

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

LIST
S CI 2011

IN THE MATTER OF THE WILLMOTT FORESTS 1995-1999 PROJECT
ARSN 089 598 612

B E T W E E N

WILLMOTT FORESTS LIMITED (RECEIVERS AND MANAGERS APPOINTED)
(IN LIQUIDATION) ACN 063 263 650 (IN ITS CAPACITY AS A MEMBER OF
THE SCHEME) AND OTHERS

Plaintiffs

and

GRIMSEY FINANCIAL SERVICES PTY LTD ACN 113 911 247
AND OTHERS

Defendants

AFFIDAVIT OF BRYAN WEBSTER

Date of document: 21 June 2011

Filed on behalf of: The Plaintiffs

Prepared by:

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I, BRYAN WEBSTER of 333 Collins Street, Melbourne, Accountant, do solemnly and sincerely affirm:

1. I am a Registered Liquidator, Certified Practising Accountant and a partner of KordaMentha Pty Ltd (**KordaMentha**).
2. On 6 September 2010, I was appointed joint and several receiver and manager of the assets of Willmott Forests Limited (Receivers and Managers Appointed) (In Liquidation) (ACN 063 263 650) (**WFL**) and its wholly owned subsidiaries (together, the **Willmott Group**), along with my partners Mark Anthony Korda and Mark Francis Xavier Mentha. Further details of our appointment are set out at paragraphs 8 and 9 below. Now produced and shown to me and marked **BW-1** is a copy of an extract from the records of the Australian Securities and Investments Commission (**ASIC**) relating to WFL.
3. Where I refer in this affidavit to the **Receivers**, I am referring to myself and each of Mr Mentha and Mr Korda (as applicable) in our capacities as joint and several receivers and



managers of the relevant charged assets of WFL. I am authorised to make this affidavit on behalf of the Receivers.

4. I make this affidavit in support of the Plaintiffs' originating process seeking orders of this Honourable Court granting:
 - (a) interim, interlocutory and/or final injunctions under subsections s 1324(1) and (4) of the *Corporations Act 2001* (Cth) (**Corporations Act**) and/or subsections 12GC(1) and (3) of the *Australian Securities and Investments Act 2001* (Cth) (**ASIC Act**) prohibiting any meeting of the members of the Willmott Forests 1995-1999 Project (**Scheme**) held pursuant to s 252D of the Corporations Act by a notice of meeting issued by the First and Second Defendants on 20 May 2011 (**20 May Notice**); and
 - (b) alternatively, interim, interlocutory and/or final injunctions under subsections 1324(1) and (4) of the Corporations Act and/or subsections 12GC(1) and (3) of the ASIC Act prohibiting the defendants and each of them from procuring or causing resolutions 1 and 2 as set out in the 20 May Notice, or any resolutions to substantially the same effect, to be put to the meeting called for 14 June 2011 or to any subsequent meeting of the members of the Scheme.

5. In this affidavit, I have set out information relating to:
 - (a) the scope of the Receivers' appointment over the assets of the Willmott Group, including the assets which are the subject of the Scheme;
 - (b) the nature of the Scheme and its operation;
 - (c) the financing of investors' application monies in respect of the Scheme;
 - (d) the nature of WFL's interest in the Scheme;
 - (e) the background against which the 20 May Notice has been issued;
 - (f) the Receivers' views on aspects of the proposal described in the 20 May Notice; and
 - (g) the Receivers' views on aspects of variations to the proposal described in the 20 May Notice, such variations themselves being described in a letter issued to members of the Scheme by the Third Defendant and dated 9 June 2011 (as described in more detail in paragraphs 66 to 72 below).

6. I make this affidavit from my own knowledge, except where otherwise stated. Where I state matters on the basis of information provided to me, I believe such information to be true.

Handwritten signature and initials in the bottom right corner of the page.

7. I am a Certified Practising Accountant, a Registered Liquidator and a member of the Insolvency Practitioners Association of Australia. I have been practising in the area of corporate insolvency and financial reconstructions for over 15 years.

APPOINTMENT OF THE RECEIVERS

8. On 6 September 2010 (**Appointment Date**), Mark Anthony Korda and I were appointed joint and several receivers and managers of all of the assets charged by WFL under the following charges:

- (a) Deed of Charge (Bilateral) dated 17 March 2009, ASIC registered no. 1767770;
- (b) Deed of Charge (non NSW & SA) dated 17 March 2009, ASIC registered no. 1767711; and
- (c) Deed of Charge (SA) dated 17 March 2009, ASIC registered no. 1767741.

