

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

LIST B  
S CI 2011 6606

**BETWEEN:**

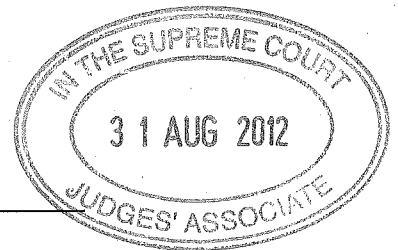
AUSTRALIA AND NEW ZEALAND BANKING  
GROUP LIMITED  
(ACN 005 357 522)

Plaintiff

- and -

OIM#2 PTY LTD (RECEIVERS AND MANAGERS  
APPOINTED) (ACN 112 691 997) as trustee for  
TIMBERCORP ORCHARD TRUST #2 & 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 Defendant

G. Bigmore, one of Her Majesty's Counsel for the Fourth 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 (*Solara 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 6604 (*Liparoo and Yungera 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](http://www.clarendonlawyers.com.au);
  - (ii) [www.kordamentha.com/creditor-information/Australia/51](http://www.kordamentha.com/creditor-information/Australia/51); and
  - (iii) [www.abl.com.au/timbercorp/compromises.htm](http://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 Solora 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 Solora Rights Proceeding;
  - (b) TSL; and
  - (c) any absent person represented in the Solora Rights Proceeding who proposes to raise an objection to the Compromise in respect of the Solora 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 Solora Rights Proceeding;
  - (b) TSL; and
  - (c) any absent person represented in the Solora Rights Proceeding who proposes to raise an objection to the Compromise in respect of the Solora 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 Solora Rights Proceeding;
- (b) TSL; and
- (c) any absent person represented in the Solora Rights Proceeding who proposes to raise an objection to the Compromise in respect of the Solora 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 Solora Rights Proceeding;
- (b) TSL; and
- (c) any absent person represented in the Solora Rights Proceeding who proposes to raise an objection to the Compromise in respect of the Solora 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 Solora 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**

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 #2  
First 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 #2  
Second 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 #2  
Third Defendant

ROBERT BUGDEN AND ELIZABETH BUGDEN (AS THE REPRESENTATIVES OF  
THE GROWERS IN THE 2005 TIMBERCORP CITRUS PROJECT (ARSN 114 091 299))  
Fourth Defendants