

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

SCI 2013 01478

THE TRUST COMPANY (NOMINEES) LIMITED (ACN 004 134 441)

Plaintiff

and

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

Defendants

THIRD AFFIDAVIT OF YU-CHIAO HSUEH

Date of document: 7 May 2014
Filed on behalf of: The Second and Third Defendants
Macpherson + Kelley
Lawyers
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MELBOURNE VIC 3000

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I, **YU-CHIAO HSUEH** of Level 22, 114 William Street, Melbourne, solemnly and sincerely declare and affirm that:

- 1 I am an employee of the firm Macpherson + Kelley Lawyers (**M+K Lawyers**), the solicitors for the Second and Third Defendants, being the persons appointed as representatives of all of the growers in the Timbercorp project of which they are a member (together the **Representative Growers**). I have carriage of this matter on behalf of the Representative Growers under the supervision of my principal, Michael Fernon, 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 I refer to my previous affidavits in this proceeding dated 25 March 2014 (**First Affidavit**) and 17 April 2014 (**Second Affidavit**). Unless otherwise stated, this affidavit adopts the capitalised defined terms in my First Affidavit and Second Affidavit.
- 4 I make this further affidavit in connection with the application for approval of the Deed of Compromise.

Further Results of the Grower Notification and Consultation Process

- 5 On 6 May 2014, I received an email from Ms Jing Chang of Arnold Bloch Leibler attaching a spreadsheet prepared by TSL which recorded details of all telephone, email and facsimile communications with growers for the period from 11 April 2014 to 5 May 2014 (**5 May**

Communication Spreadsheet). I have read the 5 May Communication Spreadsheet and note that since 11 April 2014, there has been one grower who requested information in relation to the particulars of their investment such as how many lots they had invested in or which scheme they had invested in. Now produced and shown to me marked **confidential exhibit YCH-14**) is a true copy of the email from Ms Moodie of TSL to me attaching the 5 May Communication Spreadsheet.

- 6 Confidential exhibit **YCH-14** is contained in a sealed envelope and the Representative Growers will make an application for an order that they be kept confidential as the 5 May Communication Spreadsheet contains growers' personal information.

Return to Sender notifications

- 7 I refer to paragraph 25 of my First Affidavit and paragraph 5 of my Second Affidavit dated 17 April 2014. Accordingly, as at 5 May 2014, there have been a total of five Return to Sender notifications sent to TSL based upon my examination of the Communication Spreadsheets.
- 8 Based on my examination of the Communication Spreadsheets, I understand that one of the growers was bankrupt and the information forwarded to the Trustee in bankruptcy. With respect to the remaining four growers, I am informed by Ms Jing Chang of Arnold Bloch Leibler, solicitors for TSL, and believe that TSL contacted all four growers by email and sent them copies of the Letters to Growers and First Notice to Participant Growers.

Provision of Supplementary Advice to Kerree Bezencon

- 9 As deposed at paragraphs 20 to 22 of my Second Affidavit dated 17 April 2014, the Representative Growers received written Supplementary Advice on 9 April 2014 and held telephone conferences with Garry Bigmore QC and Sam Hopper of Counsel and me on 15 and 17 April 2014.
- 10 On 17 April 2014, I sent an email to Kerree Bezencon that relevantly stated:

We trust you received my second affidavit filed and served this afternoon. As deposed in my affidavit, the Representative Growers received a supplementary memorandum of advice.

We attach a further confidentiality deed for your execution. When you have signed and returned it, we can provide you with the supplementary memorandum. Please note that this deed will cover off on any future memoranda so you won't have to re-execute every time.

Now produced and shown to me marked **YCH-15** is a true copy of my email to Ms Bezencon dated 17 April 2014 attaching a confidentiality deed.

- 11 On 29 April 2014, Ms Bezencon sent me an email with a properly executed confidentiality deed.

12 Later on 29 April 2014, I replied to Ms Bezencon's email enclosing a copy of the Supplementary Advice. Now produced and shown to me marked **confidential exhibit YCH-16** is a true copy of my email to Ms Bezencon enclosing a copy of the Supplementary Advice and related emails between Ms Bezencon and me between 25 and 29 April 2014.

Affirmed by **YU-CHIAO HSUEH**)

at *Melbourne* in the State of Victoria)

this *7th* day of May 2014)

Before me: *[Signature]*)

YCH

BEFORE ME.....
Anne Louise McCartney
An Australian Legal Practitioner
(within the meaning of the Legal Profession Act 2004)
Level 22, 114 William St, Melbourne Vic 3000