane Sheridan  
**Sent:** Thursday, 24 February 2011 2:50 PM  
**To:** Meagan Grose  
**Subject:** FW: Kangara Property  
**Attachments:** Document.pdf; Colour\_pdf120.pdf

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**From:** Chris Day [mailto:chris.day@fabal.com.au]  
**Sent:** Friday, 29 October 2010 5:23 PM  
**To:** Jane Sheridan  
**Subject:** RE: Kangara Property

Dear Jane

I don't intend to circulate this to create war and peace. However, I am attaching the letter from PwC that lead to all the issues re Sale of Citrus Deed on the day of the first meeting. The letter was addressed to Kerree and Chris Dundon (our COO and Secretary)

**Meeting(s):** The meetings have been adjourned in accordance with both the Corporations Law and the MIS constitutions twice, not once, and for a period each time of less than a month. Therefore we disagree with your review.

Further, FABAL's intention to become the RE of the 2 projects which cover some of Kangara property has not changed. Our interest in seeking to assist with ASC is conjunctual not a change of our intention. If this did not eventuate, we would continue as RE for the growers involved in around 70% of the property, not 100%. Corporatisation is only one option and the wind up is not a necessity. However, we need time to complete our review like we did with the Timbercorp Avocados. Costa is happy with work with us on this basis. We thought KM was as well. We are seeking to get PwC on side.

**Sale of Citrus Agreement – 2011 Financial Year 2004 Timbercorp Citrus Project, etc:** Note that it is PwC/Allens that bought up the agreement on 14/9 and they refer to both the agreement and the poison pill clauses – not us. Kerree had the agreement with her and explained to/reviewed with me what they were on about in the 2 principle clauses. If that is a breach so be it. I had the meeting adjourned because of those agreements and I have been trying to get a copy of them ever since.

If the SCA are confidential then they shouldn't be because they are seriously disadvantaging the grower. I have now requested a copy from KM, PwC/AA and Costa – none of which have been successful as yet.

Note that I am happy to work with all parties to have them continue – that is not inconsistent while we work out how to really help the growers.

**RE:** We are unable to find the places where we suggest that we are the RE.

**Court Case:** I attach a recent article of 3 July 2010 referring to a current action that is being run. It is not an MIS case but KM is involved. The point of our discussion in the letter was to try to resolve this without having lawyers earn all the money and the growers be left with nothing.

I hope this clarifies the issues in your letter and we do not seek to be confrontational. However, we do not need to create a slanging match with KM/ABL so this is addressed to you only. I am used to be threatened by lawyers on what they will do to me/us. As a lawyer, it only makes me more determined to avoid creating conflict.

If you want this turned into a legally reviewed letter, I will undertake this next week.

Kind regards

Chris

**Chris Day**  
Chief Executive Officer

Email: [chris.day@fabal.com.au](mailto:chris.day@fabal.com.au)  
Direct line: 08 8208 4020  
Mobile: 0418 552 200

Food And Beverage Australia Limited  
PO Box 719  
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P: **(08) 8208 4000** | F: **(08) 8208 4099**  
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**From:** Jane Sheridan [<mailto:JSheridan@abl.com.au>]  
**Sent:** Thursday, 28 October 2010 12:45 PM  
**To:** Chris Day  
**Cc:** Hinchin, Clint; Whittle, Matthew; [sbaillieu@ocfunds.com.au](mailto:sbaillieu@ocfunds.com.au); [kerree@siger.com.au](mailto:kerree@siger.com.au); Antony Munro; Bryan Webster; [michael.fung@au.pwc.com](mailto:michael.fung@au.pwc.com)  
**Subject:** Kangara Property

Chris,

Please see the attached letter.

Regards

Jane

**Jane Sheridan** | Partner

**Arnold Bloch Leibler** | Level 21, 333 Collins Street, Melbourne Victoria 3000  
T: +61 3 9229 9815 | F: + 61 3 9229 9944 | M: 0418 323 679  
[jsheridan@abl.com.au](mailto:jsheridan@abl.com.au) | [www.abl.com.au](http://www.abl.com.au)

Arnold Bloch Leibler acknowledges the traditional owners of country throughout Australia.

