

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

SCI 2010 398

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 THE 2005 TIMBERCORP CITRUS PROJECT (ARSN 114 091 299)
AND ORS

Plaintiffs

CERTIFICATE IDENTIFYING EXHIBIT

Date of document: 8 February 2010
Filed on behalf of: the Plaintiffs

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This is the exhibit marked "**MAK-4**" now produced and shown to **MARK ANTHONY KORDA**
at the time of swearing his affidavit on 8 February 2010.

Before me: 

CATHERINE HELEN MACRAE
Arnold Bloch Leibler
Level 21, 333 Collins Street
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An Australian Legal Practitioner within the
meaning of the Legal Profession Act 2004

Exhibit "MAK-4"
Transcript of 24 November 2009

SUPREME COURT OF VICTORIA

COMMERCIAL COURT

TIMBERCORP LIMITED (IN LIQUIDATION)
(ACN 055 185 067) & ORS

Plaintiffs

v.

PLANTATION LAND LIMITED
(ACN 090 443 333)

Defendant

JUDGE: Judd J
WHERE HELD: Melbourne
DATE OF HEARING: 24 November 2009

APPEARANCES

MR L. ZWIER appeared on behalf of the Plaintiffs.

MR R.M. GARRATT QC with MR S. RUBENSTEIN appeared on behalf of
Plantation Land Limited.

MR S. HOPPER appeared on behalf of SJ Ostwald Consulting Pty
Ltd.

1 HIS HONOUR: Now, Mr Zwier, you're here for the liquidator?

2 MR ZWIER: Yes, Your Honour, and the Timbercorp companies in
3 liquidation.

4 HIS HONOUR: Yes, all right. Mr Garratt, I think you're next,
5 on my list anyway.

6 MR GARRATT: Yes, Your Honour. I appear with my learned friend
7 Mr Rubenstein for Plantation Land Limited in the various
8 proceedings.

9 HIS HONOUR: Yes. I assumed as much. Mr Hopper?

10 MR HOPPER: I appear for SJ Ostwald Consulting Pty Ltd,
11 Proceeding 9365/2009.

12 HIS HONOUR: I wonder, Mr Zwier, if I mightn't ask Mr Garratt
13 what his position is in relation to the application, if
14 he has one.

15 MR GARRATT: Your Honour, our position is that the settlement
16 arrangement that is being struck has entailed a
17 compromise on the part of our clients and the other
18 parties to it which - - -

19 HIS HONOUR: That's, I think, plain - - -

20 MR GARRATT: Self evident.

21 HIS HONOUR: Self evident, yes.

22 MR GARRATT: But which balances in a fair way, we would say,
23 Your Honour, the interests that everyone has in the trees
24 in the relevant parcels of land.

25 HIS HONOUR: Yes.

26 MR GARRATT: For that reason, Your Honour, we support the
27 making of the orders and would propose not saying
28 anything substantive unless something falls from our
29 learned friend Mr Zwier which calls for further comment
30 from us.

31 HIS HONOUR: Yes, all right. Are you in much the same

1 position, Mr Hopper?

2 MR HOPPER: Identical position, Your Honour.

3 HIS HONOUR: Yes. Yes, all right. Mr Zwier, I've read the

4 material, a couple of questions that I have, but are

5 there any particular parts of it that you want to take me

6 to?

7 MR ZWIER: Your Honour, if I could just make the following

8 suggestion. There were really four matters before the

9 court.

10 HIS HONOUR: Yes.

11 MR ZWIER: The first matter which I would seek Your Honour to

12 deal with is obviously the directions application which

13 is Proceeding 10241/2009. If I can just refer to the

14 other proceedings as follows. The South Australian

15 proceeding now No.9519/2009 - - -

16 HIS HONOUR: Just bear with me a moment. The directions

17 application is for the approval in effect?

