

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

**LIST E**

No 7114 of 2009

**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 EACH OF THE  
MANAGED INVESTMENTS SCHEMES LISTED  
IN SCHEDULE 1 OF THE ORIGINATING PROCESS  
First Plaintiff**

**MARK ANTHONY KORDA and LEANNE CHESSER  
Second and Third Plaintiffs**

**AFFIDAVIT OF MARK ANTHONY KORDA  
OLIVE AND ALMOND SCHEMES**

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Date of document: 13 July 2009  
Filed on behalf of: the Plaintiffs  
Prepared by:  
Arnold Bloch Leibler  
Lawyers and Advisers  
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MELBOURNE 3000

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Ref: 011499489  
(Leon Zwier)

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I, **MARK ANTHONY KORDA** of Level 24, 333 Collins Street, Melbourne, Chartered Account,  
**SAY ON OATH** that:

- 1 I am the Second Plaintiff in this proceeding. I make this affidavit on behalf of myself and the Third Plaintiff, Ms Leanne Chesser. Ms Chesser and I are liquidators of the First Plaintiff, Timbercorp Securities Limited (In Liquidation) (ACN 092 311 469) (TSL).

*MK*

*CE*

- 2 Except where I otherwise indicate, the matters deposed to in this affidavit are deposed to from my own personal knowledge of the facts. Where I depose to matters from information and belief, I believe such matters to be true.
- 3 I am a chartered accountant and a partner of the firm KordaMentha. I am a Registered Liquidator and an Official Liquidator of the Court. I am a member of the Insolvency Practitioners Association of Australia and a member of the Institute of Chartered Accountants. Before founding KordaMentha in 2002, I had a 24-year career with the firm Andersen, during which I held the positions of Director of Corporate Finance, Managing Partner Asia Pacific Corporate Recovery Services Practice and Managing Partner Australia Accounting and Audit Practice. I was also a Member of the Australian Executive Committee and Board of Partners. I have been practising in the area of corporate insolvency and financial reconstructions for 20 years.
- 4 I make this affidavit in support of the application by the Plaintiffs to wind up the managed investments schemes listed in Schedule 1 to this affidavit (**Almond and Olive Schemes**), pursuant to section 601ND of the *Corporations Act 2001* (Cth) (**Corporations Act**). This affidavit supplements my previous affidavits sworn in these proceedings:
- (a) an affidavit sworn on 4 June 2009 and filed in this proceeding for the purpose of obtaining a direction under s 447D (**Directions Affidavit**);
  - (b) 14 affidavits sworn on 3 July 2009 and filed in this proceeding each giving information about the Almond and Olive schemes (**14 Almond and Olive Scheme Affidavits**);
  - (c) 14 affidavits sworn on 9 July 2009 and filed in this proceeding each giving further information about the Almond and Olive Schemes (**14 Supplementary & Reply Almond and Olive Scheme Affidavits**);
- 6 **Administration, Liquidation & TSL's Insolvency**
- 6.1 On 23 April 2009, Ms Chesser and I were appointed as voluntary administrators of TSL. Now produced and shown to me marked **MAK-1** is a current and historical extract of the records maintained by the Australian Securities and Investments Commission (**ASIC**) with respect to TSL, generated on 3 July 2009.

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- 6.2 Also on 23 April 2009, the respective directors of Timbercorp Limited (ACN 055 185 067) (**Timbercorp**) and thirty nine (39) of its wholly owned subsidiaries (together **Timbercorp Group Companies**) appointed me and four other KordaMentha partners, namely Mark Francis Xavier Mentha, Leanne Kylie Chesser, Craig Peter Shepard and Cliff Stuart Rocke, as administrators of those companies. All of the appointments were made pursuant to section 436A of the Corporations Act.
- 6.3 TSL is a wholly-owned subsidiary of Timbercorp.
- 6.4 Since 23 April 2009, with the assistance of other partners and staff of KordaMentha, I have undertaken investigations into the affairs of TSL. I stated in my Directions Affidavit that I consider TSL is insolvent. Since swearing my Directions Affidavit I have continued my investigations into TSL and I adhere to my view that TSL is insolvent.
- 6.5 TSL and the Timbercorp Group's insolvency is set out in the Administrators' Report made pursuant to section 439A of the Corporations Act and dated 18 June 2009 (**Creditors' Report**). Now produced and shown to me and marked **MAK-2** is the Creditors' Report. TSL's position is set out at pages 16 and 17 of the Creditors' Report. The report of the directors of TSL appears at Appendix 9 to the Creditors' Report and a summary of the historical management accounts of the Timbercorp Group, including of TSL, is attached as Appendix 10 to the Creditors' Report.
- 6.6 On 29 June 2009 we convened a meeting of the creditors of the Timbercorp Group Companies and a separate meeting of the creditors of TSL. The creditors resolved to wind up the Timbercorp Group Companies and TSL respectively. I am therefore now a liquidator of TSL. Shown to me marked **MAK-3** are the minutes of the meeting of the creditors of TSL held on 29 June 2009.

