

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

LIST B
S CI 2011 6604

BETWEEN:

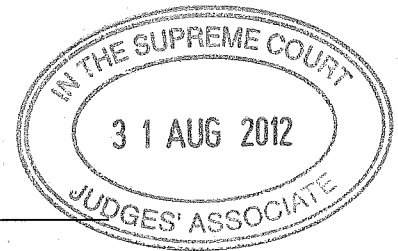
AUSTRALIA AND NEW ZEALAND BANKING
GROUP LIMITED
(ACN 005 357 522)

Plaintiff

- and -

OIM#2 PTY LTD (RECEIVERS AND MANAGERS
APPOINTED (ACN 112 691 997) as trustee for
TIMBERCORP ORCHARD TRUST #3 & ORS (according
to the attached Schedule)

Defendants



ORDER

JUDGE OF THE COURT: The Honourable Justice Judd

DATE MADE: 31 August 2012

ORIGINATING PROCESS: Originating Motion

HOW OBTAINED: Return of summons

ATTENDANCE: W. Harris of Senior Counsel with M. Rush of counsel for the Plaintiff

M. N. C. Harvey of counsel for the First and Second Defendants

G. Bigmore, one of Her Majesty's Counsel for the Fifth to Tenth Defendants

OTHER MATTERS: The Court notes the following matters:

1. On 25 July 2012, in each of the following proceedings, a compromise of the proceeding was reached (each, a *Compromise* and together, the *Compromises*), the terms of which were contained in a deed of compromise executed by the parties and Timbercorp Securities Limited (in liquidation) ACN 092 311 469 (*TSL*):

- (i) this proceeding (*Liparoo and Yungera Rights Proceeding*);
- (ii) Supreme Court of Victoria Proceeding No. S APCI 2011 0103 (*Almond Land Rights Appeal Proceeding*);
- (iii) Supreme Court of Victoria Proceeding No. S CI 2011 6606 (*Solara Rights Proceeding*);
- (iv) Supreme Court of Victoria Proceeding No. S CI 2010 1354 (*BB Olives Rights Proceeding*); and
- (v) Supreme Court of Victoria Proceeding No. S CI 2011 6777 (*Fenceport Rights Proceeding*)

(together, the *Timbercorp Apportionment Proceedings*).

2. Each Compromise is expressed to be conditional on (among other things):

- (i) the Court approving the Compromise and ordering that it shall be binding on the absent persons represented by the representative parties appointed in the relevant proceeding pursuant to rule 16.01(2) of the Supreme Court (General Civil Procedure) Rules 2005 (*Rules*); and
- (ii) the Court approving the Compromise in each of the other Timbercorp Apportionment Proceedings and ordering that each such Compromise shall be binding on the absent persons represented by the representative parties appointed in the relevant proceeding pursuant to rule 16.01(2) of the Rules.



3. On 27 August 2012, by summons issued by the plaintiff (or, in the case of the Almond Land Rights Appeal Proceeding, the first respondent) in

each of the Timbercorp Apportionment Proceedings, application was made for (among other things) approval of the relevant Compromise pursuant to rule 16.01(4) of the Rules (each, an *Approval Application* and, together, the *Approval Applications*).

4. These orders will be posted at each of:
- (i) www.clarendonlawyers.com.au;
 - (ii) www.kordamentha.com/creditor-information/Australia/51; and
 - (iii) www.abl.com.au/timbercorp/compromises.htm,

as soon as practicable after the making of these orders.



THE COURT ORDERS BY CONSENT THAT:

1. The Approval Application made in the Liparoo and Yungera Rights Proceeding be set down for hearing before the Honourable Justice Judd on 3, 4 and, to the extent required and subject to the availability of the Court, 5 October 2012 on an estimate of 2 hearing days.
2. On or before 19 September 2012:
 - (a) each party to the Liparoo and Yungera Rights Proceeding;
 - (b) TSL; and
 - (c) any absent person represented in the Liparoo and Yungera Rights Proceeding who proposes to raise an objection to the Compromise in respect of the Liparoo and Yungera Rights Proceeding,

is to file and serve any affidavit material upon which it intends to rely at the hearing.
3. On or before 25 September 2012:
 - (a) each party to the Liparoo and Yungera Rights Proceeding;
 - (b) TSL; and
 - (c) any absent person represented in the Liparoo and Yungera Rights Proceeding

who proposes to raise an objection to the Compromise in respect of the Liparoo and Yungera Rights Proceeding,

is to file and serve any affidavit material in reply upon which it intends to rely at the hearing.

4. On or before 28 September 2012:

- (a) each party to the Liparoo and Yungera Rights Proceeding;
- (b) TSL; and
- (c) any absent person represented in the Liparoo and Yungera Rights Proceeding who proposes to raise an objection to the Compromise in respect of the Liparoo and Yungera Rights Proceeding,

is to file and serve an outline of its submissions upon which it intends to rely at the hearing.

5. On or before 1 October 2012:

- (a) each party to the Liparoo and Yungera Rights Proceeding;
- (b) TSL; and
- (c) any absent person represented in the Liparoo and Yungera Rights Proceeding who proposes to raise an objection to the Compromise in respect of the Liparoo and Yungera Rights Proceeding,

is to file and serve any outline of its submissions in reply upon which it intends to rely at the hearing.

6. The Approval Application made in the Liparoo and Yungera Rights Proceeding is to be heard and determined concurrently with the Approval Applications made in each of the other Timbercorp Apportionment Proceedings.

7. The exhibits CJA-1, CJA-2 and CJA-3 to the Affidavit of Celia Jane Armstrong dated 30 August 2012 and filed in this proceeding be kept confidential.

8. There be no order as to costs.

DATE AUTHENTICATED:

31 August 2012





A handwritten signature in dark ink, appearing to read "Judd". The signature is fluid and cursive, with a long horizontal stroke extending to the left.

The Hon. Justice Judd

SCHEDULE OF PARTIES

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 TIMBERCORP ORCHARD TRUST #3

First Defendant

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

Second Defendant

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 IN ITS CAPACITY AS TRUSTEE FOR TIMBERCORP ORCHARD TRUST #5

Third Defendant

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 IN ITS CAPACITY AS TRUSTEE FOR TIMBERCORP ORCHARD TRUST #5

Fourth Defendant

GRAHAM DACE as the representative of the Growers in the 2001 Timbercorp Almond Project (ARSN 095 649 746)

Fifth Defendant

GRAHAM GOLDENBERG as the representative of the Growers in the 2002 Timbercorp Almond Project (ARSN 099 611 935)

Sixth Defendant

GORAN RUNJE as the representative of the Growers in the 2003 Timbercorp Almond Project (ARSN 103 197 299)

Seventh Defendant

GRAEME PHILIP COLE as the representative of the Growers in the 2004 Timbercorp Almond Project (ARSN 108 336 670)

Eighth Defendant

CHRISTOPHER MARK LITTLE as the representative of the Growers in the 2005
Timbercorp Almond Project (ARSN 112 935 092)

Ninth Defendant

DAVID SYDNEY 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