

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

No 8870 of 2009  
and of 2009

List B

COMMERCIAL COURT

BETWEEN

**TIMBERCORP LIMITED (IN LIQUIDATION)**  
**ACN 055 185 067**

First Plaintiff

and

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

Second Plaintiff

**PLANTATION LAND LIMITED**  
**ACN 090 443 333**

Defendant

**AFFIDAVIT OF BRYAN WEBSTER**

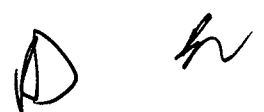
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Filed on behalf of: the Plaintiffs

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I, **BRYAN WEBSTER**, of Level 24, 333 Collins Street, Melbourne, in the State of Victoria,  
Certified Practicing Accountant, **SINCERELY DECLARE AND AFFIRM** that:

- 1 I am a Certified Practicing Accountant and an executive director of the firm KordaMentha Pty Ltd (ACN 100 169 391) (**KordaMentha**). My employers, Mark Korda and Leanne Chesser (**Liquidators**), are the liquidators of the First Plaintiff, Timbercorp Limited (ACN 055 185 067) (**Timbercorp**) and the Second Plaintiff, Timbercorp Securities Limited (In Liquidation) (ACN 092 311 469) (**TSL**). Timbercorp was formerly known as Timbercorp Eucalypts Limited. Now produced and shown to me, marked "**BW-1**" is a current ASIC search extract in respect of Timbercorp. Now





produced and shown to me, marked “**BW-2**” is a current ASIC search extract in respect of TSL. I am authorised to make this affidavit on behalf of Timbercorp and TSL.

- 2 TSL is the responsible entity of a large number of horticultural managed investment schemes which are registered schemes under Chapter 5C of the *Corporations Act 2001* (Cth) (**Corporations Act**). These include 11 active forestry managed investment schemes (**Forestry Schemes**). The members of the Forestry Schemes are called Growers (**Growers**) in the constitutions of the Forestry Schemes.
- 3 Prior to their administration Timbercorp and TSL entered, as lessee, into a number of leases, in respect of approximately 58,700 hectares of the land on which the Forestry Schemes are conducted. Timbercorp and TSL then sub-leased particular plots of land (described as woodlots) to Growers. The general structure of the leasehold arrangements for the Forestry Schemes is illustrated in a simplified structure diagram of the 1999 Timbercorp Eucalypts Project (ARSN 085827872) (**1999 Scheme**). Now produced and shown to me and marked “**BW-3**” is a copy of this diagram. Timbercorp entered into management agreements with the Growers under the Forestry Schemes. Pursuant to these management agreements, Timbercorp planted the trees on the PLL Land on the Growers’ behalf. Now produced and shown to me and marked “**BW-4**” are copies of the relevant management agreements under the Forestry Schemes.
- 4 The defendant (**PLL**) is the owner and head lessor of land situated in Victoria and South Australia which is leased by Timbercorp or TSL for the purposes of the Forestry Schemes. Now produced and shown to me and marked “**BW-5**” is a current ASIC search extract in respect of PLL.
- 5 The relevant land which PLL owns in Victoria is described in the lease documents as Broers 51 and Broers 52, Branton 47, Hawker 214, Warrabkook 474, Sharrock 405, Settlers 401, Nigel 339, Laurie 272, Fullertons 518, Chick 79, Merna 311, Fridays 184, Stribling 430, Milltown 314, Calvert 65, Zum Park 516, Stephens 429, Merna 312 and Caulfield 72 (**Victorian PLL Land**). Now produced and shown to me and marked “**BW-6**” is a copy of the title searches for the Victorian PLL Land. A number of leases govern TSL’s and Timbercorp’s leases of the Victorian PLL Land (**Victorian Leases**). The substantive terms of all the Victorian Leases, including those regarding the payment of rent, permitted use and termination, are the same. Timbercorp or TSL

granted sub-leases of the Victorian PLL Land to the Growers. Some of the Victorian Leases were registered as forest property agreements under the *Forestry Rights Act 1996* (Vic). The registration of those agreements is shown on the title searches for the Victorian PLL Land.

