

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

Defendant

CERTIFICATE IDENTIFYING EXHIBIT

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.fern@mk.com.au

This is the exhibit marked **YCH-6** now produced and shown to **YU-CHIAO HSUEH** at the time of
affirming his affidavit on 17 April 2014.

Before me: 

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

YCH-6

**Emails between Kerree Bezencon and Yu-chiao Hsueh
of M+K Lawyers dated 25 March 2014**

Hsueh, Yu-chiao

From: Hsueh, Yu-chiao
Sent: Tuesday, 25 March 2014 5:29 PM
To: 'Kerree Bezencon'
Cc: Fernon, Michael; 'Salvo, Alicia'; 'David Porter'; 'Karli Cibich'; 'Jane Sheridan'; JChang@abl.com.au; 'Hinchen, Clint'; 'Adams, Elyse'
Subject: RE: Timbercorp Kangara Rights Proceeding (Proceeding No SCI 01478 2013)

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.

Kind regards,

Yu-chiao

Yu-chiao Hsueh
Senior Associate

M+K Lawyers

Level 22 114 William Street Melbourne VIC 3000 | DX 174 Melbourne
Phone: (03) 8615 9939 | Fax: (03) 9794 2590
yu-chiao.hsueh@mk.com.au | www.mk.com.au

VICTORIA | NEW SOUTH WALES | TASMANIA | QUEENSLAND

From: Kerree Bezencon [mailto:kerree@siger.com.au]
Sent: Tuesday, 25 March 2014 4:55 PM
To: Hsueh, Yu-chiao; 'Salvo, Alicia'; 'David Porter'; 'Karli Cibich'; 'Jane Sheridan'; JChang@abl.com.au; 'Hinchen, Clint'; 'Adams, Elyse'
Cc: Fernon, Michael
Subject: RE: Timbercorp Kangara Rights Proceeding (Proceeding No SCI 01478 2013)

Dear Hsueh,

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....?

Kerree Bezencon

B.Ec (Accounting & Finance),
ASIA (Grad Dip Applied Finance & Investment),
CPA(Certified Practising Accountant) PFP (Specialist in Financial Planning),
CFP (Certified Financial Planner),
SSA (Specialist SMSF Advisor)

PO Box 1147, Healesville, Vic, 3777
Tel 03 59 626 097, Fax 03 59 626 086
Email : kerree@siger.com.au

From: Hsueh, Yu-chiao [mailto:Yu-chiao.Hsueh@mk.com.au]
Sent: Tuesday, 25 March 2014 3:55 PM
To: 'Salvo, Alicia'; David Porter; Karli Cibich; Jane Sheridan; Jing Chang <JChang@abl.com.au> (JChang@abl.com.au); Hinchin, Clint; Adams, Elyse; kerree@siger.com.au
Cc: Fernon, Michael
Subject: Timbercorp Kangara Rights Proceeding (Proceeding No SCI 01478 2013)

Dear all,

Please find **attached** by way of service the Affidavit of Yu-chiao Hsueh filed with the Court today and exhibit YCH-4 (the remaining exhibits are confidential and sealed).

Kind regards,

Yu-chiao

Yu-chiao Hsueh
Senior Associate

M+K Lawyers
Level 22 114 William Street Melbourne VIC 3000 | DX 174 Melbourne
Phone: (03) 8615 9939 | Fax: (03) 9794 2590
yu-chiao.hsueh@mk.com.au | www.mk.com.au

VICTORIA | NEW SOUTH WALES | TASMANIA | QUEENSLAND

From: Salvo, Alicia [mailto:Alicia.Salvo@allens.com.au]
Sent: Monday, 17 March 2014 2:04 PM
To: David Porter; Karli Cibich; Hsueh, Yu-chiao; Fernon, Michael
Cc: Jane Sheridan; Jing Chang <JChang@abl.com.au> (JChang@abl.com.au); Hinchin, Clint; Adams, Elyse
Subject: FW: Consent orders - Proceeding Nos SCI 01477 2013 and SCI 01478 2013 - Bella Vista Rights Proceeding and Kangara Rights Proceeding

Dear all

I refer to the below email from Justice Judd's associate, confirming that his Honour is not available in April to hear the approval applications in the Bella Vista and Kangara Rights Proceedings.

His Honour's associate subsequently informed me during our telephone conversation last Friday that at this stage, Justice Judd is only available to hear the approval applications in the week commencing 19 May 2014. Mr Fletcher also recommended that the parties revert to the Court with their alternative availabilities and any amended consent orders as soon as possible in light of His Honour's limited availability in May.

