

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

LIST B

S CI 2013 01478

BETWEEN

THE TRUST COMPANY (NOMINEES) LIMITED (ACN 000 154 441)

Plaintiff

and

MICHAEL FUNG IN HIS CAPACITY AS RECEIVER AND MANAGER OF ALIGN FUNDS
MANAGEMENT LIMITED (RECEIVER AND MANAGER APPOINTED) (ACN 105 684 231) IN
ITS CAPACITY AS THE RESPONSIBLE ENTITY OF THE TIMBERCORP ORCHARD TRUST
AND ORS

Defendants

FIFTH AFFIDAVIT OF CLINTON CHARLES HINCEN
(KANGARA RIGHTS PROCEEDING)

Date of document: 1 May 2014
Filed on behalf of: The plaintiff
Prepared by:


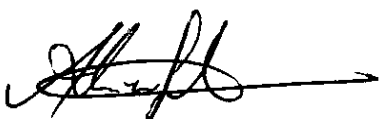
Allens
Lawyers
101 Collins Street
Melbourne VIC 3000

Solicitor code: 21455
DX 30999 Melbourne
Tel 9614 1011 Fax 9614 4661
Ref CCHM:120338387
(Clint.Hinchen@allens.com.au)

I, **CLINTON CHARLES HINCEN** of Allens, 101 Collins Street, Melbourne, in the State of
Victoria, Lawyer, SAY ON OATH that:

1 I am a solicitor and a partner in the firm Allens. I have the care and conduct of this
proceeding (the ***Kangara Rights Proceeding***) on behalf of the plaintiff, The Trust
Company (Nominees) Limited (***The Trust Company***). I am authorised to make this
affidavit on behalf of The Trust Company.

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 I make this affidavit in connection with The Trust Company's application for approval of the compromise of the Kangara Rights Proceeding reached between the parties to this proceeding.

Correspondence with Ms Kerree Bezencon on behalf of the TGG Citrus Committee

- 4 On 11 April 2014, I was copied into an email sent by Ms Alicia Salvo of Allens to the representatives of the parties and the liquidators of Timbercorp Securities Limited (in liquidation) (*TSL*) and Ms Bezencon, attaching a copy of the authenticated orders of Justice Judd made on 21 March 2014 in respect of this proceeding. On 14 April 2014, Ms Bezencon, on behalf of the TGG Citrus Committee, replied to all recipients of that email (including me) and stated:

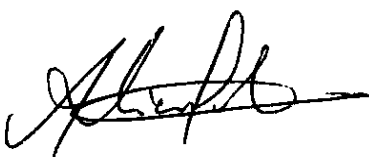
Dear All,

we are seeking to have some representation and were not consulted on this time schedule. Forgive my lack of knowledge on the process. I will endeavour to have a proper response as soon as possible after awaiting response from liquidators.

Now produced and shown to me and marked '**Exhibit CCH-32**' is a true copy of an email chain between Allens and Ms Bezencon (including others) between 11 April 2014 and 28 April 2014, which includes this email from Ms Bezencon dated 14 April 2014.

- 5 At approximately 3.30pm on 15 April 2014, Ms Jane Sheridan of Arnold Bloch Leibler, solicitors for the liquidators of *TSL*, sent an email to me and the other parties forwarding a chain of correspondence between Ms Bezencon and Mr Bryan Webster of KordaMentha. Ms Sheridan's covering email noted that the email chain which followed explained what Ms Bezencon was seeking from the liquidators. From my review of the email chain, I understand that:

- (a) Ms Bezencon requested that the liquidators provide funding to cover the TGG Citrus Committee's legal costs to appear at the hearing of the approval application; and




- (b) Mr Webster's response confirmed, among other things, that TSL is not a party to the proceeding and that it is for the parties to the proceeding to determine whether they wish to pay the costs incurred to have someone appear as a contradictor.

Now produced and shown to me and marked '**Exhibit CCH-33**' is a true copy of the email from Ms Sheridan dated 15 April 2014, forwarding the chain of correspondence between Ms Bezencon and the liquidators of TSL.

- 6 At approximately 4.46pm on 15 April 2014, Ms Bezencon sent a further email on behalf of the TGG Citrus Committee to me, the other parties to the proceeding and the liquidators of TSL which stated, among other things, that 'monies should be provided for the role of contradictor and coverage of the legal counsel costs to represent us' at the hearing scheduled for 19 May 2014 (**Funding Request**). A copy of this email forms part of the email chain at Exhibit CCH-32.
- 7 On 15 April 2014, I was copied into an email sent by Mr Yu-chiao Hsueh of M+K Lawyers, solicitors for the second and third defendants, to Ms Bezencon at approximately 5.28pm. The email replied to the Funding Request and stated, among other things, that:
- (a) as the respective parties' rights and interest to the Kangara sale proceeds remain in dispute, a Court order is necessary for Ms Bezencon's costs to be paid out of the fund and, accordingly, Ms Bezencon would need to make an application to the Court for such orders as a first step; and
- (b) the second and third defendants would neither consent to nor oppose such an application.

Now produced and shown to me and marked '**Exhibit CCH-34**' is a true copy of an email chain between various parties and Ms Bezencon (including others) between 11 April 2014 and 16 April 2014, including this email from Mr Hsueh dated 15 April 2014.



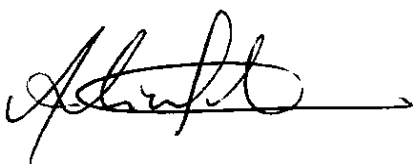
8 On 16 April 2014, I was copied into an email sent by Ms Karli Cibich of Norton Rose Fulbright Australia, solicitors for the first defendant, to Ms Bezencon. The email replied to the Funding Request and stated, among other things, that:

- (a) the first defendant is mindful of the need to preserve the funds under his control and that it is a matter for the Court to decide if Ms Bezencon is appointed as a contradictor; and
- (b) the first defendant would not oppose or consent to any application made by Ms Bezencon to be appointed as a contradictor or to have her legal costs of doing so paid out of the funds.

A copy of this email forms part of the email chain at Exhibit CCH-34.

