

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

**IN THE MATTER OF
THE TIMBERCORP APPORTIONMENT PROCEEDINGS**

No. S CI 2010 1354 (BB Olives Rights Proceeding)
No. S APCI 2011 0103 (Almond Land Rights Appeal Proceeding)
No. S CI 2011 6604 (Liparoo and Yungera Rights Proceeding)
No. S CI 2011 6606 (Solara Rights Proceeding)
No. S CI 2011 6777 (Fenceport Rights Proceeding)

THIRD AFFIDAVIT OF JANE CHALMERS SHERIDAN

Date of document: 2 October 2012
Filed on behalf of: Timbercorp Securities Limited (in liquidation)


Prepared by:
ARNOLD BLOCH LEIBLER
Lawyers and Advisers
Level 21
333 Collins Street
MELBOURNE 3000

Solicitor's Code: 54
DX 38455 Melbourne
Tel: 9229 9999
Fax: 9229 9900
Ref: 011601361

(Jane Sheridan - jsheridan@abl.com.au)

I, **JANE CHALMERS SHERIDAN**, of Level 21, 333 Collins Street, Melbourne, in the state of Victoria, Solicitor, **MAKE OATH AND SAY** that:

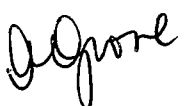
- 1 I am a partner of Arnold Bloch Leibler (**ABL**), the solicitors for Timbercorp Securities Limited (in liquidation) (ACN 092 311 469) (**TSL**).
- 2 I have the care and conduct of the following proceedings on behalf of, amongst others, **TSL**:
 - (a) no S CI 2010 1354 (the **BB Olives Rights Proceeding**);
 - (b) no S APCI 2011 0103 (the **Almond Land Rights Appeal Proceeding**);
 - (c) no. S CI 2011 6604 (the **Liparoo and Yungera Rights Proceeding**);
 - (d) no. S CI 2011 6606 (the **Solara Rights Proceeding**); and
 - (e) no. S CI 2011 6777 (the **Fenceport Rights Proceeding**),(together the **Timbercorp Apportionment Proceedings**).



3 Except where I otherwise indicate, I make this affidavit from my own knowledge. Where I depose to matters from information and belief, I believe those matters to be true.

4 I refer to the affidavits sworn on 18 September 2012 by Mark Anthony Korda, one of the liquidators of TSL, on behalf of TSL and filed in each of the Timbercorp Apportionment Proceedings. Each of those affidavits is in substantially the same form. In each of those affidavits, Mr Korda explains that:

- (a) TSL is the responsible entity of the Timbercorp registered managed investment schemes relevant to the Timbercorp Apportionment Proceedings (**Schemes**);
- (b) TSL is not a party to any of the Timbercorp Apportionment Proceedings;
- (c) from approximately August 2011, Mr Korda facilitated discussions between, on the one hand, members of the Timbercorp Growers Group, which has represented Growers in the Schemes throughout the administration and liquidation of TSL, and, on the other hand, the secured creditors claiming an interest in the net sale proceeds the subject of each of the Timbercorp Apportionment Proceedings, with a view to reaching a settlement of the proceedings;
- (d) on 25 July 2012, the parties to each of the Timbercorp Apportionment Proceedings and TSL executed deeds of compromise in respect of each of the Timbercorp Apportionment Proceedings (**Deeds of Compromise**);
- (e) under each of the Deeds of Compromise, TSL, amongst other things, agrees to perform the following administrative roles:
 - (i) receiving, holding and distributing the settlement amounts under each of the Deeds of Compromise; and
 - (ii) distributing "Grower Information Documents" to Growers regarding the Deeds of Compromise; and
- (f) one of the "Grower Information Documents" in respect of the Timbercorp Apportionment Proceedings is a "Direction to Pay" form, by which a Grower whose payment under the Deeds of Compromise is subject to a competing



claim can direct TSL to pay that Grower's payment to wholly or partly satisfy the competing claim.

Explanation as to the competing claims referred to in the Direction to Pay forms

5 By 13 July 2012, the parties to the Timbercorp Apportionment Proceedings had reached an in principle agreement as to the settlement of the Timbercorp Apportionment Proceedings (which, on 25 July 2012, was formally set down in the Deeds of Settlement). Accordingly, on 13 July 2012, on behalf of TSL, I wrote a letter to Freehills, the solicitors for Timbercorp Finance Limited (in liquidation) (**TFL**). In that letter, I:

- (a) stated that the liquidators of TSL had previously been notified of a claim by TFL in respect of amounts which are or may be owing by TSL to Growers in the Timbercorp Schemes, whose investment in the Timbercorp Schemes was financed by TSL (**TFL Funded Growers**);
- (b) explained that, under each of the Timbercorp Apportionment Proceedings, one of the questions for determination was who had the right to share in the proceeds of various sales of Timbercorp horticultural assets sold earlier in the liquidation of the Timbercorp Group (**Net Sale Proceeds**);
- (c) stated that an in principle agreement had been reached in respect of the settlement of the Timbercorp Apportionment Proceedings;
- (d) explained that, under that in principle agreement, the Growers in each of the Timbercorp Apportionment Proceedings would receive an *ex gratia* payment in consideration for the release of all claims that they otherwise have or would have in respect of the Net Sale Proceeds;
- (e) stated that there remained an outstanding issue as to a potential payment to the litigation funders of the Almond Land Rights Appeal Proceeding; and
- (f) sought clarification as to whether TFL would seek to assert a claim in respect of the proposed *ex gratia* compromise payments to TSL on behalf of TFL Funded Growers.

