

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

No. S ECI 2014 000419

BETWEEN

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

Plaintiff

and

PETER JOHN WHITE

First Defendant

and

TIMBERCORP SECURITIES LIMITED (IN LIQUIDATION) (ACN 093 311 469)

Second Defendant

REJOINDER

Date of document: 9 September 2016
Filed on behalf of the First Defendant by
Counterclaim
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To the Plaintiff's Amended Reply to the First Defendant's Amended Defence filed 29 August 2016 (the **Reply**), the First Defendant (**Mr White**) joins issue with each of the allegations made therein, and says further:-

- 1 Insofar as the Plaintiff (**Timbercorp Finance**) alleges in paragraphs 5, 6, 7, 8, 11, 12, 13, 14, 17, 18, 19, and 20 of the Reply that that Mr White did not obtain, or did not hold, lots in the relevant Projects, Mr White makes no such denials in his Amended Defence to Further Amended Statement of Claim filed 30 August 2016 (the **Defence**).
- 2 Further to paragraph 1, Mr White refers to and relies upon paragraphs 1 to 89 of the Defence, and says further that none of those paragraphs allege that the Second Defendant (**Timbercorp Securities**) did not issue to him lots in the relevant Projects, or that Mr White did not obtain, or did not hold, lots in the relevant Projects.
- 3 Whether or not Timbercorp Securities issued to Mr White lots in the relevant Projects or whether Mr White obtained, or held, lots in the relevant Projects, is not relevant to the question of whether Timbercorp Finance performed clause 1 of the Loan Agreement.


- 4 By reason of the above, Mr White is not estopped and is not precluded from raising the allegations in his 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 White and Timbercorp Finance as to whether or not Timbercorp Securities issued to Mr White lots in the relevant Projects or whether Mr White obtained, or held, lots in the relevant Projects, and accordingly, there is no occasion for the exercise of judicial power to determine such an issue in this proceeding.

Dated: 9 September 2016

Michael D Wyles

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