Now produced and shown to me and marked **BW-2** is a copy of the Deed of Appointment of Receiver and Manager pursuant to which Mr Korda and I were appointed under the charges described above.

9. Also on 6 September 2010, Mark Francis Xavier Mentha and I were appointed joint and several receivers and managers of all of the assets charged by WFL under the Deed of Charge (Secondary) dated 17 March 2009, ASIC registered no. 1767723. Now produced and shown to me and marked **BW-3** is a copy of the Deed of Appointment of Receiver and Manager pursuant to which Mr Mentha and I were appointed under the charge described above.
10. Shortly following the appointment of the Receivers, on 6 September 2011, Thomas Fernandez was appointed as voluntary administrator of the Willmott Group. However, on 26 October 2010, by order of the Federal Court of Australia, Mr Fernandez was removed as voluntary administrator and Messrs Ian Carson and Craig Crosbie of the firm PPB Advisory were appointed joint and several voluntary administrators of the Willmott Group. At a meeting of creditors convened by Messrs Carson and Crosbie on 22 March 2011, the creditors of the Willmott Group resolved to wind up the Willmott Group and to appoint Messrs Carson and Crosbie as joint and several liquidators of the Willmott Group.
11. WFL is the responsible entity (**RE**) of a number of registered managed investment schemes and the manager of a number of unregistered managed investment schemes. By Deeds of Partial Termination executed in September 2010, the Receivers' appointment over WFL's rights, title and interest in, and rights and obligations arising under any agreement, deed or document appointing WFL as responsible entity and / or manager of the registered



managed investment schemes (the **RE Function**), was terminated. The effect of the Deeds of Partial Termination was to exclude from the Receivers' appointment WFL's role as responsible entity and / or manager of the registered managed investment schemes operated by WFL. Now produced and shown to me and marked **BW-4** is a copy of the Deeds of Partial Termination executed on 24 September 2010.

12. In summary, the assets over which the Receivers are appointed, comprise all of the assets, undertaking and rights of WFL and its wholly-owned subsidiaries, subject to certain exclusions. The assets over which the Receivers are appointed include:
 - (a) interests held by WFL in its own right in the managed investment schemes operated by WFL, including the Scheme; and
 - (b) WFL's interest in loans advanced to Growers in the managed investment schemes operated by WFL, including the Scheme.
13. The exclusions to the assets over which the Receivers are appointed include the following:
 - (a) any land located within a radius of approximately 150 kilometres around the township of Bombala, New South Wales (the **Bombala Land**);
 - (b) any property held by WFL in its capacity as responsible entity, trustee or custodian in respect of the managed investment schemes operated by WFL or any other property held by WFL or its wholly-owned subsidiaries in their capacity as a trustee or custodian; and
 - (c) (following the partial termination of the Receivers' appointment) the RE Function described in paragraph 11 above.
14. The RE Function is now under the control of Messrs Carson and Crosbie, as Liquidators of WFL.

THE DEFENDANTS

15. The First Defendant, Grimsey Financial Services Pty Ltd (**Grimsey**), is a corporation registered under the Corporations Act with its principal place of business located in Melbourne, Victoria. Now produced and shown to me and marked **BW-5** is a true copy of a current company extract in relation to Grimsey obtained from the ASIC database.
16. Based on my review of the books and records of WFL, I understand that:
 - (a) Grimsey's business involves providing tax, accounting and financial planning services;

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- (b) Grimsey has been involved with the establishment of certain managed investment schemes operated by WFL;
 - (c) a number of Grimsey's clients have invested in managed investment schemes operated by WFL, including the Scheme; and
 - (d) a company associated with Grimsey, Grimsey and Associates Financial Services Pty Ltd, is a member of the Scheme.
17. The Second Defendant, Redisland Australia Limited (**Redisland**), is a public corporation registered under the Corporations Act with its principal place of business located in Braeside, Victoria. Phillip John Grimsey is a director of each of Grimsey and Redisland. Now produced and shown to me and marked **BW-6** is a true copy of a current company extract in relation to Redisland obtained from the ASIC database.
18. The Third Defendant, Willmott Growers Group Inc (**WGG**), is an incorporated association located in Melbourne, Victoria. According to page 9 of the Explanatory Memorandum accompanying the 20 May Notice (the **Explanatory Memorandum**) (which forms part of exhibit BW-33 to this affidavit), WGG was formed and incorporated by Grimsey upon the appointment of the Receivers to WFL. The WGG website (<http://www.willmottgrowersgroup.com.au/>) states that WGG "has been incorporated as an association to promote unity and co-ordination for members who hold investments in financial projects which Willmott Forests Limited (administrators, receivers & managers appointed) is currently the responsible entity". Now produced and shown to me and marked **BW-7** is a screen shot of the WGG website showing this statement and WGG's publication of the 20 May Notice and Explanatory Memorandum.
19. The Fourth Defendant, Paul Challis, is a director of Redisland and a founding member of WGG. He is also the signatory of the introductory letter to Growers in the Scheme contained in the Explanatory Memorandum accompanying the 20 May Notice.