Now produced and shown to me and marked "**JCS-6**" is a copy of the letter from ABL to Freehills dated 13 July 2012.



- 6 On 16 July 2012, Freehills sent a letter to me in response to my letter of 13 July 2012. In that letter, Freehills stated that TFL intended to take advice upon, and consider its position about, the matters raised in my letter of 13 July 2012. In order to obtain that advice, Freehills requested that we provide a range of stipulated documents in relation to the Timbercorp Apportionment Proceedings, and offered to sign a confidentiality deed in respect of the receipt of those documents.

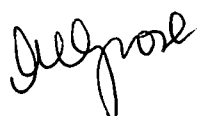
Now produced and shown to me and marked "**JCS-7**" is a copy of the letter from Freehills to ABL dated 16 July 2012.

- 7 On 17 July 2012, I spoke via telephone and corresponded via email with Darren James of Freehills in relation to the provision of documentation sought by TFL in relation to the Timbercorp Apportionment Proceedings.

Now produced and shown to me and marked "**JCS-8**" is a copy of a bundle of correspondence sent between Freehills and ABL on 17 July 2012.

- 8 On 26 July 2012, we received a letter from Freehills. In that letter, Freehills stated that they were instructed that:

- (a) under the loans with TFL Funded Growers (**Loans**), TFL agreed to lend TFL Funded Growers specific amounts by paying those amounts directly to TSL (in its capacity as responsible entity of the relevant Schemes);
- (b) to secure the Loans, Growers agreed to provide TFL with one of the following three forms of security:
 - (i) an assignment to TFL of the "secured property" being all of the [TFL Funded Grower's] rights, title and interest in any debt or other monetary obligation (actual or contingent) owed to [the TFL Funded Grower] by [TSL] in relation to the Scheme;
 - (ii) a fixed charge in favour of TFL of the "secured property", being the TFL Funded Grower's right, title and interest at any time in the Scheme; and
 - (iii) a fixed but not floating charge in favour of TFL of the "mortgaged property" being the right, title and interest of the TFL Funded Grower in the Scheme;



- (c) many TFL Funded Growers were in default of the obligations under the Loans with TFL, such that the amount owing by those TFL Funded Growers was immediately due and payable upon demand (**Defaulting TFL Funder Growers**);
- (d) TFL is exercising its rights against such Defaulting TFL Funder Growers;
- (e) TFL claims that any moneys to which a Defaulting TFL Funder Grower is entitled under the Deeds of Compromise and which is received by TSL should be paid to TFL as secured creditor pursuant to the Loans with the Defaulting TFL Funder Growers; and
- (f) if there is dispute as to TFL's entitlement to those moneys, then TFL is content for TSL to hold those moneys pending resolution of the dispute.

Now produced and shown to me and marked "**JCS-9**" is a copy of the letter from Freehills to ABL dated 26 July 2012.

9 On 2 August 2012, I sent an email to Mr James of Freehills attaching a copy of the executed Deed of Compromise in respect of the Fenceport Rights Proceeding. In that email, I sought confirmation from Mr James that TFL would agree that:

- (a) by providing a "Direction to Pay" (to which I refer in paragraph 4(f) above), a TFL Funded Grower would not be considered to be admitting liability to TFL; and
- (b) it would consider such Directions to Pay to be without prejudice to the TFL Funded Grower's rights against TFL in relation to the Loan between that TFL Funded Grower and TFL.

Now produced and shown to me and marked "**JCS-10**" is a copy of the email from me to Mr James of Freehills sent on 2 August 2012.

10 On 8 August 2012, I received a reply to my 2 August 2012 email from Mr James of Freehills. In that email, Mr James confirmed that TFL:

- (a) does not consider any Direction to Pay provided by a TFL Funded Grower to constitute an admission of liability by that TFL Funded Grower to TFL in respect of the Loan between that TFL Funded Grower and TFL, and



- (b) considers such Directions to Pay to be without prejudice to the TFL Funded Grower's rights (if any) against TFL in relation to the Loan.

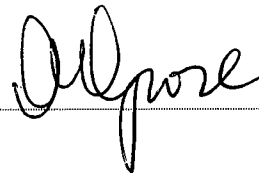
Now produced and shown to me and marked "JCS-11" is a copy of the email from Mr James to me sent on 8 August 2012.