18 MR ZWIER: Yes.

19 HIS HONOUR: Yes.

20 MR ZWIER: The other three matters are the South Australian

21 application for relief and forfeiture and that proceeding

22 is 951/2009.

23 HIS HONOUR: Nine?

24 MR ZWIER: Five one of 2009 - 9519.

25 HIS HONOUR: Nine five one nine?

26 MR ZWIER: Yes.

27 HIS HONOUR: Of 2009, yes.

28 MR ZWIER: The second is the Victorian liquidators application

29 for relief and forfeiture, and that's Proceeding No.8870

30 of 2009.

31 HIS HONOUR: Yes.

1 MR ZWIER: And the third is the grower Oswells application for
2 relief which is Proceeding No.9635 - - -

3 COUNSEL: Three six five.

4 MR ZWIER: (Indistinct)

5 HIS HONOUR: Nine?

6 MR ZWIER: Thank you, 9365/2009.

7 HIS HONOUR: Now, is it anticipated - I noticed there were
8 draft orders in the deed of settlement.

9 MR ZWIER: There are, Your Honour.

10 HIS HONOUR: Yes.

11 MR ZWIER: But there's four preliminary matters I'd like to
12 take Your Honour to before we deal with it. Two of them
13 are minor, but there are two which I should draw to Your
14 Honour's attention. Your Honour, the application for
15 directions is akin to an application for approval of the
16 compromise, which would ordinarily occur under
17 s.477(2)(A) of the Corporations Act, and the practice in
18 applying for a compromise is to make that application to
19 a judge other than the trial judge for obvious reasons
20 and that is if a direction or compromise is not approved,
21 it won't prejudice the trial judge from hearing the trial
22 of the proceeding. In this particular case, all the
23 parties are content for Your Honour to hear it, but I
24 thought it was appropriate to draw that to Your Honour's
25 attention, lest Your Honour should be concerned that it
26 might be more appropriate for some other judge to deal
27 with the application. The second matter I wanted to draw
28 to Your Honour's attention is notice.

29 HIS HONOUR: Yes.

30 MR ZWIER: Your Honour will appreciate that the substantive
31 application for directions arises because beneficiaries

1 of the trust or growers with entitlements are going to be
2 paying money effectively to settle a claim and not all of
3 them are represented before the court.

4 HIS HONOUR: Well, it's money that might eventually find its
5 way to growers rather than - - -

6 MR ZWIER: Yes, Your Honour.

7 HIS HONOUR: Yes.

8 MR ZWIER: And for such an application, some judges in the past
9 have required advertising or a broader notice to be
10 given. I thought I should just draw to Your Honour's
11 attention the following. ASIC were given notice of the
12 application yesterday. I've got an affidavit of
13 Ms Kerwin which I can hand up to Your Honour which
14 indicates that ASIC will not participate. It doesn't
15 oppose or consents to the relief that's being sought.

16 HIS HONOUR: It consents or doesn't oppose?

17 MR ZWIER: It doesn't consent or oppose, Your Honour.

18 HIS HONOUR: That's pretty helpful, isn't it?

19 MR ZWIER: Yes, Your Honour.

20 HIS HONOUR: It's reminiscent of the reaction of the law
21 enforcement authorities when enquiries are made about a
22 search warrant.

23 MR ZWIER: Your Honour, the committee of inspection has also
24 given notice yesterday, that is referred to in the
25 affidavit of Ms Kerwin.

26 HIS HONOUR: Committee of?

27 MR ZWIER: Inspection of TSL, which is Timbercorp Securities
28 Limited.

29 HIS HONOUR: Yes.

30 MR ZWIER: And Your Honour, in the material we've seen
31 references to the liquidators keeping parties informed by

1 updating their websites, the KordaMentha website and the
2 Arnold Bloch Leibler website. Yesterday the Arnold Bloch
3 Leibler website was updated with the court processes and
4 the affidavit of Mr Korda which was sworn on 19 November,
5 save for those parts which are said to be confidential.
6 The KordaMentha website has not been updated because the
7 web manager is unavailable to attend to that task, but it
8 was - Your Honour, I've just been informed it was updated
9 this morning.

