

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

r8.05

LIST E

No of 2009

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

TIMBERCORP SECURITIES LIMITED
(UNDER ADMINISTRATION) ACN 092 311 469
IN ITS CAPACITY AS RESPONSIBLE ENTITY OF EACH OF THE
MANAGED INVESTMENT SCHEMES LISTED IN SCHEDULE 1
First Plaintiff
MARK ANTHONY KORDA and LEANNE KYLE CHESSER
Second and Third Plaintiffs

FIRST AFFIDAVIT OF MARK ALBERT BLAND

Date of document:	9 June 2009
Filed on behalf of:	Chris Garnaut
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: MAB:0900205

I, **MARK ALBERT BLAND** of Level 17, Rialto North Tower, 525 Collins Street, Melbourne, do solemnly sincerely and truly declare and affirm as follows:

1. I am a solicitor and a director of Clarendon Lawyers Pty Ltd, solicitors for Christopher Garnaut, an investor in the Timbercorp 2001 Almond Project.
2. We have been instructed to act in these proceedings as representatives of the grower investors on the creditors committee of Timbercorp Securities Limited.
3. On 9 June 2009 we wrote to Leon Zwier of Arnold Block Leibler. Now produced and shown to me marked MAB-1 is a copy of this letter.

AFFIRMED by the said **MARK ALBERT BLAND**)
at Melbourne in the State of Victoria)
this 9th day of June 2009)



Before me: 

KATE FELICITY DESMOND

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*

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First Plaintiff

MARK ANTHONY KORDA and LEANNE KYLE CHESSER
Second and Third Plaintiffs

CERTIFICATE IDENTIFYING EXHIBIT

Date of document:	9 June 2009
Filed on behalf of:	Chris Garnaut
Prepared by:	
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This is the exhibit marked "MAB-1" now produced and shown to **MARK ALBERT BLAND** at the time of affirming his affidavit on

Before me: 

KATE FELICITY DESMOND
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*

9 June 2009

Our Ref: MMP:MJF:0900205

Leon Zwier
Arnold Bloch Liebler
333 Collins Street
MELBOURNE VIC 3000
By email: lzwier@abl.com.au

Dear Sir

Timbercorp Securities Limited

We refer to the recommendation by His Honour Robson J that we write to you setting out what we believe needs to be considered prior to the return of your clients' summons for directions.

The summons

Our clients consider that your clients should not be making application for directions whether to apply to wind up the almond and olive schemes.

Instead your clients should vigorously pursue other alternatives. These include:

1. calling a meeting of members of each scheme for the purpose of retiring and facilitating the appointment of a new responsible entity for the schemes; and
2. finding a buyer for the land and trees comprising the schemes who will pay out the growers for their interests.

If your clients persist with their application, we will require the following information.

1. what steps have your clients taken to implement the alternatives above;
2. copies of the schemes registers;
3. the assumptions and original cash flow information underlying the cash flow forecasts which your clients have prepared for the schemes;
4. title particulars for all properties on which the almond lots and olive lots are located so that the growers can lodge caveats to protect their sub-leases (we note the relevant product disclosure statements promise to provide this information).

New responsible entity

In relation to the first alternative above, your clients should consider the following:

1. terminating by mutual agreement all arrangements with related Timbercorp companies excluding leases and licences;
2. retiring as responsible entity and seeking the appointment of a new responsible entity.
3. transferring the relevant leases and licences to the new responsible entity.

This will enable the new responsible entity to conduct independent assessments of the viability of the schemes and if they are viable, to engage suitable contractors at commercial rates, or, if they are not viable, to wind up the schemes.



Growers funding

If your clients proceed with making the applications, we consider that three of the growers' representatives on the Timbercorp Securities Limited Creditors Committee should be appointed as contradictors, ie, Chris Garnaut, Kerree Bezencon and Neil White. The costs of the contradictors should be paid out of the assets of the administration in the same way that the costs of the applicants are being paid.

Funding generally

The Timbercorp Group is funding the administrators. We understand that approximately \$6,000,000 to \$7,000,000 has been earmarked for this purpose. TSL has never had any surplus cash. It has always been a conduit whereby the Timbercorp Group has tapped the public market for \$2 billion of investments. The relevant offer documents promote to the investors the expertise, experience and financial substance of the Timbercorp Group as a whole. The parent company is responsible for the subsidiaries' conduct and should pay its obligations (see the discussion in *Schneider Electric (Aust) Pty Ltd v ACCC*, [2003] FCAFC 2).

The investors need advice on many issues, not just in relation to your client's current application. We suggest that out of the funds earmarked for the administration, an amount of \$500,000 be set aside in a fund to be administered by the three representatives named above for advice to growers on all aspects of the schemes.

Any surplus amount not expended on obtaining advice or representing the growers' interests in court proceedings should be returned to your clients.

Yours faithfully

Mark Bland
Director

Enc

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