SWORN at Melbourne
in the State of Victoria
by **JANE CHALMERS SHERIDAN**
this 2nd day of October 2012

)
)
)
)
)



Before me:



MEAGAN LOUISE GROSE
Arnold Bloch Leibler
Level 21, 333 Collins Street
Melbourne 3000
An Australian Legal Practitioner within the
meaning of the Legal Profession Act 2004

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No. S CI 2011 6777 (Fenceport Rights Proceeding)

CERTIFICATE IDENTIFYING EXHIBIT

Date of document: 2 October 2012
Filed on behalf of: Timbercorp Securities Limited (in liquidation)

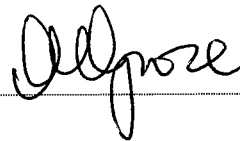
Prepared by:
ARNOLD BLOCH LEIBLER
Lawyers and Advisers
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333 Collins Street
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Solicitor's Code: 54
DX 38455 Melbourne
Tel: 9229 9999
Fax: 9229 9900
Ref: 011601361

(Jane Sheridan - jsheridan@abl.com.au)

This is the exhibit marked "JCS-6" now produced and shown to **JANE CHALMERS SHERIDAN** at the time of swearing her affidavit on 2 October 2012.

Before me: _____



MEAGAN LOUISE GROSE
Arnold Bloch Leibler
Level 21, 333 Collins Street
Melbourne 3000
An Australian Legal Practitioner within the
meaning of the Legal Profession Act 2004

Exhibit "JCS-6"
Letter from ABL to Freehills dated 13 July 2012

"JCS-6"

Arnold Bloch Leibler

Lawyers and Advisers

13 July 2012

Darren James
Freehills
Level 42
101 Collins Street
Melbourne VIC 3000

Your Ref
Our Ref JCS
File No. 011601361

Contact
Jane Sheridan
Direct 61 3 9229 9815
Facsimile 61 3 9229 9944
jsheridan@abl.com.au



Level 21
333 Collins Street
Melbourne
Victoria 3000
Australia
DX38455 Melbourne
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61 3 9229 9999
Facsimile
61 3 9229 9900

Dear Darren

Timbercorp

We act for Timbercorp Securities Limited (In Liquidation) (TSL) and its Liquidators. We understand that you act for Timbercorp Finance Limited (In Liquidation) (TFL).

Existing claim

The TSL Liquidators have previously been notified of a claim by TFL in respect of amounts which are or may become owing by TSL to Growers in the various Timbercorp managed investment schemes (whether registered or unregistered) whose investment in the Timbercorp Schemes was financed by TFL. We understand that TFL continues to assert that claim in respect of harvest or crop proceeds payable to Growers with an outstanding loan to TFL.

Sale transactions

As you will be aware, since the commencement of the TSL liquidation, the land on which the various Timbercorp schemes were conducted has been sold by the relevant land owners in a series of transactions. Each transaction which related to the sale of land used in the Timbercorp horticultural schemes was approved by the Supreme Court of Victoria. As part of those transactions, the Growers' rights in relation to the horticultural assets were extinguished, so that the Growers no longer have a right to the crop produced on the relevant land or any other rights under the relevant scheme.

While the Supreme Court approved each horticultural sale prior to its completion, the apportionment of the sale proceeds between the land owners, Growers and any other interested parties (such as secured creditors) was not determined at the time the approval was granted. Instead, the Court ordered that the net proceeds of each sale be held on trust, pending a proceeding to determine the rights of the land owners, Growers and other interested parties to all, or any part of those net proceeds.

MELBOURNE SYDNEY

Partners
Mark M Leibler AC
Henry D Lanzer
Joseph Boranzizajin
Leon Zwiier
Philip Chastler
Ross A Paterson
Stephen L Sharp
Kenneth A Gray
Kevin F Frawley
Michael N Dodge
Jane C Sheridan
Leone R Thompson
Zaven Mardrossian
Jonathan M Wenig
Paul Sokolowski
Paul Rubenstein
Peter M Seidel
Alex King
John Mitchell
Nicole Gordon
Ben Mahoney
Sam Dollard
Lily Tell
Henry Skene
Andrew Sberberg
Lisa Kerryweather
Jonathan Miler
John Mengolian
Caroline Goulden
Matthew Less
Genevieve Sexton
Jeremy Leibler
Rick Naray
Nathan Briar
Jonathan Caslan
Justin Vasilas
Curt Harding
James Simpson
**Senior Litigation
Counsel**
Robert J Heathcote
Senior Associates
Sue Kee
Jorya Clelland
Benjamin Marshall
Kristina Verney
Teresa Ward
Jason Blankfield
Christine Fleer
Nancy Collins
Susanna Ford
Kimbberley MacKay
Gary Segal
Tiffany Lucas
Clare Varghese
Andrea Towson
Jennifer Collins
Lisa Lane
Daniel Mole
David Spenser
Kate Logan
Laila De Melo
Elizabeth Steer
Ainta Bradley
Anetta Cukrowicz
Damien Cuddihy
Daniel Snyder
David Robbins
Krystal Bodggood
Geoffrey Kozminsky
Jeremy Lanzer
Consultants
Alan Fels AO