9 On 16 April 2014, I was copied into an email sent by Ms Salvo at my request attaching a letter to Ms Bezencon which responded to the Funding Request and Ms Bezencon's comment in her email dated 14 April 2014 (Exhibit CCH-32) that she was not consulted on the time schedule for the proceeding. The letter confirmed that The Trust Company would oppose any application by the TGG Citrus Committee for its legal costs to be paid out of the net sale proceeds held on trust by the first defendant (**Fund**) and raised the following matters, among others, in support of its position:

- (a) the Court made orders on 19 July 2013 for the legal costs of the representative growers to be paid out of the Fund. As the role of the representative growers is to consider the interests of all growers whom they represent, The Trust Company considers that it would be inappropriate for an additional party's costs (whether acting as a second representative party or as a lone contradictor) to be borne out of the Fund, especially in circumstances where there is already a significant shortfall in the balance of the Fund compared to the debt owed to The Trust Company as secured creditor; and



- (b) the Trust Company supports Ms Bezencon's right to appear in the proceeding or to make submissions or advance relevant evidence and considers Ms Bezencon to be effective contradictor based on her involvement and experience in previous related matters in the Supreme Court and her appearance in this proceeding on 19 July 2013; and
- (c) in accordance with paragraph 10 of the orders made on 19 July 2013 in this proceeding, Ms Bezencon was served with copies of all documents filed in the proceeding, and accordingly, had been provided with the opportunity since that date to make submissions or advance evidence to the Court or to M&K Lawyers as she considered relevant (but that we understood Ms Bezencon had chosen not to engage in that process to date).

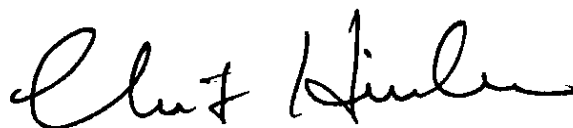
Now produced and shown to me and marked 'Exhibit CCH-35' is a true copy of the email attaching the letter to Ms Bezencon dated 16 April 2014.

- 10 On 25 April 2014, Ms Bezencon sent me a further email in response to the letter which, among other things, requested that her correspondence be placed before the Court. On 28 April 2014, I was copied into an email sent by Ms Salvo at my request to Ms Bezencon, confirming, among other things, that the chain of correspondence would be exhibited to a further affidavit to be filed on behalf of The Trust Company. Copies of Ms Bezencon's email dated 25 April 2014 and Ms Salvo's response dated 28 April 2014, form part of the email chain at Exhibit CCH-32.


SWORN by Clinton Charles Hinchin at

Melbourne in the State of Victoria this

1st day of May 2014



Before me



ALICIA SALVO
of 101 Collins Street, Melbourne
Victoria 3000
An Australian Legal Practitioner
within the meaning of the
Legal Profession Act 2004

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

List B

S CI 2013 01478

BETWEEN

THE TRUST COMPANY (NOMINEES) LIMITED (ACN 000 154 441)

Plaintiff

and

MICHAEL FUNG IN HIS CAPACITY AS RECEIVER AND MANAGER OF ALIGN FUNDS
MANAGEMENT LIMITED (RECEIVER AND MANAGER APPOINTED) (ACN 105 684 231) IN
ITS CAPACITY AS THE RESPONSIBLE ENTITY OF THE TIMBERCORP ORCHARD TRUST
AND ORS (ACCORDING TO THE SCHEDULE ATTACHED)

Defendants

CERTIFICATE IDENTIFYING EXHIBIT

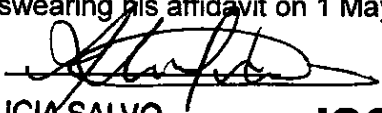
Date of document: 1 May 2014
Filed on behalf of: The plaintiff
Prepared by:

Allens
Lawyers
101 Collins Street
Melbourne VIC 3000

Solicitor code: 21455
DX 30999 Melbourne
Tel 9614 1011 Fax 9614 4661
Ref CCHM:120338387
(Clint.Hinchen@allens.com.au)

This is the **Exhibit** marked '**CCH-32**' now produced and shown to **Clinton Charles Hinchen** at the time of swearing his affidavit on 1 May 2014.

Before me


ALICIA SALVO
of 101 Collins Street, Melbourne
Victoria 3000
An Australian Legal Practitioner
within the meaning of the
Legal Profession Act 2004

**'CCH-32': Email chain between
Allens and Kerree Bezencon
between 11 April 2014 and 28
April 2014**

Bland, Tom

From: Salvo, Alicia
Sent: Monday, 28 April 2014 5:23 PM
To: Kerree Bezencon
Cc: JChang@abl.com.au; nick@nickstretchlegal.com.au; 'Jane Sheridan'; 'David Porter'; 'Karli Cibich'; 'Michael Fernon'; 'Yu-chiao Hsueh'; nick@nickstretchlegal.com.au; Hinchin, Clint; Adams, Elyse
Subject: RE: Consent orders - Proceeding Nos SCI 01477 2013 and SCI 01478 2013 - Bella Vista Rights Proceeding and Kangara Rights Proceeding

Dear Kerree

Thank you for your email.

Our client does not propose to respond to the assertions made in your email given its position as set out in our letter to you dated 16 April 2014. For the record, however, the allegation made in the fifth bullet point below is firmly refuted.

We confirm that we will exhibit this chain of correspondence to a further affidavit to be filed on behalf of our client in the Kangara Rights Proceeding, and which will be served on you in due course.

