

**IN THE FEDERAL COURT OF AUSTRALIA
VICTORIA DISTRICT REGISTRY
GENERAL DIVISION**

No. VID 541 of 2009

**IN THE MATTER OF TIMBERCORP SECURITIES LIMITED (IN LIQUIDATION)
ACN: 092 311 469**

AND

**IN THE MATTER OF TIMBERCORP LIMITED (IN LIQUIDATION)
ACN: 055 185 067**

**TIMBERCORP SECURITIES LIMITED (IN LIQUIDATION)
AND OTHERS**

PLAINTIFFS

and

**WA CHIP & PULP CO PTY LTD
AND OTHERS**

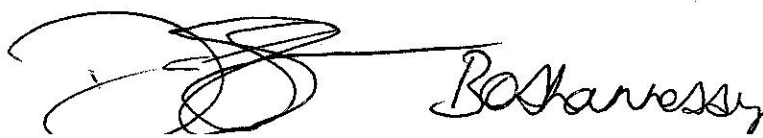
DEFENDANTS

SUPPLEMENTARY AFFIDAVIT OF DAMON BRYCE SEYMOUR

I Damon Bryce Seymour of Suite 7, The Coach House, corner of York Street and Peels Place, Albany, in the State of Western Australia, Legal Practitioner say on oath that:-

1. I make this affidavit further to my affidavit of 30 July 2009 ("my first affidavit")
2. Save where otherwise appears, the contents of this Supplementary Affidavit are true to my own knowledge. Where a fact is true to the best of my information and belief that fact is stated and the source of the information and belief is identified in the text.
3. I refer to paragraph 20 of my first affidavit. I have obtained the mortgage repayments in respect of the Albany Defendants leases from six of the Albany Defendants referred to in that paragraph. Those details have been inserted into Annexure 3, a further copy of which is annexed hereto and marked "DS3A". I believe the mortgage payment figures in DS3A to be true.
4. I have as a consequence amended the schedule in paragraph 28 as follows:-

	Income	Outgoings
Rent	\$NIL	
Mortgage		\$369,840.00




Rates and Taxes		\$64,038.44
Firebreaks		\$15,750
Spraying for firebreak weeds		\$15,025.92 - \$20,124.00

In respect of the payments in the above schedule the figures are representative of annual amounts. It follows that quarterly amounts are ¼ of the figures shown. The individual figures for the Albany Defendants, where provided and if applicable, are shown in "DS3A"

5. I have read certain of the Albany Defendants leases again and as a consequence I have supplemented the information in Annexure DS4 (none of the contents of DS4 are changed - they are merely supplemented). The revised form of Annexure DS4 is annexed and marked "DS4A".
6. I refer to paragraph 11 of my first affidavit. The Camerons will take the same position as the other Albany Defendants referred to in paragraph 7- 9 of my first affidavit in relation to the application for extension under section 568(8). That leaves outstanding the question of the disclaimer of the Zambonetti's lease referred to in paragraph 11 thereof.
7. Annexed hereto and marked DS5 is a true copy of an exchange of correspondence late of 30 July 2009 and today with Arnold Bloch Leibler ("ABL"). (I have taken the view that the second letter from ABL marked "without prejudice" is not privileged from production).

SWORN by)
at Albany)
in the State of Western Australia)
the 31st day of July 2009.)



Before me:

B O'Shannessy
Justice of the Peace

Bronwyn Elizabeth O'Shannessy
7 Seville Way
ALBANY WA 6330
Justice of the Peace 7463

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AND OTHERS**

DEFENDANTS

CERTIFICATE IDENTIFYING EXHIBIT

This is the exhibit marked "DS3A" now produced and shown to DAMON BRYCE SEYMOUR at the time of swearing his affidavit of 30th July 2009.

Before me:


Justice of the Peace

Bronwyn Elizabeth O'Shannessy
7 Seville Way
ALBANY WA 6330
Justice of the Peace 7463