Apportionment Proceedings

The proceedings to determine the right to share in the proceeds of the horticultural sales are referred to in this letter as "**Apportionment Proceedings**". Those proceedings are as follows:

- (a) the appeal of the Almond Land Apportionment Proceeding (which relates to the 2002, 2005, 2006 and 2007 Timbercorp Almond Projects and the 2002 Timbercorp Almond Private Offer Project (**Almond Land Apportionment Proceeding**));
- (b) the Liparoo and Yungera Apportionment Proceeding (which relates to the 2001, 2002, 2003, 2004 and 2005 Timbercorp Almond Projects and the 2002 Timbercorp Almond Private Offer Project);
- (c) the Fenceport Apportionment Proceeding (which relates to the 2001, 2002, 2003 and 2004 Timbercorp Olive Projects and the 2000 Timbercorp Olive Private Offer Project);
- (d) the BB Olives Apportionment Proceeding (which relates to the 2006, 2007 and 2008 Timbercorp Olive Projects); and
- (e) the Solara Apportionment Proceeding (which relates to the 2005, Timbercorp Citrus Project).

As the determination of the Apportionment Proceeding for each horticultural sale will involve similar issues, it was considered appropriate for an Apportionment Proceeding in relation to the proceeds of one of the horticultural sales to be heard and determined first, with the intention that the result in that Apportionment Proceeding could then form a basis for a determination in the other Apportionment Proceedings.

The first Apportionment Proceeding to be heard and determined was the Almond Land Apportionment Proceeding. A decision in that proceeding was handed down by the Supreme Court in June 2011. The Court found that the Growers were not entitled to any part of the net sale proceeds and that the full amount of the net sale proceeds should be paid to the secured creditors of the land owner. This decision has now been appealed by the Growers, but the appeal has not yet been heard.

Proposed global settlement

Following notice of the appeal of the decision in the Almond Land Apportionment Proceeding, the Liquidators of TSL approached interested parties in relation to the Apportionment Proceedings seeking to facilitate a global settlement of those proceedings and an agreement was reached in principle.

Under that agreement, the Growers in each of the Apportionment Proceedings would receive an ex gratia payment in consideration for the release of all claims that they otherwise have or would have in respect of the net sale proceeds.

The proposed global settlement has been documented in a confidential draft deed of compromise for each of those Apportionment Proceedings. The Apportionment Proceedings take the form of representative proceedings (with a named representative Grower from each relevant scheme). We understand that Senior Counsel for the representative Growers in each of the Apportionment Proceedings has reviewed the draft deeds of compromise and has provided or will provide an opinion in relation to them to the representative Growers.

If the draft deeds of compromise are approved by the representative Growers in each of the Apportionment Proceedings, approval of the Court will be sought to ensure that the deeds bind all of the Growers who are represented by the named representative Growers. We understand that the representative Growers are meeting on Monday, 16 July 2012 to consider the draft deeds of compromise.

Ongoing claim

There remains an outstanding issue as to a potential payment to the litigation funders of the appeal of the Almond Land Apportionment Proceeding from the compromise payment in respect of that Apportionment Proceeding. We will discuss this with you further once the final position is known.

Given TFL's existing claim to amounts payable by TSL to TFL funded Growers, TSL and the plaintiffs in the Apportionment Proceedings wish to ascertain whether TFL will seek to assert such a claim in respect of the proposed ex gratia compromise payments to TSL on behalf of the Growers.

We anticipate that TFL will require the draft deeds of compromise to assist TFL in determining whether it wishes to assert such a claim. We have obtained the consent of the relevant parties to provide TFL with a copy of the deeds on a confidential basis. We enclose a confidentiality deed to be executed by TFL in this regard. Once we have received an executed copy of it, we can provide you with the draft deeds of compromise.

As the representative Growers are meeting with their Counsel on Monday to discuss the draft deeds of compromise prior to the next Directions Hearing scheduled for 20 July 2012, it would be of great assistance if we and the plaintiffs in the Apportionment Proceedings could know before then what TFL's position is. We would therefore be grateful if you would let us know, as soon as possible and on an urgent basis, whether TFL asserts a claim in respect of the proposed ex gratia compromise payments. Unless you say otherwise, we propose to share your confirmation of TFL's position with all other interested parties.

Please contact Jane Sheridan if you have any questions.