Regards

Alicia Salvo
Senior Associate
Allens

Allens > < Linklaters

DL +61 3 9613 8504
M +61 414 151 838
101 Collins Street
Melbourne VIC 3000 Australia
www.allens.com.au

From: Kerree Bezencon [mailto:kerree@siger.com.au]
Sent: Friday, 25 April 2014 3:13 PM
To: Hinchin, Clint
Cc: Adams, Elyse; Hinchin, Clint; JChang@abl.com.au; nick@nickstretchlegal.com.au; 'Jane Sheridan'; 'David Porter'; 'Karli Cibich'; 'Michael Fernon'; 'Yu-chiao Hsueh'; Salvo, Alicia; 'Rex Booker'; nick@nickstretchlegal.com.au
Subject: RE: Consent orders - Proceeding Nos SCI 01477 2013 and SCI 01478 2013 - Bella Vista Rights Proceeding and Kangara Rights Proceeding

Dear Clint,

to Clarify :

- I have on record 330 growers in the list for 04 & 05 growers and maintain that in response I represent the views of numerous growers that do not agree with the Bugdens
- Being unpaid and not being a lawyer puts me at a severe disadvantage and you know it - just because I attend court does not make me a lawyer - it's absurd to suggest it. Arguably, just because you've lodged tax returns for 35/ 40 years doesn't then make you an accountant, no matter what you might believe.
- Whilst some emails have been received, other notifications have not - therefore notification was not timely and my inclusion has been limited. My protest was notified to you as well as M&K - I have been responsive - contrary to your comments
- Your client would certainly rather have me silenced or so disadvantaged, to enable as much as possible monies to be preserved, especially if no opposition occurs. Silencing any opposition benefits your client but not growers per se and you are therefore biased in your argument

- This is yet another abuse of your position against a weaker unequal and unrepresented person, using threats of legal action/opposition to get your way and stifle opposition. (You've done the same before employing threats and intimidation, just as you did when we voted (86% and 76%) to change the RE and you used legal threats against that RE and on other occasions.)
- To quote from your letter, Justice Judd at para11, wanted to ensure legal costs are minimized - but he did not state it should be to the point that it eliminates a contradictor. On the contrary, he emphasized that costs should be minimized "as best it can", but at the same time as ensuring having an "effective representation on behalf of growers with an "effective contradictor" on all relevant issues."
- This can't be done in a vacuum, without resources. You need someone to appear, put some arguments. I/TGG Committee do not have resources. So, by opposing any funding, you've very effectively eliminated any "contradictor".
- Justice can never be served where you stifle opposition by eliminating the obvious potential contradictor. And really - am I such a threat? I doubt it. It does prove the point to me that you are driven to winning - and will use any unfair means to disadvantage a dissenting party.
- You do make the point aptly by your response, that one buys justice - it belongs to those with money. Sleep well.

With disgust,

Kerree Bezencon
TGG Citrus Committee

p.s. You misquote Justice Judd (para13) - he did not want 2 law firms, one for me as "1 representative grower" and another for the other "representative grower" - he wanted one only. **He did not say he didn't want a contradictor, as you imply.**

p.ps. Please include this in court documents, Yu -Chiao

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

PO Box 1147, Healesville, Vic, 3777
Tel 03 59 626 097, Fax 03 59 626 086
Email : kerree@siger.com.au

From: Salvo, Alicia [<mailto:Alicia.Salvo@allens.com.au>]

Sent: Wednesday, 16 April 2014 6:08 PM

To: 'Kerree Bezencon'

Cc: Hinchin, Clint; Adams, Elyse; nick@nickstretchlegal.com.au; 'David Porter'; 'Karli Cibich'; 'Michael Fernon'; 'Yu-chiao Hsueh'; 'Jane Sheridan'; jchang@abl.com.au

Subject: RE: Consent orders - Proceeding Nos SCI 01477 2013 and SCI 01478 2013 - Bella Vista Rights Proceeding and Kangara Rights Proceeding

Dear Ms Bezencon

We refer you to the attached correspondence.

Kind regards

Alicia Salvo
Senior Associate

Allens

Allens > < Linklaters

DL +61 3 9613 8504
M +61 414 151 838
101 Collins Street
Melbourne VIC 3000 Australia
www.allens.com.au

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

Sent: Tuesday, 15 April 2014 4:46 PM

To: Salvo, Alicia; 'David Porter'; 'Karli Cibich'; 'Michael Fernon'; 'Yu-chiao Hsueh'; 'Jane Sheridan'; JChang@abl.com.au

Cc: Hinchin, Clint; Adams, Elyse; nick@nickstretchlegal.com.au

Subject: RE: Consent orders - Proceeding Nos SCI 01477 2013 and SCI 01478 2013 - Bella Vista Rights Proceeding and Kangara Rights Proceeding

Dear All,

I note that there is an upcoming court case scheduled for the 19th May in regard to the allocation of proceeds from the Kangara citrus sale.

Clarendon's/nw McPherson & Kelly (M&K) represent 2 growers in this case. We however represent some 330 growers.

As there is a deal agreed between M&K's growers and Debentureholders, it means that there will be no effective "contradictor" at all, at court. Justice Judd had very much welcomed having a contradictor in the previous case as you know.

We therefore request from all parties that monies should be provided for the role of contradictor and coverage of the legal counsel costs to represent us. We have a firm, Nick Stretch Legal, ready to act. Please respond by COB Wednesday 15th, so that we may get them to prepare arguments in time.

Regards

Kerree Bezencon
Chair for TGG Citrus Inc.

Kerree Bezencon

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

PO Box 1147, Healesville, Vic, 3777
Tel 03 59 626 097, Fax 03 59 626 086
Email : kerree@siger.com.au

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

Sent: Monday, 14 April 2014 10:04 PM

To: 'Salvo, Alicia'; 'David Porter'; 'Karli Cibich'; 'Michael Fernon'; 'Yu-chiao Hsueh'; 'Jane Sheridan'; 'Jing Chang' <JChang@abl.com.au> (<JChang@abl.com.au>)

Cc: 'Hinchin, Clint'; 'Adams, Elyse'

Subject: RE: Consent orders - Proceeding Nos SCI 01477 2013 and SCI 01478 2013 - Bella Vista Rights Proceeding and Kangara Rights Proceeding

Dear All,

we are seeking to have some representation and were not consulted on this time schedule. Forgive my lack of knowledge on the process. I will endeavour to have a proper response as soon as possible after awaiting response from liquidators.