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**Date** 14 September 2010

ABN 47 702 595 758

**From** Clint Hinchin

Level 27  
530 Collins Street  
Melbourne VIC 3000  
Australia  
T +61 3 9614 1011  
F +61 3 9614 4661

**To** **Ms Kerree Bezencon**, Siger Super Services Pty Ltd,  
Healesville, Victoria

**Email** kerree@siger.com.au

Correspondence  
GPO Box 1776  
Melbourne VIC 3001  
Australia  
DX 30999 Melbourne

**Copy To** Mr Christopher Dundon, COO and Company Secretary,  
Food and Beverage Australia Limited, Unley South  
Australia

www.aar.com.au

[chris.dundon@fabal.com.au](mailto:chris.dundon@fabal.com.au); [admin@fabal.com.au](mailto:admin@fabal.com.au)

**Copy To** **Michelle Reid**, Senior Manager, Investment Manager &  
Super Funds, Australian Securities and Investments  
Commission

**Fax** (03) 9280 3444

**Copy To** **Jane Sheridan**, Partner, Arnold Bloch Leibler

**Email** JSheridan@abl.com.au

Confidential Email

Dear Kerree and Christopher

**Notice of meeting of Members of 2004 Timbercorp Citrus  
Project (ARSN 108 887 538) and 2005 Timbercorp Citrus  
Project (ARSN 114 091 299)**

Please see attached.

Attach

**Our Ref** CTSM:306250099

ctsm A0115532914v5 306250099 14.9.2010

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Singapore  
Sydney



14 September 2010

ABN 47 702 595 758

Ms Kerree Bezencon  
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Healesville VIC 3777

Mr Christopher Dundon  
Food and Beverage Australia  
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Unley SA 5061

Level 27  
530 Collins Street  
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Australia  
T +61 3 9614 1011  
F +61 3 9614 4661

By Email

By Email

Correspondence  
GPO Box 1776  
Melbourne VIC 3001  
Australia  
DX 30999 Melbourne

Dear Kerree and Christopher

www.aar.com.au

**Notice of meeting of Members of 2004 Timbercorp  
Citrus Project (ARSN 108 887 538) and 2005  
Timbercorp Citrus Project (ARSN 114 091 299)**

We act as legal advisers to Paul William Kirk and Michael Fung in their capacities as receivers and managers (**Receivers and Managers**) appointed to Align Funds Management Limited in its capacity as responsible entity of the Timbercorp Orchard Trust (ARSN 106 557 297) (Receivers and Managers Appointed) (**Align**).

It has come to our attention that certain members of the 2004 Timbercorp Citrus Project (ARSN 108 887 538) (**2004 Project**) and the 2005 Timbercorp Citrus Project (ARSN 114 091 299) (**2005 Project**) (together, **Projects**), have convened a meeting on Tuesday 14 September 2010 at 2.30pm to consider removing Timbercorp Securities Limited (ACN 092 311 469) (in Liquidation) in its capacity as responsible entity of the Projects (**TSL RE**) and appointing Food and Beverage Australia Limited (ACN 007 996 081) (**FABAL**) as responsible entity of the Projects (**RE**).

As you are aware, the 2005 Project was established on the properties called Kangara and Solora and the 2004 Project established only on Kangara. Solora was sold by the Receivers and Managers and the growers rights in respect of the assets the subject of the Sale Contract were extinguished effective from 9 April 2010. The Receivers and Managers are conducting a sale process for the Kangara property, which is currently well advanced. These steps have been undertaken consistently with "the defacto winding up" process that has been used for other Timbercorp projects under the supervision of the Supreme Court of Victoria.

