

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

List D

No. S CI 2011 6777

BETWEEN

FENCEPORT PTY LTD (ACN 139 604 121) & ORS (according to the attached
Schedule)

Plaintiffs

and

CON MOSHOPOULOS & ORS (according to the attached Schedule)

Defendants

FIFTH AFFIDAVIT OF CELIA JANE ARMSTRONG

Date of document:

2 October 2012

Filed on behalf of:

the First, Second, Third, Fourth and Fifth Defendants

Prepared by:

Clarendon Lawyers

Tel: 03 8681 4400

Level 17, Rialto North Tower

Fax: 03 8681 4499

525 Collins Street

Solicitors Code: 101294

MELBOURNE VIC 3000

Ref: MJF:1000182

michael.fernon@clarendonlawyers.com.au

I, **CELIA JANE ARMSTRONG** of Level 17, Rialto North Tower, 525 Collins Street, Melbourne, make oath and say that:

- 1 I am an employee of the firm Clarendon Lawyers Pty Ltd, the solicitors for the First, Second, Third, Fourth and Fifth Defendants, being the Representative Growers in this proceeding. Subject to the supervision of my principal, Michael Fernon, I have the carriage of this matter on behalf of the Representative Growers and I am authorised to make this affidavit on their behalf.
- 2 Except where otherwise indicated, I make this affidavit from my own knowledge. Where I depose to matters from information or belief, I believe those matters to be true.
- 3 This is my fifth affidavit in connection with the application for approval of the Deed of Compromise. My earlier affidavits were headed and dated:
 - (a) "Affidavit of Celia Jane Armstrong" sworn on 30 August 2012;
 - (b) "Second Affidavit of Celia Jane Armstrong" sworn on 30 August 2012;
 - (c) "Third Affidavit of Celia Jane Armstrong" sworn on 19 September 2012; and
 - (d) "Fourth Affidavit of Celia Jane Armstrong" sworn on 25 September 2012.

When I refer to my earlier affidavits, I adopt the headings set out above. Except where otherwise stated, defined terms used in this affidavit have the meaning ascribed to them in my earlier affidavits.

Further correspondence with Growers

- 4 In paragraph 5 of the Third Affidavit of Celia Jane Armstrong I discuss the Grower Notification and Consultation Process and in the subsequent paragraphs I discuss the Communication Spreadsheets



provided by TSL (see paragraph 8 of the Third Affidavit of Celia Jane Armstrong), Escalated Queries and Comments (see paragraph 10 of the Third Affidavit of Celia Jane Armstrong) and Escalated Queries and Comments Call Sheet (see paragraph 12 of the Third Affidavit of Celia Jane Armstrong).

- 5 In paragraph 9 of the Third Affidavit of Celia Jane Armstrong I list the dates for which I received Communication Spreadsheets. The most recent date being 17 September 2012.
- 6 Since 17 September 2012 I have received further Communication Spreadsheets from Antony Munro of KordaMentha. I have received Communication Spreadsheets for 18 September, 19 September, 21 September and 24 to 26 September 2012 (inclusive) (**Further Communication Spreadsheets**).
- 7 I have read the Further Communication Spreadsheets and set out below an overview of all communications received from Growers as noted on the Further Communication Spreadsheets:
- (a) a total of thirteen (13) growers have made comments, questions and/or objections in relation to the Deed of Compromise. Some of the growers raised more than one comment, question and/or objection;
 - (b) three (3) growers requested more information about the Deed of Compromise in general;
 - (c) fourteen (14) growers made Escalated Queries or Comments (as addressed further in paragraph 13 below.
- 8 Ms Gleed of Clarendon Lawyers has updated the Escalated Queries and Comments Call Sheets from the Further Communication Spreadsheets (**Updated Escalated Queries and Comments Call Sheet**) and I have responded, or caused responses to be sent, to any Escalated Queries and Comments that required a response. These responses are recorded in the Updated Escalated Queries and Comments Call Sheet. Now produced and shown to me marked **confidential exhibit CJA-12** is a true copy of the Updated Escalated Queries and Comments Call Sheets together with copies of any related emails not already attached to confidential exhibit CJA-9 (being the Escalated Queries and Comments Call Sheets).
- 9 Exhibit CJA-12 is sealed. The Updated Escalated Queries and Comments Call Sheet contains personal information of growers and the Representative Growers will seek orders that CJA-12 remain confidential.
- 10 Paragraph 11 below includes the combined results of the Communication Spreadsheets and Further Communication Spreadsheets. Accordingly, it repeats some of the information contained in paragraph 15 of the Third Affidavit of Celia Jane Armstrong and serves as a single, comprehensive record of the results of the Grower Notification and Consultation Process in relation to this proceeding.
- 11 I have read the Communication Spreadsheets and Further Communication Spreadsheets and set out below an overview of all communications received from Growers as noted on the Communication Spreadsheets and Further Communication Spreadsheets:
- (a) a total of one hundred and fifty (150) growers have made comments, questions and/or objections in relation to the Deed of Compromise. Some of the growers raised more than one comment, question and/or objection;