10 HIS HONOUR: So the ABL website was updated?

11 MR ZWIER: Yesterday.

12 HIS HONOUR: Yesterday.

13 MR ZWIER: KordaMentha this morning.

14 HIS HONOUR: How would, insofar as it's relevant, scheme
15 members know to look at the ABL website? Is that because
16 it's mentioned on the KordaMentha or some other means?

17 MR ZWIER: Well, in many of the applications brought before the
18 court, there's been repeated reference when the courts
19 have been full of grower representatives. The fact that
20 there are two websites which are continually updated, so
21 only from that background, Your Honour, and at various
22 meetings which the liquidators have held with growers and
23 with creditors, reference has been made to the websites
24 being updated.

25 HIS HONOUR: Yes.

26 MR ZWIER: But I thought it was appropriate, Your Honour, to
27 draw to Your Honour's attention that that is the limited
28 form of notice that's been given would be, in my
29 submission, in the circumstances of this particular
30 matter, Your Honour could take comfort to deal with it
31 without further notices given, but if Your Honour were

1 reminded to adjourn it, then Your Honour - we would
2 obviously abide by Your Honour's view.

3 HIS HONOUR: Can you tell me how many and what proportion of
4 members are not represented by those who are party to the
5 deed? I know there was some difficulty expressed in the
6 affidavit about being precise about it, because of - for
7 a variety of reasons, but is it 50 per cent or 25 per
8 cent?

9 MR ZWIER: Your Honour, there are two representative groups
10 there, the Timbercorp growers group and the growers
11 reference group.

12 HIS HONOUR: Yes.

13 MR ZWIER: And Mr Fernon tells me that they represent about
14 50 per cent of the growers affected by this proposed
15 settlement, and that they're united in supporting this
16 application but about 50 per cent of the growers are not
17 represented before Your Honour, and really, that's the
18 basis upon which the direction is sought, that there are
19 parties whose rights are being affected who aren't before
20 the court, and who are affected (indistinct) receipt of
21 funds to enable the settlement to proceed.

22 HIS HONOUR: Am I right to understand that save for the
23 notification that's occurred on the website and websites,
24 and the other means that you describe that if directions
25 were given of notification to each of the members, that
26 would be an expensive and time consuming process?

27 MR ZWIER: Yes Your Honour. What the liquidators would be
28 advocating is to be posting on the website a copy of any
29 order or direction the court might make.

30 HIS HONOUR: So you'd be suggesting if a direction was made
31 that it be implemented by posting a notice on the

1 website.

2 MR ZWIER: Yes Your Honour. Obviously if Your Honour's minded
3 to make the direction and the settlement would proceed
4 but notice can be given to all parties.

5 HIS HONOUR: Yes.

6 MR ZWIER: The effect of - Your Honour of course could make an
7 order deferring the operation of any direction for a
8 period of say, seven days to give any party adversely
9 affected an opportunity to apply. My recollection, Your
10 Honour, is that in one instance Justice Finkelstein in
11 one application made such an order because he expressed
12 similar concerns and he thought that by allowing a short
13 window of time, it would enable any party adversely
14 affected who might read the website or might read of it
15 elsewhere to bring an application, otherwise the
16 transaction could say complete within seven days. The
17 structure of the settlement deed is that if Your Honour
18 were minded to make the order, then the settlement date
19 would proceed, would be the following day, from the date
20 of Your Honour's order, and Your Honour, that's the third
21 minor matter I wanted to draw to your attention.

