

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

SCI 2013 01477

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

THIRD AFFIDAVIT OF YU-CHIAO HSUEH

Date of document: 17 April 2014
Filed on behalf of: The Second and Third Defendants
Macpherson + Kelley
Lawyers
Level 22, 114 William Street
MELBOURNE VIC 3000

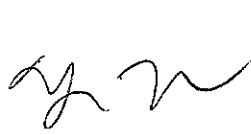
Solicitor's Code: 041547
DX 174 Melbourne
Tel: 03 8615 9900
Fax: 03 8615 9999
Ref: MJF:229731
Email: michael.fernon@mk.com.au

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-7**) is a true copy of the email from Ms Moodie of TSL to me attaching the 11 April Communication Spreadsheet.

6 Confidential exhibit **YCH-7** 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.

7 I have read the Communication Spreadsheets and note that since 23 March 2014, a total of 8 growers made comments or asked questions in relation to the Deed of Compromise. Among them:

- (a) five growers were contacted by TSL by telephone after TSL received Return to Sender notifications in relation to their postal addresses. TSL updated the details of these growers and sent them copies of the First Notice to Participant Growers at their nominated email or postal address;
- (b) five growers returned their Bank Account Nomination Form and/or their Direction to Pay to TSL;
- (c) no growers lodged objections or made Escalated Queries or Comments; and
- (d) there were also three Return to Sender notifications sent to TSL.

Affirmed by **YU-CHIAO HSUEH**)

at *Melbourne* in the State of Victoria) *af 7K*

this *17th* day of April 2014)

Before me: *[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