- (b) seventy (70) growers requested the First Letter to Growers, Notice to Growers, Frequently Asked Questions, Bank Account Nomination Form and/or Direction to Pay be emailed or posted to them;
- (c) twenty-seven (27) growers requested information in relation to the particulars of their investments, such as how many lots they had invested in or which scheme they had invested in;
- (d) twenty-three (33) growers requested financial information, such as how much they were entitled to under the Deed of Compromises or how much TSL or TFL indebtedness they had;
- (e) thirty-seven (37) growers returned their Bank Account Nomination Form and/or their Direction to Pay to TSL;
- (f) sixteen (16) growers requested more information about the Deed of Compromise in general;
- (g) six (6) growers notified TSL of a change of address or change of contact details; and
- (h) twenty-five (25) growers made Escalated Queries or Comments (as addressed further in paragraph 13 below).

12 Paragraph 13 below includes the full results from the Updated Escalated Queries and Comments Call Sheet. Accordingly, it repeats some of the information contained in paragraph 16 of the Third Affidavit of Celia Jane Armstrong and serves as a single, comprehensive record of all of the Escalated Queries and Comments received in relation to this proceeding.

13 I have read the Updated Escalated Queries and Comments Call Sheets and set out below an overview of all communications received from Growers as noted on the Updated Communication Spreadsheets (paraphrasing):

- (a) On 14 August 2012 a grower emailed TSL requesting a "brief" from Clarendon Lawyers explaining the compromise. I replied to the grower's request by return email on 16 August 2012 summarising the compromise and the proceedings on foot. On 16 August 2012 I received a return email from the grower questioning their entitlement to water rights in relation to the 2002 olive project. On 16 August 2012 I responded to the grower's question by return email informing the grower that they did not own the water licences and that for the purposes of the compromise the amount offered is in satisfaction of any claim that growers have in relation to the water rights.
- (b) On 14 August 2012 a grower called TSL and commented that they did not think the compromise was worth accepting as 5% of the sale proceeds was not enough.
- (c) On 16 August 2012 a grower called TSL and commented that the amount received under the compromise was a pittance and that the grower would be prepared to pay a rudimentary sum to continue as a grower and to continue to receive harvest funds. I responded to the grower by return call on 20 August 2012. The grower outlined that they had received payments as recently as March 2012. We discussed the matters relevant to saving the scheme for the growers and I indicated to the grower that the window of opportunity to save the schemes had closed.



- (d) On 20 August 2012 a grower emailed TSL and commented that they are happy with the outcome reached in the compromise and want the compromise to proceed.
- (e) On 20 August 2012 a grower emailed TSL and commented that they had no objection to the proposed compromise arrangements.
- (f) On 20 August 2012 a grower called TSL and commented that they were very happy with the compromise.
- (g) On 20 August 2012 a grower emailed TSL and raised their concerns that unpaid management fees owed to Timbercorp should not be paid as they were incurred whilst Timbercorp was insolvent. I responded to the grower's concern on 21 August 2012 by calling the grower. During our conversation:
 - (i) we discussed the grower's concerns and thoughts generally;
 - (ii) the grower asked whether TSL would provide a receipt for any payment of the settlement amount.

