

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

COMMERCIAL COURT

No 8870 of 2009

BETWEEN

TIMBERCORP LIMITED (IN LIQUIDATION)
ACN 055 185 067

First Plaintiff

TIMBERCORP SECURITIES LIMITED (IN LIQUIDATION)
ACN 092 311 469

Second Plaintiff

and

PLANTATION LAND LIMITED
ACN 090 443 333

Defendant

**FURTHER AND BETTER PARTICULARS OF
THE AMENDED STATEMENT OF CLAIM DATED 5 OCTOBER 2009**

Date of document: 12 October 2009
Filed on behalf of: the Plaintiffs

Prepared by:

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In response to the request by the Defendant for further and better particulars of the Amended Statement of Claim, the Plaintiffs say as follows:

1 As to paragraph 22 of the Amended Statement of Claim:

- (a) Bryan Webster made the alleged assumption, upon concluding the conversation particularised in paragraph 18(d) of the Amended Statement of Claim.

Mark Korda made the alleged assumption upon being advised by Bryan Webster of the conversation particularised in paragraph 18(d) of the Amended Statement of Claim, on or around 31 July 2009.

- (b) This is not a proper request for particulars. The Plaintiffs refer the Defendant to the evidence served on 9 October 2009.
- (c) Timbercorp and TSL did not pay the July Quarter Instalment prior to the expiry of the Default Notice. The steps that would have been taken, had Timbercorp and TSL received notification are set out in paragraphs 16 - 17 of the affidavit of Bryan Webster dated 9 October 2009 and paragraph 6 of the affidavit of Mark Anthony Korda dated 9 October 2009.

2 As to paragraph 28 of the Amended Statement of Claim

This is not a proper request for particulars.

Under cover of that objection, the Defendant has waived its right to serve and rely upon termination notices without first giving notice to Timbercorp and TSL by reason of the conduct referred to in paragraphs 18 - 21 of the Amended Statement of Claim, paragraphs 13 - 17 of the affidavit of Bryan Webster dated 9 October 2009 and paragraph 6 of the affidavit of Mark Anthony Korda dated 9 October 2009.

3 As to paragraph 32 of the Amended Statement of Claim

The loss and damage includes:

- (a) the reduction in the purchase price payable under the SPD if the leases are terminated and not transferred;
- (b) further or alternatively the loss of the opportunity to sell Timbercorp and TSL's interest under the PLL Leases; and,
- (c) further, the cost incurred in filing these proceedings.

Further particulars will be provided at the hearing on loss and damage.

4 As to paragraph 35 of the Amended Statement of Claim

This is not a proper request for particulars. Under cover of that objection, the defendant is referred to paragraphs 5, 6 and 7 of the affidavit of Mark Anthony Korda dated 9 October 2009.

5 As to paragraph 39 of the Amended Statement of Claim

The Forestry Property Agreements are in writing and comprise the same documents as constitute the relevant PLL Leases. Copies are already in the possession of the defendant and further copies comprise parts of exhibit **BW-8** to the affidavit of Bryan Webster dated 9 October 2009. The registered agreements are registered in respect of land described in the following certificates of title, which appear in parts of exhibit **BW-6** to the affidavit of Bryan Webster dated 9 October 2009:

- (a) Volume 09885; Folio 270;
- (b) Volume 09885; Folio 274;
- (c) Volume 10531; Folio 325;
- (d) Volume 10509; Folio 438;
- (e) Volume 10509; Folio 364; and,
- (f) Volume 10218; Folio 006.

Dated 12 October 2009

A handwritten signature in black ink, reading "Arnold Bloch Leibler", written over a horizontal dotted line.

ARNOLD BLOCH LEIBLER
Solicitors for the Plaintiffs