Kerree Bezencon
For Timbercorp Citrus Growers Inc

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

PO Box 1147, Healesville, Vic, 3777
Tel 03 59 626 097, Fax 03 59 626 086
Email : kerree@siger.com.au

From: Salvo, Alicia [<mailto:Alicia.Salvo@allens.com.au>]
Sent: Friday, 11 April 2014 2:30 PM
To: David Porter; Karli Cibich; Michael Fernon; Yu-chiao Hsueh; Jane Sheridan; Jing Chang <JChang@abl.com.au> (JChang@abl.com.au); Kerree Bezencon
Cc: Hinchin, Clint; Adams, Elyse
Subject: FW: Consent orders - Proceeding Nos SCI 01477 2013 and SCI 01478 2013 - Bella Vista Rights Proceeding and Kangara Rights Proceeding

Dear all

We refer to the email below from Justice Judd's associate and attach for your reference the authenticated orders made on 21 March 2014 in respect of the Bella Vista and Kangara Rights Proceeding.

Could the parties please arrange for the orders to be posted on the various websites, as outlined in the orders.

Regards

Alicia Salvo
Senior Associate
Allens

Allens > < Linklaters

DL +61 3 9613 8504
M +61 414 151 838
101 Collins Street
Melbourne VIC 3000 Australia
www.allens.com.au

From: Tully.Fletcher@supremecourt.vic.gov.au [<mailto:Tully.Fletcher@supremecourt.vic.gov.au>] **On Behalf Of** juddj.associate@supremecourt.vic.gov.au
Sent: Friday, 11 April 2014 1:01 PM
To: Adams, Elyse
Cc: Salvo, Alicia; Hinchin, Clint; juddj.associate@supremecourt.vic.gov.au
Subject: RE: Consent orders - Proceeding Nos SCI 01477 2013 and SCI 01478 2013 - Bella Vista Rights Proceeding and Kangara Rights Proceeding

Dear Practitioners,

I refer to the above proceedings.

Please find attached the authenticated Orders of 21 March.

Kind regards,

Tully Fletcher
Associate to the Honourable Justice Judd

Supreme Court of Victoria
210 William Street
Melbourne Vic 3000
Telephone: +61 3 9603 6128
Fax: +61 3 9670 8408
Email: juddi.associate@supremecourt.vic.gov.au

NOTE: Practitioners are referred to paragraph 5 of Practice Note 10 of 2011. Any correspondence with associates must be sent simultaneously to all other parties and must be confined to uncontroversial matters. Telephone communications must be confined to administrative and routine matters. Requests for legal or procedural advice will not be answered.

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<http://www.allens.com.au/experts>

**IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
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THE TRUST COMPANY (NOMINEES) LIMITED (ACN 000 154 441)

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**MICHAEL FUNG IN HIS CAPACITY AS RECEIVER AND MANAGER OF ALIGN FUNDS
MANAGEMENT LIMITED (RECEIVER AND MANAGER APPOINTED) (ACN 105 684 231) IN
ITS CAPACITY AS THE RESPONSIBLE ENTITY OF THE TIMBERCORP ORCHARD TRUST
AND ORS (ACCORDING TO THE SCHEDULE ATTACHED)**

Defendants

CERTIFICATE IDENTIFYING EXHIBIT

Date of document: 1 May 2014

Filed on behalf of: The plaintiff

Prepared by:

Allens

Lawyers

101 Collins Street

Melbourne VIC 3000

Solicitor code: 21455

DX 30999 Melbourne

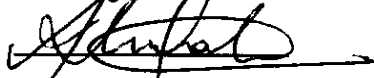
Tel 9614 1011 Fax 9614 4661

Ref CCHM:120338387

(Clint.Hinchen@allens.com.au)

This is the **Exhibit** marked '**CCH-33**' now produced and shown to **Clinton Charles Hinchen** at the time of swearing his affidavit on 1 May 2014.

Before me



ALICIA SALVO
of 101 Collins Street, Melbourne
Victoria 3000
An Australian Legal Practitioner
within the meaning of the
Legal Profession Act 2004

**'CCH-33': Email from Jane
Sheridan dated 15 April 2014**

Bland, Tom

From: Jane Sheridan <JSheridan@abl.com.au>
Sent: Tuesday, 15 April 2014 3:30 PM
To: Hinchin, Clint; Adams, Elyse; Hsueh, Yu-chiao; Fernon, Michael; Cibich, Karli; Salvo, Alicia; Porter, David
Cc: Jing Chang
Subject: FW: URGENT REQUEST

Dear All,

Please see the email chain that follows which explains what Kerree was seeking from the liquidators.

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 | www.abl.com.au

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

From: Bryan Webster [mailto:bwebster@kordamentha.com]
Sent: Tuesday, 15 April 2014 11:02 AM
To: Kerree Bezencon
Cc: nick@nickstretchlegal.com.au; Jane Sheridan; Mark Korda
Subject: RE: URGENT REQUEST

Dear Kerree,

Thanks for your email.

TSL's only role in relation to the compromise concerning the Kangara sale proceeds is to act as a facilitator – disseminating information prepared on behalf of the Court appointed Representative Growers to all Growers, operating a Grower hotline and email facility and, if the compromise is approved, receiving the amount allocated to the Growers as trustee for those Growers (not as responsible entity) and distributing it in accordance with the Court approved compromise deed. TSL may be asked to provide evidence confirming that it has sent the relevant information and informing the Court of the operation of the hotline and email facility.

Given its limited role as facilitator, TSL is not a party to the court proceedings seeking approval of the agreed compromise and will not be appearing in those proceedings, save as a witness, if required. It is not for TSL to determine whether it is appropriate or preferable that a contradictor appear at the hearing of the proceedings. This is a question for the parties to the proceedings. Further, it is for the parties to the proceedings to determine whether they wish to pay the costs incurred to have someone appear as a contradictor, either from their own funds or the sale proceeds.

Accordingly, TSL is not in a position to agree to your request.