THE SCHEME

20. WFL is the responsible entity of the Scheme. The Scheme is a registered managed investment scheme under Part 5C of the *Corporations Act 2001* and comprises six projects, corresponding to the following six successive prospectuses issued by WFL:
- (a) 1995 Prospectus (1995) Project;
 - (b) 1995 Prospectus (1996) Project;
 - (c) 1996 Prospectus Project;

- (d) 1997 Prospectus Project;
 - (e) 1998 Prospectus Project; and
 - (f) 1999 Prospectus Project.
21. The Scheme is governed by a suite of documents including (among others):
- (a) a constitution – now produced and shown to me and marked **BW-8** is a copy of the constitution for the Scheme;
 - (b) Lease Agreements – now produced and shown to me and marked:
 - (i) **BW-9** is a copy of a sample Lease Agreement for the 1995 Prospectus (1995) Project; and
 - (ii) **BW-10** is a copy of a sample Lease Agreement for the 1999 Prospectus Project.
 - (c) Preparation and Planting Agreements – now produced and shown to me and marked:
 - (i) **BW-11** is a copy of a sample Preparation and Planting Agreement for the 1995 Prospectus (1995) Project; and
 - (ii) **BW-12** is a copy of a sample Preparation and Planting Agreement for the 1999 Prospectus Project;
 - (d) Maintenance Agreements – now produced and shown to me and marked:
 - (i) **BW-13** is a copy of a sample Maintenance Agreement for the 1995 Prospectus (1995) Project; and
 - (ii) **BW-14** is a copy of a sample Maintenance Agreement for the 1999 Prospectus Project.
22. The Scheme involves the planting and cultivation of radiata pine trees. Now produced and shown to me and marked **BW-15** are true copies of the prospectuses for the 1995 and 1999 Projects which summarise the nature of the Scheme in more detail.
23. According to WFL's register, there are 757 investors in the Scheme (**Growers**).
24. Growers applied to WFL for a certain number of 'Hectares', with each Hectare representing an interest in one hectare of land and all improvements on it (i.e. the land and trees). WFL, as Manager of the Scheme, leased the land to the Growers by entering into a Lease Agreement. The Growers also engaged the Manager through a Preparation & Planting Agreement and Maintenance Agreement to establish and maintain the plantations.



25. With respect to the 1995 to 1998 Prospectuses, the Scheme was structured such that all payments by Growers to WFL were to be made upfront (with the exception of harvest/marketing costs), rather than on an ongoing basis throughout the life of the Scheme. The type and amount of the upfront application monies are summarised in the table below:

Agreement	1995 Prospectus (95)	1995 Prospectus (96)	1996 Prospectus	1997 Prospectus	1998 Prospectus
Preparation & Planting Agreement	\$4,950 / Ha	\$4,950 / Ha	\$4,950 / Ha	\$6,000 / Ha	\$6,000 / Ha
Maintenance Agreement	\$3,000 / Ha	\$3,000 / Ha	\$3,000 / Ha	\$3,500 / Ha	\$3,500 / Ha
Lease Agreement	\$4,000 / Ha	\$4,000 / Ha	\$4,000 / Ha	\$4,000 / Ha	\$4,000 / Ha
Total :	\$11,950 / Ha	\$11,950 / Ha	\$11,950 / Ha	\$13,500 / Ha	\$13,500 / Ha

26. The Scheme's constituent documents make no positive stipulation as to harvesting and marketing of the timber. However, the Prospectuses indicated that Growers may elect to have their timber marketed by the responsible entity (then referred to as the "Manager") on their behalf.
27. As described in more detail in paragraphs 30 to 33 below, Growers were given the option of financing their upfront application monies such that they were only required to pay a deposit upfront and then could repay their loan over time. Further, Growers who financed their application monies were also given the option of deferring the repayment of the principal and interest relating to their loan until their trees were harvested (or certain other events, including the extinguishment of the Growers' interest in the Scheme). This deferment was granted by WFL in exchange for the Grower assigning either (generally) 25% or 30% of their interest in the Scheme (depending on the prospectus) to WFL. In summary, therefore, some Growers in the 1995 to 1998 Prospectuses will have paid all of their application monies for the life of the Scheme upfront with nothing remaining to pay, whereas other Growers will have financed their application monies via a grower loan with principal and interest to be paid upon harvest of the trees (or certain other events, including the termination of the Scheme). Approximately 63.8% of Growers elected to finance their investment through such a loan, and then to defer their repayment of principal in this manner.

