

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

SCI 2013 01478

THE TRUST COMPANY (NOMINEES) LIMITED (ACN 004 134 441)

Plaintiff

and

MICHAEL FUNG IN HIS CAPACITY AS RECEIVER AND MANAGER OF ALIGN  
FUNDS MANAGEMENT LIMITED (RECEIVER & MANAGER APPOINTED)  
(ACN 105 684 231) IN ITS CAPACITY AS THE RESPONSIBLE ENTITY OF THE  
TIMBERCORP ORCHARD TRUST & ORS

Defendants

SECOND AFFIDAVIT OF YU-CHIAO HSUEH

Date of document: 17 April 2014  
Filed on behalf of: The Second and Third Defendants  
Macpherson + Kelley  
Lawyers  
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MELBOURNE VIC 3000

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I, **YU-CHIAO HSUEH** of Level 22, 114 William Street, Melbourne, solemnly and sincerely declare and affirm that:

- 1 I am an employee of the firm Macpherson + Kelley Lawyers (**M+K Lawyers**), the solicitors for the Second and Third Defendants, being the persons appointed as representatives of all of the growers in the Timbercorp project of which they are a member (together the **Representative Growers**). I have carriage of this matter on behalf of the Representative Growers under the supervision of my principal, Michael Fernon, and I am authorised to make this affidavit on their behalf.
- 2 Except where otherwise indicated, I make this affidavit from my own knowledge. Where I depose to matters from information or belief, I believe those matters to be true.
- 3 I refer to my previous affidavit in this proceeding dated 25 March 2014 (**Previous Affidavit**). Unless otherwise stated, this affidavit adopts the capitalised defined terms in my Previous Affidavit.
- 4 I make this further affidavit in connection with the application for approval of the Deed of Compromise.

**Further Results of the Grower Notification and Consultation Process**

- 5 On 11 April 2014, I received a further email from Ms Ishbel Moodie on behalf of TSL attaching a spreadsheet which recorded details of all telephone, email and facsimile communications with growers for the period to 11 April 2014 (**11 April Communication Spreadsheet**). I have

read the 11 April Communication Spreadsheet and note that since 23 March 2014, there have been four Return to Sender notifications sent to TSL and no other grower communications to TSL according to the 11 April Communication Spreadsheet. Now produced and shown to me marked **confidential exhibit YCH-5**) is a true copy of the email from Ms Moodie of TSL to me attaching the 11 April Communication Spreadsheet.

- 6 Confidential exhibit **YCH-5** is contained in a sealed envelope and the Representative Growers will make an application for an order that they be kept confidential as the 11 April Communication Spreadsheet contains growers' personal information.

### Grower Objections

- 7 Since my Previous Affidavit, there has been an objection to the Deed of Compromise lodged by Ms Kerree Bezencon on behalf of Siger Super Services Pty Ltd, a grower in the Timbercorp 2005 Citrus Project with M+K Lawyers directly.
- 8 On 25 March 2014, Ms Bezencon sent an email to me and the legal representatives of the other parties to the Deed of Compromise that stated:

*I have not received the email you refer to nor anything from Korda Mentha on the date of the 3rd March.*

*I also note that if I have not received it, maybe others also have not - but that probably serves your purpose.*

*In cl15 you state you conferred with other parties - who may I ask? - certainly not the Citrus Committee - but that is not unusual.*

*Why have you only advertised in the Australian and only one time?*

*I suggest that you do not proactively communicate - you make it difficult with the onus always on the growers to take action - they have to seek out the site for understanding, or call you, or see the ad with luck. Growers are reasonably cynical and burnt out with no hope of justice - this just serves to underline that.*

*Please include this email with court documents, not that it will make any difference - it will be lost amongst the papers and the glass of wine you all have at the end of the day, as you clock up more fees and congratulate yourselves on how well you argued and how grateful we should be.*

*This is a farce and continues to be so, with little regard for serious consideration for growers and their plight. Justice is totally obliterated in this process. You are removed from the anxious growers, their sleepless nights, the suicidal thoughts, the loss of peace, retirement, security, the incredulity at the unfairness and injustice, the disgust at those who should be looking after grower interests and the ultimate revulsion at the legal system you all promote, which is the final insult. I wonder what you all tell your children at night....?*

9 Later that day, I sent Ms Bezencon the following reply by email:

*Dear Kerree,*

*Thank you for your email.*

*As you requested, I will include your correspondence in supplementary affidavit material that the Court will need to consider.*

*I will also endeavour to send you an email separately tomorrow that provides substantive responses to the concerns you have raised.*

10 Now produced and shown to me marked **YCH-6** is a true copy of the emails between Ms Bezencon and me dated 25 March 2014.

11 On 26 March 2014, I sent Ms Bezencon a further email that provided a substantive response to the issues raised in her email dated 25 March 2014. Now produced and shown to me marked **confidential exhibit YCH-7** is a true copy of my email to Ms Bezencon dated 25 March 2014. The email refers to the substance of the Advice provided to the Representative Growers which is privileged and the Representative Growers do not waive that privilege.