Regards

Bryan





Bryan Webster | Partner

t +61 3 8623 3409 m +61 449 953 818

bwebster@kordamentha.com

Level 24, 333 Collins Street, Melbourne Vic 3000, Australia

restructuring | forensic | investment management | real estate

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From: Kerree Bezencon [mailto:kerree@siger.com.au]

Sent: Monday, 14 April 2014 10:00 PM

To: Mark Korda

Cc: nick@nickstretchlegal.com.au; Bryan Webster

Subject: RE: URGENT REQUEST

Dear Mark,

please respond as time is of the essence, thanks

Kerree Bezencon

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

PO Box 1147, Healesville, Vic, 3777

Tel 03 59 626 097, Fax 03 59 626 086

Email : kerree@siger.com.au

From: Kerree Bezencon [mailto:kerree@siger.com.au]

Sent: Thursday, 10 April 2014 4:43 PM

To: 'mkorda@kordamentha.com'

Cc: 'nick@nickstretchlegal.com.au'

Subject: URGENT REQUEST

Dear Mark,

I note that there is an upcoming court case scheduled for the 17th May in regard to the allocation of proceeds from the Kangara citrus sale.

Clarendon's/nw McPherson & Kelly (M&K) represent 2 growers in this case. We however represent some 330 growers.

As there is a deal agreed between M&K's growers and Debentureholders, it means that there will be no effective "contradictor" at all, at court. Justice Judd had very much welcomed having a contradictor in the previous case as you know.

We therefore request that monies should be provided for the role of contradictor and coverage of the legal counsel costs to represent us. We have a firm, Nick Stretch Legal, ready to act. Please respond by COB Friday 11th, so that we may get them to prepare arguments in time.

Regards

Kerree Bezencon
Chair for TGG Citrus Inc.

B.Ec (Accounting & Finance),
ASIA (Grad Dip Applied Finance & Investment),
CPA(Certified Practising Accountant) PFP (Specialist in Financial Planning),
SSA (Specialist SMSF Advisor)

Tel 0419 509 557

Email : kerree@siger.com.au

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

List B

S CI 2013 01478

BETWEEN

THE TRUST COMPANY (NOMINEES) LIMITED (ACN 000 154 441)

Plaintiff

and

**MICHAEL FUNG IN HIS CAPACITY AS RECEIVER AND MANAGER OF ALIGN FUNDS
MANAGEMENT LIMITED (RECEIVER AND MANAGER APPOINTED) (ACN 105 684 231) IN
ITS CAPACITY AS THE RESPONSIBLE ENTITY OF THE TIMBERCORP ORCHARD TRUST
AND ORS (ACCORDING TO THE SCHEDULE ATTACHED)**

Defendants

CERTIFICATE IDENTIFYING EXHIBIT

Date of document: 1 May 2014

Filed on behalf of: The plaintiff

Prepared by:

Allens

Lawyers

101 Collins Street

Melbourne VIC 3000

Solicitor code: 21455

DX 30999 Melbourne

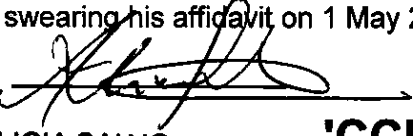
Tel 9614 1011 Fax 9614 4661

Ref CCHM:120338387

(Clint.Hinchen@allens.com.au)

This is the **Exhibit** marked '**CCH-34**' now produced and shown to **Clinton Charles Hinchen** at the time of swearing his affidavit on 1 May 2014.

Before me


ALICIA SALVO
of 101 Collins Street, Melbourne
Victoria 3000
An Australian Legal Practitioner
within the meaning of the
Legal Profession Act 2004

**'CCH-34': Email chain between
various parties and Kerree
Bezencon between 11 April 2014
and 16 April 2014**

Bland, Tom

From: Cibich, Karli <karli.cibich@nortonrosefulbright.com>
Sent: Wednesday, 16 April 2014 4:00 PM
To: Kerree Bezencon (kerree@siger.com.au)
Cc: Hsueh, Yu-chiao (Yu-chiao.Hsueh@mk.com.au); Hinchey, Clint; Salvo, Alicia; Porter, David; 'Michael Fernon' (Michael.Fernon@mk.com.au); 'Jane Sheridan' (JSheridan@abl.com.au) (JSheridan@abl.com.au); Jing Chang <JChang@abl.com.au> (JChang@abl.com.au); nick@nickstretchlegal.com.au
Subject: RE: Consent orders - Proceeding Nos SCI 01477 2013 and SCI 01478 2013 - Bella Vista Rights Proceeding and Kangara Rights Proceeding (2800449)[NRF-APAC.FID1143761]

Dear Ms Bezencon

Our client is mindful of the need to preserve the funds under his control and notes it is a matter for the Court to decide whether you are appointed as a contradictor.

We are instructed that our client will not oppose or consent to any applications you make to be appointed as a contradictor or to have your legal costs of doing so paid out of the Funds.

Regards

Karli Cibich | Senior Associate
Norton Rose Fulbright Australia
Level 15, RACV Tower, 485 Bourke Street, Melbourne, Australia
Tel +61 3 8686 6986 | Mob +61 418 349 260 | Fax +61 3 8686 6505
karli.cibich@nortonrosefulbright.com

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From: Kerree Bezencon [mailto:kerree@siger.com.au]
Sent: Tuesday, 15 April 2014 9:03 PM
To: 'Hsueh, Yu-chiao'
Cc: 'Hinchey, Clint'; 'Adams, Elyse'; nick@nickstretchlegal.com.au; 'Salvo, Alicia'; Porter, David; Cibich, Karli; 'Feron, Michael'; 'Jane Sheridan'; JChang@abl.com.au
Subject: RE: Consent orders - Proceeding Nos SCI 01477 2013 and SCI 01478 2013 - Bella Vista Rights Proceeding and Kangara Rights Proceeding (2800449)[NRF-APAC.FID1143761]

Dear All,

May I have your responses please by COB today?

Kerree Bezencon

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

PO Box 1147, Healesville, Vic, 3777
Tel 03 59 626 097, Fax 03 59 626 086
Email : kerree@siger.com.au

From: Hsueh, Yu-chiao [<mailto:Yu-chiao.Hsueh@mk.com.au>]
Sent: Tuesday, 15 April 2014 5:28 PM
To: 'Kerree Bezencon'
Cc: 'Hinchin, Clint'; 'Adams, Elyse'; nick@nickstretchlegal.com.au; 'Salvo, Alicia'; 'David Porter'; 'Karli Cibich'; Fernon, Michael; 'Jane Sheridan'; JChang@abl.com.au
Subject: RE: Consent orders - Proceeding Nos SCI 01477 2013 and SCI 01478 2013 - Bella Vista Rights Proceeding and Kangara Rights Proceeding

Dear Kerree,

We refer to your email below.