On 21 August 2012 I emailed Jane Sheridan of Arnold Bloch Leibler about the grower's question regarding a receipt. On 22 August 2012 Jane Sheridan replied to my question by return email stating that the next statement the grower received from TFL or TSL would show the payment of any settlement money has been credited against any amount owing. Later that day I caused an email to be sent to the grower informing the grower that TSL would notify growers that their entitlement had been dealt with in accordance with the Deed of Compromise and informing the grower that they would need to seek their own taxation advice.

- (h) On 20 August 2012 a grower called TSL and asked if there was any opportunity to opt out of the compromise. The grower did not wish to have their call marked as escalated.
- (i) On 20 August 2012 a grower emailed TSL seeking a response to whether once the compromise is accepted whether that completely winds up Timbercorp. I responded to the grower's question by return email on 28 August 2012 and outlined to the grower that the simple answer was "no". The compromise relates only to the growers' (and other parties') claims to share in the proceeds of sale of the assets used to run the relevant schemes (including the land upon which the schemes were run). As for the winding up of the Timbercorp companies, I informed the grower that process is ongoing, however, I informed the grower further that Clarendon Lawyers could not speak to the winding up as we did not act for Timbercorp or its liquidators. I said to the grower that there may be some matters between Timbercorp and the growers outside the terms of the compromise which will be ongoing.
- (j) On 21 August 2012 a grower called TSL and commented that they were happy to receive something from the compromise.
- (k) On 12 September 2012 a grower emailed TSL and noted their objection to the Compromise. On 17 September 2012 I emailed the grower requesting whether the grower wished to maintain their objection and if so, whether they would like to make any additional points known to the



Court. On 17 September 2012, I received a return email from the grower, in which the grower responded that they would like to maintain their objection.

- (l) On 18 September 2012 a grower emailed TSL and asked how they could object to the compromise. TSL informed the grower that they were able to email their objection directly to TSL to be forwarded for escalation to Clarendon Lawyers. On the same day the grower emailed TSL again confirming that they object to the compromise and making the following comments:
 - (i) growers built up Timbercorp agricultural assets investing over 2 billion dollars;
 - (ii) the banks want growers to accept 0.8% of that value whilst wanting loan amounts paid back;
 - (iii) the banks are responsible for this debacle; and
 - (iv) these projects are viable and there should be great compensation for growers.
- (m) On 26 September 2012 a grower emailed TSL and commented:
 - (v) that the poor mugs that funded the investment are the ones that are left with the least;
 - (vi) the receivers will justify their obscene costs. Where was their skin in the game at any stage yet they have taken a fortune and will continue to fight with growers' money at full charge out rates until any funds are exhausted;
 - (vii) the same can be said for the banks;
 - (viii) where was the ASIC and the polities when this debacle was unfolding; and
 - (ix) where are the charges against the directors who allowed these schemes to run,
- (n) On 26 September 2012 a grower emailed TSL and commented:
 - (i) it took the grower a lot of effort, real effort, to raise the funds for this investment, let alone the thousands and thousands of dollars they had to find each year for maintenance fees; and
 - (ii) to the corporate jackasses it is just figures on a page. To the grower, it was sweat, it was pain, it was exhaustion, it was real and now they are told that effort is worth 5%. Really? The grower's blood, sweat and tears is worth 5%, while others shining a seat with their butt is worth 95%?!? What country am I in?.
- (o) On 26 September 2012 thirteen growers emailed TSL, forwarding an email from Kerree Bezencon to state that they object to the compromise.

- 14 On 18 September 2012 Jane Sheridan forwarded to me an email from a grower that was sent to TSL. The grower's question was directed to Clarendon Lawyers and attached an email that the grower had received from another grower encouraging the recipient to object to the compromise. The grower asked if the email they had received was related to the proceedings. By return email on the same day I informed the grower that the email had been sent to them by another grower who is involved in various grower groups which are not related to Clarendon Lawyers. I further informed the grower that the emailed they had received had not been sent or authorised by Clarendon Lawyers or the



Representative Growers an invited the grower to contact me to discuss the matter further. The grower has not contacted me again.

