

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

LIST E

No of 2009

**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

ORIGINATING PROCESS

Date of document: 10 November 2009
Filed on behalf of: the Plaintiffs

Prepared by:
ARNOLD BLOCH LEIBLER
Lawyers and Advisers
Level 21
333 Collins Street
MELBOURNE 3000

Solicitor's Code: 54
DX 38455 Melbourne
Tel: 9229 9999
Fax: 9229 9900
Ref: 01-1499489
(Leon Zwier lzwier@abl.com.au/
Bridgette Toy-Cronin btoycronin@abl.com.au)

A. DETAILS OF APPLICATION

This application is made under sections 477(2B), 511 and 568(1A) of the *Corporations Act 2001* (Cth) (**the Act**).

On the facts stated in the supporting affidavit of Mark Anthony Korda sworn on 10 November 2009 (**Affidavit**) the Plaintiffs seek the following orders:

1 That the Court approves entry by:

- (a) the Third (Korda) and Fourth (Chesser) Plaintiffs in their capacity as liquidators of the First (TSL), Sixth (Timbercorp) and Eighth (Almond Land) Plaintiffs; and

- (b) the 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 -

pursuant to s 477(2B) of the Act, into:

- (i) the sale and purchase deeds between each of the Plaintiffs and Boundary Bend Limited which form Confidential Exhibits MAK-19 and MAK-20 to the Affidavit or documents substantially in that form (**SPDs**); and
- (ii) any document referred to, in connection with, or necessary to give effect to the SPDs.

- 2 The Third (Korda) and Fourth (Chesser) Plaintiffs (in their capacity as Liquidators of the First (TSL) Plaintiff) and the Third (Korda) and Fifth (Mentha) Plaintiffs (in their capacity as Liquidators of the Second Plaintiff (OML)) seek directions pursuant to section 511 of the Act that they are justified in procuring the First Plaintiff as responsible entity of the managed investment schemes listed in Schedule 1 and the Second Plaintiff as manager of the managed investment scheme listed in Schedule 2 (**Unregistered Olive Scheme**), to enter into and perform the SPDs which includes provisions to terminate or surrender each relevant Grower sub-lease or licence and joint venture agreement.
- 3 The Third (Korda) and Fifth (Mentha) Plaintiffs (in their capacity as Liquidators of the Second Plaintiff (OML)) seek leave pursuant to section 568(1A) to disclaim the Project and Management Agreement as defined in the Affidavit (**PMA**) in respect of the Unregistered Olive Scheme.
- 4 The Third (Korda) and Fifth (Mentha) Plaintiffs (in their capacity as liquidators of the Second Plaintiff (OML)) seek directions pursuant to section 511 of the Act that they are justified in disclaiming pursuant to section 568 of the Act the PMA in respect of the Unregistered Olive Scheme and to enter into and performing the SPD which will have the effect of terminating Growers' rights.
- 5 The Third and Fourth Plaintiffs (in their capacity as liquidators of the First Plaintiff) and the Third and Fifth Plaintiffs (in their capacity as liquidators of the Second Plaintiff) seek directions pursuant to section 511 of the Act that upon completion of any sale they are justified in procuring a Plaintiff to hold the net proceeds of sale on trust 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 proceeds.

6 Exhibits MAK-14, MAK-15, MAK-17, MAK-18, MAK-19 and MAK-30, MAK-31 and MAK-32 to the Affidavit be kept confidential.

7 Such further or other orders as the Court deems fit.

DATE: 10 November 2009


.....
ARNOLD BLOCH LEIBLER
Solicitors for the plaintiff

This application will be heard by the Justice Croft in Court No. , Supreme Court, 450 Little Bourke Street, Melbourne at 10:30 am on 11 November 2009.

C. APPLICATION FOR WINDING UP ON GROUND OF INSOLVENCY

Not applicable.

D. FILING

Date of filing:

PROTHONOTARY

This originating process is filed by Arnold Bloch Leibler of Level 21, 333 Collins Street, Melbourne, VIC, 3000, solicitors for the plaintiff.

E. SERVICE

The plaintiff's address for service is C/- Arnold Bloch Leibler, Level 21, 333 Collins Street, Melbourne, VIC, 3000.

It is intended to provide as a courtesy a copy of this originating process on the following persons.

Australian Securities and Investments Commission;

George Kalil and David Butterfield by their solicitors Clarendon Lawyers;

Kerree Anne Bezencon by her solicitor Maurice Blackburn;

Ian Menzies Carson, the Additional Liquidator by his solicitors Mallesons;
Australia and New Zealand Banking Group Ltd by its solicitors Allens Arthur Robinson;
BOSI Securities Services Limited by its solicitors Blake Dawson;
Commonwealth Bank of Australia by its solicitors Henry Davis York; and
To post this document on the websites of KordaMentha and Arnold Bloch Leibler

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

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)