

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

AFFIDAVIT OF DAVID SYDNEY BUTTERFIELD

Date of document:

1 October 2012

Filed on behalf of:

the Fourth Appellant

Prepared by:

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

Tel: 03 8681 4400

Fax: 03 8681 4499

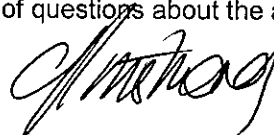
Solicitors Code: 101294

Ref: MJF:1100297

michael.fernon@clarendonlawyers.com.au

I, DAVID SYDNEY BUTTERFIELD of Level 2, 349 Collins Street, Melbourne, make oath and say that:

- 1 I am a chartered accountant aged 61. I was previously a responsible manager for Match Funds Management Ltd which holds a responsible entity licence until the company was sold and I am currently a responsible manager for Apollo Asset Management Limited which holds an Australian Financial Services Licence to issue and manage wholesale managed investment schemes.
- 2 I make this affidavit on my own behalf and except where I otherwise indicate, the matters deposed to in this affidavit are deposed to from my own personal knowledge of the facts.
- 3 I am the fourth appellant in this proceeding and the representative of the Growers in the 2007 Timbercorp Almond Project (ARSN 122 511 040) and the 2002 Timbercorp Almond Project (Private Offer No 1).
- 4 I became a representative grower because Michael Fernon, whom I have known for over 20 years, asked me to be.
- 5 I am not a client of Chris Garnaut and never have been.
- 6 On 20 July 2012 I attended a meeting at Clarendon Lawyers with other representative growers where Garry Bigmore QC and Sam Hopper discussed their advice to the representative growers. I had received a copy of their written advice earlier that day.
- 7 At that meeting I asked Mr Bigmore QC and Mr Hopper a number of questions about the advice.



8 I have read and heard counsel's advice at the meeting on 20 July 2012. At the end of the meeting I agreed that the growers I represent should accept the compromise. I came to this decision independently of the other representative growers, Chris Garnaut or any other person.

SWORN by DAVID SYDNEY BUTTERFIELD)
at Melbourne in the State of Victoria)
this 1st day of October 2012)

David S. Butterfield

Before me: 

CELIA JANE ARMSTRONG
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 CHESSE

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

Fifth Respondent