Advice

- 15 On 14 August 2012 Ms Kerree Bezencon requested a copy of the Advice on behalf of Siger Super Services Pty Ltd. I provided Ms Bezencon with the Advice on 17 August 2012 after she provided me with a signed copy of a deed of undertaking and acknowledgement pursuant to which she agreed to protect the confidentiality of and privilege in the Advice (**Undertaking**). Now produced and shown to me marked **CJA-13** is a true copy of the Undertaking signed by Ms Bezencon dated 16 August 2012.
- 16 On 1 October 2012 I caused a supplementary note from counsel (**Supplementary Note**) to be sent by email to the Representative Growers and any Grower who has been provided with a copy of the Advice. Now produced and shown to me marked **confidential exhibit CJA-14** is a true copy of the Supplementary Note. The Supplementary Note is privileged and the Representative Growers do not waive that privilege.
- 17 Exhibit CJA-14 is sealed and the Representative Growers will make an application for an order that it remain confidential.

Affidavits from the Representative Growers

- 18 I prepared and swore the Fourth Affidavit of Celia Jane Armstrong in response to the Affidavit of Kerree Anne Bezencon dated 18 September 2012 (**Ms Bezencon's Affidavit**) and filed in this proceeding. I have also asked each of the Representative Growers to provide a short affidavit in response to Ms Bezencon's Affidavit.
- 19 The Representative Growers in this proceeding are Con Moshopoulos (**Mr Moshopoulos**), Pauline Emma Hammer (**Ms Hammer**), David Sydney Butterfield (**Mr Butterfield**). Graham Goldenberg (**Mr Goldenberg**) and Shun King Li (**Mr Li**)

Ms Hammer, Mr Butterfield and Mr Goldenberg

- 20 On 1 October 2012, Ms Hammer, Mr Butterfield and Mr Goldenberg each swore an affidavit in this proceeding in response to Ms Bezencon's Affidavit. I arranged for their affidavits to be filed and served that same day.

Mr Moshopoulos

- 21 I am informed by Mr Moshopoulos that he is unable to swear an affidavit in response to Ms Bezencon's Affidavit before the hearing of the application for approval of the Deed of Compromise as he is overseas until 8 October 2012. Mr Moshopoulos also informed me that he:
- (a) received written and oral advice from counsel in relation to the compromise;
 - (b) gave instructions to accept the compromise at the meeting at Clarendon Lawyers on 20 July 2012;
 - (c) acted independently of anyone else in giving those instructions.



Mr Li

- 22 Ms Glead informs me that Mr Li is prepared to swear and affidavit in response to Ms Bezencon's Affidavit and that he has approved a draft of that affidavit, however, as at the time of swearing this affidavit, Mr Li has not sworn his affidavit. I will arrange for Mr Li's affidavit to be filed and served as soon as possible after it has been sworn.]

Costs of the Representative Growers

- 23 On 16 December 2012 the Honourable Justice Davies made orders in this proceeding (**Orders**). Paragraph 4 of the Orders require:

4. The Third and Fourth Plaintiffs (Liquidators) pay from the Net Boort Proceeds (as that term is defined in paragraph 7 of the orders made by the Honourable Justice Croft on 12 November 2009 in Supreme Court of Victoria Proceeding no 9998 of 2009) to Clarendon Lawyers (the solicitors for the Grower Defendants) the legal costs and disbursements incurred in this proceeding by the Grower Defendants on a solicitor and client basis pursuant to rule 63.32(2)(a) of the Supreme Court (General Civil Procedure) Rules 2005 (Vic) within 14 days of presentation to the Liquidators by Clarendon Lawyers of:

- (a) a tax invoice for those legal costs and disbursements in relation to this proceeding; or
(b) a bill of costs on a solicitor and client basis, prepared and certified by an appropriately qualified costs consultant, as agreed by the Liquidators and the Grower Defendants.*

Now produced and shown to me marked **CJA-15** is a true copy of the Orders of Davies J dated 16 December 2011.

