

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 083 992 367) & ORS
(according to the attached Schedule)

Defendants

AFFIDAVIT OF CELIA JANE ARMSTRONG

Date of document:

30 August 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

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 Seventh, Eighth and Ninth Defendants, being the persons appointed as representatives of all of the growers in the Timbercorp project of which they are a member (together the **Representative Growers**). 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 Clarendon Lawyers also acts for the growers appointed as representative growers in the other Timbercorp rights proceedings, namely,
 - (a) Supreme Court of Victoria, Court of Appeal Proceeding No S APCI 2011 0103;
 - (b) Supreme Court of Victoria Proceeding No S CI 2011 6604;
 - (c) Supreme Court of Victoria Proceeding No S CI 2011 6606; and
 - (d) Supreme Court of Victoria Proceeding No S CI 2011 6777,(the **Other Timbercorp Rights Proceedings**).



- 4 This affidavit is made in connection with the application for approval of the deed of compromise of the proceeding entered into by the parties to this proceeding on 25 July 2012 (**Deed of Compromise**).
- 5 Prior to entering into the Deed of Compromise, the Representative Growers sought and received the advice of counsel. On 20 July 2012 Clarendons Lawyers and counsel engaged by them held a meeting (**Meeting**) with the Representative Growers and the growers appointed as representative growers in the Other Timbercorp Rights Proceedings. Prior to the Meeting, the Representative Growers attending the Meeting were provided with a copy of counsels' written advice to them and the other growers appointed as representative growers in the Other Timbercorp Rights Proceedings (**Advice**). At the Meeting counsel presented and discussed the Advice and answered any questions from Representative Growers. Any Representative Growers who were unable to attend the Meeting were provided with the Advice by email. Now produced and shown to me marked **confidential exhibit CJA-1** is a true copy of the Advice. The Advice is privileged and the Representative Growers do not waive that privilege.
- 6 Since the Meeting, Counsel have updated the Advice (**Updated Advice**) and the Updated Advice has been provided by email to the Representative Growers and the growers appointed as representative growers in the Other Timbercorp Rights Proceedings. The Updated Advice does not differ in substance from the Advice. Now produced and shown to me marked **confidential exhibit CJA-2** is a true copy of the Updated Advice. The Updated Advice is privileged and the Representative Growers do not waive that privilege.
- 7 On 29 August 2012 Counsel prepared a supplementary memorandum of advice (**Supplementary Memorandum**). Now produced and shown to me marked **confidential exhibit CJA-3** is a true copy of the Supplementary Memorandum. The Supplementary Memorandum is privileged and the Representative Growers do not waive that privilege.
- 8 Confidential exhibits CJA-1, CJA-2 and CJA-3 are sealed and the Representative Growers will make an application for an order that they be kept confidential. The other parties to the proceeding have been informed of that application and have consented to it.
- 9 The Updated Advice and Supplementary Memorandum have been provided, and will continue to be provided, to any grower, or the solicitor for any grower, who requests a copy of the advice from Counsel and who provides to Clarendon Lawyers a deed acknowledging, and undertaking to protect, the confidentiality and privilege of the advice.

SWORN by CELIA JANE ARMSTRONG
at Melbourne in the State of Victoria
this 30th day of August 2012

)
)
) 

Before me:



CARLIE TANIA HODGES

GAR001_1000133-088.086

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

**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

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

First Defendant

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

Second Defendant

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

Third Defendant

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))

(in his capacity as liquidator of Timbercorp Limited (in liquidation))

Fourth Defendant

LEANNE KYLIE CHESSER

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

(in her capacity as liquidator of Timbercorp Limited (in liquidation))

Fifth Defendant

MARK FRANCIS XAVIER MENTHA

(in his capacity as liquidator of B.B. Olives Pty Ltd (in liquidation))

Sixth Defendant

MICHAEL CHARLES VICARY

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

Seventh Defendant

PAMELA JAN DRY

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

Eighth Defendant

DAVID BUTTERFIELD

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

Ninth Defendant