The Trust Company's counsel are available for a hearing on either 19, 20 or 21 May 2014. I understand from my discussions with M+K Lawyers that the representative growers' counsel are also available on those dates. Norton Rose – please let me know if your client has any difficulties with those dates.

In light of the likelihood that the hearing will be pushed back to May, we attach for your review our client's proposed consent orders setting down an extended timetable for the filing of evidence and submissions, to provide the parties with additional time to prepare for the hearing. As you will note, paragraph 1 of each of the draft orders includes an order for the vacation of this Friday's directions hearing. The draft consent orders also require all relevant evidence to be filed by 8 April 2014 to allow the parties sufficient time to confer on and prepare the required court books in advance of written submissions being finalised. This will also assist the parties to cross reference the court book pages in written submissions, which Justice Judd's associate has informed me is His Honour's preferred approach.

Please let me know if you have any comments on the proposed orders. In light of the need to revert to the Court as soon as possible, I would appreciate it if the parties could provide any comments on the proposed orders today.

Regards

Alicia Salvo
Senior Associate
Allens

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From: Tully.Fletcher@supremecourt.vic.gov.au [<mailto:Tully.Fletcher@supremecourt.vic.gov.au>] **On Behalf Of** juddj.associate@supremecourt.vic.gov.au
Sent: Thursday, 13 March 2014 4:15 PM
To: Salvo, Alicia
Cc: Hinchin, Clint; David Porter; Adams, Elyse; Jing Chang <JChang@abl.com.au> (JChang@abl.com.au); Jane Sheridan; juddj.associate@supremecourt.vic.gov.au; Karli Cibich; kerree@siger.com.au; Michael Fernon; orders@supremecourt.vic.gov.au; Yu-chiao Hsueh
Subject: Re: Consent orders - Proceeding Nos SCI 01477 2013 and SCI 01478 2013 - Bella Vista Rights Proceeding and Kangara Rights Proceeding

Dear Practitioners,

Regrettably the proposed April hearing dates discussed below are unavailable.

His honour asks that you confer on appropriate dates in May.

Kind regards,

Tully Fletcher
Associate to the Honourable Justice Judd

Supreme Court of Victoria
210 William Street
Melbourne Vic 3000
Telephone: +61 3 9603 6128
Fax: +61 3 9670 8408
Email: juddj.associate@supremecourt.vic.gov.au

NOTE: Practitioners are referred to paragraph 5 of Practice Note 10 of 2011. Any correspondence with associates must be sent simultaneously to all other parties and must be confined to uncontroversial matters. Telephone communications must be confined to administrative and routine matters. Requests for legal or procedural advice will not be answered.

<p>"Salvo, Alicia" <Alicia.Salvo@allens.com.au></p> <p>12/03/2014 13:41</p>	<p>To: "orders@supremecourt.vic.gov.au" <orders@supremecourt.vic.gov.au>, "juddi.associate@supremecourt.vic.gov.au" <juddi.associate@supremecourt.vic.gov.au></p> <p>cc: Michael Fernon <Michael.Fernon@mk.com.au>, Yu-chiao Hsueh <Yu-chiao.Hsueh@mk.com.au>, David Porter <david.porter@nortonrosefulbright.com>, Karli Cibich <karli.cibich@nortonrosefulbright.com>, "kerree@siger.com.au" <kerree@siger.com.au>, "Hinchen, Clint" <Clint.Hinchen@allens.com.au>, "Adams, Elyse" <Elyse.Adams@allens.com.au>, Jane Sheridan <JSheridan@abl.com.au>, "Jing Chang <JChang@abl.com.au> (JChang@abl.com.au)" <JChang@abl.com.au></p> <p>Subject: Consent orders - Proceeding Nos SCI 01477 2013 and SCI 01478 2013 - Bella Vista Rights Proceeding and Kangara Rights Proceeding</p>
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Dear Registry and Associate

This email is sent on behalf of, and with the consent of, all parties to the Kangara Rights Proceeding and the Bella Vista Rights Proceeding.

We refer to our email to you below dated 22 January 2014.

Conditions precedent to the deeds of compromise

Our email stated that the deeds of compromise executed in respect of the Bella Vista and Kangara Rights Proceeding contained certain conditions precedent, including:

1. the Debenture Holders' approval of the compromise by 7 March 2014; and
2. approval of the compromise by the Court in accordance with rule 16.01(4) of the *Supreme Court (General Civil Procedure) Rules 2005* by 30 June 2014 (***Court Approval***).