- 24 TSL has agreed to pay the legal costs and disbursements of the Representative Growers in connection with the Deed of Compromise and the application for the approval of the Deed of Compromise (**Costs of the Compromise**). This agreement is described in clause 4(i) of the Deed of Compromise. The deed of Compromise is exhibit CJA-4 to the Second Affidavit of Celia Jane Armstrong and exhibit MAK-1 to the Affidavit of Mark Antony Korda dated 18 September 2012.
- 25 There are some outstanding legal fees and disbursements of and incidental to this proceeding which the Representative Growers intend to claim pursuant to paragraph 4 of the Orders and which are not Costs of the Compromise.
- 26 Ms Jenny Bogie, a former employee of Clarendon Lawyers, has, until recently, coordinated the preparation of the requisite bill of costs with the independent costs consultant agreed between the parties, Ms Judith Hedstrom. I am informed by Ms Bogie that Ms Hedstrom has been busy with other matters and has only recently informed Ms Bogie that she has capacity to prepare the requisite bill of costs.
- 27 On Friday 28 September 2012 I spoke with Ms Hedstrom on the telephone. Ms Hedstrom informed me that she would be able to prepare the requisite bill of costs by Friday, 5 October 2012 provided that I arranged for the necessary files to be delivered to her on Monday, 1 October 2012.



28 On 1 October 2012 I caused the necessary files to be sent to Ms Hedstrom.

SWORN by CELIA JANE ARMSTRONG)

at Melbourne in the State of Victoria)

this 2nd day of ~~September~~ ^{October} 2012)



Before me:.....



SARAH DORN

of Clarendon Lawyers Pty Ltd
Level 17, Rialto North Tower
525 Collins St Melbourne Victoria 3000
an Australian Legal Practitioner within the
meaning of the *Legal Profession Act 2004*

SARAH DORN

of Clarendon Lawyers Pty Ltd
Level 17, Rialto North Tower
525 Collins St, Melbourne Victoria 3000
an Australian Legal Practitioner within the
meaning of the *Legal Profession Act 2004*

SCHEDULE

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

BETWEEN

FENCEPORT PROPRIETARY LIMITED (ACN 139 604 121)

First Plaintiff

OLIVECORP LAND PTY LTD (IN LIQUIDATION) (ACN 090 141 512)

Second Plaintiff

MARK ANTHONY KORDA

(in his capacity as liquidator of Olivecorp Land Pty Ltd (in liquidation))

Third Plaintiff

MARK FRANCIS XAVIER MENTHA

(in his capacity as liquidator of Olivecorp Land Pty Ltd (in liquidation))

Fourth Plaintiff

CON MOSHOPOLOUS

**(in his capacity as a Grower in the 2000 Timbercorp Olive Project (Private Offer)
(Unregistered))**

First Defendant

PAULINE EMMA HAMMER

(in her capacity as a Grower in the 2001 Timbercorp Olive Project (ARSN 094 382 082))

Second Defendant

DAVID SYDNEY BUTTERFIELD

(in his capacity as a Grower in the 2002 Timbercorp Olive Project (ARSN 098 233 455))

Third Defendant

GRAHAM GOLDENBERG

(in his capacity as a Grower in the 2003 Timbercorp Olive Project (ARSN 104 648 473))

Fourth Defendant

SHUN KING LI

(in his capacity as a Grower in the 2004 Timbercorp Olive Project (ARSN 108 744 378))

Fifth Defendant

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

List D

No. S CI 2011 6777

BETWEEN

FENCEPORT PTY LTD (ACN 139 604 121) & ORS (according to the attached
Schedule)

Plaintiffs

and

CON MOSHOPOULOS & ORS (according to the attached Schedule)

Defendants

EXHIBIT NOTE

Date of document:

2 October 2012

Filed on behalf of:

the First, Second, Third, Fourth and Fifth Defendants

Prepared by:

Clarendon Lawyers
Level 17, Rialto North Tower
525 Collins Street
MELBOURNE VIC 3000

Tel: 03 8681 4400


Fax: 03 8681 4499

Solicitors Code: 101294

Ref: MJF:1000182

michael.fernon@clarendonlawyers.com.au

This is the exhibit marked "exhibit CJA-13" now produced and shown to **CELIA JANE ARMSTRONG** at the time of swearing her affidavit on 2 October 2012.



