

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
IN THE COURT OF APPEAL
CIVIL DIVISION

No. S APCI 2011 0103

BETWEEN

GRAHAM GOLDENBERG & ORS (according to the attached Schedule)

Appellants

and

BOSI SECURITY SERVICES LIMITED (ACN 009 413 852) as trustee for AUSTRALIA AND
NEW ZEALAND BANKING GROUP LIMITED (ACN 005 357 522) and BOS
INTERNATIONAL (AUSTRALIA) LIMITED (ACN 066 601 250) and WESTPAC BANKING
CORPORATION (ACN 007 457 141) & ORS (according to the attached Schedule)

Respondents

FOURTH AFFIDAVIT OF CELIA JANE ARMSTRONG

Date of document:

2 October 2012

Filed on behalf of:

the First, Second, Third and Fourth Appellants

Prepared by:

Clarendon Lawyers
Level 17, Rialto North Tower
525 Collins Street
MELBOURNE VIC 3000

Tel: 03 8681 4400

Fax: 03 8681 4499

Solicitors Code: 101294

Ref: MJF:1100297

michael.fernon@clarendonlawyers.com.au

I, CELIA JANE ARMSTRONG of Level 17, Rialto North Tower, 525 Collins Street, Melbourne, make oath and say that:

- 1 I am an employee of the firm Clarendon Lawyers Pty Ltd (**Clarendon Lawyers**), the solicitors for the First, Second, Third and Fourth Appellants, being the Representative Growers in this proceeding. Subject to the supervision of my principal, Michael Fernon, I have the carriage of this matter on behalf of the Representative Growers 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 This is my fifth affidavit in connection with the application for approval of the Deed of Compromise. My earlier affidavits were headed and dated:
 - (a) "Affidavit of Celia Jane Armstrong" sworn on 30 August 2012;
 - (b) "Second Affidavit of Celia Jane Armstrong" sworn on 30 August 2012; and
 - (c) "Third Affidavit of Celia Jane Armstrong" sworn on 19 September 2012.

When I refer to my earlier affidavits, I adopt the headings set out above. Except where otherwise stated, defined terms used in this affidavit have the meaning ascribed to them in my earlier affidavits.



Further correspondence with Growers

- 4 In paragraph 5 of the Third Affidavit of Celia Jane Armstrong I discuss to the Grower Notification and Consultation Process and in the subsequent paragraphs I discuss the Communication Spreadsheets provided by TSL (see paragraph 8 of the Third Affidavit of Celia Jane Armstrong), Escalated Queries and Comments (see paragraph 10 of the Third Affidavit of Celia Jane Armstrong) and Escalated Queries and Comments Call Sheet (see paragraph 12 of the Third Affidavit of Celia Jane Armstrong).
- 5 In paragraph 9 of the Third Affidavit of Celia Jane Armstrong I list the dates for which I received Communication Spreadsheets. The most recent date being 17 September 2012.
- 6 Since 17 September 2012 I have received further Communication Spreadsheets from Antony Munro of KordaMentha. I have received Communication Spreadsheets for 18 September, 19 September, 21 September and 24 to 26 September 2012 (inclusive) (**Further Communication Spreadsheets**).
- 7 I have read the Further Communication Spreadsheets and set out below an overview of all communications received from Growers as noted on the Further Communication Spreadsheets:
- (a) a total of twenty one (21) growers have made comments, questions and/or objections in relation to the Deed of Compromise. Some of the growers raised more than one comment, question and/or objection;
 - (b) one (1) grower requested the First Letter to Growers, Notice to Growers, Frequently Asked Questions, Bank Account Nomination Form and/or Direction to Pay be emailed or posted to them;
 - (c) ten (10) growers returned their Bank Account Nomination Form and/or their Direction to Pay to TSL;
 - (d) one (1) grower notified TSL of a change of address; and
 - (e) ten (10) growers made Escalated Queries or Comments (as addressed further in paragraph 13 below.
- 8 Ms Gleed of Clarendon Lawyers has updated the Escalated Queries and Comments Call Sheets from the Further Communication Spreadsheets (**Updated Escalated Queries and Comments Call Sheet**) and I have responded, or caused responses to be sent, to any Escalated Queries and Comments that required a response. These responses are recorded in the Updated Escalated Queries and Comments Call Sheet. Now produced and shown to me marked **confidential exhibit CJA-12** is a true copy of the Updated Escalated Queries and Comments Call Sheets together with copies of any related emails not already attached to confidential exhibit CJA-9 (being the Escalated Queries and Comments Call Sheets).
- 9 Exhibit CJA-12 is sealed. The Updated Escalated Queries and Comments Call Sheet contains personal information of growers and the Representative Growers will seek orders that CJA-12 remain confidential.



- 10 Paragraph 11 below includes the combined results of the Communication Spreadsheets and Further Communication Spreadsheets. Accordingly, it repeats some of the information contained in paragraph 15 of the Third Affidavit of Celia Jane Armstrong and serves as a single, comprehensive record of the results of the Grower Notification and Consultation Process in relation to this proceeding.
- 11 I have read the Communication Spreadsheets and Further Communication Spreadsheets and set out below an overview of all communications received from Growers as noted on the Communication Spreadsheets and Further Communication Spreadsheets:
- (a) a total of five hundred and twenty-three (523) growers have made comments, questions and/or objections in relation to the Deed of Compromise. Some of the growers raised more than one comment, question and/or objection;
 - (b) one hundred and sixty-eight (168) growers requested the First Letter to Growers, Notice to Growers, Frequently Asked Questions, Bank Account Nomination Form and/or Direction to Pay be emailed or posted to them;
 - (c) seventy-six (76) growers requested information in relation to the particulars of their investments, such as how many lots they had invested in or which scheme they had invested in;
 - (d) sixty-two (62) growers requested financial information, such as how much they were entitled to under the Deed of Compromises or how much TSL or TFL indebtedness they had;
 - (e) two hundred and twenty-four (224) growers returned their Bank Account Nomination Form and/or their Direction to Pay to TSL;
 - (f) twenty-five (25) growers requested more information about the Deed of Compromise in general;
 - (g) thirty-two (32) growers notified TSL of a change of address or change of contact details; and
 - (h) thirty (30) growers made Escalated Queries or Comments (as addressed further in paragraph 13 below).
- 12 Paragraph 13 below includes the full results from the Updated Escalated Queries and Comments Call Sheet. Accordingly, it repeats some of the information contained in paragraph 16 of the Third Affidavit of Celia Jane Armstrong and serves as a single, comprehensive record of all of the Escalated Queries and Comments received in relation to this proceeding.
- 13 I have read the Updated Escalated Queries and Comments Call Sheets and set out below an overview of all communications received from Growers as noted on the Updated Communication Spreadsheets (paraphrasing):
- (a) On 14 August 2012 a grower emailed TSL with the following two questions:
 - (i) what is the likely quantum of the matter; and
 - (ii) whether KordaMetha, as liquidator, had commented upon the reasons for the Timbercorp Group's failure.



