

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

LIST E

S CI 2010 07029

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 2004 TIMBERCORP TABLE GRAPE
PROJECT (ARSN 108 648 086) AND THE 2005 TIMBERCORP TABLE GRAPE PROJECT
(ARSN 113 512 236) AND ORS ACCORDING TO THE SCHEDULE

Plaintiffs

ORIGINATING PROCESS

Date of document: 23 December 2010

Filed on behalf of: The Plaintiffs

Prepared by:

ARNOLD BLOCH LEIBLER

Lawyers and Advisers

Level 21

333 Collins Street

Melbourne VIC 3000

Solicitor's Code: 54

DX 38455 Melbourne

Tel 9229 9999

Fax 9229 9900

Ref 011570028

(Leon Zwier lwier@abl.com.au)

A. DETAILS OF APPLICATION

This application is made under section 511 of the *Corporations Act 2001* (Cth) (the **Act**).

The Second and Third Plaintiffs seek directions and orders in relation to the sale process for certain assets managed by the First Plaintiff.

On the facts stated in the affidavit of Paul William Kirk sworn on 22 December 2010 (the **Kirk Affidavit**), and an affidavit of Mark Anthony Korda sworn on 22 December 2010, the Plaintiffs seek the following orders and directions:

1. The Second and Third Plaintiffs (in their capacity as Liquidators of the First Plaintiff) seek directions pursuant to section 511 of the Act that they are justified in procuring the First

Plaintiff as responsible entity of the 2004 Timbercorp Table Grape Project (ARSN 108 648 086) and the 2005 Timbercorp Table Grape Project (ARSN 113 512 226) to terminate or surrender each relevant Grower licence and to extinguish all of the rights of the Growers in respect of the property the subject of the Sale Contracts (as defined in the Kirk Affidavit) on the basis that the net proceeds of sale under the Sale Contracts are held 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.

2. Exhibits PWK-19, PWK-20, PWK-21, PWK-25, PWK-27, PWK-47, PWK-48, PWK-50, PWK-51, PWK-52, PWK-53 and PWK-54 to the Kirk Affidavit be kept confidential.
3. Such further or other orders as the Court deems fit.

DATE: 23 December 2010



ARNOLD BLOCH LEIBLER

Solicitors for the Plaintiffs

This originating process will be heard by Justice Davies in Court No. 2 Supreme Court, 450 Little Bourke Street, Melbourne at 10am on 2 February 2011.

B. — NOTICE TO DEFENDANT

TO: —

~~If you or your legal practitioner do not appear before the Court at the time shown above, the application may be dealt with, and an order made, in your absence. As soon after that time as the business of the Court will allow, any of the following may happen:~~

- ~~(a) — the application may be heard and final relief given;~~
- ~~(b) — directions may be given for the future conduct of the proceeding;~~
- ~~(c) — any interlocutory application may be heard.~~

~~Before appearing before the Court, you must file a notice of appearance, in the prescribed form, in the office of the Prothonotary and serve a copy of it on the plaintiff.~~

~~Note: Except with the leave of the Court, a defendant that is a corporation cannot appear at a hearing otherwise than by a legal practitioner.~~

C. APPLICATION FOR WINDING UP ON GROUND OF INSOLVENCY

Not applicable.

D. FILING

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

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 serve as a courtesy a copy of this originating process and the supporting affidavits of Paul Kirk and Mark Korda on the following persons:

1. Australian Securities and Investments Commission;
2. Paul William Kirk and Michael Fung, in their capacity as joint and several receiver and managers of the assets charged by Align Funds Management Limited in its capacity as the responsible entity of the Timbercorp Orchard Trust (ARSN 106 557 297) (Receivers and Managers appointed) by its solicitors Allens Arthur Robinson;
3. The Timbercorp Growers Group by their solicitors Clarendon Lawyers; and
4. The Timbercorp Growers Group Inc by their representative Kerree Bezencon.

23 DEC 2010
 Filed! 19 MAY 2010
 PN

SCHEDULE OF PARTIES

**TIMBERCORP SECURITIES LIMITED (IN LIQUIDATION) (ACN 092 311 469)
IN ITS CAPACITY AS RESPONSIBLE ENTITY OF THE 2004 TIMBERCORP TABLE GRAPE
PROJECT (ARSN 108 648 086) AND THE 2005 TIMBERCORP TABLE GRAPE PROJECT
(ARSN 113 512 236)**

First Plaintiff

**MARK ANTHONY KORDA
IN HIS CAPACITY AS LIQUIDATOR OF TIMBERCORP SECURITIES LIMITED
(IN LIQUIDATION) (ACN 092 311 469)**

Second Plaintiff

**LEANNE KYLIE CHESSER
IN HER CAPACITY AS LIQUIDATOR OF TIMBERCORP SECURITIES LIMITED
(IN LIQUIDATION) (ACN 092 311 469)**

Third Plaintiff