Before me:.....

SARAH DORN

of Clarendon Lawyers Pty Ltd
Level 17, Rialto North Tower
525 Collins St, Melbourne Victoria 3000
an Australian Legal Practitioner within the
meaning of the *Legal Profession Act 2004*

Exhibit CJA-13

**Deed of Undertaking and Acknowledgment signed
by Ms Bezencon dated 16 August 2012**

DEED OF UNDERTAKING AND ACKNOWLEDGEMENT

BY: Siger Super Services Pty Ltd ACN 005 811 781 ATF the Kereg Trust of 953 Don Road, Healesville, Victoria, 3777

(Grower)

BACKGROUND

- A The Grower is an investor in a Timbercorp Project and has requested a copy of the Advice.
- B The Grower has agreed to keep the Advice confidential and protect the privileged nature of the document in accordance with the terms of this deed.

IN CONSIDERATION OF receiving the Advice, the Grower provides the acknowledgments and undertakings contained in this deed.

1 Definitions

In this deed the following definitions apply:

Timbercorp Projects mean the following projects, in one or some of which the Grower invested:

- (a) 2001 Timbercorp Almond Project ARSN 095 649 746;
- (b) 2002 Timbercorp Almond Project (Private Offer No 1);
- (c) 2002 Timbercorp Almond Project ARSN 099 611 935;
- (d) 2003 Timbercorp Almond Project ARSN 103 197 299;
- (e) 2004 Timbercorp Almond Project ARSN 108 336 670;
- (f) 2005 Timbercorp Almond Project ARSN 112 935 092;
- (g) 2006 Timbercorp Almond Project ARSN 118 387 974;
- (h) 2007 Timbercorp Almond Project ARSN 122 511 040;
- (i) 2000 Timbercorp Olive Project (Private Offer) (Unregistered);
- (j) 2001 Timbercorp Olive Project ARSN 094 382 082;
- (k) 2002 Timbercorp Olive Project ARSN 098 233 455;
- (l) 2003 Timbercorp Olive Project ARSN 104 648 473;
- (m) 2004 Timbercorp Olive Project ARSN 108 744 378;
- (n) 2006 Timbercorp Olive Project ARSN 119 182 179;
- (o) 2007 Timbercorp Olive Project ARSN 123 155 715;
- (p) 2008 Timbercorp Olive Project ARSN 129 307 722; and
- (q) 2005 Timbercorp Citrus Project ARSN 114 091 299.

Advice means the written advice prepared by the barristers for the Representative Growers in respect of the proposed compromise of the Timbercorp Rights Proceedings.

Representative Growers means the investor growers appointed by the Supreme Court to represent the interests of all of the investor growers, including the Grower, in the Timbercorp Projects for the purposes of the Timbercorp Rights Proceedings.

Timbercorp Rights Proceedings mean the following proceedings relating to the distribution of the proceeds of sale of the assets and land used in connection with the Timbercorp Projects:

- (a) Almond Land Rights Appeal Proceeding – Supreme Court of Victoria Court of Appeal Proceeding No S APCI 2011 0103;

- (b) Boundary Bend Rights Proceeding - Supreme Court of Victoria Proceeding No S CI 2010 1354
- (c) Fenceport Rights Proceeding - Supreme Court of Victoria Proceeding No S CI 2011 6777;
- (d) Liparoo and Yungera Rights Proceeding - Supreme Court of Victoria Proceeding No S CI 2011 6604; and
- (e) Solara Rights Proceeding - Supreme Court of Victoria Proceeding No S CI 2011 6606.

2 Acknowledgment

The Grower acknowledges and confirms that the Advice is:

- (a) confidential;
- (b) the subject of legal professional privilege in favour of the Representative Growers; and
- (c) the subject of common interest privilege in favour of the Representative Growers and the growers in the Timbercorp Projects (including the Grower).