22 HIS HONOUR: Yes.

23 MR ZWIER: There's disconformity between the definition of
24 settlement date in the definition part of the deed and in
25 the operative provisions. On one view the precursor to
26 the definitional section which talks about unless the
27 context otherwise requires, there mightn't be formal
28 disconformity but there are two definitions of the
29 settlement date. The correct settlement date is within
30 one day one business day of the order (indistinct). The
31 third, sorry, the fourth minor matter was just a

1 correction of Mr Korda's affidavit. It doesn't identify
2 the location at which it was sworn. I can inform Your
3 Honour that it was sworn at Melbourne.

4 HIS HONOUR: The first sentence is missed out.

5 MR ZWIER: I think it's at the very end of the particulars of
6 jurat.

7 HIS HONOUR: That's right. Is it not usual to have a sentence
8 by way of introduction or is that - - -

9 MR ZWIER: Not usual for us Your Honour but I can just say this
10 Your Honour. The precedent that was used is the same
11 template as MAK1.

12 HIS HONOUR: Yes.

13 MR ZWIER: Your Honour will notice that MAK1 also missed where
14 the affidavit was sworn.

15 HIS HONOUR: Now just looking at - if you look at MAK4.

16 MR ZWIER: No you're right Your Honour. There's - you're
17 right. There's a bit missing.

18 HIS HONOUR: Yes there is.

19 MR ZWIER: I apologise for that Your Honour. Again, I think
20 that error has occurred once before and Mr Korda re-swore
21 the affidavit with that line corrected, and if Your
22 Honour will mind to grant us leave to do so, it may be
23 appropriate for Mr Korda to re-swear his affidavit.

24 HIS HONOUR: Having regard to the nature of the application is
25 in effect unilateral, I think it would be desirable if
26 the affidavit were corrected in that fashion, so if you
27 would - can that be done in 24 hours.

28 MR ZWIER: Yes it can.

29 HIS HONOUR: So both those matters can be corrected. The
30 opening line and the jurat at the end. All right. Look
31 thank you for that. Was there anything else that you

1 wanted to direct my attention to in particular?

2 MR ZWIER: Just one or two minor matters Your Honour. First
3 the direction is being sought pursuant to s.511 of the
4 Act. There has been some debate about whether that's the
5 correct directions application provision. Section 479,
6 sub-s.(3) is another provision which allows for
7 directions to be made by a liquidator, but Your Honour a
8 decision of Young J in Dean Willcocks v. Soluble Solution
9 Hydroponics Pty Ltd which is reported at Volume 42 of the
10 New South Wales Law Reports p.209, His Honour Young J
11 explains that in a liquidation such as this which is
12 effectively a creditor's voluntary liquidation because it
13 follows from an administration, the correct provision to
14 be making directions under is s.5.11.

15 HIS HONOUR: What passage are you looking at?

16 MR ZWIER: Your Honour, p.212, about Paragraph (d), which says
17 the jurisdiction is the same, and Your Honour, Paragraph
18 (c), however I need not stay on this point it is clear
19 that although a voluntary liquidator does not have access
20 to courts through s.479. He has access through s.511.
21 That's just above that paragraph which I referred to
22 before. So it is correctly made under s.511 this
23 application.

