

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

No. 9998 of 2009

**B E T W E E N:**

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 managed investments schemes listed in Schedule 1 and ors according to the Schedule.

Plaintiffs

**GENERAL FORM OF ORDER**

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JUDGE: The Honourable Justice Croft

DATE MADE: 12 November 2009

ORIGINATING PROCESS: Originating process of the Plaintiffs filed 10 November 2009

HOW OBTAINED: On the hearing of the originating process on 11 November 2009

ATTENDANCE: Mr L Zwier and Ms B Toy-Cronin, Solicitors for the Plaintiffs  
Mr GT Bigmore of Her Majesty's Counsel and Mr SG Hopper of Counsel for the Timbercorp Growers Group  
Mr TD Cordiner for Kerree Anne Bezencon  
Ms S Hibble of Counsel for the Australian Securities and Investments Commission  
Mr PE Anastassiou of Senior Counsel and Mr RG Craig of Counsel for Westpac Banking Corporation, BOS International Australia Limited and Australia and New Zealand Banking Group Limited

OTHER MATTERS: Each of the Plaintiffs and Boundary Bend Limited have entered into sale and purchase deeds on 12 October 2009 (SPDs) which form Confidential Exhibits MAK-18 and MAK-19 to the Affidavit of Mark Anthony Korda sworn 10 November 2009 (Affidavit).

**THE COURT ORDERS THAT:**



The Third (Korda) and Fourth (Chesser) Plaintiffs (in their capacity as Liquidators of the First Plaintiff (TSL)) are justified in procuring the First Plaintiff as responsible entity of the managed investment schemes listed in Schedule 1 of this order (Registered Schemes) to enter into and perform the SPDs and extinguishing all of the rights of Growers' (investors in the schemes set on in schedules 1 and 2 of this order)

in respect of the assets the subject of the SPDs (**Growers Rights**).

2. The Third (Korda) and Fifth (Mentha) Plaintiffs (in their capacity as liquidators of the Second Plaintiff (OML)) are justified in procuring the Second Plaintiff as manager of the Unregistered Olive Scheme to enter into and perform the SPDs and extinguishing all of the Grower Rights.
3. The Third and Fourth Plaintiffs (in their capacity as liquidators of the First Plaintiff) are justified in making, doing and executing such documents or things to give effect to the extinguishment of all of the Grower Rights in order to perform the SPDs.
4. The Third and Fifth Plaintiffs (in their capacity as liquidators of the Second Plaintiff) are justified in making, doing and executing such documents or things to give effect to the extinguishment of all of the Grower Rights in order to perform the SPDs.
5. The Third (Korda) and Fifth (Mentha) Plaintiffs (in their capacity as Liquidators of the Second Plaintiff (OML)) are justified in disclaiming in respect of the unregistered managed investment scheme listed in Schedule 2 of this order (**Unregistered Olive Scheme**) the Project and Management Agreement as defined in the Affidavit (PMA) and the Licence and Joint Venture Agreements (as defined in the Affidavit) and to the extent necessary have leave to do so pursuant to section 568 of the *Corporations Act* 2001 (*Cth*).

**THE COURT ORDERS, DECLARES AND DIRECTS THAT:**

6. The:

- (a) Third (Korda) and Fourth (Chesser) Plaintiffs in their capacity as liquidators of the First (TSL), Sixth (Timbercorp) and Eighth (Almond Land) Plaintiffs; and
- (b) Third (Korda) and Fifth (Mentha) Plaintiffs in their capacity as liquidators of the Second (OML), Seventh (OLPL), Ninth (BBO), Tenth (Olivecorp Processing) and Eleventh (Boort Estate) Plaintiffs –

may enter into and perform:

- (i) the SPDs; and
- (ii) any document referred to, in connection with, or necessary to give effect to the SPDs.


