

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

LIST B
SCI 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)
- and -

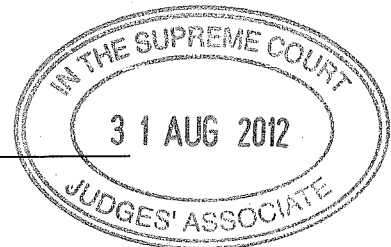
Plaintiff



B.B. OLIVES PTY LTD (IN LIQUIDATION)
(ACN 083 992 367) & 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: P. Anastassiou of Senior Counsel with R. G. Craig of counsel for the Plaintiff

O. Bigos for the First to Sixth Defendants and Timbercorp Securities Limited (in liquidation)

G. Bigmore, one of Her Majesty's Counsel for the Seventh to Ninth 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 (*BB Olives 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 2011 6604 (*Liparoo and Yungera 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 BB Olives 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 BB Olives Rights Proceeding;
 - (b) TSL; and
 - (c) any absent person represented in the BB Olives Rights Proceeding who proposes to raise an objection to the Compromise in respect of the BB Olives 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 BB Olives Rights Proceeding;
 - (b) TSL; and
 - (c) any absent person represented in the BB Olives Rights Proceeding who

proposes to raise an objection to the Compromise in respect of the BB Olives 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 BB Olives Rights Proceeding;
- (b) TSL; and
- (c) any absent person represented in the BB Olives Rights Proceeding who proposes to raise an objection to the Compromise in respect of the BB Olives 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 BB Olives Rights Proceeding;
- (b) TSL; and
- (c) any absent person represented in the BB Olives Rights Proceeding who proposes to raise an objection to the Compromise in respect of the BB Olives 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 BB Olives 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 black ink, appearing to read "Judd", written over a horizontal line.

The Hon. Justice Judd

SCHEDULE OF PARTIES

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)

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))

Fourth Defendant

LEANNE KYLIE CHESSER
(in her capacity as liquidator of B.B. Olives Pty Ltd (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