D53A

Defendants	Rents \$ Per annum	Rates \$	Firebreaks \$	Mortgages \$ Per annum
CAMERON Shaun and Joan Including land by Cameron Farms Pty Ltd	625,007.48	25,000 approx	—	—
CHATLEY Graham John	20,580.00	1,852.59	500.00	—
COUPER Ian and Michele	82,080.00	5,500.00	2,000.00	No mortgage
DE CAMPO Robert John	100,000.00	5,709.22	2,000.00	—
DIXON Bill	68,000.00	1,500.00	2,000.00	No mortgage
DOUGLAS SINCLAIR	8,836.00	—	—	31,200.00
HARDIE Richard and Joanne	9,300.00	300.00	250.00	—
HESTER Rodney and Lorraine	76,550.00	2,050.00	1000.00	No mortgage
INTRINSIC PTY LTD (Joe Lembo)	27,251.84	3,226.63	NA	120,000.00
ROCHESTER Kent and Michele	143,469.16	1000.00	2,500.00	NA
SHUTTLEWORTH Martin	58,800.00	2,500.00	2,000.00	78,000.00
TOWES David John and Heather Lee	54,145.00	1,700.00	500.00	% only 18,840 plus overdraft of 18,000
WALITJ ABORIGINAL CORPORATION (Oscar Colbung)	54,678.00	7,000.00	500.00	No mortgage
WALLWORK Kelvin	42,765.12	—	—	No mortgage
ZAMBONETTI Ken and Angela (1/3)	21,841.93	3,000.00	NA	40,200.00
ZAMBONETTI Eddie	19,378.95	3700.00	2,500.00	63,600.00
total	1,412,683.48	64,038.44	15,750	369,840.00

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AND OTHERS**

DEFENDANTS

CERTIFICATE IDENTIFYING EXHIBIT

This is the exhibit marked "DS4A" now produced and shown to DAMON BRYCE SEYMOUR at the time of swearing his affidavit of 30th July 2009.

Before me:


Justice of the Peace

Bronwyn Elizabeth O'Shannessy
7 Seville Way
ALBANY WA 6330
Justice of the Peace 7463

054A

INTRINSIC LTD (Joe Lembo)		15/10/08	15/10/2020		30/6/9	N		2mths	1/7/9	1/9/9	105.1		10/8/09
ROCHESTER and Michele		#1: 13/1/99 #2: 1/7/06 #3: 1/9/06	#1: 13/1/2011 #2: 1/7/18 #3: 1/9/18		30/6/9	#1 & #2 Y #3 N		#1: 3mths #2: 3mths #3: 2mths	1/7/9 1/7/9 1/7/9	1/10/9 1/10/9 1/9/09	532.3		10/8/09
SHUTTLEWORTH Martin		1/3/99	1/3/2011		30/6/9	Y		3mth	6/7/9	6/10/9	24 5		10/8/09
TOWES David John and Heather Lee		23/6/99	23/6/2023		30/6/9	Y		3mths	1/7/9	1/10/9	22 1		12/8/9
WALITI ABORIGINAL CORPORATION (Oscar Colbung)		1/3/2009	1/3/2023		30/6/9	Y		3mths	2/7/9	2/10/9	140.2		12/8/9
WALLWORK Kevin		16/08/07 E			30/6/9	N		2mths	1/7/0	1/9/09	152.6		13/08/9
ZAMBONETTI Ken and Angela (1/3)		1/1/08 x 2	15/4/2020		1/7/09	Y		3mths	13/7/9 9 x 2	13/10/9 x 2	83	Y	10/8/09
ZAMBONETTI Eddie		1/3/09	15/4/2020	annual	1/7/09	Y		3mths	21/7/2009	21/10/2009	71		18/8/09

DS4A

Section 568(8) Notice expires	1998/1999	hectares	Default Notice expires	Default notice served	Default Period (non-rent) payment of	Contains restriction on termination	Date Rent due	Rent Quarterly	Termination Date (if not extended)	Term Commencement / Extension	Short lease description	Lessor
27/08/09	Y	1217.2	1/10/09	#1-#5 1/07/09	3mths	#1 Y #2 Y #3 Y #4 Y #5 Y	30/6/9		#1 1/3/2 #2 022 #3 1/3/2 #4 023 #5 1/1/2 #5 022 #5 1/1/2 #5 023	#1 1/3/08 #2 1/3/08 #3 1/1/09 #4 1/3/08 #5 1/1/09		CAMERON Shaun and Joann
12/8/09		98	2/10/9	2/7/9	3mths	Y	30/6/9		1/1/2012	1/1/2000		CHATLEY Graham John
10/8/09	Y	34	1/10/9	1/7/9	3mths	Y	30/6/9		1/3/11	1/3/99		COUPER Ian and Michele
24/8/09	Y	52				Y	30/6/9		15/3/2011	15/3/99		DE CAMPO Robert John
13/8/09		36	1/10/9	1/7/9	3mths	Y	30/6/9		1/2/2011	1/2/99		DIXON Bill
10/8/09		37.6	13/10/9	13/7/9	3mths	Y	30/6/9		1/1/2011	1/1/99		DOUGLAS SINCLAIR
11/8/09		60	1/10/9	1/7/9	3mths	Y	30/6/9		5/3/2012	5/3/00		HARDIE Richard and Joanne
11/8/09		27	7/10/9	7/7/9	3mths	Y x 2	30/6/9		1/1/2012	1/1/2000		HESTER Rodney and Lorraine

