

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

LIST E
No.SC1 2010 1354

BETWEEN:

BOSI SECURITY SERVICES LIMITED (A.C.N. 009 413 852) Plaintiff
as trustee for
AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED
(A.C.N. 005 357 522) and BOS INTERNATIONAL (AUSTRALIA)
LIMITED (A.C.N. 066 601 250) and WESTPAC BANKING
CORPORATION (A.C.N. 007 457 141)

- and -
B.B OLIVES PTY LTD (IN LIQUIDATION) Defendants
(A.C.N. 083 992 367) & ORS (according to the attached Schedule)

MINUTE OF ORDER

JUDGE: The Honourable Justice Davies
DATE MADE: 22 March 2010
ORIGINATING PROCESS: Originated Motion filed 16 March 2010
HOW OBTAINED: On application by Summons filed 16 March 2010

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| ATTENDANCE: | Mr P. Anastassiou S.C. with Mr R.G Craig | Counsel for the Plaintiffs |
| | Mr P Crutchfield SC with Oren Bigos | Counsel for the First, Second, Third, Fourth, Fifth and Sixth Defendants |
| | Mr G. Bigmore QC with Mr S.Hopper | Counsel for Michael Charles Vicary, Pamela Jan Dry and David Butterfield |

OTHER MATTERS: Not applicable

THE COURT ORDERS THAT:

1. Pursuant to rule 45.05 of the *Supreme Court (General Civil Procedure) Rules 2005* (Vic) the requirements of Rules 5.03(1) and 8.02 are dispensed with.

2. Pursuant to rule 45.05 of the *Supreme Court (General Civil Procedure) Rules 2005* (Vic) the plaintiff has leave to proceed by originating motion in Form 5C.
3. Pursuant to rule 16.01(2) of the *Supreme Court (General Civil Procedure) Rules 2005* (Vic):
 - (a) Michael Charles Vicary be appointed as the representative of the Growers in the 2006 Timbercorp Olive Project (ARSN 119 182 179);
 - (b) Pamela Jan Dry be appointed as the representative of the Growers in the 2007 Timbercorp Olive Project (ARSN 123 155 715); and
 - (c) David Butterfield be appointed as the representative of the Growers in the 2008 Timbercorp Olive Project (ARSN 129 307 722).
4. The persons appointed pursuant to paragraph 3 above, be joined as the seventh, eighth, and ninth defendants in the proceeding pursuant to rule 9.02 and/or rule 9.06(b) of the *Supreme Court (General Civil Procedure) Rules 2005* (Vic).
5. The plaintiff is granted leave to file and serve an amended originating motion on the defendants on or before 4pm on 26 March 2010:
 - (a) incorporating a declaration as to what, if any, right the Growers represented by the seventh, eighth, and ninth defendants have to the sale proceeds held on trust by the first defendant pursuant to paragraph 8 of the Orders; and
 - (b) amending paragraph 5 of the Originating Motion to read "A declaration as to how the sale proceeds held on trust by the first defendant pursuant to paragraph 8 of the Orders ought to be distributed between the plaintiff and the second, seventh, eighth and ninth defendants."
6. The plaintiff is granted leave to proceed against Almond Land Pty Ltd A.C.N. 091 460 992 (in liquidation), B.B. Olives Pty Ltd A.C.N 083 992 367 (in liquidation) and Timbercorp Limited A.C.N. 055 185 067 (in liquidation) pursuant to s.471B of the *Corporations Act 2001* (Cth).

7. Paragraph 11 of the orders made by the Honourable Justice Croft in proceeding No.9998 of 2009 be discharged, insofar as it relates to exhibit MAK-19 to the affidavit of Mark Anthony Korda sworn 10 November 2009 in proceeding No.9998 of 2009.
8. On or before 4pm on 23 April 2010 the plaintiff serve on the defendants a draft list of the documents on which the plaintiff intends to rely in relation to the Rights Issue (**the Draft List**).
9. On or before 4pm on 7 May 2010, the defendants serve on the plaintiff a list of any documents which are not already identified in the Draft List and on which the defendants intend to rely in relation to the Rights Issue (**Further Documents**).
10. On or before 4pm on 14 May 2010, the plaintiff files and serves a List of Documents incorporating those documents identified in the Draft List and the Further Documents.
11. On or before 4pm on 21 May 2010 the parties file and serve:
 - (a) written contentions of fact and law addressing the issue of what right, if any, right they have to the net sale proceeds (the **Funds**) to be held on trust by the first defendant pursuant to paragraph 8 of the Orders (the **Rights Issue**) (**the Rights Contentions**);
 - (b) any affidavit material upon which they wish to rely in relation to the Rights Issue.
12. On or before 4pm on 4 June 2010 the parties file and serve:
 - (a) written contentions of fact and law in reply to the Rights Contentions;
 - (b) any affidavit material upon which they wish to rely by way of reply in relation to the Rights Issue.
13. Each party serve a copy of the documents referred to in paragraphs 8, 9, 10, 11 and 12 upon Herbert Geer, solicitors of Level 20/385 Bourke Street, Melbourne, 3001 (marked to the attention of Mr Tom May) for TGG Almond Committee Inc and Ms

Kerree Bezencon and any other document filed in the proceeding from the date of this order at the same time as the document is served upon a party to the proceeding.

14. The Liquidators of the first defendant pay from the Funds to Clarendon Lawyers, the solicitors for the seventh, eighth and ninth defendants, the legal costs and disbursements of the seventh, eighth and ninth defendants of and incidental to this proceeding on a solicitor and client basis pursuant to rule 63.32(2)(a) of the *Supreme Court (General Civil Procedure) Rules 2005* (Vic) within 14 days of presentation to the Liquidator by Clarendon Lawyers of:
 - (i) a tax invoice for Clarendon Lawyers' legal costs and disbursements in relation to this proceeding; and
 - (ii) a bill of costs on a solicitor and client basis, prepared and certified by an appropriately qualified costs consultant, to be agreed by the parties (the Consultant).
15. The proceeding be listed for further directions at 10:00am on 18 June 2010.
16. All other questions of costs are reserved.
17. Liberty to apply.

DATE AUTHENTICATED: **March 2010**

JUDGE

SCHEDULE

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No.

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AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED
(A.C.N. 005 357 522) and BOS INTERNATIONAL (AUSTRALIA) LIMITED
(A.C.N. 066 601 250) and WESTPAC BANKING CORPORATION (A.C.N.007 457
141)**

Plaintiff

and

**B.B OLIVES PTY LTD (IN LIQUIDATION)
(A.C.N. 083 992 367)**

First Defendant

and

ALMOND LAND PTY LTD (IN LIQUIDATION) (A.C.N 091 460 392)

Second Defendant

and

TIMBERCORP LIMITED (IN LIQUIDATION) (A.C.N. 055 185 067)

Third Defendant

and

**MARK ANTHONY KORDA
(in his capacity as liquidator of Almond Land Pty Ltd (in liquidation))
(in his capacity as liquidator of B.B. Olives Pty Ltd (in liquidation))**

Fourth Defendant

and

**LEANNE KYLIE CHESSER
(in her capacity as liquidator of Almond Land Pty Ltd (in liquidation))**

Fifth Defendant

and

**MARK FRANCIS XAVIER MENTHA
(in his capacity as liquidator of B.B. Olives Pty Ltd (in liquidation))**

Sixth Defendant