

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

LIST D
S CI 2011 6604

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 THE TIMBERCORP ORCHARD TRUST #3
AND ORS (ACCORDING TO THE SCHEDULE ATTACHED)**

Defendants

**SECOND AFFIDAVIT OF MARK ANTHONY KORDA
(LIPAROO AND YUNGERA RIGHTS PROCEEDING)**

Date of document: 2 October 2012
Filed on behalf of: Timbercorp Securities Ltd (in liquidation) (ACN 092 311 469), and
Almond Management Pty Ltd (in liquidation) (ACN 094 468 845)

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: 01-1601361

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

I, **MARK ANTHONY KORDA** of Level 24, 333 Collins Street, Melbourne in the State of Victoria, Chartered Accountant, **MAKE OATH AND SAY** that:

1 I am, with Leanne Kylie Chessser, the liquidator of:

(a) Timbercorp Securities Limited (in liquidation) (ACN 092 311 469) (**TSL**); and

(b) Almond Management Pty Ltd (in liquidation) (ACN 094 468 845) (**Almond Management**).

2 I am authorised to make this affidavit on behalf of TSL and Almond Management. References in this affidavit to "we", "us", "our" or "ourselves" and "Liquidators" are references to Ms Chessser and me.


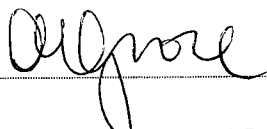


- 3 Except where I otherwise indicate, I make this affidavit from my own knowledge. Where I depose to matters from information and belief, I believe those matters to be true.
- 4 I have previously sworn an affidavit in this proceeding on 18 September 2012 (**My First Affidavit**). I defined a number of terms in My First Affidavit and I adopt those definitions in this affidavit.
- 5 At paragraph 37 of My First Affidavit, I stated that:
- "I am informed by Mr Munro that, in accordance with the Agreed Protocol, as a telephone call is received on the Hotline or an email is sent to the Grower Email Facility, the Timbercorp Grower Management Team document, in the Communications Report for that day, that telephone call or email and the response to that telephone call or email by the Timbercorp Grower Management Team. The Timbercorp Grower Management Team also indicate in the Communications Report whether the telephone call or email requires a response or further action on behalf of the Representative Growers (**Escalated Queries and Comments**)."
- 6 The completed Communications Reports for each business day from 14 August 2012 to 17 September 2012 are confidential exhibited to my First Affidavit and marked "**Confidential MAK-6**".
- 7 Since My First Affidavit, we have continued to monitor the Hotline and the Grower Email Facility and to complete Communications Reports each business day in accordance with the Agreed Protocol. Now produced and shown to me and marked "**Confidential MAK-7**" are copies of the Communications Reports for each business day from 18 September 2012 to 26 September 2012 (save for the report in respect of 20 September 2012, which, due to an oversight on that date which was only recognised this morning, was not prepared on 20 September 2012 but is being prepared today).

SWORN at Melbourne
in the State of Victoria
by **MARK ANTHONY KORDA**
this 2nd day of October 2012

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)
)
)

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

SCHEDULE

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 #3**

First Defendant

and

**OIM#5 PTY LTD (RECEIVERS AND MANAGERS APPOINTED) (ACN 118 204 701) AS
TRUSTEE FOR TIMBERCORP ORCHARD TRUST #5**

Second Defendant

and

**MICHAEL FUNG IN HIS CAPACITY AS RECEIVER AND MANAGER OF OIM#2 PTY LTD
(RECEIVERS AND MANAGERS APPOINTED) (ACN 112 691 997) IN ITS CAPACITY AS
TRUSTEE FOR TIMBERCORP ORCHARD TRUST #3 AND RECEIVER AND MANAGER
OF OIM#5 PTY LTD IN ITS CAPACITY AS TRUSTEE FOR TIMBERCORP ORCHARD
TRUST #5**

Third Defendant

and

**PAUL WILLIAM KIRK IN HIS CAPACITY AS RECEIVER AND MANAGER OF OIM#2 PTY
LTD (RECEIVERS AND MANAGERS APPOINTED) (ACN 112 691 997) IN ITS CAPACITY
AS TRUSTEE FOR TIMBERCORP ORCHARD TRUST #3 AND RECEIVER AND
MANAGER OF OIM#5 PTY LTD IN ITS CAPACITY AS TRUSTEE FOR TIMBERCORP
ORCHARD TRUST #5**

Fourth Defendant

and

**GRAHAM DACE (AS THE REPRESENTATIVE OF THE GROWERS IN THE 2001
TIMBERCORP ALMOND PROJECT (ARSN 095 649 746))**

Fifth Defendant

and

**GRAHAM GOLDENBERG (AS THE REPRESENTATIVE OF THE GROWERS IN THE 2002
TIMBERCORP ALMOND PROJECT (ARSN 099 611 935))**

Sixth Defendant

and

**GORAN RUNJE (AS THE REPRESENTATIVE OF THE GROWERS IN THE 2003
TIMBERCORP ALMOND PROJECT (ARSN 103 197 299))**

Seventh Defendant

and

**GRAEME PHILIP COLE (AS THE REPRESENTATIVE OF THE GROWERS IN THE 2004
TIMBERCORP ALMOND PROJECT (ARSN 108 336 670))**

Eighth Defendant

and

**CHRISTOPHER MARK LITTLE (AS THE REPRESENTATIVE OF THE GROWERS IN
THE 2005 TIMBERCORP ALMOND PROJECT (ARSN 112 935 092))**

Ninth Defendant

and

**DAVID BUTTERFIELD (AS THE REPRESENTATIVE OF THE GROWERS IN THE
UNREGISTERED MANAGED INVESTMENT SCHEME KNOWN AS THE 2002
TIMBERCORP ALMOND PROJECT (PRIVATE OFFER NO. 1))**

Tenth Defendant

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Plaintiff

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AS TRUSTEE FOR THE TIMBERCORP ORCHARD TRUST #3
AND ORS (ACCORDING TO THE SCHEDULE ATTACHED)**

Defendants

CERTIFICATE IDENTIFYING EXHIBIT

Date of document: 2 October 2012
Filed on behalf of: Timbercorp Securities Ltd (in liquidation) (ACN 092 311 469), and
Almond Management Pty Ltd (in liquidation) (ACN 094 468 845)

Prepared by:

ARNOLD BLOCH LEIBLER

Lawyers and Advisers

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DX 38455 Melbourne

Tel: 9229 9999

Fax: 9229 9900

Ref: 01-1601361

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

This is the exhibit marked "**Confidential MAK-7**" now produced and shown to **MARK ANTHONY KORDA** at the time of swearing his affidavit on 2 October 2012.

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

Before me: 

Exhibit "Confidential MAK-7"
Communications Reports for each business
day from 18 September 2012 to 26 September
2012 (save for 20 September 2012)