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AND OTHERS**

PLAINTIFFS

And

**WA CHIP & PULP CO PTY LTD
AND OTHERS**

DEFENDANTS

CERTIFICATE IDENTIFYING EXHIBIT

This is the exhibit marked "DS5" now produced and shown to DAMON BRYCE SEYMOUR at the time of swearing his affidavit of 30th July 2009.

Before me:


Justice of the Peace

Bronwyn Elizabeth O'Shannessy
7 Seville Way
ALBANY WA 6330
Justice of the Peace 7463

DS

Arnold Bloch Leibler

Lawyers and Advisers

30 July 2009

By email

Jim Swann / Damon Seymour
Albany Legal Pty Ltd
PO Box 5333
Albany WA 6332

Your Ref
Our Ref LZ
File No. 011499489

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Leon Zwier
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lzwier@abl.com.au

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Dear Sirs

**TIMBERCORP SECURITIES LIMITED (IN LIQUIDATION) and OTHERS v WA
CHIP & PULP CO. PTY LTD and OTHERS
PROCEEDING VID541/2009**

We refer to the affidavit of Damon Seymour made on 30 July 2009 in this proceeding, and the correspondence exhibited thereto.

- 1 We apologise for the short delay in responding to your earlier letters.
- 2 We note that a further section 568(8) has been served. We confirm that at the hearing on Monday, our clients will move for those persons referred to in paragraph 4 of Mr Seymour's affidavit to be added as defendants to the proceeding.
- 3 Our clients note that the "Albany Defendants" will not oppose the Liquidators' application for an extension of time under section 568(8) of the Act, subject to confirmation as to whether the Liquidators accept that any extension of time does not affect the existing rights of the Albany Defendants to terminate their respective leases, pursuant to their terms, or at law.
- 4 Our clients confirm that they accept any extension of time does not affect the existing rights of the Albany Defendants to terminate their respective leases, pursuant to their terms but note that these rights do not extend to termination by repudiation.
- 5 Accordingly, our clients do not accept that any conduct by the Liquidators has repudiated the lease between Intrinsic Pty Ltd and Timbercorp Securities Ltd.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Leon Zwier', is written over a horizontal line.
Leon Zwier
Partner

**MELBOURNE
SYDNEY**

Partners
Mark M Leibler AC
Henry D Lancer
Joseph Borensztajn
Leon Zwier
Phillip Chester
Ross A Paterson
Stephen L Sharp
Kenneth A Gray
Kevin F Frawley
Michael N Dodge
Jane C Sheridan
Steven Klein
Leonie R Thompson
Zaven Mardirossian
Jonathan M Wenig
Paul Sokolowski
Paul Rubenstein
Peter M Seidel
Alex King
John Mitchell
Nicole Gordon
Ben Mahoney
Sam Dollard
Lily Teal
Henry Skene
Andrew Silberberg
Kishanie Wijewickrama
Lisa Ashcroft
Jonathan Milner

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Special Counsel
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Katie Morrison
John Mengolian
Melanie Alderton
Sue Kee
Leigh De Jong
Lachlan Blake
Jorja Cleeland
Caroline Goulden
Matthew Lees
Genevieve Saxton
Lucy Kirwan
Nicholas Clifton
Lior Harel
Jeremy Leibler
Amelia Kelly
Bridgette Toy-Cronin
Benjamin Marshall

Consultants
Allan Fels AO
Steven M Skala

DBS

ALBANY LEGAL PTY LTD

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ATF AL TRUST
ABN 82 746 408 983

Suite 7, Coach House
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Albany WA 6330
PO Box 5333 Albany WA 6332

Telephone: (08) 9847 4211
Fax: (08) 9847 4233
E-mail: recep@albanylegal.com.au

31 July 2009
Our ref: 9140

Arnold Bloch Leibler
Level 21
333 Collins Street
MELBOURNE VIC 3000
ATTENTION: Mr Zwier

BY EMAIL FAX AND POST

Dear Sir,

Re: Timbercorp Securities Limited (In Liquidation)

Thank you for your letters of 30 July 2009.

