

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 GRAHAM GOLDENBERG

Date of document:

1 October 2012

Filed on behalf of:

the First Appellant

Prepared by:

Clarendon Lawyers

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I, **GRAHAM GOLDENBERG** of Level 2, 649 Bridge Road, Richmond, Victoria, 3121, make oath and say that:

- 1 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.
- 2 I am the first appellant in this proceeding and the representative of the Growers in the 2002 Timbercorp Almond Project (ARSN 099 611 935).
- 3 I was asked if I would like to be a representative grower in late 2010. This request came from Michael Fernon at Clarendon Lawyers who I knew to be acting for growers. I had been a grower investor myself in olive and almond schemes.
- 4 I am not a client of Chris Garnaut.
- 5 I received a copy of the advice provided to the representative growers by Garry Bigmore QC and Sam Hopper in writing on 16 July 2012. This advice was in relation to proposals to be put in relation to settlement of the proceedings and the advice was to be discussed in a meeting with counsel in July 2012.
- 6 The advice to accept the compromise was given after the meeting held at Clarendon Lawyers on 20 July 2012. At this meeting I discussed, with counsel, all alternatives to the compromise.



7 I acted independently of the other representative growers, Chris Garnaut or any other person in giving my instructions to counsel, and after considering all options, I came to my own conclusion that the growers best interests would be served in accepting the offer to compromise.

SWORN by **GRAHAM GOLDENBERG**)
at Melbourne in the State of Victoria)
this 15th day of October 2012)



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 LITTLE

(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