7. Upon completion of any sale under the Boort SPDs the net proceeds of sale after payment of selling costs and expenses, retentions (if any) and the costs and expenses of the liquidators of the First, Second and Sixth to Eleventh Plaintiffs referable to the preservation and realisation of the assets the subject of the SPDs, as approved by the committee of inspection of the Seventh Plaintiff and the Secured Creditors (as that term is defined in paragraph 19 of the Affidavit), or order of the Court (**Net Boort Proceeds**) are to be held by the Seventh Plaintiff in an interest bearing trust account with an Australian bank (as defined in section 9 of the *Corporations Act*), pending the hearing and determination by the Court of a proceeding to determine which person or persons have any rights to all or any part of the Net Boort Proceeds, and to be held on trust for the person or persons who are able to establish such a right, or until further order of the Court.



8. Upon completion of any sale under the Boundary Bend SPDs the net proceeds of sale (after payment of selling costs and expenses, retentions (if any) and the costs and expenses of the liquidators of the First, Second and Sixth to Eleventh Plaintiffs referable to the preservation and realisation of the assets the subject of the SPDs, as approved by the committee of inspection of the Ninth Plaintiff and the Secured Creditors (as that term is defined in paragraph 19 of the Affidavit), or order of the Court (**Net Boundary Bend Proceeds**) are to be held by the Ninth Plaintiff in an interest bearing trust account with an Australian bank (as defined in section 9 of the Corporations Act), pending the hearing and determination of a proceeding to determine which person or persons have any rights to all or any part of the Net Boundary Bend Proceeds, and to be held on trust for the person or persons who are able to establish such a right, or until further order of the Court.
9. Insofar as each of the Secured Creditors have any rights to the assets the subject of the SPDs, whether under their securities over those assets or otherwise, nothing in the release of those securities upon completion of the SPDs will prejudice those rights for the purposes of their claim to all or any part of the Net Boort Proceeds and/or Net Boundary Bend Proceeds.
10. Insofar as the Growers have any rights to the assets the subject of the SPDs nothing in order 1-5 above, or any action taken thereunder by the Third, Fourth and Fifth Plaintiffs, will prejudice those rights for the purposes of their claim to all or any part of the Net Boort Proceeds and/or Net Boundary Bend Proceeds.
11. Exhibits MAK-14, MAK-15, MAK-17, MAK-18, MAK-19, MAK-30, MAK-31 and MAK-32 to the Affidavit be kept confidential.
12. The interlocutory process of John Angus Horden dated 10 November 2009 be dismissed.
13. Costs be reserved.

DATE AUTHENTICATED:

- 3 DEC. 2009



The Honourable Justice Croft



## **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)

## **SCHEDULE 2**

1. 2000 Timbercorp Olive Project (Private Offer) (Unregistered)
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## **SCHEDULE OF PARTIES**

**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**  
First Plaintiff

**OLIVECORP MANAGEMENT LTD (IN LIQUIDATION) (ACN 089 542 343)**  
**IN ITS CAPACITY AS MANAGER OF THE UNREGISTERED**  
**MANAGED INVESTMENT SCHEME LISTED IN SCHEDULE 2**  
Second Plaintiff

**MARK ANTHONY KORDA**  
Third Plaintiff

**LEANNE KYLIE CHESSER**  
Fourth Plaintiff

**MARK FRANCIS XAVIER MENTHA**  
Fifth Plaintiff

**TIMBERCORP LIMITED (IN LIQUIDATION) (ACN 055 185 067)**  
Sixth Plaintiff

**OLIVECORP LAND PTY LTD (IN LIQUIDATION) (ACN 090 141 512)**  
Seventh Plaintiff

**ALMOND LAND PTY LTD (IN LIQUIDATION) (ACN 091 460 392)**  
Eighth Plaintiff

**B.B. OLIVES PTY LTD (IN LIQUIDATION) (ACN 083 992 367)**  
Ninth Plaintiff

**OLIVECORP PROCESSING FACILITY PTY LTD (IN LIQUIDATION) (ACN 098 581 081)**  
Tenth Plaintiff

**BOORT ESTATE PTY LTD (IN LIQUIDATION) (ACN 101 679 716)**  
Eleventh Plaintiff

Dated: 12 November 2009