

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

IN THE MATTER OF THE TIMBERCORP RIGHTS PROCEEDINGS

S APCI 2011 0103 (Almond Land Rights Appeal Proceeding)

S CI 2011 6777 (Fenceport Rights Proceeding)

S CI 2011 6604 (Liparoo & Yungera Rights Proceeding)

S CI 2011 6606 (Solara Rights Proceeding)

S CI 2010 1354 (BB Olives Rights Proceeding)

FURTHER AFFIDAVIT OF CELIA JANE ARMSTRONG

Date of document:  
Filed on behalf of:  
Prepared by:  
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Level 17, Rialto North Tower  
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17 October 2012  
The Representative Growers

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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, the solicitors for the Representative Growers in the Timbercorp Rights Proceedings. 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 I am making this affidavit in respect of each of the Timbercorp Rights Proceedings.
- 4 I have submitted a number of affidavits in each of the Timbercorp Rights Proceedings, the most recent being the Further Affidavit of Celia Jane Armstrong dated 12 October 2012, which I refer to as my **Earlier Affidavits**. Where I have defined terms in my Earlier Affidavits, I adopt those definitions in this affidavit.
- 5 This Affidavit and the following three of my Earlier Affidavits exhibit documents and emails from growers provided to me by or on behalf of Ms Bezencon:
  - (a) the Further Affidavit of Celia Jane Armstrong dated 4 October 2012 with exhibit CJA-A; (**My First 4 October Affidavit**);
  - (b) the Further Affidavit of Celia Jane Armstrong dated 4 October 2012 with exhibits CJA-B to CJA-S (**My Second 4 October Affidavit**); and



- (c) the Further Affidavit of Celia Jane Armstrong dated 12 October 2012 with exhibits CJA-T to CJA-HH (**My 12 October Affidavit**).

#### **Additional Grower Emails**

- 6 In My First 4 October Affidavit I exhibit approximately 75 emails that were provided to me by Ms Bezencon. Those emails had been sent to her from growers regarding the proposal to compromise each of the Timbercorp Rights Proceedings and are defined in My First 4 October Affidavit as "Additional Grower Emails".
- 7 On 12 October 2012 I received two emails attaching approximately 198 emails that had been sent to Ms Bezencon regarding the proposal to compromise each of the Timbercorp Rights Proceedings (**Further Additional Grower Emails**). Now produced and shown to me marked "**CJA-II**" is a true copy of both of these emails from Regis to me dated 12 October 2012 entitled "further from Kerree (2 emails) 1 of 2" and "further from Kerree, second and last email" and the attachments thereto.
- 8 I have compared the list of authors of the Further Additional Grower Emails against the list of authors of the Additional Grower Emails. Approximately sixty-one (61) emails were sent by the authors whose comments were included in the Additional Grower Emails and discussed in My First 4 October Affidavit. To avoid repetition, I have excluded their emails from the analysis contained in paragraphs 10 and 11 of this affidavit.
- 9 Further, of the one hundred and thirty-seven (137) Further Additional Emails remaining after I excluded those emails already addressed in My First 4 October Affidavit, approximately sixteen (16) emails were either duplicates or sent by the same author who expressed similar sentiments in multiple emails. I have excluded any duplicate emails or comments from the analysis contained in paragraphs 10 and 11 of this affidavit.
- 10 I have reviewed the Further Additional Grower Emails and set out below a summary of the contents of those emails not excluded from analysis because of the matters discussed in paragraphs 8 and 9 above (**Remaining Further Additional Grower Emails**):
- (a) Twelve (12) emails requested more information or to be kept updated.
  - (b) Two (2) emails notified Ms Bezencon of a change of email address.
  - (c) One (1) email disagreed with Ms Bezencon's sentiment.
  - (d) Fifty-two (52) emails contained no content and only showed that the author was replying to Ms Bezencon's request for a response.
  - (e) One hundred and eighty-three (183) emails expressed an objection, expressly or impliedly supported Ms Bezencon or otherwise indicated that they protested the proposed compromise. Approximately 95 of these emails included one or more comments of the kind summarised in paragraph 11 below.
- 11 The following comments are made in the Remaining Further Additional Grower Emails:
- (a) eight (8) comments about being disgruntled with TSL and the management of Timbercorp;



- (b) one (1) comment about being disgruntled with the Court;
- (c) thirteen (13) comments about being disgruntled with KordaMentha;
- (d) Eight (8) comments about being disgruntled with the Banks;
- (e) six (6) comments about being disgruntled with ASIC;
- (f) thirty (30) comments about the settlement offer being too low;
- (g) eleven (11) comments saying no;
- (h) three (3) comments about a conflict of interest;
- (i) three (3) comments about not being able to or wanting to pay any extra costs;
- (j) two (2) comments that the offer is a joke;
- (k) six (6) comments about the unfairness of Timbercorp loans; and
- (l) six (6) comments about the injustice of the whole matter.