## 7 **Information for the Growers**

- 7.1 The orders of the Honourable Justice Robson made 17 June 2009 and the affidavit of Leon Zwier sworn 17 June 2009 were placed upon the KordaMentha website at <http://kordamentha.com/main/creditor.aspx> on 18 June 2009. Timbercorp's website also contains a link that directs readers to the KordaMentha website. I am informed by Mr Zwier that on 18 June 2009, those orders and affidavit were also placed on Arnold Bloch Leibler's website at <http://www.abl.com.au/timbercorp/timbercorp.htm>.
- 7.2 On 19 June 2009, KordaMentha sent the notice to the Growers as ordered by Justice Robson by e-mail where the Plaintiffs had an e-mail address for the Grower, by

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prepaid post to those the Plaintiffs did not have an e-mail address for and to the committee of Growers. Now produced and shown to me marked **MAK-4** are copies of the notice sent to the Growers by email, the notice sent to Growers by post and the notice sent to the Committee of Creditors.

7.3 On 23 June 2009, the Olive Scheme and Almond Scheme key scheme documents were posted on Arnold Bloch Leibler's website at:

(a) <http://www.abl.com.au/timbercorp/almondscheme.htm>; and

(b) <http://www.abl.com.au/timbercorp/olivescheme.htm>.

7.4 On 24 June 2009 the key scheme documents for the Almond and Olive Schemes were posted on KordaMentha's website at <http://kordamentha.com/main/creditor.aspx>.

7.5 On 25 June 2009 unsworn copies of my 14 Olive and Almond Scheme Affidavits were posted on KordaMentha and Arnold Bloch Leibler websites at:

(a) <http://www.abl.com.au/timbercorp/almondscheme.htm>;

(b) <http://www.abl.com.au/timbercorp/olivescheme.htm>; and

(c) <http://kordamentha.com/main/creditor.aspx>.

**(Websites)**

7.6 On 3 July 2009 the Growers' affidavits in opposition were posted on the Websites.

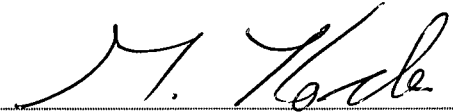
7.7 On 9 July 2009 my 14 Supplementary and Reply Olive and Almond Scheme Affidavits were posted on the Websites.

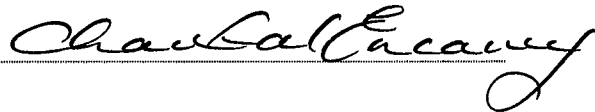
7.8 On 10 July 2009 the interlocutory process for a replacement responsible entity and supporting affidavits and four further affidavits (Messrs Lennie, Riordan, Challis and Garton Smith) served by the contradictors were posted on the Websites.

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**SWORN** by the abovenamed deponent at     )  
Melbourne in the State of Victoria     )  
this 13 day of July 2009     )

  
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Before me:   
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**CHANTAL ENCAVEY**  
Arnold Bloch Leibler  
Level 21, 333 Collins Street  
Melbourne 3000  
An Australian Legal Practitioner within the  
meaning of the Legal Profession Act 2004

## **SCHEDULE 1**

1. 2001 Timbercorp Olive Project (ARSN 094 382 082)
2. 2002 Timbercorp Olive Project (ARSN 098 233 455)
3. 2003 Timbercorp Olive Project (ARSN 104 648 473)
4. 2004 Timbercorp Olive Project (ARSN 108 744 378)
5. 2006 Timbercorp Olive Project (ARSN 119 182 179)
6. 2007 Timbercorp Olive Project (ARSN 123 155 715)
7. 2008 Timbercorp Olive Project (ARSN 129 307 722)

### **(Olive Schemes)**

8. 2001 Timbercorp Almond Project (ARSN 095 649 746)
9. 2002 Timbercorp Almond Project (ARSN 099 611 935)
10. 2003 Timbercorp Almond Project (ARSN 103 197 299)
11. 2004 Timbercorp Almond Project (ARSN 108 336 670)
12. 2005 Timbercorp Almond Project (ARSN 112 935 092)
13. 2006 Timbercorp Almond Project (ARSN 118 387 974)
14. 2007 Timbercorp Almond Project (ARSN 122 511 040)

### **(Almond Schemes)**