I replied to these questions by return email on 16 August 2012 referring the grower to the Frequently Asked Questions and stating that I was not aware of any comments made by KordaMentha.

- (b) On 14 August 2012 a grower called TSL and questioned how the lawyers came to the amounts offered under the Deed of Compromise per lot when they paid approximately \$14,000 for the investment. The grower requested that Clarendon Lawyers contact them. On 16 August 2012 I called the grower and left a message for them to call me. I have had no response from the grower.
- (c) On 14 August 2012 a grower called TSL and commented that they were naturally disappointed with the compromise. The call was marked as escalated. On 16 August 2012 I email the grower noting that they had contacted TSL and to contact me with any further questions that had not been address by TSL. On 16 August 2012 the grower replied by return email commenting:
 - (i) that the correspondence and web references were confusing;
 - (ii) that the person answering the TSL hotline call seemed hesitant and offered nothing in the way of explanation;
 - (iii) that the grower had not been kept up to date with arrangements made;
 - (iv) there was never any mention of a new owner continuing to run the almond plantations, but this seemed possible in view of the trifling compensation offered; and
 - (v) where could they find an explanation of the compromise,

I replied to the grower's concerns by return email on 16 August 2012. I attached to this email the First Notice to Growers and Frequently Asked Questions and requested that the grower contact me as I would be happy to discuss the documents with them. In my email I also briefly outlined background to the proceedings and Deed of Compromise. I have had no response from the grower;

- (d) On 14 August 2012 a grower emailed TSL and made the following comments:
 - (i) their opinions would have little effect on the outcome of the proceedings;
 - (ii) it was outrageous that an entity such as the ANZ bank could have greater rights than investors just because they executed a security over assets;
 - (iii) questioning Timbercorp's right to create any security over the assets without the grower's permission or knowledge;
 - (iv) that they could barely understand the Deed of Compromise and would be surprised if any investor could; and
 - (v) the Deed of Compromise is no compromise at all.



- (e) On 14 August 2012 a grower called TSL and commented that they were surprised to be receiving any money out of the compromise.
- (f) On 14 August 2012 a grower called TSL and commented that they were happy to see the end of this and that they wouldn't complain to receiving a little bit back.
- (g) On 15 August 2012 two growers and an advisor of the growers emailed TSL with a question in relation to the growers' joint venture arrangement regarding lots held and a related loan in one of the joint venture growers name. The growers' sought confirmation that the joint liability was restricted to the original benefits of the schemes and not the settlement monies. On 20 August 2012 I emailed Jane Sheridan of Arnold Bloch Liebler seeking an answer to the growers' question. On 22 August 2012 Jane Sheridan replied by return email stating that the joint venturer without the loan will receive their percentage share of the entitlement with no withholding and the percentage of entitlement of the joint venturer with the loan will be held in trust unless that joint venturer signs a direction to pay. On 22 August 2012 I caused a response to be sent to the growers in these terms.
- (h) On 15 August 2012 a grower called TSL and commented that it seemed ridiculous to receive such a small amount and was there any chance of getting more than the amount offered in the compromise. The grower's call was marked as escalated. On 20 August 2012 I replied to the grower's comments by calling them. I discussed the circumstances of the compromise generally with the grower. The grower requested the following three comments be put before the Court:
 - (i) there had been little consultation by the Representative Growers with the growers at large and there should have been more consultation before reaching a compromise;
 - (ii) the money offered was not enough; and
 - (iii) people shouldn't get ripped off like this from investing in Australia it's not like they invested in some dodgy scheme out of Nigeria.
- (i) On 15 August 2012 a grower emailed TSL and commented that they agree with the compromise proposed.
- (j) On 15 August 2012 a grower called TSL and commented that Timbercorp went into voluntary administration on 23 April and the grower was invoice for management fees of \$20,000 on 1 October 2008. The grower further commented that they had since paid \$18,000 of the management fees owed and questioned what kind of management could still think the grower owed \$2,000.
- (k) On 15 August 2012 a grower emailed TSL and commented that they had changed their name since investing in the scheme as they had married. The grower then questioned whether they needed to complete any documents for this. On 20 August 2012 I emailed Jane Sheridan of Arnold Bloch Liebler seeking an answer to the grower's question. On 21 August 2012 Jane Sheridan replied by return email stating that the grower would need to attached a copy of their



marriage certificate to their completed Direction to Pay. On 22 August 2012 I caused a response to be sent to the grower in these terms.

- (l) On 16 August 2012 a grower emailed TSL and commented that they would only receive just over \$1,000 from the compromise whilst still owing Timbercorp close to \$100,000 in part because of penalty interest.
- (m) On 16 August 2012 a grower called TSL and stated they objected to the compromise. The call was marked as escalated. On 16 August 2012 I called the grower to discuss their objection. I explained that the compromise was subject to Court approval. The grower requested copies of the Deed of Compromise, Bank Account Nomination Form, First Notice to Growers and Frequently Asked Questions. I sent these documents to the grower on 16 August 2012 to the grower's nominated address. At my request, on 20 August 2012 Ms Gleed called the grower to discuss any further queries with the grower. During that conversation the grower indicated to Ms Gleed that their main concern was the Macpherson and Kelley proceeding and any affect the compromise may have on those proceedings. Ms Gleed informed the grower that the proceedings were separate and that accepting any settlement amount in this proceeding would not affect the Macpherson and Kelley proceedings.