- 6 The relevant land which PLL owns in South Australia is described in the lease documents as Circelli 85, Brown 55, Lord 284, Erewhon 151, Congeith 93, Baxter 28, Nelson 338, Mules 330, Bateman 25, Scanlon 396, Redhill 375, Pitt 365 and Lester 276 (**South Australian PLL Land**). Now produced and shown to me and marked "**BW-7**" is a copy of the title searches for the South Australian PLL Land. A number of leases govern Timbercorp's and TSL's leases of the South Australian PLL Land (**South Australian Leases**). With the exception of some minor variations, the substantive terms of each of the South Australian Leases are the same. The terms of the South Australian Leases are also substantially the same as the terms of the Victorian Leases. Timbercorp or TSL granted sub-leases of the South Australian PLL Land to the Growers.
- 7 In this affidavit where I refer to a **PLL Lease**, I refer to both the Victorian Leases and South Australian Leases, and where I refer to **PLL Land** I refer to both the Victorian PLL Land and the South Australian PLL Land. Now produced and shown to me and marked "**BW-8**" is a folder containing a full copy of each PLL Lease, including all schedules. The rent due under the PLL Leases is payable to PLL in advance in quarterly instalments.
- 8 On 15 June 2009, the Liquidators (in their capacity as administrators) wrote to PLL and to each of the other landlords of land used as part of the Forestry Schemes (**Landlords**), requesting a standstill arrangement in relation to TSL and Timbercorp's rental obligations under the various leases with the Landlords (**Standstill Request**), for the period 1 July 2009 to 30 September 2009. In the case of the PLL Leases, the rental obligations for the period 1 July 2009 to 30 September 2009 (**July Quarter Instalment**) in the amount of \$891,512.46 (comprising \$341,098.53 in respect of Victorian Leases and \$550,413.93 in respect of South Australian Leases) was due on 30 June 2009. Now produced and shown to me and marked "**BW-9**" is a copy of the Standstill Request to PLL dated 15 June 2009.



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- 9 PLL's lawyers (**Maddocks**) sent a letter dated 24 June 2009 in response to the Standstill Request. Now produced and shown to me and marked "**BW-10**" is copy of Maddocks' letter dated 24 June 2009 to KordaMentha.
- 10 Timbercorp and TSL did not pay the July Quarter Instalment of \$891,512.46 to PLL by 30 June 2009.
- 11 KordaMentha sent a letter to PLL dated 2 July 2009. Now produced and shown to me and marked "**BW-11**" is a copy of KordaMentha's letter to Maddocks dated 2 July 2009. Maddocks sent a letter to KordaMentha dated 2 July 2009. Now produced and shown to me and marked "**BW-12**" is a copy of Maddocks' letter to KordaMentha dated 2 July 2009. On 8 July 2009, I sent an email to Philip Jones of Maddocks (**Mr Jones**). Now produced and shown to me, marked "**BW-13**" is copy of my email to Mr Jones dated 8 July 2009.
- 12 Under cover of a letter from Maddocks dated 21 July 2009, PLL sent notices of default to Timbercorp and TSL under the PLL Leases (**Default Notices**). The Default Notices required payment of the July Quarter Instalment within 1 month. Now produced and shown to me, marked "**BW-14**" is a copy of the letter from Maddocks dated 21 July 2009 and the Default Notices.
- 13 A few days after the Default Notices, on 28 and 29 July 2009, I attempted to contact Alan Fisher (**Mr Fisher**), a director of PLL, by telephone to inform him that the Liquidators had formally commenced a sale or recapitalisation process for the Forestry Schemes (**Timbercorp Sale Process**) and that it was intended that the outstanding rent would be paid as part of the Timbercorp Sale Process. I was unable to reach Mr Fisher by telephone and I left messages but he did not return my calls. Now produced and shown to me, marked "**BW-15**" is a copy of my file note dated 28 and 29 July 2009 recording these phone messages.
- 14 On 29 July 2009, I telephoned and emailed Mark Pryn (**Mr Pryn**), who is a Timbercorp employee and was also at the time the company secretary of PLL. Timbercorp owns approximately 2% of units stapled to PLL's shares, and Timbercorp, TSL and PLL formerly shared head offices and a Company Secretary (Mr Pryn). I asked him to assist me to contact Mr Fisher. Mr Pryn said that he would ask Mr Fisher to call me. Now produced and shown to me, marked "**BW-16**" is a copy of my email correspondence with Mark Pryn on 29 and 30 July 2009.

