

IN THE FEDERAL COURT OF AUSTRALIA
VICTORIAN DISTRICT REGISTRY

No.

of 2011

IN THE MATTER OF WILLMOTT FORESTS LIMITED (RECEIVERS AND MANAGERS
APPOINTED) (IN LIQUIDATION)
ACN 063 263 650

WILLMOTT FORESTS LIMITED (RECEIVERS AND MANAGERS APPOINTED)
(IN LIQUIDATION)
ACN 063 263 650

IN ITS PERSONAL CAPACITY AND IN ITS CAPACITY AS RESPONSIBLE ENTITY OF
EACH OF THE MANAGED INVESTMENTS SCHEMES LISTED IN SCHEDULE 1 AND IN
ITS CAPACITY AS MANAGER OF THE UNREGISTERED MANAGED INVESTMENT
SCHEME LISTED IN SCHEDULES 2 AND 3
First Plaintiff

CRAIG DAVID CROSBIE
Second Plaintiff

IAN MENZIES CARSON
Third Plaintiff

ORIGINATING PROCESS

A. DETAILS OF APPLICATION

This application is made under section 511 of the *Corporations Act 2001* (Cth) (**Corporations Act**), and the inherent jurisdiction of the Court.

The Plaintiffs seek orders that have arisen in the winding up of the First Plaintiff.

On the facts stated in the supporting affidavit of the Second Plaintiff sworn 6 May 2011 (**Affidavit**), the Second and Third Plaintiffs (in their capacity as liquidators of the First Plaintiff acting in its capacity as a responsible entity and manager) seek:

- 1 A direction pursuant to section 511 of the *Corporations Act* and the inherent jurisdiction of the Court that the Second and Third Plaintiffs are justified in procuring the First Plaintiff to amend the constitutions of the managed investment schemes listed in schedule 1, pursuant to section 601GC(i)(b) of the *Corporations Act* by executing the proposed deeds contained in exhibit CDC-33 to the Affidavit on the

Filed on behalf of the Plaintiffs

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(Leon Zwier)



basis that such amendments will not adversely affect members' rights and members will be entitled to the net proceeds of sale, or any other value or consideration received for or referable to the termination of their rights.

- 2 A direction pursuant to section 511 of the Corporations Act that the Second and Third Plaintiffs are justified in procuring the First Plaintiff to amend the investment deeds and constitutions of the Professional Investor Schemes listed in Schedule 2 by executing the proposed deeds contained in exhibit CDC-33 to the Affidavit on the basis that such amendments will not adversely affect members' rights and members will be entitled to the net proceeds of sale, or any other value or consideration received for or referable to the termination of their rights.
- 3 In the alternative, for a direction pursuant to section 511 of the Corporations Act, that the Second and Third Plaintiffs would be justified in disclaiming the Project Documents of the Willmott Registered Schemes and Willmott Professional Investor Schemes as onerous, pursuant to section 568(1) of the Corporations Act, on the basis that the Plaintiffs will seek the Court's consent before disclaiming the Project Documents and members will be entitled to the net proceeds of sale, or any other value or consideration received for or referable to the disclaimer of their rights.
- 4 A direction pursuant to section 511 of the Corporations Act that that the Second and Third Plaintiffs would be justified in disclaiming the Project Documents of the Contractual and Partnership Schemes listed in Schedule 3 as onerous, pursuant to section 568(1) of the Corporations Act, on the basis that the Plaintiffs will seek the Court's consent before disclaiming the Project Documents and members will be entitled to the net proceeds of sale, or any other value or consideration received for or referable to the disclaimer of their rights.
- 5 A direction pursuant to section 511 of the Corporations Act that the Second and Third Plaintiffs would be justified in exercising the right to terminate the Project Documents affecting the HVP Leases on the basis that such amendments will not adversely affect members' rights and members will be entitled to the net proceeds of sale, or any other value or consideration received for or referable to the termination of their rights.
- 6 A direction pursuant to sections 477(2B), 556(1)(a) and 511 of the Act, that the Second and Third Plaintiffs are justified in entering into the loan facility provided by the CBA on the terms set out in Exhibit CDC-22 to the Affidavit and that repayment of



the loan is a proper expense incurred in the liquidation of the First Plaintiff to be paid in priority to all other unsecured debts and claims of the First Plaintiff.

