

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

Not Restricted

No. 888 of 2011

TIMBERCORP SECURITIES LIMITED (IN
LIQUIDATION) (ACN 092 311 469) IN ITS
CAPACITY AS RESPONSIBLE ENTITY OF
THE 2004 TIMBERCORP CITRUS PROJECT
(ARSN 108 887 538) AND THE 2005
TIMBERCORP CITRUS PROJECT (ARSN 114
091 299) AND ORS ACCORDING TO THE
SCHEDULE

First Plaintiff

EX TEMPORE

JUDGE: JUDD J
WHERE HELD: Melbourne
DATE OF HEARING: 28 April 2011
DATE OF RULING: 28 April 2011

APPEARANCES: Counsel
For the Plaintiff Dr O Bigos
For the Receivers

Solicitors
Arnold Bloch Leibler
Mr M Whittle of Allens
Arthur Robinson

For the Timbercorp Grower
Group Citrus Committee

Ms K Bezencon, Chairperson
of the Timbercorp Grower
Group Citrus Committee
with Mr R Booker

HIS HONOUR:

- 1 I have before me an application made by the liquidators, supported by the receivers,
for what is described as a clarification of orders made on 15 March 2011.
- 2 The orders as presently formulated provided that the termination or surrender of
grower rights would be effective on and from the completion of the sale contracts.
- 3 It is in that respect that the ambiguity arises, because it would appear that there is to
be settlement of the land sale contract today and settlement of the water rights
contract at a later time, although in the not too distant future. I was told that there
were procedural steps required in South Australia before settlement of the water
rights contract can take place.
- 4 Ms Bezencon appears as the Chairperson of the Timbercorp Grower Group Citrus
Committee to oppose the proposed amendment, so as to secure a position where the
grower rights remain unaffected until the last to complete of the contracts.
- 5 She seeks that position in order to allow the growers group additional time to put
together another proposal and to call a meeting to approve variations to the relevant
constitution and a scheme to replace the responsible entity.
- 6 Her discussions have been, so it would seem, primarily with the liquidator who, she
says, has continued to engage her in discussions concerning the various proposals.
- 7 Ms Bezencon submitted that the water rights, as a matter of logic and principle,
should not be separated from the land by permitting the land contract to be
completed leaving the water rights contract to be completed at a later date, because
to separate the water from the land would diminish the overall value of the project.
That of course, proceeds on the assumption that the value is in the continuing
operation of the scheme under the management of a new responsible entity.
- 8 Unfortunately, this application has been brought as a matter of urgency, without the
usual assistance of affidavit evidence from the growers or Ms Bezencon which might
have assisted the Court in gaining a better understanding of the reason for and

nature of the discussions between the citrus committee and the liquidator.

- 9 I do not fully understand why the liquidator would continue to engage in discussions. I have been informed by counsel for the liquidators that they have engaged in discussions with Ms Bezencon as a matter of courtesy but that their views have not changed. They continue to regard the completion of the sale contracts as in the best interests of the growers. I am informed by Mr Whittle, who appears on behalf of the receivers, that the receivers' resolve is to settle the contract as quickly as possible.
- 10 The urgency of the matter today seems to have arisen because of delays arising from the need to remove caveats. Settlement was initially planned for 31 March 2011, but was delayed because of a caveat that had been lodged by an entity associated with Ms Bezencon. When that caveat came to the attention of the receivers there followed negotiations and ultimately the caveat was removed by agreement on or about 6 April. As a consequence, settlement was rescheduled for 20 April.
- 11 Before settlement could be achieved it came to the attention of the receivers that a further caveat had been lodged by a company, Garth Corp Pty Ltd, which is apparently a client of Ms Bezencon. That caveat was lodged on about 11 April. Ms Bezencon conceded that she had communicated with the directors of Garth Corp about their caveat, although it is not clear when those communications occurred. Thus, the extent of the involvement of Ms Bezencon in the action by Garth Corp to lodge a further caveat is ambiguous.
- 12 In the events that occurred, settlement was again delayed and proceedings were commenced in South Australia by the receiver for the removal of the Garth Corp caveat. Agreement was reached between the parties very recently and the receivers now wish to complete that contract today.
- 13 The only question that arises for my consideration is whether the order should be amended so as to make it abundantly clear that the grower rights in respect of the land will be terminated under a grower rights surrender deed on settlement of the

land sale contract and that grower rights in respect of water will be terminated on completion of a water rights contract. That is to say, the different rights may be terminated at different times.

- 14 In my opinion, the amendment sought will give effect to the judgment already delivered in this proceeding thus enabling the surrender of the grower rights in respect of the land on completion of the land contracts and thereafter, the surrender of the grower rights in respect of the water on completion of the water contracts. The decision to separate the water rights and the land was made during the sale process undertaken by the receivers in an attempt to obtain the best possible price for those assets. That process, and thus the separation of the land from the water rights is fully endorsed by the liquidators. Thus, there is no reason in principle why completion of the contracts may not take place on different dates. That is consistent with the reasons for judgments and the orders already made. I propose to make the amendment sought by adding the word "respective" in the last line at paragraph 1 of the order before the words "sale contracts", and by making a similar addition in the last line of paragraph 2.

SCHEDULE OF PARTIES

No. 888 of 2011

BETWEEN:

TIMBERCORP SECURITIES LIMITED (IN
LIQUIDATION) (ACN 092 311 469) IN ITS CAPACITY
AS RESPONSIBLE ENTITY OF THE 2004
TIMBERCORP CITRUS PROJECT (ARSN 108 887 538)
AND THE 2005 TIMBERCORP CITRUS PROJECT
(ARSN 114 091 299) AND ORS ACCORDING TO THE
SCHEDULE

Firstnamed Plaintiff

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

Secondnamed Plaintiff

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

Thirdnamed Plaintiff