- 15 I telephoned Mr Fisher on 30 July 2009. I said to him that the Liquidators had formally commenced the Timbercorp Sale Process, the final bids were due on 18 September 2009 and the sale needed to be completed by 30 September 2009. I said that a formal advertisement would appear in the Australian Financial Review on Friday 31 July 2009. I said that the rental arrears under the PLL Leases would be paid in full upon completion of the SPD. I said that I was negotiating with a number of Landlords, and that I wanted to ensure that PLL and the other Landlords were comfortable with the Timbercorp Sale Process. I said that I was doing so because I was aware that PLL had issued the Default Notices and had the right to terminate the PLL Leases in just under 1 month. I asked Mr Fisher for his feedback on the Timbercorp Sale Process and I said that I was concerned because Mr Fisher had not been responding to my voicemail messages. Mr Fisher said that the Default Notices had been issued as a matter of form and process, that it was all OK, that Timbercorp and TSL should not panic and that PLL would let Timbercorp and TSL know before PLL did anything. I made a file note of this conversation at the time. Now produced and shown to me and marked "**BW-17**" is a copy of my file note dated 30 July 2009.
- 16 After my conversation with Mr Fisher, I believed that Mr Fisher was comfortable with the Timbercorp Sale Process going forward and that PLL would not terminate the PLL Leases without first informing Timbercorp and TSL and giving them an opportunity to pay the rent. If I had not felt that way, I would have taken steps to see that the rent was paid before the expiry of the Default Notices that would have required the Liquidators' approval. I left telephone messages with Mr Fisher on 17 and 20 August 2009 for him to call me, but he did not return my calls. I wanted to update him on the Timbercorp Sale Process and to let him know that there was a strong interest in the Forestry Assets. Now produced and shown to me, marked "**BW-18**" is copy of my file note, dated 17 and 20 August 2009 recording these phone messages.
- 17 Because of my telephone conversation with Mr Fisher on 30 July 2009 I did not take any steps to pay the rent before the Default Notices expired. If Mr Fisher, or any other person representing PLL, had said to me at any time between 30 July 2009 and when the Termination Notices were issued that PLL intended to terminate the PLL Leases I would have immediately taken steps to pay the rent. I would have had to obtain the Liquidators' approval of payment.
- 18 On 24 August 2009 KordaMentha received a letter from Maddocks which attached notices addressed to each of Timbercorp and TSL (**Termination Notices**). Now

produced and shown to me and marked "**BW-19**", is a copy of the letter from Maddocks dated 24 August 2009 and the Termination Notices. I was very surprised when I received the Termination Notices. I called Mr Fisher immediately and left a message for him to call me. I also left a message with Mr Jones to call me. Neither of them returned my calls. Later on 24 August 2009 I spoke to Jonathan Ambler of Maddocks (**Mr Ambler**) by telephone. I said that I was absolutely gobsmacked by the Termination Notices, in light of my previous conversations with Mr Fisher. Mr Ambler said that he thought I would be surprised. He said that Maddocks had advised Mr Fisher not to return my calls and that this was part of PLL's strategy. I asked whether PLL's strategy was to claim ownership of the trees on the PLL Land. Mr Ambler said that it was not appropriate for him to comment, but that Mr Jones would send a further letter explaining the reason for terminating the PLL Leases. I made a file note of my conversation with Mr Ambler. Now produced and shown to me, marked "**BW-20**" is a copy of my file note dated 24 August 2009.