As the respective parties' rights and interests to the Kangara sale proceeds remain in dispute, a Court order is necessary if your costs are to be paid out of the fund.

Accordingly, you would need to make an application to the Court for such orders as a first step.

If you were to make such an application, we advise that our clients would neither consent to nor oppose your application.

Kind regards,

Yu-chiao

Yu-chiao Hsueh
Senior Associate

M+K Lawyers
Level 22 114 William Street Melbourne VIC 3000 | DX 174 Melbourne
Phone: (03) 8615 9939 | Fax: (03) 9794 2590
yu-chiao.hsueh@mk.com.au | www.mk.com.au

VICTORIA | NEW SOUTH WALES | TASMANIA | QUEENSLAND

From: Kerree Bezencon [<mailto:kerree@siger.com.au>]
Sent: Tuesday, 15 April 2014 4:46 PM
To: 'Salvo, Alicia'; 'David Porter'; 'Karli Cibich'; Fernon, Michael; Hsueh, Yu-chiao; 'Jane Sheridan'; JChang@abl.com.au
Cc: 'Hinchin, Clint'; 'Adams, Elyse'; nick@nickstretchlegal.com.au
Subject: RE: Consent orders - Proceeding Nos SCI 01477 2013 and SCI 01478 2013 - Bella Vista Rights Proceeding and Kangara Rights Proceeding

Dear All,

I note that there is an upcoming court case scheduled for the 19th May in regard to the allocation of proceeds from the Kangara citrus sale.

Clarendon's/nw McPherson & Kelly (M&K) represent 2 growers in this case. We however represent some 330 growers.

As there is a deal agreed between M&K's growers and Debentureholders, it means that there will be no effective "contradictor" at all, at court. Justice Judd had very much welcomed having a contradictor in the previous case as you know.

We therefore request from all parties that monies should be provided for the role of contradictor and coverage of the legal counsel costs to represent us. We have a firm, Nick Stretch Legal, ready to act. Please respond by COB Wednesday 15th, so that we may get them to prepare arguments in time.

Regards

Kerree Bezencon
Chair for TGG Citrus Inc.

Kerree Bezencon

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

PO Box 1147, Healesville, Vic, 3777
Tel 03 59 626 097, Fax 03 59 626 086
Email : kerree@siger.com.au

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

Sent: Monday, 14 April 2014 10:04 PM

To: 'Salvo, Alicia'; 'David Porter'; 'Karli Cibich'; 'Michael Fernon'; 'Yu-chiao Hsueh'; 'Jane Sheridan'; 'Jing Chang' <JChang@abl.com.au> (JChang@abl.com.au)

Cc: 'Hinchen, Clint'; 'Adams, Elyse'

Subject: RE: Consent orders - Proceeding Nos SCI 01477 2013 and SCI 01478 2013 - Bella Vista Rights Proceeding and Kangara Rights Proceeding

Dear All,

we are seeking to have some representation and were not consulted on this time schedule. Forgive my lack of knowledge on the process. I will endeavour to have a proper response as soon as possible after awaiting response from liquidators.

Kerree Bezencon
For Timbercorp Citrus Growers Inc

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

PO Box 1147, Healesville, Vic, 3777
Tel 03 59 626 097, Fax 03 59 626 086
Email : kerree@siger.com.au

From: Salvo, Alicia [<mailto:Alicia.Salvo@allens.com.au>]

Sent: Friday, 11 April 2014 2:30 PM

To: David Porter; Karli Cibich; Michael Fernon; Yu-chiao Hsueh; Jane Sheridan; Jing Chang <JChang@abl.com.au>
(JChang@abl.com.au); Kerree Bezencon
Cc: Hinchin, Clint; Adams, Elyse
Subject: FW: Consent orders - Proceeding Nos SCI 01477 2013 and SCI 01478 2013 - Bella Vista Rights Proceeding and Kangara Rights Proceeding

Dear all

We refer to the email below from Justice Judd's associate and attach for your reference the authenticated orders made on 21 March 2014 in respect of the Bella Vista and Kangara Rights Proceeding.

Could the parties please arrange for the orders to be posted on the various websites, as outlined in the orders.

Regards

Alicia Salvo
Senior Associate
Allens

Allens < Linklaters

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M +61 414 151 838
101 Collins Street
Melbourne VIC 3000 Australia
www.allens.com.au

From: Tully.Fletcher@supremecourt.vic.gov.au [<mailto:Tully.Fletcher@supremecourt.vic.gov.au>] **On Behalf Of**
juddj.associate@supremecourt.vic.gov.au

Sent: Friday, 11 April 2014 1:01 PM

To: Adams, Elyse

Cc: Salvo, Alicia; Hinchin, Clint; juddj.associate@supremecourt.vic.gov.au

Subject: RE: Consent orders - Proceeding Nos SCI 01477 2013 and SCI 01478 2013 - Bella Vista Rights Proceeding and Kangara Rights Proceeding

Dear Practitioners,

I refer to the above proceedings.

Please find attached the authenticated Orders of 21 March.

Kind regards,

Tully Fletcher
Associate to the Honourable Justice Judd

Supreme Court of Victoria
210 William Street
Melbourne Vic 3000
Telephone: +61 3 9603 6128
Fax: +61 3 9670 8408
Email: juddj.associate@supremecourt.vic.gov.au

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

List B

S CI 2013 01478

BETWEEN

THE TRUST COMPANY (NOMINEES) LIMITED (ACN 000 154 441)

Plaintiff

and

**MICHAEL FUNG IN HIS CAPACITY AS RECEIVER AND MANAGER OF ALIGN FUNDS
MANAGEMENT LIMITED (RECEIVER AND MANAGER APPOINTED) (ACN 105 684 231) IN
ITS CAPACITY AS THE RESPONSIBLE ENTITY OF THE TIMBERCORP ORCHARD TRUST
AND ORS (ACCORDING TO THE SCHEDULE ATTACHED)**

Defendants

CERTIFICATE IDENTIFYING EXHIBIT

Date of document: 1 May 2014

Filed on behalf of: The plaintiff

Prepared by:

Allens

Lawyers

101 Collins Street

Melbourne VIC 3000

Solicitor code: 21455

DX 30999 Melbourne

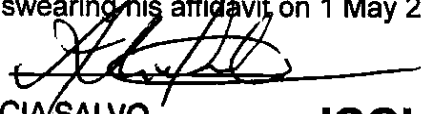
Tel 9614 1011 Fax 9614 4661

Ref CCHM:120338387

(Clint.Hinchen@allens.com.au)

This is the **Exhibit** marked '**CCH-35**' now produced and shown to **Clinton Charles Hinchen** at the time of swearing his affidavit on 1 May 2014.