On 4 September 2012 I emailed the grower asking whether the grower wished to maintain their objection and if so, whether they would like to make any additional points know to the Court. On 6 September 2012, I received a return email from the grower in which the grower confirmed they withdrew their objection.

- (n) On 20 August 2012 a grower emailed TSL and commented that they were happy with the outcome reached and wanted the compromise to proceed.
- (o) On 21 August 2012 a grower emailed TSL and commented that it was outrageous that TFL continued to chase loans for a clearly worthless product and that they were glad to be part of the class action run by Macpherson and Kelley.
- (p) On 21 August 2012 a grower emailed TSL requesting a copy of the Advice. I replied by return email on 24 August 2012 requesting that the grower sign a deed of undertaking and acknowledgement to protect the confidentiality in and privilege attaching to the Advice (**Undertaking**). Upon receipt of the signed Undertaking from the grower on 28 August 2012 I emailed the grower a copy of the Advice.
- (q) On 23 August 2012 a grower called TSL and commented that the compromise is quite a shortfall for the current existing liability for grower investors and was not much of a return to grower investors;
- (r) On 24 August 2012 a grower emailed TSL requesting a copy of the Advice. I replied by return email on 2 September 2012 requesting that the grower sign an Undertaking. Upon receipt of the signed Undertaking from the grower on 11 September 2012 I emailed the grower a copy of the Advice.



- (s) On 21 September 2012 a grower emailed TSL and commented that they strongly objected to the litigation funders claim for 25% of the amount to be paid to growers under the Deed of Compromise and that they believed this to be outrageous.
- (t) On 26 September 2012 a grower sent two emails. The first to TSL asking for a response to a request for further information to be explained in layman terms from grower legal representatives in relation to why accepting the compromise is better than proceeding with the appeal and the second to both TSL and me commenting that:
 - (i) from interpreting the details provided that it appears approximately \$1.68 million in expenses has been incurred to date by the funders who have underwritten the Almond Land Appeal and that it would seem logical that those funding the appeal would only do so to such an extent if they believed there was a strong chance of succeeding;
 - (ii) that the funders were entitled to receive their expenditures to date paid from the paltry \$6 million currently on offer to growers, therefore reducing the distributions to growers by close to 30%;
 - (iii) how did Counsel determine that the appeal process should be terminated and on what basis;
 - (iv) didn't independent consultants suggest that grower entitlements should be potentially 60-70% of the sale proceeds;
 - (v) instead of racing to court for the usual "rubber stamp" it would have been far more appropriate to call a meeting of growers to explain the pros and cons of the compromise and allow questions to be asked;
 - (vi) one could be forgiven for believing that the outcome of all previous proceedings in all the Timbercorp cases were preordained and that such outcomes were agreed to by those in the legal and liquidator professions who have been the big winners and have done nothing more than operate a charade to justify their excessive fees; and
 - (vii) KordaMetha probably has the more to answer for as in their position as responsible entity they had an obligation to support growers but never did. It has always appeared that KordaMentha has been effectively taking instructions from the banks who provide them with ongoing work as opposed to performing the very important role of protecting grower interest as responsible entity.

On 26 September 2012 I sent an email response to the grower explaining that:

- (viii) the Representative Growers for whom we act have all decided that the compromise is in the best interests of growers;



- (ix) the Representative Growers came to their decision after taking into account the Advice from Counsel, the certainty of payments to be made to growers under the compromise and the cost and delay in pursuing the various rights proceedings;
- (x) Clarendon Lawyers could not discuss the content of Counsels' advice with the grower as it is privileged. Clarendon Lawyers could provide the grower with a copy of the advice and discuss it with the grower if the grower provided Clarendon Lawyers with a deed of undertaking and acknowledgement to protect the confidentiality of and privilege in the Advice. If the grower would like Clarendon Lawyers to prepare a deed for their attention the grower could provide us with the details of which project the grower invested in and their current address;
- (xi) Clarendon Lawyers is unable to speak to the intentions or beliefs of the funders as we do not act for the funders. If the Court awards the funders the full amount of their claim, then the amount payable to each grower will be reduced by almost 30%;
- (xii) one argument in favour of the payment to the funders is that without the appeal, there would be no compromise. If the appeal had not been run, then the precedent set in the Almond Land Rights Proceeding, where Justice Davies held that the growers' rights had no value, would detrimentally impact the likelihood that rights proceedings in respect of other Timbercorp projects would produce a different result and the growers may have ended up with nothing;
- (xiii) I was unsure of who the grower was referring to when the grower referred to the independent consultants who valued the growers entitlement at between 60% to 70%, however, I explained that if this was a reference to the experts appointed by the growers in the Almond Land Rights Appeal Proceeding, I noted that in that proceeding Davies J held that the growers rights had no value at all;
- (xiv) no meeting of growers had been held. Rather, the Representative Growers conducted a consultation process for over a month during which Clarendon Lawyers have invited growers to contact us with their questions, comments and objections;
- (xv) I have submitted a number of affidavits on behalf of the Representative Growers setting out for the Court the results of that consultation process and informing the Court of all of the questions, comments and objections raised by the growers. It was too late for the grower's concerns to be included in that material; and
- (xvi) I would submit the grower's concerns in a supplementary affidavit to inform the Court of the additional communications between Clarendon Lawyers and growers.

On 1 October 2012 I sent a further response to the grower referring to the first of the grower's two emails and asking whether my response on 26 September 2012 had addressed the grower's query. I have not received any further correspondence from this grower.



- (u) On 26 September 2012 eight growers emailed TSL, forwarding an email from Kerree Bezencon to state that they object to the compromise.

