

**IN THE SUPREME COURT OF VICTORIA AT MELBOURNE  
COMMERCIAL COURT**

No. S ECI 2014 000419

BETWEEN

**TIMBERCORP FINANCE PTY LTD (IN LIQUIDATION) (ACN 054 581 190)**

Plaintiff

and

**PETER JOHN WHITE AND ANOR (as set out in the schedule)**

Defendants

BETWEEN

**TIMBERCORP SECURITIES LIMITED (IN LIQUIDATION) (ACN 093 311 469)**

Plaintiff by Counterclaim

and

**PETER JOHN WHITE AND ANOR (as set out in the schedule)**

Defendants by Counterclaim

**DEFENCE TO PLAINTIFF BY COUNTERCLAIM'S CLAIM DATED 31 AUGUST 2016**

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Date of document: 9 September 2016  
Filed on behalf of the First Defendant by  
Counterclaim  
Prepared by:  
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The First Defendant by Counterclaim (**Mr White**) by way of defence to the Plaintiff by Counterclaim's claim dated 31 August 2016 but filed pursuant to leave granted 2 September 2016 says as follows:

1. Mr White denies that he makes allegations against the Plaintiff by Counterclaim in paragraph 76C of Mr White's Amended Defence to Further Amended Statement of Claim filed 30 August 2016 (the **Defence to Timbercorp Finance**).
2. Further, Mr White denies that in paragraph 76C of the Defence to Timbercorp Finance he denies that he ever obtained lots or became a Grower in the relevant Projects.
3. Further, the issue of whether Mr White ever obtained lots or became a Grower in the relevant Projects:
  - (a) was not part of the trial of the proceeding of Timbercorp Finance's claim against him of indebtedness;
  - (b) is not an issue capable of settling the real dispute finally, namely Timbercorp Finance's claim against him of indebtedness; and

2.

(c) therefore, is not a real question for determination in this proceeding, nor a question that needs to be determined for the purposes of determining Timbercorp Finance's claim against him of indebtedness.

4. By reason of the matters referred to above, insofar as the Plaintiff by Counterclaim in its prayer for relief seeks a declaration:

(a) there is no basis for the seeking of such a declaration in circumstances where Mr White does not deny that he obtained lots or became a Grower in the relevant Projects;

(b) there is no justiciable issue as between Mr White and Timbercorp Securities on the question of whether Mr White obtained lots or became a Grower in the relevant Projects, and therefore there is no occasion for the exercise of judicial power; and

(c) the making of such a declaration would be in response to a hypothetical and therefore it is inappropriate for the Court to make any such declaration (*Bass v Permanent Trustee Co Ltd* (1999) 198 CLR 334).

5. He otherwise denies the allegations therein and repeats the matters pleaded in paragraphs 1 to 89 of his Defence to Timbercorp Finance.

Dated: 9 September 2016

**Michael D Wyles**

**Fleur Shand**

**Dion Fahey**

  
.....  
M&K Lawyers Group Pty Ltd  
Solicitors for the First Defendant

**SCHEDULE OF PARTIES**

BETWEEN

**TIMBERCORP FINANCE PTY LTD (IN LIQUIDATION) (ACN 054 581 190)**

Plaintiff

and

**PETER JOHN WHITE**

First Defendant

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

Second Defendant

AND BETWEEN

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

Plaintiff by Counterclaim

**PETER JOHN WHITE**

First Defendant by Counterclaim

**TIMBERCORP FINANCE PTY LTD (IN LIQUIDATION) (ACN 054 581 190)**

Second Defendant by Counterclaim