

**IN THE SUPREME COURT OF VICTORIA
AT MELBOURNE
COMMERCIAL COURT**

No. S CI 2014 02972

BETWEEN

TIMBERCORP FINANCE PTY LTD (IN LIQUIDATION) (ACN 054 581 190)

Plaintiff

and

**DOUGLAS JAMES COLLINS & OTHERS
(according to attached Schedule of Parties)**

Defendants

REJOINDER

Date of document: 14 September 2016
Filed on behalf of the First Defendant and
Second Defendant
Prepared by:
M&K Lawyers Group Pty Ltd
40-42 Scott Street
Dandenong VIC 3175

Code: 108855
DX: 17501, Dandenong
Tel: +61 3 9794 2600
Fax: +61 3 9794 2500
Ref: RGW:241159
Attn: Ron Willemsen
Email: ron.willemsen@mk.com.au

To the Plaintiff's Reply to the First and Second Defendants' Amended Defence filed 9 September 2016 (the **Reply**), the First and Second Defendants (**Mr & Mrs Collins**) join issue with each of the allegations made therein, and say further:-

- 1 Insofar as the Plaintiff (**Timbercorp Finance**) alleges in paragraphs 5, 6, 7, and 8, of the Reply that that Mr & Mrs Collins did not obtain, or did not hold, lots in the 2008 Olive Project, Mr & Mrs Collins make no such denials in their Amended Defence to Further Amended Statement of Claim filed 5 September 2016 (the **Defence**).
- 2 Further to paragraph 1, Mr & Mrs Collins refer to and rely upon paragraphs 1 to 89 of the Defence, and say further that none of those paragraphs allege that the Third Defendant (**Timbercorp Securities**) did not issue to them lots in the 2008 Olive Project, or that Mr & Mrs Collins did not obtain, or did not hold, lots in the 2008 Olive Project.
- 3 Whether or not Timbercorp Securities issued to Mr & Mrs Collins lots in the 2008 Olive Project or whether Mr & Mrs Collins obtained, or held, lots in the 2008 Olive Project, is not relevant to the question of whether Timbercorp Finance performed clause 1 of the Loan Agreement.
- 4 By reason of the above, Mr & Mrs Collins are not estopped and are not precluded from raising the allegations in their Defence on the basis of abuse of process as alleged by Timbercorp Finance.

- 5 Further, by the reason of the above, there is no justiciable issue as between Mr & Mrs Collins and Timbercorp Finance as to whether or not Timbercorp Securities issued to Mr & Mrs Collins lots in the 2008 Olive Project or whether Mr & Mrs Collins obtained, or held, lots in the 2008 Olive Project, and accordingly, there is no occasion for the exercise of judicial power to determine such an issue in this proceeding.

Dated: 14 September 2016

Michael D Wyles

Fleur Shand

Dion Fahey


.....
M&K Lawyers Group Pty Ltd
Solicitors for the First Defendant and
Second Defendant

SCHEDULE OF PARTIES

Dated: 14 September 2016

No. S CI 2014 02972

TIMBERCORP FINANCE PTY LTD (IN LIQUIDATION) (ACN 054 581 190)

Plaintiff

DOUGLAS JAMES COLLINS

First Defendant

JANET ANN COLLINS

Second Defendant

TIMBERCORP SECURITIES LIMITED (IN LIQUIDATION) (ACN 092 311 469)

Third Defendant