Advice

- 14 On 14 August 2012 Ms Kerree Bezencon requested a copy of the Advice on behalf of Siger Super Services Pty Ltd. I provided Ms Bezencon with the Advice on 17 August 2012 after she provided me with a signed copy of a deed of undertaking and acknowledgement pursuant to which she agreed to protect the confidentiality of and privilege in the Advice (**Undertaking**). Now produced and shown to me marked **CJA-13** is a true copy of the Undertaking signed by Ms Bezencon dated 16 August 2012.
- 15 On 1 October 2012 I caused a supplementary note from counsel (**Supplementary Note**) to be sent by email to the Representative Growers and any Grower who has been provided with a copy of the Advice. Now produced and shown to me marked **confidential exhibit CJA-14** is a true copy of the Supplementary Note. The Supplementary Note is privileged and the Representative Growers do not waive that privilege.
- 16 Exhibit CJA-14 is sealed and the Representative Growers will make an application for an order that it remain confidential.

Affidavits from the Representative Growers

- 17 On 18 September 2012 Kerree Bezencon (**Ms Bezencon**) has sworn an affidavit in respect of:
- (a) Supreme Court of Victoria Proceeding No S CI 2011 6604 (**Solara Rights Proceeding**);
 - (b) Supreme Court of Victoria Proceeding No S CI 2011 6777 (**Fenceport Rights Proceeding**); and
 - (c) Supreme Court of Victoria Proceeding No S CI 2010 1354 (**BB Olives Rights Proceeding**), (**Ms Bezencon's Affidavit**). Now produced and shown to me marked **CJA-15** is a true copy of Ms Bezencon's affidavit dated 18 September 2012. In paragraph 10 of her affidavit Ms Bezencon alleges, *inter alia*, Clarendon Lawyers are "*under instructions effectively from Chris Garnaut*".
- 18 On 25 September 2012 I swore an affidavit in response to Ms Bezencon's Affidavit in each of the Solara Rights Proceeding, Fenceport Rights Proceeding and BB Olives Rights Proceeding. I also asked the representative growers in each of those proceedings to provide a short affidavit in response to Ms Bezencon's Affidavit. Additionally, for the sake of completeness, I asked the Representative Growers in this proceeding to provide an affidavit in response to paragraph 10 of Ms Bezencon's Affidavit.
- 19 The Representative Growers in this proceeding are Graham Goldenberg (**Mr Goldenberg**), Con Moshopoulos (**Mr Moshopoulos**), Chris Littley (**Mr Littley**) and David Butterfield (**Mr Butterfield**).

Mr Goldenberg, Mr Littley and Mr Butterfield

- 20 On 1 October 2012 Mr Goldenberg, Mr Littley and Mr Butterfield each swore an affidavit in this proceeding in response to Ms Bezencon's Affidavit. I arranged for their affidavits to be filed and served that same day.



Mr Moshopoulos

21 I am informed by Mr Moshopoulos that he is unable to swear an affidavit in response to Ms Bezencon's Affidavit before the hearing of the application for approval of the Deed of Compromise as he is overseas until 8 October 2012. Mr Moshopoulos also informed me that he:

- (a) received written and oral advice from counsel in relation to the compromise;
- (b) gave instructions to accept the compromise at the meeting at Clarendon Lawyers on 20 July 2012;
- (c) acted independently of anyone else in giving those instructions.

SWORN by CELIA JANE ARMSTRONG
at Melbourne in the State of Victoria
this 2nd day of October 2012

)
)
) 

Before me: 

SARAH DORN
of Clarendon Lawyers Pty Ltd
Level 17, Rialto North Tower
525 Collins St, Melbourne Victoria 3000
an Australian Legal Practitioner within the
meaning of the *Legal Profession Act 2004*

SCHEDULE

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

BETWEEN

GRAHAM GOLDENBERG

(in his capacity as representative of the Growers in the 2002 Almond Project (ARSN 099 611 935))

First Appellant

CHRISTOPHER MARK LITTLEY

(in his capacity as representative of the Participant Growers in the 2005 Almond Project (ARSN 112 935 092))

Second Appellant

CONSTANTINE MOSHOPOULOS

(in his capacity as representative of the Participant Growers in the 2006 Almond Project (ARSN 118 387 974))

Third Appellant

DAVID BUTTERFIELD

(in his capacity as representative of the Participant Growers in the 2007 Almond Project (ARSN 122 511 040) and as representative of the Growers in the 2002 (Private Offer No 1))

Fourth Appellant

**BOSI SECURITY SERVICES LIMITED (ACN 009 413 852) as trustee for AUSTRALIA AND NEW ZEALAND
BANKING GROUP LIMITED (ACN 005 357 522) and BOS INTERNATIONAL (AUSTRALIA) LIMITED (ACN
066 601 250) and WESTPAC BANKING CORPORATION (ACN 007 457 141)**

First Respondent

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

Second Respondent

ALMOND LAND PTY LTD (IN LIQUIDATION) (ACN 091 460 392)

Third Respondent

MARK ANTHONY KORDA

(in his capacity as liquidator of Almond Land Pty Ltd (in liquidation))

Fourth Respondent

LEANNE KYLIE CHESSER

(in her capacity as liquidator of Almond Land Pty Ltd (in liquidation))

Fifth Respondent

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

List E

No. S CI 2010 1354

BETWEEN:

BOSI SECURITY SERVICES LIMITED (ACN 009 413 852) as trustee for
AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED (ACN 005 357 522) and
BOS INTERNATIONAL (AUSTRALIA) LIMITED (ACN 066 601 250) and
WESTPAC BANKING CORPORATION (ACN 007 457 141)

Plaintiff

and

B.B OLIVES PTY LTD (IN LIQUIDATION) (ACN 083 992) & ORS
(according to the Schedule)

Defendants

EXHIBIT NOTE

Date of document:

2 October 2012

Filed on behalf of:

the Seventh, Eighth and Ninth Defendants

Prepared by:

Clarendon Lawyers
Level 17, Rialto North Tower
525 Collins Street
MELBOURNE VIC 3000

Tel: 03 8681 4400

Fax: 03 8681 4499

Solicitors Code: 101294

Ref: MJF:1000133

michael.fernon@clarendonlawyers.com.au

This is the exhibit marked "exhibit CJA-13" now produced and shown to CELIA JANE ARMSTRONG at the time of swearing her affidavit on 2 October 2012.