24 HIS HONOUR: Where were you just reading? Is this on p.212.

25 MR ZWIER: Yes Your Honour.

26 HIS HONOUR: This Paragraph (e)?

27 MR ZWIER: Paragraph (c) the line beginning - the paragraph
28 beginning with the word, however.

29 HIS HONOUR: Still on p.212?

30 MR ZWIER: Yes.

31 HIS HONOUR: I see, yes.

1 MR ZWIER: It's above (d). It comes - - -

2 HIS HONOUR: Yes. Yes all right.

3 MR ZWIER: Your Honour will also appreciate that s.601FC
4 sub-s.(2) of the Act which is contained in Part 5(c)
5 provides that the responsible entity holds scheme
6 property on trust for scheme members so in a sense this
7 is an application akin to a trustee application seeking
8 approval, perhaps under s.63 of the Trustee Act. When
9 this issue was raised before Justice Finkelstein before,
10 Justice Finkelstein, without dealing with it in his
11 judgment observed that much of the jurisprudence of a
12 directions application emanates from trust law and I
13 think His Honour has previously written a detailed
14 judgment tracking it back for some time, but he thought
15 the application was properly one made under s.511 of the
16 Act in the matter that was then before him, but it has
17 similarities to it. That is the growers are the
18 beneficiaries of the trust and it is the growers'
19 entitlements that are being used for the compromise.
20 Your Honour I won't take you to the authority, save there
21 are two other bits of evidence I want to put before Your
22 Honour if I may which aren't presently before you.

23 Before I do so, I'd like to clarify the basis on
24 which I would seek to tender it. The first is a
25 memorandum of advice of counsel, Mr Connick and Mr Bigos.
26 Their advice is privileged and confidential. The
27 liquidators don't wish to waive the privilege or
28 confidence but would seek to tender it to Your Honour so
29 Your Honour can be apprised of senior counsel's views
30 about the compromise, and again Your Honour will be
31 familiar that this is not an uncommon practice in

1 relation to compromises under s.477 sub-s.(2)(a) of the
2 Act to claim that you are compromising claims in excess
3 of \$20,000. If Your Honour were minded to accept the
4 advice of counsel on that basis, it might assist Your
5 Honour to understand the merits of the compromise that we
6 are seeking directions in relation to.

7 HIS HONOUR: Yes all right.

8 MR ZWIER: Bear with me for a moment.

9 HIS HONOUR: Yes thank you.

10 MR ZWIER: And Your Honour, if I could tender, Your Honour, a
11 letter of advice from Arnold Bloch Leibler to the
12 liquidators. It sets out properly also a view about
13 prospects and so forth. It's dated today's date, Your
14 Honour, and it really confirms oral advice that's been
15 previously given. And if I could just confirm, Your
16 Honour, I'm not - the liquidators don't (indistinct)
17 privilege or confidence in relation to that advice
18 either.

19 HIS HONOUR: Yes, thank you.

20 MR ZWIER: Now, Your Honour, if I could hand up to Your Honour
21 the orders that the liquidators now seek in the
22 directions application. They're slightly different from
23 the orders previously provided, Your Honour. I
24 understand they've been circulated to the other parties
25 at the Bar table, Your Honour. If I could just say
26 something about the form of the direction. In previous
27 applications, the liquidators have sought directions that
28 they're justified or that it's appropriate for them to
29 enter into an agreement or deed. In this particular
30 case, the deed has already been entered into. The
31 controversy is the payment of the money, and the deed

1 will stand once Your Honour makes such a direction. If
2 Your Honour is disinclined to make such a direction, then
3 obviously the deed will not give any force and effect.

4 HIS HONOUR: Do you need Paragraph 1? I just wondered whether
5 what you really seek is the - a direction in relation to
6 the payment under Clause 4.4(a)?

7 MR ZWIER: The reason it was included, Your Honour, was a
8 concern that it might be said that protection was given
9 to the liquidators other than for the making of the
10 payment under that settlement without a form of direction
11 akin to the one in Paragraph 1, so it was designed to
12 give the liquidators protection for the entirety of the
13 deed, not just the making of the payment.

14 HIS HONOUR: The only reason you're here though is because - as
15 I understood the affidavit, not all scheme members are
16 represented.

17 MR ZWIER: That's so, Your Honour.

18 HIS HONOUR: And that's really the issue that arises under
19 4.4(a), isn't it?

20 MR ZWIER: It is, Your Honour. But the liquidators were always
21 keen to get as much protection as they could.

22 HIS HONOUR: Of course they are.

23 MR ZWIER: The other paragraphs really deal with the confidence
24 privilege and confidentiality. I'm happy to address Your
25 Honour about the reasons for the confidentiality.
26 They're just - it's purely commercial. There are other
27 landlords in disputes with the liquidators. The
28 liquidators are hoping to resolve all those disputes
29 sensibly and probably more - and efficiently and it's
30 thought that if there is any publication of the terms in
31 any way, it might prejudice them in their negotiations,

1 Your Honour.

2 HIS HONOUR: May I assume that the other parties represented
3 here have no difficulty with the confidentiality order in
4 relation to those paragraphs?