12 Further, I have compared the list of authors of the Remaining Further Additional Grower Emails against the names of growers who are listed in the Communication Spreadsheets and Further Communication Spreadsheets. The following authors of the Remaining Further Additional Grower Emails have also contacted the TSL and their enquiries, comments or objections to TSL or me have been recorded in my Earlier Affidavits:

- (a) Mr Alchin contacted TSL on 14 August 2012 requesting more information in relation to the compromise. I emailed Mr Alchin multiple times on 16 August 2012 in response to his questions. In his email to Ms Bezencon, Mr Alchin requests more information.
- (b) Mr de Vries contacted TSL on 14 August 2012 about the quantum involved in the compromise and any comments made by KordaMentha in relation to the failure of the Timbercorp companies. His email was escalated and I subsequently emailed Mr de Vries. He did not lodge an objection with TSL or me; however, he expressed his support of Ms Bezencon in his email to her.
- (c) Mr Wolfe contacted TSL on 14 August 2012 and notified TSL of a change of email address. In his email to Ms Bezencon he requested more information.
- (d) Ms Chang contacted TSL on 14 August 2012 and requested a copy of the First Notice to Growers. She did not lodge any objection with TSL, however, but expressed her support of Ms Bezencon in her email to her.
- (e) Mr Abbott contacted TSL on 14 August 2012 in relation to the current bank account details stored on the TSL system. He did not lodge an objection with TSL or me; however, he notified Ms Bezencon of his objection in his email to her.
- (f) Mr Heilbuth contacted TSL on 15 August 2012 and returned a bank account nomination form. He did not expressly lodge an objection with TSL, however, he informed Ms Bezencon of his objection in his email to Ms Bezencon.



- (g) Mr Warren contacted TSL on 16 August 2012 and requested a copy of the First Notice to Growers. He did not lodge any objection with TSL, however, he informed Ms Bezencon of his objection in her email to Ms Bezencon.
- (h) Mr McMullen contacted TSL on 20 August 2012 and returned a bank account nomination form. He did not expressly lodge an objection with TSL, however, he informed Ms Bezencon of his objection in his email to Ms Bezencon.
- (i) Mr Black contacted TSL on 21 August 2012 and requested a copy of the First Notice to Growers. He did not lodge any objection with TSL, however, he informed Ms Bezencon of his objection in his email to Ms Bezencon.
- (j) Mr Colley contacted TSL on 21 August 2012 and returned a bank account nomination form. He did not expressly lodge an objection with TSL, however, he informed Ms Bezencon of his objection in his email to Ms Bezencon.
- (k) Mr Sullivan contacted TSL on 22 August 2012 and requested information in relation to his investment. He did not lodge any objection with TSL, however, he informed Ms Bezencon of his objection in his email to Ms Bezencon.
- (l) Mr Makin contacted TSL on 31 August 2012 returned a bank account nomination form. He did not expressly lodge an objection with TSL, however, he informed Ms Bezencon of his objection in his email to Ms Bezencon.
- (m) Mr Cuff contacted TSL on 12 September 2012, returning a bank account nomination form and did not expressly lodge an objection with TSL. Mr Cuff expressed his desire to maintain his objection to Ms Bezencon.
- (n) Mr and Ms Foster notified TSL of their objection on 26 September 2012 by forwarding to TSL a copy of an email from Ms Bezencon.
- (o) Ms Martinuzzo notified TSL of her objection on 26 September 2012 by forwarding to TSL a copy of an email from Ms Bezencon.
- (p) Mr Gulabovski contacted both TSL and me on 26 September 2012 requesting the compromise to be expressed in layman terms and answers to multiple questions. I contacted Mr Gulabovshki on the same day by return email in response to his questions. Mr Gulabovski did not lodge any objection with TSL, however, he informed Ms Bezencon of his objection in his email to Ms Bezencon.
- (q) Mr Ellis notified TSL of his objection on 26 September 2012 by forwarding to TSL a copy of an email from Ms Bezencon.
- (r) Ms Feiner notified TSL of his objection on 26 September 2012 by forwarding to TSL a copy of an email from Ms Bezencon.
- (s) Mr Nonnenmacher notified TSL of his objection on 26 September 2012 by forwarding to TSL a copy of an email from Ms Bezencon.



- 13 As a consequence of the late delivery of the Further Additional Grower Emails I have not had the opportunity to respond to the authors. Accordingly, I have been unable to discuss with the authors any of their concerns, address any misconceptions or queries about the current proceedings or reply to any requests for further information.
- 14 In response to a request that I made to Arnold Bloch Leibler (**ABL**), solicitors for TSL, the Timbercorp Grower Liaison Team, under the supervision of Michael Orchard (Senior Client Account Manager) conducted a review of the authors of the Further Additional Emails to ascertain if they were growers in there relevant schemes.
- 15 On 16 October 2012 I received an email from Ms Meagan Grose (**Ms Grose**) of ABL attaching the list of authors noting which schemes (if any) the author had invested in plus other relevant notes (**Summary of Authors**). Now produced and shown to me marked "**CJA-JJ**" is a true copy of the email from Ms Grose to me with attachment dated 16 October 2012.
- 16 The Summary of Authors shows that 25 authors either did not have any investment in a relevant Timbercorp scheme or there was not enough information available to identify the investment.

**Further Documents provided by or on behalf of Kerree Bezencon**

- 17 In:
- (a) My Second 4 October Affidavit I exhibit a series of bundles of documents given to me by Ms Bezencon on 4 October 2012; and
  - (b) My 12 October Affidavit I exhibit a further series of bundles of documents provided to me by Ms Bezencon on 12 October 2012.
- 18 Between 13 October and 17 October 2012 I received some further emails from or on behalf of Ms Bezencon. Ms Bezencon has asked me to exhibit some further bundles of cash flows and related documents in respect of Timbercorp olives schemes. Now produced and shown to me marked **CJA—KK** is a true copy of the cash flows and related documents in respect of Timbercorp olives schemes provided to me by or on behalf of Ms Bezencon.
- 19 I am informed by Ms Bezencon that there are no further documents she wishes to put before the Court.

SWORN by CELIA JANE ARMSTRONG  
at Melbourne in the State of Victoria  
this 17<sup>th</sup> day of October 2012

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Before me:.....

**SARAH DORN**  
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