Yours sincerely



Jane Sheridan
Partner

**IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
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No. S CI 2011 6777 (Fenceport Rights Proceeding)

CERTIFICATE IDENTIFYING EXHIBIT

Date of document: 2 October 2012
Filed on behalf of: Timbercorp Securities Limited (in liquidation)

Prepared by:

ARNOLD BLOCH LEIBLER

Lawyers and Advisers

Level 21

333 Collins Street

MELBOURNE 3000

Solicitor's Code: 54

DX 38455 Melbourne

Tel: 9229 9999

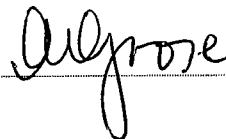
Fax: 9229 9900

Ref: 011601361

(Jane Sheridan - jsheridan@abl.com.au)

This is the exhibit marked "**JCS-7**" now produced and shown to **JANE CHALMERS SHERIDAN** at the time of swearing her affidavit on 2 October 2012.

Before me:



MEAGAN LOUISE GROSE

Arnold Bloch Leibler

Level 21, 333 Collins Street

Melbourne 3000

An Australian Legal Practitioner within the
meaning of the Legal Profession Act 2004

Exhibit "JCS-7"
Letter from Freehills to ABL dated 16 July 2012

Freehills

Ms Jane Sheridan
Arnold Bloch Leibler
Level 21, 333 Collins Street
MELBOURNE VIC 3000

16 July 2012
Matter 81648878
By email only

jsheridan@abl.com.au

Dear Jane

Timbercorp Finance Pty Ltd (In Liq)

We refer to your letter of 13 July 2012 received at 4.12pm.

Our client wishes to take advice upon, and consider its position about, the matters raised in your letter.

Our client is conscious of the timing matters raised in your letter and will do its best to advise you of its position as soon as it can. It is possible, however, that this might not be able to be done before 20 July 2012.

For the purposes of obtaining advice about and considering its position, our client would appreciate being provided with the following:

- 1 a copy of the principal pleadings in each of the Apportionment Proceedings;
- 2 a copy of the orders in the Almond Land Apportionment Proceeding to which the Almond Land Apportionment appeal relates;
- 3 a copy of the Notice of Appeal in the Almond Land Apportionment appeal proceeding;
- 4 a copy of each of the draft deeds of compromise in the Apportionment Proceedings (**Draft Deeds**) once they have each been approved by each of the Representative Growers in the Apportionment Proceedings; and
- 5 your advice as to whether the ex gratia payments or any part thereof are to be paid out of the sale proceeds the subject of the Apportionment Proceedings or otherwise.

Our client is prepared to pay your photocopying expenses associated with the provision of the above-mentioned copy documents at the rate of \$0.10 per page (inclusive of GST).

Our client notes your request that it execute the confidentiality deed attached to your letter in order to obtain copies of the Draft Deeds. Our client requires changes to the terms of that deed. A revised form of confidentiality deed, with our client's suggested changes in mark-up, is attached.

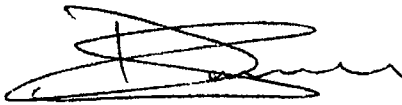
If the revised form of the confidentiality deed is acceptable to your client, please advise us and we will then put it into final form and arrange for our client to execute it. If, however, you have questions or concerns about the changes suggested by our client, please contact us to arrange a time to discuss same.

Doc 18170255.3

Freehills

We look forward to hearing from you.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Darren James', with a stylized flourish at the end.

Darren James
Executive Counsel
Freehills
+61 3 9288 1263
darren.james@freehills.com

**IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
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Tel: 9229 9999
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Exhibit "JCS-8"
**Bundle of correspondence sent between
Freehills and ABL on 17 July 2012**

Freehills

Ms Jane Sheridan
Arnold Bloch Leibler
Level 21, 333 Collins Street
MELBOURNE VIC 3000

17 July 2012
Matter 81648878
By email only

jsheridan@abl.com.au

Dear Jane

Timbercorp Finance Pty Ltd (In Liq)

We refer to our letter of 16 July 2012.

We note that we have not yet been provided with the following documents/information:

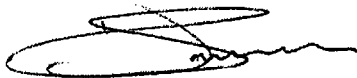
- 1 a copy of the principal pleadings in the Almond Land Apportionment Proceeding;
- 2 a copy the orders in the Almond Land Apportionment Proceeding to which the Almond Land Apportionment Appeal relates;
- 3 a copy of the Notice of Appeal in the Almond Land Apportionment Appeal proceeding; and
- 4 your advice as to whether the ex gratia payments referred to in your letter of 13 July 2012 in respect of the Almond Land Apportionment Appeal Proceeding are to be paid, in whole or in part, out of the sale proceeds the subject of that proceeding.

We would appreciate receiving the above from you as soon as possible.

We would also appreciate your advice as to whether the draft deeds have now been approved by each of the Representative Growers in each of the Apportionment Proceedings.

Please contact us with any questions.