12 On the same day, I received the following email from Ms Bezencon:

*may I please have a copy of the reasoning behind the advice provided by counsel thank-you.*

*Please do not think the criticism was aimed personally at you - it is just the whole circumstances are beyond most peoples wildest nightmares and unlike you, I get to speak with many of the growers involved and know too well the devastating effects. This gets all forgotten I believe in the course of legal arguments and the game of debate.*

Now produced and shown to me marked **YCH-8** is a true copy of the email from Ms Bezencon to me dated 26 March 2014.

13 On 28 March 2014, I provided Ms Bezencon with a copy of the Advice after receiving an executed confidentiality deed. Now produced and shown to me marked **confidential exhibit YCH-9** is a true copy of the email from me to Ms Bezencon dated 28 March 2014 enclosing a copy of the Advice and letter from M+K Lawyers to the Representative Growers dated 20 December 2013. The Advice and letter provided to the Representative Growers are privileged and the Representative Growers do not waive that privilege.

14 On 31 March 2014, I had a telephone discussion with Ms Bezencon in connection with the Deed of Compromise and the Advice. I sent a contemporaneous email to myself at the time which outlined parts of our conversation. However, there are gaps in my email as I was typing whilst speaking with Ms Bezencon on the telephone. Accordingly, I have since prepared a more comprehensive file note that sets out my conversation with Ms Bezencon in further detail to the best of my memory. Now produced and shown to me marked

**confidential exhibit YCH-10** are true copies of the file notes of my conversation with Ms Bezencon. The file notes refer to the substance of the Advice provided to the Representative Growers and the Representative Growers do not waive that privilege.

- 15 I had a further telephone discussion with Ms Bezencon that day in connection with the Deed of Compromise and the Advice. I sent a contemporaneous email to myself at the time which outlined our conversation. Now produced and shown to me marked **confidential exhibit YCH-11** is a true copy of my file note of the further conversation with Ms Bezencon. The file note refers to the substance of the Advice provided to the Representative Growers and the Representative Growers do not waive that privilege.
- 16 Later on 31 March 2014, I sent Ms Bezencon an email following up our telephone discussions.
- 17 On 1 April 2014, I received a further email from Ms Bezencon reiterating her previous objection and raising a number of issues arising from my conversation with her, and in particular, relating to the Advice given to the Representative Growers.
- 18 On 2 April 2014, I responded to Ms Bezencon's email dated 1 April 2014.
- 19 Now produced and shown to me marked **confidential exhibit YCH-12** is a true copy of the emails between Ms Bezencon and me between 31 March 2014 and 2 April 2014. The emails between Ms Bezencon and me relate to the substance of the Advice provided to the Representative Growers and the Representative Growers do not waive that privilege.

#### **Supplementary advice to Representative Growers**

- 20 On 9 April 2014, I provided the Representative Growers with a copy of a written supplementary advice prepared by Garry Bigmore QC and Sam Hopper of Counsel (**Supplementary Advice**). The Supplementary Advice was prepared after further consideration and investigation of factual and legal issues that Ms Bezencon raised in her email dated 1 April 2014 in confidential exhibit YCH-9. Now produced and shown to me marked **confidential exhibit YCH-13** are true copies of the emails to the Representative Growers dated 9 April 2014 enclosing the Supplementary Advice. The Supplementary Advice and my correspondence to the Representative Growers are privileged and they do not waive that privilege.
- 21 On 15 April 2014, I held a conference over the telephone with the Second Defendant, Garry Bigmore QC and Sam Hopper. During this telephone conference, Counsel and I discussed the Supplementary Advice with the Second Defendant and answered his queries. After our discussion, the Second Defendant confirmed that the Supplementary Advice did not change his decision to enter into the Deed of Compromise and that he maintains his instructions to support Court approval of the Deed of Compromise.
- 22 On 17 April 2014, I held a conference over the telephone with the Third Defendants, Garry Bigmore QC and Sam Hopper. During this telephone conference, Counsel and I discussed

the Supplementary Advice with the Third Defendants and answered their queries. After our discussion, the Third Defendants confirmed that the Supplementary Advice did not change their decision to enter into the Deed of Compromise and that they maintain their instructions to support Court approval of the Deed of Compromise.

- 23 Confidential exhibits YCH-7, YCH-9, YCH-10, YCH-11, YCH-12 and YCH-13 are contained in a sealed envelope and the Representative Growers will make an application for an order that they be kept confidential for the reasons deposed to in paragraphs 11, 13, 14, 15, 19 and 20 of this affidavit.

Affirmed by **YU-CHIAO HSUEH** )

at *Melbourne* in the State of Victoria )

this *17<sup>th</sup>* day of April 2014 )

Before me: *[Signature]*

*[Signature]*

**BEFORE ME.....**  
**Anne Louise McCartney**  
**An Australian Legal Practitioner**  
**(within the meaning of the Legal Profession Act 2004)**  
**Level 22, 114 William St, Melbourne Vic 3000**