

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

List D
S CI 2011 6606

B E T W E E N

AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED (ACN 005 357 522)

Plaintiff

and

OIM#2 PTY LTD (RECEIVERS AND MANAGERS APPOINTED) (ACN 112 691 997) AS
TRUSTEE FOR TIMBERCORP ORCHARD TRUST #2 & ORS (ACCORDING TO THE
ATTACHED SCHEDULE)

Defendants

THIRD AFFIDAVIT OF CLINTON CHARLES HINCEN
(SOLORA RIGHTS PROCEEDING)

Date of document: 28 September 2012

Filed on behalf of: The Plaintiff

Prepared by:

Allens
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I, **CLINTON CHARLES HINCEN** of Allens, 101 Collins Street, Melbourne, in the State of Victoria,
Lawyer, SAY ON OATH that:

1. I am a solicitor and a partner in the firm Allens. I have the care and conduct of this proceeding (the **Solora Rights Proceeding**) on behalf of the plaintiff, Australia and New Zealand Banking Group Limited (**ANZ**). I am authorised to make this affidavit on behalf of ANZ.



2. 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 paragraph 56 of my affidavit sworn in this proceeding on 19 September 2012 which is set out below:


"Further, the constituent documents for the almond projects the subject of the Almond Land Rights Proceeding are broadly similar in content and form to the corresponding documents for the Citrus Project the subject of the Solara Rights Proceeding. In this regard, I note that the growers in the Citrus Project are subject to licence agreements rather than leases (see paragraph 18 above). As such, the constituent documents for that project bear a greater resemblance to the constituent documents for the licence-based projects the subject of the Almond Land Rights Proceeding, namely, the 2001 Almond Project, the 2002 Almond Project, the 2002 Private Offer Project and the 2003 Almond Project."

4. I have since noted that there is an error in that paragraph insofar as I have deposed to the 2001 Almond Project being the subject of the Almond Land Rights Proceeding (as defined in that affidavit). The 2001 Almond Project was not the subject of that proceeding (but is instead the subject of the Liparoo and Yungera Rights Proceeding).

SWORN by Clinton Charles Hinchey at

Melbourne in the State of Victoria this

28th day of September 2012



Before me



AMY JULIETTE BURTON
of 101 Collins Street, Melbourne
Victoria 3000
An Australian Legal Practitioner
within the meaning of the
Legal Profession Act 2004

SCHEDULE

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AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED (ACN 005 357 522)

Plaintiff

and

**OIM#2 PTY LTD (RECEIVERS AND MANAGERS APPOINTED) (ACN 112 691 997) AS
TRUSTEE FOR TIMBERCORP ORCHARD TRUST #2**

First Defendant

and

**MICHAEL FUNG IN HIS CAPACITY AS RECEIVER AND MANAGER OF OIM#2 PTY LTD
(RECEIVERS AND MANAGERS APPOINTED) (ACN 112 691 997) IN ITS CAPACITY AS
TRUSTEE FOR TIMBERCORP ORCHARD TRUST #2**

Second Defendant

and

**PAUL WILLIAM KIRK IN HIS CAPACITY AS RECEIVER AND MANAGER OF OIM#2 PTY LTD
(RECEIVERS AND MANAGERS APPOINTED) (ACN 112 691 997) IN ITS CAPACITY AS
TRUSTEE FOR TIMBERCORP ORCHARD TRUST #2**

Third Defendant

and

**ROBERT BUGDEN AND ELIZABETH BUGDEN (AS THE REPRESENTATIVES OF THE
GROWERS IN THE 2005 TIMBERCORP CITRUS PROJECT (ARSN 114 091 299))**

Fourth Defendants