Before me


ALICIA SALVO
of 101 Collins Street, Melbourne
Victoria 3000
An Australian Legal Practitioner
within the meaning of the
Legal Profession Act 2004

**'CCH-35': Email from Alicia
Salvo to Kerree Bezencon
attaching letter dated
16 April 2014**

Bland, Tom

From: Salvo, Alicia
Sent: Wednesday, 16 April 2014 6:08 PM
To: 'Kerree Bezencon'
Cc: Hinchin, Clint; Adams, Elyse; nick@nickstretchlegal.com.au; 'David Porter'; 'Karli Cibich'; 'Michael Fernon'; 'Yu-chiao Hsueh'; 'Jane Sheridan'; JChang@abl.com.au
Subject: RE: Consent orders - Proceeding Nos SCI 01477 2013 and SCI 01478 2013 - Bella Vista Rights Proceeding and Kangara Rights Proceeding
Attachments: L - K Bezencon (16 April 2014).PDF

Dear Ms Bezencon

We refer you to the attached correspondence.

Kind regards

Alicia Salvo
Senior Associate
Allens

Allens > < Linklaters

DL +61 3 9613 8504
M +61 414 151 838
101 Collins Street
Melbourne VIC 3000 Australia
www.allens.com.au

From: Kerree Bezencon [mailto:kerree@siger.com.au]
Sent: Tuesday, 15 April 2014 4:46 PM
To: Salvo, Alicia; 'David Porter'; 'Karli Cibich'; 'Michael Fernon'; 'Yu-chiao Hsueh'; 'Jane Sheridan'; JChang@abl.com.au
Cc: Hinchin, Clint; Adams, Elyse; nick@nickstretchlegal.com.au
Subject: RE: Consent orders - Proceeding Nos SCI 01477 2013 and SCI 01478 2013 - Bella Vista Rights Proceeding and Kangara Rights Proceeding

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As there is a deal agreed between M&K's growers and Debentureholders, it means that there will be no effective "contradictor" at all, at court. Justice Judd had very much welcomed having a contradictor in the previous case as you know.

We therefore request from all parties that monies should be provided for the role of contradictor and coverage of the legal counsel costs to represent us. We have a firm, Nick Stretch Legal, ready to act. Please respond by COB Wednesday 15th, so that we may get them to prepare arguments in time.

Regards

Kerree Bezencon

Chair for TGG Citrus Inc.

Kerree Bezencon

B.Ec (Accounting & Finance),
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Sent: Monday, 14 April 2014 10:04 PM

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Cc: 'Hinchin, Clint'; 'Adams, Elyse'

Subject: RE: Consent orders - Proceeding Nos SCI 01477 2013 and SCI 01478 2013 - Bella Vista Rights Proceeding and Kangara Rights Proceeding

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CFP (Certified Financial Planner),
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PO Box 1147, Healesville, Vic, 3777
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Email : kerree@siger.com.au

From: Salvo, Alicia [<mailto:Alicia.Salvo@allens.com.au>]

Sent: Friday, 11 April 2014 2:30 PM

To: David Porter; Karli Cibich; Michael Fernon; Yu-chiao Hsueh; Jane Sheridan; Jing Chang <JChang@abl.com.au> (JChang@abl.com.au); Kerree Bezencon

Cc: Hinchin, Clint; Adams, Elyse

Subject: FW: Consent orders - Proceeding Nos SCI 01477 2013 and SCI 01478 2013 - Bella Vista Rights Proceeding and Kangara Rights Proceeding

Dear all

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Could the parties please arrange for the orders to be posted on the various websites, as outlined in the orders.

Regards

Alicia Salvo
Senior Associate
Allens

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M +61 414 151 838
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Melbourne VIC 3000 Australia
www.allens.com.au

From: Tully.Fletcher@supremecourt.vic.gov.au [mailto:Tully.Fletcher@supremecourt.vic.gov.au] **On Behalf Of**
juddj.associate@supremecourt.vic.gov.au
Sent: Friday, 11 April 2014 1:01 PM
To: Adams, Elyse
Cc: Salvo, Alicia; Hinchin, Clint; juddj.associate@supremecourt.vic.gov.au
Subject: RE: Consent orders - Proceeding Nos SCI 01477 2013 and SCI 01478 2013 - Bella Vista Rights Proceeding and Kangara Rights Proceeding

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Kind regards,

Tully Fletcher
Associate to the Honourable Justice Judd

Supreme Court of Victoria
210 William Street
Melbourne Vic 3000
Telephone: +61 3 9603 6128
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F +61 3 9614 4661
www.allens.com.au

ABN 47 702 595 758

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Date 16 April 2014
From Clint Hinchin / Alicia Salvo
To **Kerree Bezencon**, TGG Citrus Committee Inc.,
Healesville
Email kerree@siger.com.au
Copy To **David Porter**, Norton Rose Fulbright Australia,
Melbourne
Email David.Porter@nortonrosefulbright.com
Copy To **Michael Fernon**, M+K lawyers, Melbourne
Email Michael.Fernon@mk.com.au
Copy To **Jane Sheridan**, Arnold Bloch Leibler, Melbourne
Email JSheridan@abl.com.au

Confidential Email

Dear Ms Bezencon

Supreme Court of Victoria Proceeding No SCI 1478 of 2013
(Kangara Rights Proceeding)

Please see attached.