Before me:.....



SARAH DORN

of Clarendon Lawyers Pty Ltd
Level 17, Rialto North Tower
525 Collins St, Melbourne Victoria 3000
an Australian Legal Practitioner within the
meaning of the *Legal Profession Act 2004*

Exhibit CJA-13

**Deed of Undertaking and Acknowledgment signed
by Ms Bezencon dated 16 August 2012**

DEED OF UNDERTAKING AND ACKNOWLEDGEMENT

BY: Siger Super Services Pty Ltd ACN 005 811 781 ATF the Kereg Trust of 953 Don Road, Healesville, Victoria, 3777

(Grower)

BACKGROUND

- A The Grower is an investor in a Timbercorp Project and has requested a copy of the Advice.
- B The Grower has agreed to keep the Advice confidential and protect the privileged nature of the document in accordance with the terms of this deed.

IN CONSIDERATION OF receiving the Advice, the Grower provides the acknowledgments and undertakings contained in this deed.

1 Definitions

In this deed the following definitions apply:

Timbercorp Projects mean the following projects, in one or some of which the Grower invested:

- (a) 2001 Timbercorp Almond Project ARSN 095 649 746;
- (b) 2002 Timbercorp Almond Project (Private Offer No 1);
- (c) 2002 Timbercorp Almond Project ARSN 099 611 935;
- (d) 2003 Timbercorp Almond Project ARSN 103 197 299;
- (e) 2004 Timbercorp Almond Project ARSN 108 336 670;
- (f) 2005 Timbercorp Almond Project ARSN 112 935 092;
- (g) 2006 Timbercorp Almond Project ARSN 118 387 974;
- (h) 2007 Timbercorp Almond Project ARSN 122 511 040;
- (i) 2000 Timbercorp Olive Project (Private Offer) (Unregistered);
- (j) 2001 Timbercorp Olive Project ARSN 094 382 082;
- (k) 2002 Timbercorp Olive Project ARSN 098 233 455;
- (l) 2003 Timbercorp Olive Project ARSN 104 648 473;
- (m) 2004 Timbercorp Olive Project ARSN 108 744 378;
- (n) 2006 Timbercorp Olive Project ARSN 119 182 179;
- (o) 2007 Timbercorp Olive Project ARSN 123 155 715;
- (p) 2008 Timbercorp Olive Project ARSN 129 307 722; and
- (q) 2005 Timbercorp Citrus Project ARSN 114 091 299.

Advice means the written advice prepared by the barristers for the Representative Growers in respect of the proposed compromise of the Timbercorp Rights Proceedings.

Representative Growers means the investor growers appointed by the Supreme Court to represent the interests of all of the investor growers, including the Grower, in the Timbercorp Projects for the purposes of the Timbercorp Rights Proceedings.

Timbercorp Rights Proceedings mean the following proceedings relating to the distribution of the proceeds of sale of the assets and land used in connection with the Timbercorp Projects:

- (a) Almond Land Rights Appeal Proceeding – Supreme Court of Victoria Court of Appeal Proceeding No S APCI 2011 0103;

- (b) Boundary Bend Rights Proceeding - Supreme Court of Victoria Proceeding No S CI 2010 1354
- (c) Fenceport Rights Proceeding - Supreme Court of Victoria Proceeding No S CI 2011 6777;
- (d) Liparoo and Yungera Rights Proceeding - Supreme Court of Victoria Proceeding No S CI 2011 6604; and
- (e) Solara Rights Proceeding - Supreme Court of Victoria Proceeding No S CI 2011 6606.

2 Acknowledgment

The Grower acknowledges and confirms that the Advice is:

- (a) confidential;
- (b) the subject of legal professional privilege in favour of the Representative Growers; and
- (c) the subject of common interest privilege in favour of the Representative Growers and the growers in the Timbercorp Projects (including the Grower).

3 Undertaking

The Grower undertakes not to:

- (a) disclose the Advice or the part of the Advice to any person who does not share the same confidentiality obligations or privilege in relation to the Advice; or
- (b) deal with the Advice in any way whatsoever that may be inconsistent with maintaining the confidentiality of or privilege in relation to the Advice.

EXECUTED AS A DEED ON THE *16th* day of August 2012:

EXECUTED SIGER SUPER SERVICES
PTY LTD ACN 005 811 781 ATF THE
KEREG TRUST in accordance with the
Corporations Act 2001 by being signed by
the following officers:



Kerree Bezencon - director



Regis Edmond Bezencon - director

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
IN THE COURT OF APPEAL
CIVIL DIVISION

No. S APCI 2011 0103

BETWEEN

GRAHAM GOLDENBERG & ORS (according to the attached Schedule)

Appellants

and

BOSI SECURITY SERVICES LIMITED (ACN 009 413 852) as trustee for AUSTRALIA AND
NEW ZEALAND BANKING GROUP LIMITED (ACN 005 357 522) and BOS
INTERNATIONAL (AUSTRALIA) LIMITED (ACN 066 601 250) and WESTPAC BANKING
CORPORATION (ACN 007 457 141) & ORS (according to the attached Schedule)

Respondents

THIRD AFFIDAVIT OF CELIA JANE ARMSTRONG

Date of document:

2 October 2012

Filed on behalf of:

the First, Second, Third, Fourth and Fifth Appellants

Prepared by:

Clarendon Lawyers
Level 17, Rialto North Tower
525 Collins Street
MELBOURNE VIC 3000

Tel: 03 8681 4400

Fax: 03 8681 4499

Solicitors Code: 101294

Ref: MJF:1100297

michael.fernon@clarendonlawyers.com.au

This is the exhibit marked "exhibit CJA-15" now produced and shown to **CELIA JANE ARMSTRONG** at the time of swearing her affidavit on 2 October 2012.