7 Exhibits CDC-32 and CDC-33 to the Affidavit be kept confidential.

8 Such further or other orders as the Court deems fit.

DATE: 11 May 2011

Arnold Bloch Leibler

ARNOLD BLOCH LEIBLER
Solicitors for the plaintiff

This application will be heard by the Federal Court of Australia, 305 William Street, Melbourne at 9:30 on 7 June 2011

B. NOTICE TO DEFENDANT

Not applicable.

C. APPLICATION FOR WINDING UP ON GROUND OF INSOLVENCY

Not applicable.

D. FILING

Date of filing: 11 MAY 2011


An officer acting with the authority of the
DISTRICT REGISTRAR

This originating process is filed by Arnold Bloch Leibler of Level 21, 333 Collins Street, Melbourne, VIC, 3000, solicitors for the Plaintiffs.

E. SERVICE

The Plaintiffs' address for service is C/- Arnold Bloch Leibler, Level 21, 333 Collins Street, Melbourne, VIC, 3000.

It is intended to serve a copy of this originating process on each person listed below:



- (a) the Committee of Inspection;
- (b) the Australian Securities and Investments Commission;
- (c) the Willmott Growers Group by their solicitors Clarendons Lawyers;
- (d) the Willmott Action Group by their solicitors Lilley Dawson;
- (e) the Commonwealth Bank of Australia by their solicitors Clayton Utz; and
- (f) Mark Korda, Bryan Webster and Mark Mentha of KordaMentha by their solicitors Allens Arthur Robinson.

A copy of this originating process and the supporting affidavit of the Second Plaintiff will also be posted on the websites of Arnold Bloch Leibler (www.abl.com.au) and PPB (www.ppb.com.au).



Schedule 1 - Registered Managed Investment Schemes

- (a) Willmott Forests 1989 - 1991 Project (ARSN 092 516 651)
- (b) Willmott Forests 1995 - 1999 Project (ARSN 089 598 612)
- (c) Willmott Forests Project (ARSN 089 379 975)
- (d) BioForest Dual Income Project 2006 (ARSN 119 153 623)
- (e) BioForest Sustainable Timber and Biofuel Project 2007 (ARSN 124 135 535)
- (f) Willmott Forests Premium Forestry Blend Project (ARSN 131 549 589)
- (g) Willmott Forests Premium Forestry Blend Project - 2010 Project (ARSN 142 722 585)
- (h) Willmott Forests Premium Timberland Fund No. 1 (ARSN 136 768 520)



Schedule 2 - Unregistered Managed Investment Schemes: Professional Investor Schemes

- (a) Willmott Forests - Professional Investor - 2001 Project - 2001 Information Memorandum
- (b) Willmott Forests - Professional Investor - 2002 Project - 2002 Information Memorandum
- (c) Willmott Forests - Professional Investor - 2003 Project - 2003 Information Memorandum (2003) and 2003 Information Memorandum (2004)
- (d) Willmott Forests - Professional Investor - 2004 Project - 2004 Information Memorandum and 2004 Information Memorandum (2005)
- (e) 2005 BioForest Wholesale Project No. 2 - 2005 Wholesale Forestry Memorandum (Bioforest)
- (f) Willmott Forests - Professional Investor - 2006 Project - 2006 Information Memorandum



Schedule 3 - Unregistered Managed Investment Schemes: Contractual Schemes and Partnership Schemes

Contractual Schemes

- (a) 1983 (No Project)
- (b) 1984 (No Project)
- (c) 1985 (No Project)
- (d) 1986 (No Project)
- (e) 1987 (No Project)
- (f) 1989 (No Project)
- (g) 1990 (No Project) Interest Only Offer
- (h) 1991 (No Project)
- (i) 1995 (No Project) (Custom)
- (j) Sharp/Reed Plantation Project -1998 Information Memorandum
- (k) 2001 (No Project)

Partnership Schemes

- (l) McKenzie & Partners - Forestry Partnership No.1 (1993)
- (m) Grimsey & Associates Pty Ltd - Forestry Partnership No. 1 (1994)
- (n) Grimsey & Associates Pty Ltd - Forestry Partnership No. 2 (1994)
- (o) Grimsey & Associates Pty Ltd - Forestry Partnership No. 3 (1994)
- (p) McKenzie & Partners - Forestry Partnership No. 2 (1994)