Yours sincerely



Darren James
Executive Counsel
Freehills
+61 3 9288 1263
darren.james@freehills.com

Doc 18170255.5

Meagan Grose

From: James, Darren [darren.james@freehills.com]
Sent: Tuesday, 17 July 2012 3:20 PM
To: Jane Sheridan
Cc: Adams, Ken; Egan, Lauren
Subject: Timbercorp Finance Pty Ltd (In Liq)
Attachments: Scan-to-Me from 10.2.24.31 2012-07-17 144532.pdf

Jane

Further to our telephone discussion earlier today, attached is a copy of the revised deed poll executed today by one of the Liquidators of Timbercorp Finance Pty Ltd (In Liq).

We look forward to receiving the documents and information requested in our letter of yesterday as soon as possible.

Regards

Darren James
Executive Counsel
Freehills

T +61 3 9288 1263 F +61 3 9288 1567
www.freehills.com

FREEHILLS

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Meagan Grose

From: Jane Sheridan
Sent: Tuesday, 17 July 2012 4:49 PM
To: James, Darren
Cc: Adams, Ken; Egan, Lauren
Subject: RE: Timbercorp Finance Pty Ltd (In Liq)
Attachments: BB Olives - draft deed of compromise.doc; Fenceport - draft deed of compromise.doc; Almond Land appeal - deed of compromise.doc; Deed of Compromise - Solara Rights Proceeding.DOC; Deed of Compromise - Liparoo & Yungera Rights Proceeding .DOC

Darren,

I attach the latest drafts of the deeds of compromise. You will notice that they are all based on the same document but with some differences to deal with the peculiarities of each proceeding. There is an outstanding issue concerning the litigation funder for the Almond Land Appeal which I will discuss with you separately.

Regards

Jane

Jane Sheridan | Partner

Arnold Bloch Leibler | Level 21, 333 Collins Street, Melbourne Victoria 3000
T: +61 3 9229 9815 | F: +61 3 9229 9944 | M: 0418 323 679
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Arnold Bloch Leibler acknowledges the traditional owners of country throughout Australia.

From: James, Darren [<mailto:darren.james@freehills.com>]
Sent: Tuesday, 17 July 2012 3:20 PM
To: Jane Sheridan
Cc: Adams, Ken; Egan, Lauren
Subject: Timbercorp Finance Pty Ltd (In Liq)

Jane

Further to our telephone discussion earlier today, attached is a copy of the revised deed poll executed today by one of the Liquidators of Timbercorp Finance Pty Ltd (In Liq).

We look forward to receiving the documents and information requested in our letter of yesterday as soon as possible.

Regards

Darren James
Executive Counsel
Freehills

T +61 3 9288 1263 F +61 3 9288 1567
www.freehills.com

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

**IN THE MATTER OF
THE TIMBERCORP APPORTIONMENT PROCEEDINGS**

No. S CI 2010 1354 (BB Olives Rights Proceeding)
No. S APCI 2011 0103 (Almond Land Rights Appeal Proceeding)
No. S CI 2011 6604 (Liparoo and Yungera Rights Proceeding)
No. S CI 2011 6606 (Solara Rights Proceeding)
No. S CI 2011 6777 (Fenceport Rights Proceeding)

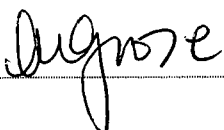
CERTIFICATE IDENTIFYING EXHIBIT

Date of document: 2 October 2012
Filed on behalf of: Timbercorp Securities Limited (in liquidation)

Prepared by:
ARNOLD BLOCH LEIBLER
Lawyers and Advisers
Level 21
333 Collins Street
MELBOURNE 3000

Solicitor's Code: 54
DX 38455 Melbourne
Tel: 9229 9999
Fax: 9229 9900
Ref: 011601361
(Jane Sheridan - jsheridan@abl.com.au)

This is the exhibit marked "JCS-9" now produced and shown to **JANE CHALMERS SHERIDAN** at the time of swearing her affidavit on 2 October 2012.

Before me: 

MEAGAN LOUISE GROSE
Arnold Bloch Leibler
Level 21, 333 Collins Street
Melbourne 3000
An Australian Legal Practitioner within the
meaning of the Legal Profession Act 2004

Exhibit "JCS-9"
Letter from Freehills to ABL dated 26 July 2012

Freehills

Ms Jane Sheridan
Partner
Arnold Bloch Leibler
Level 21
333 Collins Street
MELBOURNE VIC 3000

26 July 2012
Matter 81648878

By email only

jsheridan@abl.com.au

Dear Jane

**Australia & New Zealand Banking Group Ltd v OIM#2 Pty Ltd & Ors
Supreme Court of Victoria Proceeding Nos. SCI 2011 6604 and SCI
2011 6606**

**Fenceport Proprietary Limited & Ors ats Moshopolous & Ors
Supreme Court of Victoria Proceeding No. SCI 2011 6777**

**BOSI Security Services Ltd v B.B Olives Pty Ltd (In Liq)
Supreme Court of Victoria Proceeding No. 2010 1354**

**BOSI Security Services Ltd v Australia & New Zealand Banking
Group Ltd
Supreme Court of Victoria Proceeding No. SCI 2009 10699**

We refer to your letter of 13 July 2012 regarding the settlements agreed as between each of the parties to the above-mentioned proceedings but not yet approved by the court (**Settlements**).