Before me:.....

SARAH DORN

of Clarendon Lawyers Pty Ltd
Level 17, Rialto North Tower
525 Collins St, Melbourne Victoria 3000
an Australian Legal Practitioner within the
meaning of the *Legal Profession Act 2004*

Exhibit CJA-15

**Affidavit of Kerree Bezencon sworn 18 September
2012**

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

Olive Schemes
SCI 2011 6777
SCI 2010 1354

Citrus Schemes
SCI 2011 6606

COMMERCIAL COURT

LIST

BETWEEN

BOSI SECURITY SERVICES LIMITED (ACN 009 413 852) AS TRUSTEE FOR AUSTRALIA AND NEW
ZEALAND BANKING GROUP LIMITED (ACN 005 357 522) AND BOSI INTERNATIONAL (AUSTRALIA)
LIMITED (ACN 066 601 250) AND WESTPAC BANKING CORPORATION(ACN 007457 141) & ORS
(according to attached schedule)

Plaintiff

AND

B.B.OLIVES PTY LTD (IN LIQUIDATION) (ACN 083 992 367) & ORS (according to attached
Schedule).

Defendant

AND

TGG CITRUS INC. A0053635L

Defendant

AND

TGG OLIVE INC. A0053490J

Defendant

AFFIDAVIT OF KERREE ANNE BEZENCON

Date of document : 18th September, 2012.

Filed by the Applicant

Telephone: 0419 509 557

Reference:

Email: kerree@siger.com.au

I, **Kerree Anne Bezencon**, of 953 Don Road, Healesville in the State of Victoria, Accountant, make oath and say:

1. I swear this affidavit in support of my and the Second and Third Applicant's application in this proceeding and am authorised to swear this affidavit on behalf of the Second and Third Applicant.
2. Except where I otherwise indicate, I make this application from my own knowledge. Where I depose to matters from information or belief, I believe those matters to be true.
3. The purpose of this affidavit is to object to the compromise in relation to the citrus and olive growers and to allow the arguments for these growers rights to be contended and addressed in a separate hearing - not to assume they are the same as the almond case, nor that the same arguments apply to the citrus and olives
4. An Entity of which I am a director is a member (usually referred to as a grower) in the 2005 Timbercorp Citrus Project (ASRN 114 091 299) (**Scheme**). I personally am also a grower in various almond and olive schemes. I have been the accountant for approximately 30 other growers in various Timbercorp Projects.
5. I am currently on the Committee of Inspection to represent growers views to the liquidators
6. I am also the chairperson of the TGG Citrus Committee Inc TGG Olive Committee Inc (**Committees**), which are incorporated associations formed for the sole purpose of representing growers in the Timbercorp Citrus Olives Projects and of seeking to secure and advance the growers' interests.
7. In particular, the constitution of the Committee states that the purposes of the Committee are:

" 1. To seek representation on behalf of Growers involved in the Timbercorp

Managed Investment Schemes that are managed by the responsible

Managed Investment Schemes that are managed by the responsible entity known as Timbercorp Securities Limited, which is now in liquidation.

- 2. To facilitate meetings with Growers to provide updates relating to the status of their projects and to also seek their opinions on the relevant issues involved.*
- 3. To seek funds from the above Growers and their financial advisers to provide payment for such representation. In addition such funds would also be available to reimburse committee members for such outlays as interstate travel (by Senior Committee Members), postage, phone and other incidental out of pocket expenses.*
- 4. Such representation would include legal, financial and independent expert advice to pursue outcomes to seek to secure and advance Grower's interests in these projects. Such advice sought would be to provide Growers with potential options regarding the legal and financial structures that may be able to be applied to these projects.*
- 5. To communicate on behalf of Growers with the current administrator of these projects, (Korda Mentha) and any other relevant stakeholders.*
- 6. To provide an ongoing communication role to keep Growers and their financial advisers updated on the performance of their projects.*
- 7. To consider the establishment of a web site for Grower updates."*
8. The other senior committee members of the Committee were growers or financial planners with clients who were growers in the Timbercorp Citrus Olives & Almonds Projects.
9. As chairperson of the Committee, I am also in regular email and/or telephone contact with approximately 1,800 financial advisers and accountants who obtain views from their grower clients and communicate them to me. We have a database covering over 80% of olive growers and 96% of citrus growers with whom we are in contact.

CLARENDONS & GARNAUT NOT REPRESENTATIVE OF GROWERS INTERESTS

10. Clarendons choice of representative olive and citrus growers as well as almonds are clients of Mr Chris Garnaut and he has their proxy. Clarendons are therefore under instructions effectively from Mr Garnaut. Thus the advice by counsel will reflect the instructions given by Mr Garnaut. Mr Garnaut, and his colleague Owen Lennie, would

appear conflicted and compromised because of their numerous property syndicate dealings with the very banks that are against the growers.

11. Neither the Clarendon representatives nor Garnaut have been involved in any of the proceedings nor shown any interest in citrus and olive growers projects, grower representative action groups and Committees and cannot be said to represent them. It is unlikely therefore that Chris Garnaut as proxy of representative growers reflects the sentiment of all the other growers, whereas the TGG Citrus & Olive Committees do