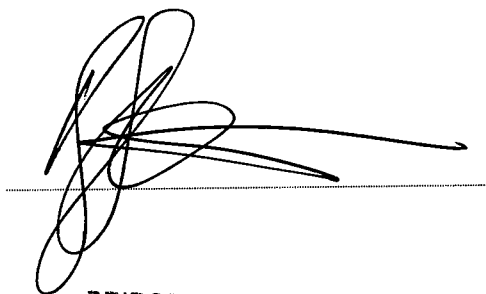
- 19 On 25 August 2009 Maddocks sent KordaMentha a letter. Now produced and shown to me and marked "**BW-21**" is a copy of this letter. On that day, I telephoned Mr Ambler again to discuss the Termination Notices. During that conversation I said that KordaMentha would need to inform Growers about the Termination Notices. Mr Ambler said that he saw no need for KordaMentha to post the Termination Notices on the website. Shortly after this time the Termination Notices were posted on the KordaMentha website.
- 20 On 26 August 2009, I telephoned Mr Ambler twice to discuss the Termination Notices. In the first conversation, I suggested that PLL withdraw the Termination Notices. Later that day I spoke with Mr Ambler again to arrange a meeting at Maddocks' offices to discuss the Termination Notices. On 27 August 2009 and on 31 August 2009 meetings were held between representatives of PLL and representatives of KordaMentha to address the Termination Notices. I made file notes of the conversations at the meetings. Now produced and shown to me and marked "**BW-22**" is a copy of my file notes. By 1 September 2009 PLL and KordaMentha were moving close to executing a stand still agreement. On 2 September 2009, I spoke with Mr Ambler by telephone. Mr Ambler said that, at a PLL board meeting held on 1 September 2009, the PLL board had determined that PLL should not sign a stand still agreement because signing the letter would be misleading as to PLL's intentions. Mr Ambler did not tell me what those intentions were. I made a file note of the conversation. Now produced and shown to me and marked "**BW-23**" is a copy of my

file note, dated 2 September 2009. Also on that day PLL lodged a disclosure notice with ASIC. Now produced and shown to me marked "**BW-24**" is a copy of the disclosure notice dated 2 September 2009

- 21 On 11 September 2009 Timbercorp and TSL commenced this proceeding. On 14 September 2009 Timbercorp and TSL commenced Supreme Court of South Australia proceeding 1404 of 2009 against PLL, and that proceeding has been cross-vested to this Court.
- 22 Maddocks sent a letter dated 18 September 2008 to the Liquidators' solicitors, Arnold Bloch Leibler. Now produced and shown to me and marked "**BW-25**" is a copy of this letter.
- 23 At approximately 11am on Friday 18 September 2009, Arnold Bloch Leibler tendered payment of the July Quarter Instalment on behalf of Timbercorp and TSL. PLL did not accept the payment. Now produced and shown to me and marked "**BW-26**" is a copy of an acknowledgement of tender signed by Mr Fisher on 18 September 2009. At approximately 12pm on 30 September 2009, Arnold Bloch Leibler tendered payment of both the July Quarter Instalment and the quarterly instalment of rent due on 30 September 2009 for the PLL Leases (**October Quarter Instalment**) on behalf of Timbercorp and TSL. PLL did not accept the payment. Now produced and shown to me and marked "**BW-27**" is a copy of an acknowledgement of tender signed by Mr Fisher on 30 September 2009.

**SWORN** at Melbourne  
in the State of Victoria  
by **BRYAN WEBSTER** this  
9<sup>th</sup> day of October 2009

Before me:

**BRIDGET ELLEN SLOCUM**  
Arnold Bloch Leibler  
Level 21, 333 Collins Street  
Melbourne 3000  
An Australian Legal Practitioner within the  
meaning of the Legal Profession Act 2004