We are instructed as follows:

- 1 Many growers in the schemes to which the Proceedings and the Proposed Settlements variously relate (**Scheme/s**) entered into loans with Timbercorp Finance Pty Ltd (In Liq) (**Timbercorp Finance**) (**Loans**).
- 2 Under the Loans, Timbercorp Finance agreed to lend grower borrowers specific amounts (**Loan Amount/s**) by paying those amounts to Timbercorp Securities Limited (In Liq) (**Timbercorp Securities**) (in its capacity as responsible entity of the Scheme/s):
 - (a) the balance of the grower borrower's application money for lots or groves in the Scheme/s and, if applicable, in other schemes (**Other Schemes**);
 - (b) the balance of invoices rendered by Timbercorp Securities to the grower borrower in respect of liabilities arising in respect of lots in the Scheme/s and, if applicable, the Other Schemes; and/or
 - (c) the grower borrower's loan application fee.

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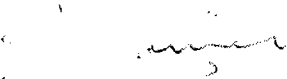
- 3 For the purpose of securing, among other things, payment by the grower borrower of the Loan Amount/s and all other moneys (including but not limited to interest and default interest) that the grower borrower must pay or may owe under the Loans (**Total Amount Owing**), the grower borrower agreed to provide Timbercorp Finance with one of the following forms of security (**Securities**):
- (a) The grower borrower assigned to Timbercorp Finance the *secured property*.
- The *secured property* was relevantly defined as "all of [the grower borrower's] right, title and interest in any debt or other monetary obligation (actual or contingent) owed to [the grower borrower] by [Timbercorp Securities] under or in relation to *projects*."
- The *projects* was relevantly defined as "the projects detailed in [the grower borrower's loan application form]" and, in the case where the grower borrower had applied to consolidate one or more existing loans, "any [of] the projects referred to in the relevant" existing loan."
- (b) The grower borrower charged, in favour of Timbercorp Finance by way of a fixed charge, the *secured property*.
- The *secured property* was relevantly defined as all of the grower borrower's "right, title and interest at any time in the projects including in the *lots* and the *project agreements*".
- The *project agreements* were relevantly defined as meaning, "in connection with a *project*, its constitution together with the agreements in connection with the project to which the [grower borrower] is a party or under which the [grower borrower] is entitled to any rights or benefits".
- A *lot* was relevantly defined as "each grovelot, woodlot or almondlot (as the case may be) allotted, to the [grower borrower] under a [prospectus/es detailed in the grower borrower's loan application form]".
- (c) The grower borrower charged, in favour of Timbercorp Finance by way of a fixed but not a floating charge, the *Mortgaged Property*.
- The *Mortgaged Property* was relevantly defined as "all and singular the right, title and interest of the [grower borrower] in the *Project* including, without limiting the generality of the foregoing, in the *lots/groves* allocated to the [grower borrower] in the *Project Agreements*".
- The *Project Agreements* was relevantly defined as "the agreements to which the [grower borrower became] a party and which relate to the [lots/groves] allocated to the [grower borrower], including [specified management, licence and joint venture agreements]".
- 4 Many grower borrowers have defaulted and remain in default of their obligations under the Loans with the result that the Total Amount Owing by such grower borrowers is due and payable upon demand. Timbercorp Finance is exercising its rights, including as a secured creditor under the Securities, against such grower borrowers.
- 5 Timbercorp Finance has not been able to conclude that any of the moneys proposed to be paid to or in respect of grower borrowers in default under the Settlements (which we understand to have been agreed as between the parties but not yet signed) are not *secured property* or *Mortgaged Property* (as applicable) for the purpose of the Securities.

Freehills

- 6 Accordingly, unless and until you are advised otherwise, any moneys to which any grower borrower in default of a Loan becomes entitled pursuant to the Settlements which is received by Timbercorp Securities should be paid to Timbercorp Finance as secured creditor under the Loans (including under the Securities). Timbercorp Finance will apply any such funds received to reduce the Total Amount Owing by borrower growers under their Loans.
- 7 If there is any dispute about Timbercorp Finance's entitlement to such moneys, Timbercorp Finance is content, without prejudice to any of its rights, for those moneys to be held by Timbercorp Securities until that dispute is resolved by agreement or otherwise.
- 8 Timbercorp Finance will separately send you a list of grower borrower in Schemes who are in default of their Loan/s as at the date of this letter. Following receipt of same, please amend your records to ensure any moneys paid pursuant to the Settlements are paid to Timbercorp Finance.

Please contact us with any questions.