THE DEBATE & JUSTICE

12. I have represented growers and attended many of the court hearings and have observed something of the way the legal system operates. I do not possess the legal knowledge of a solicitor nor the eloquence of barristers.
13. All those present in court appear to know the rules of this "debating game" and I am at a severe disadvantage. Please excuse my lack of ability in this presentation, and if I offend it is not intentional.
14. It appears to me as an onlooker, as a game of words, something like a school debate run at a higher level. The debaters can take either side and argue the merits of that side, and tomorrow may argue the exact opposite. The best debater, the most eloquent and forceful debater wins. The bar table is a friendly table at which adversaries today may well be working with each other tomorrow. I should not be affronted that in the face of utterly serious and life threatening decisions, jokes are made and banalities are discussed amongst the debaters - it seems to bring some calmness and some ordinariness/ sanity to their world of words. But it deeply upsets those of us who are the victims, whose voice is totally dependent on the barristers voice and conviction.
15. No morality about the position is taken.
16. It appears that in all this game of words, in all this debating, the truth is lost and often not even sought- it is a sadly forgotten player. Yes - I can see that it is the game that is all important. Who will win the war of words - that is the focus amongst this crawling ant-hill of lawyers & barristers. Once debated, we can all go home or across the road for a beer or wine and start all over again on Monday. Life goes on.
17. Whilst this might be understandable, I stand to implore a different approach. I stand to ask you all, and you Justice Judd in particular to see past the debate game to the very plight of many growers who I have spoken to and who seem bewildered to continually get the short straw in the argument. Where is justice they ask?
18. I understood that the law comprises of not just the rules of legislation but also is made on the hop as it were, by new and good arguments that can be developed as new law emerges with changed circumstances and arguments. Many of the cases that create a precedent are based, I think, on new ways of looking at things especially in relation to the law of equity/justice.
19. I implore you - who know the game - to look through my totally inadequate abilities in this regard and seek that rare essence of justice and equity - and help the argument that might be presented somewhat in an unsophisticated manner but has merit and can, with help be developed.

MOTIVATION

20. I do believe that one should not just do the right thing, but we should raise the bar and do it for the right motivation. If you do the right thing because it is only because of fear of being caught for doing otherwise, that's the lowest standard to adopt. If you give a gift to help someone because it makes you feel good about your generosity that's only slightly better. If you do it with the motive that it's the best thing for the other, then we will have achieved the ultimate - it is that approach that I am pleading with you to adopt
21. So that I am transparent, I note that all the players in this debate are being rewarded for their efforts and being well paid, I am not receiving any payment for this affidavit - in fact all this is costing me - in both time and money.
22. There is obviously certainly a self-interested motive by all the debaters to make money. This is not unreasonable, but I here really urge you all to make this NOT the primary motive - there is no test, only your heart will know the truth . Only you will know what you will tell your children/wife about your day, when you reach home.
23. Lastly, there is a choice, between doing good and doing just a job and this choice rests with you - the consequences to the growers dire - some will lose their homes, their retirement dreams, their kids education, their sanity - more than one is deeply depressed with little hope to redo their lives

TAX , GROWERS BEST INTERESTS & ACCESS TO INFORMATION

24. One of the greatest misconceptions is that all growers invested all in the name of tax. Our experience and data files indicate that the majority of investors were super funds where the tax advantage is minimal. They invested because of the annuity like income stream that suited very well the long-term time frame of superannuants - some 20-30 years.
22. There has been much talk about "the best interests of the growers." Many have decided that growers are voiceless, powerless or need to be patronised, they are often given little information while the lawyers or liquidators decide what is in the growers best interest. But these are accountants or lawyers who are generally conservative people, deciding our fate, always looking for so-called "certainty," according to court affidavits - and prefer certainty , even where it is the certainty of nothing. How is that in our best interests?
22. The growers however are not conservative and did not chose certainty when investing in agriculture - one of the most volatile investments of all - in that it varies greatly from the standard mean, much like equities. Over long-term time frames the probability of a loss in such volatile assets approaches zero according to actuaries. Adding to this, this asset class is very much uncorrelated to other assets classes and is regarded as aiding the diversity and minimising the risks of a model portfolio.
25. Thus, many of us took a calculated risk with these investments. Many appreciated the issues after reading in the PDS about the various risks that we might face - of climate, pest, water, AUD dollar, price variations, operating costs variations etc (forgetting here

the issue of the one risk generally not highlighted of the RE going into liquidation) We are grown-ups, we made choices and we need to be given the same degree of information required at the time of investing as now with the "compromise".

INFORMATION ACCESS

26. This is clearly not the case at present. Too many hurdles are being put there to be able to easily access information. The initial letter from Clarendons carries no explanations whatsoever, but refers one onto 3 website - Clarendons, ABL & Timbercorp Korda Mentha - to get further information. Those people not computer literate or without net access are severely disadvantaged.
27. The grower must then scroll through numerous pdf's then print out the various 7 documents times 5 (the number of projects) ie 35 documents!! They are certainly not contained in just one document for each of these 5 interests, like a PDS. Then he/she must read them - over a ream of documents.
28. If they want to know the Barristers view, they must contact the 3 companies, find out the appropriate person, speak with them and request the document.
29. First they must read, understand, talk to a lawyer about signing a confidentiality agreement. Then after all that, and several days they might get the information - over 100 pages to read and digest.
30. Then they must go back into the web-site documents again, and find the phone number and/or the email address to lodge an objection. This all takes time and is not self evident.

NO ALTERNATE/CONTRARY VIEWS AIRED & CRITICAL INFO MISSING

31. They have not been provided with alternate views and the reasoning behind such.
32. Critical cash flow analysis is missing. Debate as to these pros and cons is therefore also missing.
33. No information is given about the basis for agreeing to the compromise - why should it be on a seeming proportion of sale proceeds - why not on the basis of the investment made by growers or some other point?

PROJECTS ARE NOT ALL THE SAME - CITRUS & OLIVE GROWERS

34. All projects are not the same. The structures do vary with each one and whilst there may be similarities, the total end picture can and is quite different - this should be acknowledged without using blanket rules applying 5% of sale proceeds to all projects.
35. There is much at stake for growers in the citrus and olive projects. No viability analysis has been done by any judge to ascertain if these projects are different to the almonds. To lump them together is a gross injustice. To not hear the arguments for their viability is unjust
36. Different locations and different farm properties yield different results.