My client's non-opposition to the extension application is subject to the confirmation I sought in point 1 of my letter of 29 July 2009. I am yet to receive a clear response.

You say in paragraph 4 of your letter:

"Our clients confirm that they accept any extension of time does not affect the existing rights of the Albany Defendants to terminate their respective leases, pursuant to their terms but note that these rights do not extend to termination by repudiation."(original emphasis used)

Can you please confirm in writing that you are accepting that any extension of time under section 568(8) does not affect my client's contractual rights to terminate under their leases (in the events that have happened or are to happen), or their common law rights?

There are no trees on the Zambonetti's leases referred to in point 6 of my letter of 29 July 2009 and paragraph 11 of Mr Seymour's affidavit. A telephone call from you or the Liquidator to Mr Peter Drygan (i.e. Timbercorp's Albany representative) will confirm that.

There is no reason why the Liquidators cannot make a decision to disclaim within the statutory period which expires, in the case of the Zambonetti's, on 10 August 2009. Vacant land likely has no growers and is of no conceivable advantage to Timbercorp.

DBS

Arnold Bloch Leibler

Lawyers and Advisers

31 July 2009

By email

Jim Swann / Damon Seymour
Albany Legal Pty Ltd
PO Box 5333
Albany WA 6332

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Dear Sirs

**TIMBERCORP SECURITIES LIMITED (IN LIQUIDATION) and OTHERS v WA
CHIP & PULP CO. PTY LTD and OTHERS
PROCEEDING VID541/2009**

We refer to our letter dated 30 July 2009 and your letter dated 31 July 2009.

We confirm that our clients accept any extension of time under section 568(8) does not affect the existing contractual rights of the Albany Defendants under the leases to terminate their respective leases.

In relation to the Zambonetti's land, even though no trees may be growing on the land (which we are yet to confirm), Growers may still have rights in relation to that land because they have entered into an agreement to sub-lease in respect of that land. Therefore, the Liquidators need to consider their position in relation to whether the Zambonetti's lease should be disclaimed. That is why the Liquidators ask that the Zambonettis agreed to extend the period under their section 568(8) notice until 30 September 2009. In the meantime, the Liquidators will use their best endeavours to reach a conclusion on that issue, and if at all possible, prior to 30 September 2009.

Yours faithfully

A handwritten signature in black ink, appearing to read 'for Leon Zwier', is written over a horizontal line. Below the signature, the name 'Leon Zwier' and the title 'Partner' are printed in a bold, sans-serif font.

Leon Zwier
Partner

**MELBOURNE
SYDNEY**

Partners
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Lawyers and Advisers

30 July 2009

By email

Jim Swann / Damon Seymour
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Albany WA 6332

Your Ref
Our Ref LZ
File No. 011499489

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WITHOUT PREJUDICE

Dear Sirs

**TIMBERCORP SECURITIES LIMITED (IN LIQUIDATION) and OTHERS v WA
CHIP & PULP CO. PTY LTD and OTHERS
PROCEEDING VID541/2009**

We refer to your letter dated 30 July 2009 to the liquidators of Timbercorp Limited.

- 1 Unfortunately, the first time we saw this letter was as an exhibit to Mr Seymour's affidavit of 30 July 2009.
- 2 Our clients note the matters raised in your letter and also in Mr Seymour's affidavit.
- 3 Our clients will review the circumstances in relation to Intrinsic Pty Ltd's lease and the leases of your other clients. In particular, our clients will determine whether there are trees on the land, or whether the land is otherwise of strategic importance to the relevant Timbercorp project.
- 4 While our clients will use all reasonable endeavours to expedite their decision as to whether or not to disclaim the relevant lease, having regard to that review, we are concerned that it will not be possible to do so prior to the expiry of any of the 568(8) notices. Accordingly, our clients request that your clients (including Intrinsic Pty Ltd) continue with their non-opposition to the extension application.
- 5 Please confirm as a matter of urgency whether this is acceptable to all your clients.

Yours faithfully


Leon Zwier
Partner

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333 Collins Street
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Steven M Skala

DSS

The Camerons instruct me not to press their position, and an extension of time in relation to their leases will not, subject to the confirmation I request above, be opposed.

Please confirm your client will not seek an extension of time in respect of the Zambonetti's leases referred to in paragraph 11 of Mr Seymour's affidavit. Alternatively if your clients require, say, another few days (beyond 10 August 2009), I will take instructions with a view to reaching an appropriate compromise.

Yours faithfully

A handwritten signature in black ink, appearing to be 'Jim Swann', written over a horizontal line.

Jim Swann
Director