We assume that you are aware of the RE obligations contained in all the Project documents that would be inherited by a new RE, including the following agreements:

- Sale of Citrus Agreement – 2011 Financial Year 2004 Timbercorp Citrus Project – Kangara;
- Sale of Citrus Agreement – 2011 Financial Year 2005 Timbercorp Citrus Project – Kangara;

Our Ref CTSM:306250099

ctsm A0115532914v5 306250099 14.9.2010

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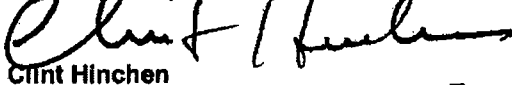
- Sale of Citrus Agreement – 2010 Financial Year 2004 Timbercorp Citrus Project – Kangara;
- Sale of Citrus Agreement – 2010 Financial Year 2005 Timbercorp Citrus Project – Kangara,

dated 16 July 2010 between TSL RE, Timbercorp Securities Limited (In Liquidation) ACN 092 311 469, Timbercorp Limited (In Liquidation) (ACN 055 185 067), Mark Anthony Korda and Leanne Kyle Chesser in their capacities as liquidators of each of the above entities, Align, the Receivers and Managers, CostaExchange Limited (ACN 002 687 961) (**Costa**) and AgriExchange Murtho Pty Ltd (ACN 093 583 049) (together, the **Sale of Citrus Agreements**).

The Sale of Citrus Agreements include provisions that are triggered in the event of a change of RE and these provisions may, in certain circumstances, require the replacement RE to pay the outstanding management costs and use of occupancy fees of Costa and the Receivers and Managers respectively. Despite their materiality, we note that there is no reference to the Sale of Citrus Agreements (and other Project documents) in the notice of meeting and would expect that the impact of a change of RE would be fully disclosed to growers at any meeting that is held to consider a change of RE.

Given our clients' interest as Receivers and Managers of Align, the land holding entity, we expect that you will provide us with a detailed account of today's meetings including voting procedures in respect of the resolutions and voting results so that the Receivers and Managers can consider their next steps.

Yours sincerely



Clint Hinchin

Partner

Clint.Hinchin@aar.com.au

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## Court seeks answers on sale discount

Leonie Wood  
July 3, 2010 - 3:00AM

Advertisement

TWO insolvency specialists, Mark Mentha and Mark Korda of KordaMentha, have been called to explain in court why they sold a property at a steep discount.

Mr Mentha, who initially answered questions about the sale during a liquidator's examination in 2008, is being sued in the Victorian Supreme Court for allegedly breaching his duty by selling the 16-hectare site where the former Bradmill Undare textile group operated for \$7 million.

Now Mr Korda and a colleague, Mark Ryan, will be called to a liquidator's examination in the Federal Court this month to explain what they know about how the sale was negotiated.

When it sold in April 2002 Mr Mentha was the receiver and manager appointed by the ANZ Bank to recover debts owed by the denim manufacturer.

He agreed to sell the business and land, owned by a subsidiary Redcastle Estate, to Melbourne businessman Colin DeLutis.

In 2007 Redcastle was put into liquidation by its shareholders, the Frazer family, and in 2008 the Redcastle liquidator, Wayne Lamb, filed a writ against Mr Mentha seeking damages.

Mr Lamb has alleged that Mr Mentha sold the land for \$7 million when it and the buildings had a market value of "not less than \$13.2 million".

In his defence filed in the Supreme Court, Mr Mentha denies wrongdoing, saying he acted honestly and in good faith.

He has told the court that at the time of the sale Mr DeLutis, the sole prospective buyer, had insisted he would not buy the denim business unless he could also buy the land. As well, the business was incurring large losses, and if the sale had fallen through and employees were made redundant it would have crystallised further liabilities of \$11 million, Mr Mentha said.

He told the 2008 examination that he was not involved in finalising the sale after April 24, 2002.

In the Federal Court yesterday, Justice Alan Goldberg cleared the way for Mr Lamb to ask questions of Mr Korda and Mr Ryan, saying the liquidator was "seeking to fill in the gap" about the sale negotiations. But he indicated the liquidator could not make it a "dress rehearsal" for the Supreme Court case.

*This story was found at: <http://www.brisbanetimes.com.au/business/court-seeks-answers-on-sale-discount-20100702-zu2d.html>*