37. Different produce yield different results - citrus, olives and almonds have very different factors.
38. Different marketers, their marketing and distributions yields different results.
39. Different operating costs yield different results
40. Different factors in the contracts yield different results. Different structures yield different results and inter-entity relationships
41. Different constitutions yield different results
42. Different arguments can be mounted for each project, yielding different results
43. Lumping them altogether simply does not do justice to the outcomes to growers
44. Olives and Citrus should have the same opportunity as Almond growers to present their significantly different arguments regarding the growers rights

04 & 05 CITRUS GROWERS SHOULD BE DEALT WITH TOGETHER

45. The Citrus growers in 05 share the property with 04 citrus growers. They should be dealt with at the same time in their own separate rights hearing, - rather than having extra costs for separate 04 & 05 legal hearings
46. Korda Mentha has never convened a meeting of citrus growers to discuss their options as was done for the almond and olive growers.
47. An amendment has been made to the constitution that allows the growers the ability to make requests to the RE (such as, that KM report to them more fully about the compromise etc). The Committee now seeks and proposes that a meeting should be conducted, as growers have not ever had this opportunity and the proposal be considered at a meeting of members of the Scheme called and convened by the First Plaintiff
48. I consider that it would be in the best interests of the growers in the Scheme for the First Plaintiff to convene a meeting of the members of the Scheme to consider the available compromise, the alternatives that might be argued and enable the almond growers and other to be fully informed of the alternate views

LACK OF INFORMATION

49. Lack of information has been a prevailing theme in all this. We can cite numerous incidences, if required. Clarendons have provided piecemeal information, despite court orders and though we represent significant numbers of growers, we are not being adequately informed, nor consulted
50. Clarendons were to keep the TGG Citrus & Olive & Almond Inc informed and involved in the process of the growers rights issues but we have clearly not been given any information nor opportunity for input in relation to the "compromises".
51. The TGG committees are severely disadvantaged and under-resourced to be able to legally insist on having access to this information. You Justice Judd would be aware, that in one previous proceeding we were at a severe disadvantage to be able to present our case - and lacked the requisite legal basis and time to argue many aspects. We probably should have stated a number of points but we were all awash and overwhelmed by the occasion. Lack of time and the expertise and resources has meant we are often disadvantaged.
52. This time we want our voice heard and the truth known. We will answer and provide any evidence that might be required, and seek any guidance in this respect, not being lawyers

NO URGENCY

53. As there is no pressing urgency, no crops are about to die (as if they ever were with crop sale agreements in place) we request that the olive and citrus proceedings regarding growers entitlements are dealt with separately with appropriate representation as to the various issues that are peculiar to these projects and products.

54. My motivation is to seek a just outcome where growers are informed and given the information to make proper decisions and present the best argument for each project. We would want every opportunity to present complete and thorough analysis of the projects to the court in regards particularly to the viability of the growers projects

OBJECTIONS

55. Any objections we receive to the above compromise from growers in the Scheme will obviously be noted

Sworn at Noosaville in)
in the State of Queensland this)
18th day of September 2012)

Heath Morgan

Before me:

Paul Dwyer

PAUL DWYER.
SOLICITOR.
QUEENSLAND.

SCHEDULE OF PARTIES

BETWEEN

FENCEPORT PROPRIETARY LIMITED (ACN 139 604 121)

First Plaintiff

OLIVECORP LAND PTY LTD (IN LIQUIDATION) (ACN 090 141 512)

Second Plaintiff

MARK ANTHONY KORDA

(in his capacity as liquidator of Olivecorp Land Pty Ltd (in liquidation))

Third Plaintiff

MARK FRANCIS XAVIER MENTHA

(in his capacity as liquidator of Olivecorp Land Pty Ltd (in liquidation))

Fourth Plaintiff

- and -

CON MOSHOPOLOUS

(in his capacity as a Grower in the 2000 Timbercorp Olive Project (Private Offer)
(Unregistered))

First Defendant

PAULINE EMMA HAMMER

(in her capacity as a Grower in the 2001 Timbercorp Olive Project (ARSN 094 382 082))

Second Defendant

DAVID SYDNEY BUTTERFIELD

(in his capacity as a Grower in the 2002 Timbercorp Olive Project (ARSN 098 233 455))

Third Defendant

GRAHAM GOLDENBERG

(in his capacity as a Grower in the 2003 Timbercorp Olive Project (ARSN 104 648 473))

Fourth Defendant

SHUN KING LI

(in his capacity as a Grower in the 2004 Timbercorp Olive Project (ARSN 108 744 378))

Fifth Defendant

SCHEDULE OF PARTIES

**BOSI SECURITY SERVICES LIMITED (ACN 009 413 852) as trustee for
AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED
(ACN 005 357 522) and BOS INTERNATIONAL (AUSTRALIA) LIMITED
(ACN 066 601 250) and WESTPAC BANKING CORPORATION (ACN 007 457 141)**

Plaintiff

and

**B.B. OLIVES PTY LTD (IN LIQUIDATION)
(ACN 083 992 367)**

First Defendant

and

ALMOND LAND PTY LTD (IN LIQUIDATION) (ACN 091 460 392)

Second Defendant

and

TIMBERCORP LIMITED (IN LIQUIDATION) (ACN 055 185 067)

Third Defendant

and

**MARK ANTHONY KORDA
(in his capacity as liquidator of Almond Land Pty Ltd (in liquidation))
(in his capacity as liquidator of B.B. Olives Pty Ltd (in liquidation))**

Fourth Defendant

and

**LEANNE KYLIE CHESSER
(in her capacity as liquidator of B.B. Olives Pty Ltd (in liquidation))**

Fifth Defendant

and

**MARK FRANCIS XAVIER MENTHA
(in his capacity as liquidator of B.B. Olives Pty Ltd (in liquidation))**

Sixth Defendant

and

MICHAEL CHARLES VICARY

(as the representative of the Growers in the 2006 Timbercorp Olive Project (ARSN 119 182 179))

Seventh Defendant

and

PAMELA JAN DRY

(as the representative of the Growers in the 2007 Timbercorp Olive Project (ARSN 123 155 715))

Eighth Defendant

and

DAVID BUTTERFIELD

(as the representative of the Growers in the 2008 Timbercorp Olive Project (ARSN 129 307 722))

Ninth Defendant

SCHEDULE OF PARTIES

BETWEEN

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

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

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

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