Yours sincerely



Darren James
Executive Counsel
Freehills

+61 3 9288 1263
darren.james@freehills.com

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

**IN THE MATTER OF
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No. S CI 2011 6777 (Fenceport Rights Proceeding)

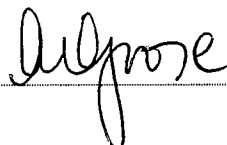
CERTIFICATE IDENTIFYING EXHIBIT

Date of document: 2 October 2012
Filed on behalf of: Timbercorp Securities Limited (in liquidation)

Prepared by:
ARNOLD BLOCH LEIBLER
Lawyers and Advisers
Level 21
333 Collins Street
MELBOURNE 3000

Solicitor's Code: 54
DX 38455 Melbourne
Tel: 9229 9999
Fax: 9229 9900
Ref: 011601361
(Jane Sheridan - jsheridan@abl.com.au)

This is the exhibit marked "**JCS-10**" now produced and shown to **JANE CHALMERS SHERIDAN** at the time of swearing her affidavit on 2 October 2012.

Before me: 

MEAGAN LOUISE GROSE
Arnold Bloch Leibler
Level 21, 333 Collins Street
Melbourne 3000
An Australian Legal Practitioner within the
meaning of the Legal Profession Act 2004

Exhibit "JCS-10"
Email sent on 2 August 2012 by Jane Sheridan
of Arnold Bloch Leibler to Darren James of
Freehills

Meagan Grose

From: Jane Sheridan
Sent: Thursday, 2 August 2012 11:36 AM
To: James, Darren
Subject: Timbercorp Compromise Deeds
Attachments: Fully executed Fenceport deed.pdf

Darren,

I attach the execution copy of the Compromise Deed for the Fenceport Rights Proceeding. Given the size of the documents, I will send through the others in separate emails.

Clarendons, acting for the Growers, has asked me to obtain from TFL written confirmation in favour of the Growers that any direction to pay given by a Grower under clause 4(g) of the Fenceport Deed (and the corresponding clauses of the other deeds) does not constitute an admission of liability by that Grower to TFL and is without prejudice to the Grower's rights against TFL in relation to any TFL Indebtedness.

This is consistent with the language in the existing directions to pay, which reserve Growers' rights against TFL and TSL and state that no admissions are made in relation to the claims by TFL. We will also be including this type of language in the directions to pay.

Please let me know whether TFL is willing to provide the written confirmation. I suspect that, without it, Clarendons may recommend to Growers that they don't sign the directions to pay.

We are no longer going ahead with the directions hearing that was due tomorrow. Instead, the Court has agreed to find us an approval judge without the need for us to obtain directions to that effect. I will let you know when we know who the judge will be .

Regards

Jane

Jane Sheridan | Partner

Arnold Bloch Leibler | Level 21, 333 Collins Street, Melbourne Victoria 3000
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jsheridan@abl.com.au | www.abl.com.au

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**IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
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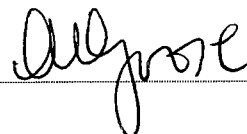
Prepared by:
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333 Collins Street
MELBOURNE 3000

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DX 38455 Melbourne
Tel: 9229 9999
Fax: 9229 9900
Ref: 011601361

(Jane Sheridan - jsheridan@abl.com.au)

This is the exhibit marked "**JCS-11**" now produced and shown to **JANE CHALMERS SHERIDAN** at the time of swearing her affidavit on 2 October 2012.

Before me: _____



MEAGAN LOUISE GROSE
Arnold Bloch Leibler
Level 21, 333 Collins Street
Melbourne 3000
An Australian Legal Practitioner within the
meaning of the Legal Profession Act 2004

Exhibit "JCS-11"
**Email sent on 8 August 2012 from Darren
James of Freehills to Jane Sheridan of Arnold
Bloch Leibler**

Meagan Grose

From: James, Darren [darren.james@freehills.com]
Sent: Wednesday, 8 August 2012 8:10 PM
To: Jane Sheridan
Cc: Adams, Ken; Egan, Lauren
Subject: Timbercorp Finance Pty Ltd (In Liq): Apportionment Settlements

Jane

We understand that Messrs. Clarendons have requested that our client, Timbercorp Finance Pty Ltd (In Liq) (TFL) provide written confirmation that the giving of any authorisation or direction by a Participant Grower pursuant to clause 4(b) the Deed of Compromise for the Fenceport Rights Proceeding, or pursuant to any equivalent clause in the Deeds of Compromise for the BB Olive Rights Proceeding, the Almonds Appeal Proceeding, the Solora Rights Proceeding or the Liparoo and Yungera Rights Proceeding:

- (a) does not constitute an admission of liability by the Participant Grower to TFL in respect of the Participant Grower's TFL Indebtedness; and
- (b) is without prejudice to the Participant Grower's rights (if any) against TFL in relation to the Participant Grower's TFL Indebtedness.

We are instructed that TFL hereby provides that confirmation.

Please contact us with any questions.

Regards

Darren James
Executive Counsel
Freehills

T +61 3 9288 1263 F +61 3 9288 1567
www.freehills.com

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