5 MR ZWIER: I assume that those who represent the growers would
6 be delighted to keep the contents of it confidential.

7 HIS HONOUR: Yes.

8 MR ZWIER: And I assume that - - -

9 MR GARRATT: Your Honour, we are not troubled by the direction
10 which is Paragraph 3 of the document before Your Honour.
11 As to Paragraph 4, we have not seen the matters of legal
12 advice handed up.

13 HIS HONOUR: I don't think that that's appropriate, to make
14 such a declaration. I mean, the facts are the facts.
15 It's been - - -

16 MR GARRATT: Yes, Your Honour. What's happened in that course
17 really is part of the ex parte application, as I would
18 see it, rather than inter partes. Sometimes on a
19 compromise, advice is exhibited to an affidavit to show
20 the court that the matter has received careful attention
21 and the court can gain greater comfort in that respect,
22 but I have never seen, I must say for myself, a paragraph
23 like Paragraph 4. It would normally follow, because it's
24 exhibited to the advice and it's part of the evidence as
25 it were and - but in any event, I just wish to make plain
26 that we haven't been shown that advice and that's really
27 - therefore would be slightly anxious if Your Honour were
28 to - - -

29 HIS HONOUR: I am not going to do it.

30 MR GARRATT: - - - bearing against us.

31 HIS HONOUR: Yes.

1 MR GARRATT: Thank you, Your Honour.

2 MR ZWIER: Your Honour, in relation to the - what I've
3 previously described as the South Australian and
4 Victorian liquidators' relief application, if I can hand
5 up to Your Honour the form of orders that are sought.
6 They comply with the deed of settlement and they've just
7 been conveniently marked in both proceedings.

8 HIS HONOUR: Now, I suppose nothing in the nature of a
9 declaration is being sought here? Is it necessary to
10 make an order of the kind in Paragraph 1, relieving from
11 forfeiture where it is a discretionary remedy and hasn't
12 been adjudicated on the merits. I understand the effect
13 of this deed. Wouldn't one ordinarily deal with that
14 matter in the contract between the parties?

15 MR ZWIER: It could be dealt with by contract, Your Honour.
16 The liquidators are concerned that it was done by
17 contract and rights have been terminated. There might be
18 other implications to reignite rights that previously had
19 been terminated, and that the safer course was to come to
20 Your Honour with an order by consent. I know that there
21 is jurisprudence in relation to declaratory relief but
22 the court should not grant declaratory relief on a
23 consent basis without an adjudication of the rights, but
24 in a proceeding like this, I would have thought that it
25 would be sensible to make such an order.

26 HIS HONOUR: Yes.

27 MR ZWIER: The final order which I'd like to hand up, it
28 relates to what I've called the growers' application for
29 relief, and is no more than a disposition of the
30 proceeding and that's Proceeding 9365/2009. Your Honour
31 should have that with those three orders. There should

1 be one which is marked 9365 in the Oswell and Plantation
2 Land proceeding. Your Honour, I can hand up another
3 copy.

4 HIS HONOUR: I've got your initial proposed order and your
5 application under s.511. I've got the - I see. One of
6 the orders deals with two proceedings.

7 MR ZWIER: Yes, Your Honour, yes. And then the last order
8 should deal with what I've called the growers'
9 application for relief and it does no more than - - -

10 HIS HONOUR: Yes, I understand that. So the first of the
11 orders you mentioned is intended to be made in each of
12 those proceedings?