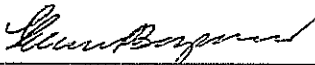
3 Undertaking

The Grower undertakes not to:

- (a) disclose the Advice or the part of the Advice to any person who does not share the same confidentiality obligations or privilege in relation to the Advice; or
- (b) deal with the Advice in any way whatsoever that may be inconsistent with maintaining the confidentiality of or privilege in relation to the Advice.

EXECUTED AS A DEED ON THE *16th* day of August 2012:

EXECUTED SIGER SUPER SERVICES
PTY LTD ACN 005 811 781 ATF THE
KEREG TRUST in accordance with the
Corporations Act 2001 by being signed by
the following officers:



Kerree Bezencon - director



Regis Edmond Bezencon - director

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

List D

No. S CI 2011 6777

BETWEEN

FENCEPORT PTY LTD (ACN 139 604 121) & ORS (according to the attached
Schedule)

Plaintiffs

and

CON MOSHOPOULOS & ORS (according to the attached Schedule)

Defendants

EXHIBIT NOTE

Date of document:	2 October 2012
Filed on behalf of:	the First, Second, Third, Fourth and Fifth Defendants
Prepared by:	
Clarendon Lawyers	Tel: 03 8681 4400
Level 17, Rialto North Tower	Fax: 03 8681 4499
525 Collins Street	Solicitors Code: 101294
MELBOURNE VIC 3000	Ref: MJF:1000182
	michael.fernon@clarendonlawyers.com.au

This is the exhibit marked "exhibit CJA-15" now produced and shown to **CELIA JANE ARMSTRONG** at the time of swearing her affidavit on 2 October 2012.



Before me:.....

SARAH DORN
of Clarendon Lawyers Pty Ltd
Level 17, Rialto North Tower
525 Collins St, Melbourne Victoria 3000
an Australian Legal Practitioner within the
meaning of the *Legal Profession Act 2004*

Exhibit CJA-15

Orders of Davies J dated 16 December 2011

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

LIST D
S CI 2011 06777

IN THE MATTER OF an application by FENCEPORT PORT PROPRIETARY LIMITED (ACN 139 604 121), OLIVECORP LAND PTY LTD (In Liquidation) (ACN 090 141 512), MARK ANTHONY KORDA (in his capacity as liquidator of OLIVECORP LAND PTY LTD (In Liquidation); and MARK FRANCIS XAVIER
For declarations as to rights to money held on trust

FENCEPORT PROPRIETARY LIMITED (ACN 139 604 121)
& ORS (according to the attached Schedule)

Plaintiffs

GENERAL FORM OF ORDER

JUDGE OF THE COURT:	The Honourable Justice Davies
DATE MADE:	16 December 2011
ORIGINATING PROCESS:	Originating Motion
HOW OBTAINED:	On the directions hearing of the Originating Motion filed 13 December 2011
ATTENDANCE:	Dr O. Bigos of Counsel for the Plaintiffs Mr G. Bigmore, one of Her Majesty's Counsel with Mr S. Hopper of Counsel for Ms Pauline Emma Hammer and Messrs Con Moshopolous, David Sydney Butterfield, Graham Goldenberg and Shun King Li
OTHER MATTERS:	In respect of paragraph 4 of this Order, the Plaintiffs reserve their rights to: (i) review the legal costs and disbursements incurred by the Grower Defendants (as that term is defined in paragraph 3 of this Order) in this proceeding; (ii) form a view about the reasonableness of those legal costs and disbursements; and (iii) challenge any such legal costs and disbursements which the Plaintiffs regard as not being reasonably incurred.