In order to satisfy the first condition precedent listed above, the plaintiff convened a meeting of the Debenture Holders on 28 February 2014. At the meeting, the Debenture Holders passed resolutions approving the compromises reached in each proceeding.

In order to satisfy the second condition precedent listed above, the plaintiff filed a summons and supporting affidavit in respect of each proceeding with the registry earlier today to bring applications pursuant to rule 16.01(4) of the *Supreme Court (General Civil Procedure) Rules 2005* for approval of the compromises reached between the parties to both proceedings.

We are informed by the registry that the summonses and supporting affidavits are being held by them pending resolution of a return date. Once the return date has been set, the registry will stamp the summonses, and the plaintiff will arrange for them to be served on the other parties. We attach for your reference a copy of the (unstamped) summonses as well as the supporting affidavits filed in respect of each proceeding.

Consent orders and hearing date

As noted above, the deeds of compromise executed by the parties require that Court Approval is obtained by 30 June 2014. In this context, proposed consent orders have been signed by the parties to the Kangara and Bella Vista Rights Proceedings setting out a timeline for the filing of affidavit material and submissions by the parties. A copy of the signed consent orders, as well as draft orders for amendment by the Court, are attached.

The consent orders also provide for the proposed one-day, combined hearing of the applications in April 2014 to allow sufficient time for the Court to consider the application and be in a position to deliver its decision prior to 30 June 2014.

We note that the parties' counsel are available for a one-day hearing on any of 4 April 2014, 7 to 10 April 2014 or 23 to 24 April 2014.

Please do not hesitate to contact me if you have any questions.

Kind regards

Alicia Salvo
Senior Associate
Allens

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From: Adams, Elyse

Sent: Wednesday, 22 January 2014 10:52 AM

To: orders@supremecourt.vic.gov.au; judj.associate@supremecourt.vic.gov.au

Cc: Michael Fernon; Yu-chiao Hsueh; David Porter; Karli Cibich; kerree@siger.com.au; Hinchey, Clint; Salvo, Alicia

Subject: Consent orders - Proceeding Nos SCI 01477 2013 and SCI 01478 2013 - Bella Vista Rights Proceeding and Kangara Rights Proceeding

Dear Registry and Associate

This email is sent on behalf of, and with the consent of, all parties to the Kangara Rights Proceeding and Bella Vista Rights Proceeding.

We are pleased to inform his Honour that a deed of compromise was executed in each proceeding by the relevant parties on 14 January 2014. The deeds contain certain conditions precedent, namely:

1. the Debenture Holders' approval of the compromises by 7 March 2014; and
2. approval of the compromises by the Court in accordance with rule 16.01(4) of the *Supreme Court (General Civil Procedure) Rules 2005* by 30 June 2014.

The Plaintiff is currently intending to convene a meeting of the Debenture Holders in the last week of February 2014 at which a resolution for approval of the compromises will be proposed for their consideration. Assuming the requisite approval is obtained, the Plaintiff will then file a summons and supporting affidavit in order to initiate the application for Court approval of the compromises.

In this context, proposed consent orders signed by all parties to the proceedings and draft orders for amendment by the Court adjourning the directions hearing listed for 24 January 2014 until a date not before 21 March 2014 are attached.

Please do not hesitate to contact us if you have any queries.

Many thanks and kind regards

Elyse Adams
Lawyer
Allens

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*****[attachment "Summons (Kangara).pdf" deleted by Tully Fletcher/Person/DOJ] [attachment "Summons (Bella Vista).pdf" deleted by Tully Fletcher/Person/DOJ] [attachment "Third Affidavit of Clinton Charles Hinchon sworn 12 March 2014 (Kangara).PDF" deleted by Tully Fletcher/Person/DOJ] [attachment "Second Affidavit of Clinton Charles Hinchon sworn 12 March 2014 (Bella Vista).PDF" deleted by Tully Fletcher/Person/DOJ] [attachment "Minutes of Consent Order (Bella Vista).PDF" deleted by Tully Fletcher/Person/DOJ] [attachment "Minutes of Consent Order (Kangara).PDF" deleted by Tully Fletcher/Person/DOJ] [attachment "Kangara Rights Proceeding - proposed orders.DOC" deleted by Tully Fletcher/Person/DOJ] [attachment "Bella Vista Rights Proceeding - proposed orders.DOC" deleted by Tully Fletcher/Person/DOJ]

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