13 MR ZWIER: Yes, Your Honour.

14 HIS HONOUR: Yes, all right.

15 MR ZWIER: Unless there's anything further that Your Honour
16 wishes to hear, those are my submissions, Your Honour.

17 HIS HONOUR: Yes. Do you have anything more to add,
18 Mr Garratt?

19 MR GARRATT: Simply to confirm this, Your Honour, that in the
20 8870 and 9519 proceeding, they are essentially, Your
21 Honour, consent orders inter partes and it is appropriate
22 to make them, in our submission, so that there can be no
23 dispute or debate hereafter - - -

24 HIS HONOUR: I'm content to make them.

25 MR GARRATT: Yes, thank you, Your Honour. I say nothing
26 further, Your Honour.

27 HIS HONOUR: Yes, all right. Bear with me for one moment.

28 (RULING FOLLOWS)

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1 HIS HONOUR: Is there anything else?

2 MR ZWIER: Your Honour, not in relation to the applications

3 that are before Your Honour, but with the two court

4 matters, Your Honour, it's been the practice of the

5 liquidators to generally keep the court informed or

6 appraised of other issues that might arise so that it

7 might assist the liquidators and other parties if further

8 applications are to be made and for the court to be aware

9 of what might be coming. If Your Honour were minded, I

10 could just explain to Your Honour what's being

11 contemplated at the moment.

12 Your Honour will have seen from the affidavits that

13 the scheme of the Timbercorp winding up is in effect an

14 informal winding up by a process of amendment to

15 constitutions to allow the liquidators, under powers of

16 attorney, to extinguish borrower rights, and then a sale

17 process then an extinguishment of rights at settlement

18 through a series of directions. Your Honour, the first

19 direction is, of course, made by His Honour Justice

20 Finkelstein in relation to forestry, and that's set out

21 in the affidavit of Mr Korda which is before you in

22 Exhibit MAK4. There's reference to it, I think, in

23 Paragraphs 44 to 55.

24 The second application, which follows the same

25 lines, related to almonds, and on that occasion the

26 application was made to His Honour Justice Robson, and

27 His Honour made similar orders, I think, in relation to

28 the winding up or the extinguishment of rights in the

29 almond schemes.

30 The third horticultural or forestry scheme that came

31 before the court was olives, and in that application

1 which was issued, Your Honour, I appeared before His
2 Honour Justice Robson and said having had directions made
3 in relation to forestry in one court and in relation to
4 almonds in another, it is probably unnecessary to make a
5 further application to amend the constitution for olives,
6 and His Honour was helpful to observe that that is
7 probably so, given that the matter had already been dealt
8 with.

9 There are two more horticultural schemes that the
10 liquidators are dealing with. One is table grapes and
11 the other is citrus. In relation to table grapes and
12 citrus, the constitutions have not been amended to
13 empower the liquidators to terminate grower rights, but I
14 think it's fair to just inform the court that unless a
15 party expresses some controversy about it, the
16 liquidators presently intend to amend those constitutions
17 without making an application but, if any party at the
18 Bar table or the regulator ASIC has some concerns about
19 it, then, Your Honour, the liquidators will come before
20 Your Honour seeking some time before Christmas to obtain
21 a direction empowering them to amend those constitutions.

22 As I've said, Your Honour, the liquidators' view is
23 it's now uncontroversial, given the history, but I
24 thought it was appropriate to draw that to the court's
25 attention lest we should need an urgent hearing for those
26 applications. But there are no other matters, Your
27 Honour.

28 (RULING FOLLOWS)

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(Unrevised)
(Judd J)

R U L I N G

1 HIS HONOUR: Yes. I'll just ask my associate to return the
2 advice to you, Mr Zwier.
3 MR ZWIER: If Your Honour please.
4 HIS HONOUR: If there's nothing further I can assist with, I
5 adjourn sine die.
6 ADJOURNED TO A DATE TO BE FIXED