THE COURT ORDERS THAT:

1. Pursuant to Rule 45.05 of the *Supreme Court (General Civil Procedure) Rules 2005* (Vic) the requirements of Rules 5.03(1) and 8.02 are dispensed with.
2. Pursuant to Rule 16.01(2) of the *Supreme Court (General Civil Procedure) Rules 2005* (Vic):
 - (a) Con Moshopolous is appointed as representative of the Growers in the 2000 Timbercorp Olive Project (Private Offer) (Unregistered);
 - (b) Pauline Emma Hammer is appointed as representative of the Growers in the 2001 Timbercorp Olive Project (ARSN 094 383 082);
 - (c) David Sydney Butterfield is appointed as representative of the Growers in the 2002 Timbercorp Olive Project (ARSN 098 233 455);
 - (d) Graham Goldenberg is appointed as representative of the Growers in the 2003 Timbercorp Olive Project (ARSN 104 648 473); and
 - (e) Shun King Li is appointed as representative of the Growers in the 2004 Timbercorp Olive Project (ARSN 108 744 378).
3. Pursuant to Rules 9.02 and/or 9.06(b) of the *Supreme Court (General Civil Procedure) Rules 2005* (Vic), the five persons appointed pursuant to paragraph 2, above, are joined as the First, Second, Third, Fourth, and Fifth Defendants (**Grower Defendants**) respectively in this proceeding.
4. The Third and Fourth Plaintiffs (**Liquidators**) pay from the Net Boort Proceeds (as that term is defined in paragraph 7 of the orders made by the Honourable Justice Croft on 12 November 2009 in Supreme Court of Victoria proceeding no. 9998 of 2009) to Clarendon Lawyers (the solicitors for the Grower Defendants) the legal costs and disbursements incurred in this proceeding by the Grower Defendants on a solicitor and client basis pursuant to Rule 63.32(2)(a) of the *Supreme Court (General Civil Procedure) Rules 2005* (Vic) within 14 days of presentation to the Liquidators by Clarendon Lawyers of:
 - (a) a tax invoice for those legal costs and disbursements in relation to this proceeding; or
 - (b) a bill of costs on a solicitor and client basis prepared and certified by an appropriately qualified costs consultant, as agreed by the Liquidators and the Grower Defendants.
5. Pursuant to Rule 45.05 of the *Supreme Court (General Civil Procedure) Rules 2005* (Vic) the Plaintiffs have leave to proceed by originating motion in Form 5C.
6. The Plaintiffs are granted leave to file and serve an amended originating motion on the Defendants on or before 4.00pm on 20 December 2011:



- (a) that conforms with Form 5C;
 - (b) that lists the Grower Defendants as the First, Second, Third, Fourth, and Fifth Defendants in this proceeding;
 - (c) seeking a declaration as to what (if any) rights the Growers represented by the Grower Defendants have to the net sale proceeds held on trust by the First Defendant pursuant to paragraph 7 of the orders of the Honourable Justice Croft on 12 November 2009 in Supreme Court of Victoria proceeding no. 9998 of 2009; and
 - (d) amending paragraph 4 of the Originating Motion to read, "A declaration as to how the Net Boort Proceeds should be distributed between the First Plaintiff, the Second Plaintiff, and the Growers represented by the First, Second, Third, Fourth and Fifth Defendants."
7. Paragraph 11 of the orders made by the Honourable Justice Croft in Supreme Court proceeding no. 9998 of 2009 (confidentiality order) is discharged in relation to exhibit MAK-18 to the affidavit of Mark Anthony Korda filed on 10 November 2009 in that proceeding.
8. The proceeding is listed for further directions at 10.00am on 24 February 2012.
9. Costs otherwise be reserved.

DATE AUTHENTICATED: 6 January 2012

KK060112



SCHEDULE OF PARTIES

S CI 2011 06777

FENCEPORT PROPRIETARY LIMITED (ACN 139 604 121)

First Plaintiff

**OLIVECORP LAND PTY LTD (IN LIQUIDATION)
(ACN 090 141 512)**

Second Plaintiff

**MARK ANTHONY KORDA
(in his capacity as Liquidator of Olivecorp Land Pty Ltd
(In Liquidation))**

Third Plaintiff

**MARK FRANCIS XAVIER
(in his capacity as Liquidator of Olivecorp Land Pty Ltd
(In Liquidation))**

Fourth Plaintiff

