

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

NINTH AFFIDAVIT OF YU-CHIAO HSUEH

Date of document: 19 May 2014
Filed on behalf of: The Second and Third Defendants
Macpherson + Kelley
Lawyers
Level 22, 114 William Street
MELBOURNE VIC 3000

Solicitor's Code: 041547
DX 174 Melbourne
Tel: 03 8615 9900
Fax : 03 8615 9999
Ref: MJF:229731
Email: michael.fernon@mk.com.au

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 make this further affidavit in connection with the application for approval of the Deed of Compromise.

TSL follow up with trustee in bankruptcy

- 4 I refer to paragraphs 4 to 6 of my fifth affidavit dated 12 May 2014.
- 5 I have since been informed by Ms Jing Chang of Arnold Bloch Leibler, solicitors for TSL, and believe that TSL has made two calls to the trustee in bankruptcy of the relevant grower and that the trustee confirmed that it had received the documents sent relating to the Deed of Compromise and the trustee would call TSL back. To the best of my knowledge, the trustee has not called the trustee back yet.



Further communications with Kerree Bezencon

6 On 16 May 2014, at 3:22pm I received an email from Kerree Bezencon titled "statement for court".

7 At 3:45pm, I replied to Ms Bezencon and wrote:

Thank you Kerree.

We will make sure this is produced to the Court.

8 At 3:58pm, I received a further email from Ms Bezencon which stated:

there is another following Yu-chiao along similar lines with the cashflows etc

9 Now produced and shown to me marked **YCH-22** is a true copy of my email exchange with Ms Bezencon dated 16 May 2014..

10 On 16 May 2014 at 5:28pm, I sent Ms Bezencon an email that relevantly stated:

Dear Kerree,

By way of courtesy, please note the following details for the hearing on Monday as we received from His Honour's Associate.



The matter will be heard before Justice Dixon in the Supreme Court of Victoria commencing at 10.30am in Old High Court 3.

11 At 5:59pm, I received the following response:

thank you, for obvious reasons we do not have the funds to appear.

12 Now produced and shown to me marked **YCH-23** is a true copy of the email exchange between Ms Bezencon and me dated 16 May 2014.

13 On 18 May 2014 at 9:48pm, I received a further email from Ms Bezencon enclosing her further submissions in this matter, which she requested be kept confidential and for her time to be covered, emphasising again that she is unable to appear in person for the very obvious reason of funding. Now produced and shown to me marked **confidential exhibit YCH-24** is a true copy of the email from Ms Bezencon to me with her submissions attached.

 2 

14 Although the submissions do not appear to disclose the substance of the Advice given to the Representative Growers, they have been provided to me on the condition that they be kept confidential. Accordingly, confidential exhibit YCH-24 is contained in a sealed envelope.

Affirmed by YU-CHIAO HSUEH)

at Melbourne in the State of Victoria)

this 19th day of May 2014)

Before me:)

BEFORE ME
Madeleine Joanne Karipidis
An Australian Legal Practitioner
(within the meaning of the Legal Profession Act 2004)
Level 22, 114 William St, Melbourne Vic 3000