Attach

Our Ref CCHM:ANSM:120338387

ansm A0128968588v3 120338387 16.4.2014

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Melbourne VIC 3001 Australia
DX 30999 Melbourne

ABN 47 702 595 758

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16 April 2014

Kerree Bezencon
TGG Citrus Committee Inc.
PO Box 1147
Healesville VIC 3777
By Email

Dear Ms Bezencon

**Supreme Court of Victoria Proceeding No SCI 478 of 2013
(Kangara Rights Proceeding)**

We write in response to your email dated 15 April 2014 in which you request funds to cover the legal costs of the TGG Citrus Committee Inc (*the Committee*) in respect of the Kangara Rights Proceeding.

As outlined in M+K Lawyers' email to you in response on the same day, if the Committee proposes that its legal costs be paid out of the net sale proceeds held on trust by the first defendant (*the Fund*), it will need to apply to the Court for an order on that basis.

Although our client recognises the role a "contradictor" may play in assisting the Court in its determination of issues such as those in the present proceeding, it is neither necessary nor appropriate in this case that the legal costs of the Committee be paid out of the Fund. Accordingly, if the Committee sought orders from the Court that its legal costs be paid out of the Fund, we confirm that our client would oppose such an application. The reasons for our client's position, and its response to the matters raised in your email, are set out below.

- (a) On 19 July 2013, the Court made orders in this proceeding appointing Robert and Elizabeth Bugden as representatives of all growers in the 2005 Citrus Project. A copy of those orders is attached for your reference. Although you sought and were granted leave to appear and make submissions to the Court in support of your application to be appointed as the representative party instead of the Bugdens, your application was unsuccessful. The assertion in your email that M+K Lawyers, acting on behalf of the representative growers, represents only two growers in this case is incorrect. The Bugdens are the representatives of all growers in the 2005 Citrus Project.
- (b) In respect of the statement in your email that you represent 330 growers, we note that in relation to the two projects the subject of the Kangara Rights Proceeding, there were only 240 investor growers: 80 growers in the 2004 Citrus Project and 160 growers in the 2005 Citrus Project (see the affidavit of Clinton Charles Hinchin sworn on 21 March 2014).
- (c) As stated at the outset, our client understands the role a contradictor may play in proceedings such as the present one and, accordingly, supports your right to appear in the proceeding or to make submissions or advance relevant evidence. This was reflected in the orders made at the outset of this proceeding (on 19 July 2013). Based on your involvement

Our Ref CCHM:ANSM:120338387
ansm A0128968588v3 120338387 16.4.2014

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and experience in previous related matters in the Supreme Court, and your appearance in this proceeding on 19 July 2013, our client considers that you are an effective contradictor. We believe this view is supported by the comments made by Justice Judd on 26 July 2013 in this proceeding (at paragraph 14 of his Honour's ruling):

I reject Ms Bezencon's application to become the representative party in the Kangara Rights Proceeding in lieu of Robert Bugden and Elizabeth Bugden. That is not to say Ms Bezencon should not be given an opportunity to participate in the trial, as she has in the past. She has already been granted leave to appear on behalf of the TGG Citrus Committee. Paragraph 10 in the draft proposed orders reserved to Ms Bezencon a full opportunity to participate in the trial. Documents in the proceeding are to be served on the TGG Citrus Committee Inc. I am satisfied such a right will provide her with every opportunity to pick up mistakes and check facts, to make submissions or advance such evidence as she may be advised at the appropriate time.

(emphasis added)

A copy of Justice Judd's ex tempore ruling is attached.

- (d) Paragraph 10 of the orders made on 19 July 2013 in the proceeding requires that at the same time a party files any document in the proceeding, that party must also serve a copy of that document on the TGG Citrus Committee Inc. In furtherance of that order, you have been served with copies of court documents filed by our client, and copied into our client's communications with the Court. This included our emails to the Court dated 12 March 2014 and 18 March 2014 in respect of the proposed timetable for the filing of evidence and submissions ahead of the scheduled hearing of this proceeding. We understand that all other parties to the Kangara Rights Proceeding have likewise communicated with the Committee in accordance with the order. Accordingly, since the date of those orders, you have been provided with the opportunity to make submissions or advance such evidence to the Court or to M+K Lawyers as you consider relevant. To date, as we understand it, you have chosen not to engage in this process. For the avoidance of doubt, and in response to the comments in your email of 14 April 2014, our client is unable to accept that you had a lack of knowledge of the process or that you were not consulted on the time schedule approved by the Court for the hearing of the approval application in the Kangara Rights Proceeding.
- (e) The Court has made orders for the legal costs of the representative growers to be paid out of the Fund (see paragraph 6(b) of the attached orders). As the role of the representative growers is to consider the interests of all growers whom they represent, our client considers that it would be inappropriate for an additional party's costs (whether acting as a second representative party or as a lone contradictor) to be borne out of the Fund, especially in circumstances where there is already a significant shortfall in the balance of the Fund compared to the debt owed to our client as the secured creditor.
- (f) In this respect we refer you to a further aspect of Justice Judd's ruling (made on 26 July 2013) concerning the question of costs of separate legal representation:

11. What is determinative of the outcome, however, is the very practical matter of costs. The fund that is available in the Kangara Rights Proceeding falls well short of the claim that is made by the secured creditor. In those circumstances, the court should be astute to ensure, as best it can, that legal costs are minimised, while at the same time ensuring that there is an effective representation on behalf of the growers, with an effective contradictor on all relevant issues that arise for determination by the court.

...

13. It would be intolerable if the fund were to incur the costs of a second firm of solicitors to act on behalf of Ms Bezencon, should she be nominated as a representative party.

...

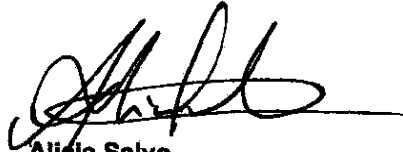
(emphasis added).

If you proceed with an application to the Court for the Committee's legal costs to be paid out of the Fund, our client reserves its right to advance additional submissions and to file affidavit evidence at the appropriate time in support of its position.

Yours sincerely



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