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28. The 1999 Prospectus was structured differently to the 1995 to 1998 Prospectuses. Growers applying for Hectares in the 1999 Prospectus were required to pay an upfront amount of \$6,000 / Ha in respect of the Preparation & Planting Agreement and ongoing payments of \$150 / Ha annually in respect of the Maintenance Agreement and \$100 / Ha annually in respect of the Lease Agreement. Growers had the option of financing their upfront payment under the Preparation & Planting Agreement (in the same way as Growers in the 1995 to 1998 Prospectuses), however they are required to continue to make their maintenance and lease payments on an annual basis.
29. The Scheme is operated on land owned by WFL in the Bombala region (i.e. the Bombala Land as defined above). In light of the matters set out in paragraph 13(a) above, the land on which the Scheme is operated does not fall within the scope of the Receivers' appointment and remains within the control of the Liquidators. Now produced and shown to me and marked **BW-16** is a spreadsheet compiled from the books and records of WFL which lists the name and title details of each parcel of land on which the Scheme is operated.

GROWER LOANS

30. As noted above, for Growers participating in the Scheme, optional finance was made available through third-party lenders by way of loans to fund the required upfront payments (**Grower Loans**). Grower Loans were provided separately from, and did not form part of, the Scheme. Grower Loans:
- (a) for Growers in the 1995 to 1998 Prospectus Projects were provided by A. S. Calendar Nominees (Vic) Pty Ltd (**ASCV**); and
 - (b) for Growers in the 1999 Prospectus Project were provided by third party financiers arranged through Laton Securities Pty Ltd.
31. A total of 567 Growers in the Scheme elected to finance their investments through Grower Loans provided by ASCV (as at around October 2009).
32. The loan agreements for Grower Loans provided by ASCV provided that a Grower could elect to defer the principal repayment date (i.e. the date on which the principal amount under the Grower's Loan was to be repaid) until all of the trees on the Grower's Hectares are cleared and felled (defined as the **Effective Date**) in consideration for which the Grower agreed to assign either (generally) 25% or 30% of its interest in the Scheme to the lender (the **Deferment Option**).

33. In exercise of the Deferment Option, 483 of the Growers with Grower Loans provided by ASCV have executed Deeds of Assignment, Deferment and Variation pursuant to which they have agreed to assign to ASCV or WFL (generally) 25% or 30% (as the case may be depending on the relevant prospectus and the timing of the assignment) of their interests in the Scheme. The Deeds of Assignment, Deferment and Variation executed by these Growers provide that in the event that a Grower's interest in the Scheme is extinguished before the Effective Date for any cause other than misfeasance by WFL, the Grower's Loan shall become due and payable at the expiration of seven days after the issue of a notice demanding repayment. Now produced and shown to me and marked **BW-17** is a copy of a sample Deed of Assignment, Deferment and Variation for a Grower in the 1995 Prospectus (1995) Project.
34. On or around 1 October 1999, ASCV assigned its interests in the Grower Loans provided by it to WFL. Now produced and shown to me and marked **BW-18** is an copy of an Agreement to Assign Receivables between ASCV and WFL.
35. On or around 23 December 2002, WFL assigned its interests in the Grower Loans provided by ASCV to Willmott Finance Pty Ltd (**WFIN**). Now produced and shown to me and marked **BW-19** is a copy of an Agreement to Assign Receivables between WFL and WFIN.

WFL'S INTEREST IN THE SCHEME

36. WFL holds interests in the Scheme in two separate capacities:
- (a) first, WFL holds Hectares in the Scheme in its own right as a Grower in the following Projects:
- (i) 1995 Prospectus (1995) Project (22 Hectares);
 - (ii) 1996 Prospectus Project (399 Hectares);
 - (iii) 1997 Prospectus Project (23 Hectares); and
 - (iv) 1999 Prospectus Project (11 Hectares).
- (b) secondly, WFL has an interest in other Hectares in the Scheme by virtue of a number of Growers having agreed to assign a percentage of their Hectares to WFL in exchange for a deferment of the Growers' obligation to repay principal and interest on their Grower loans. These interests are held by WFL in the following Projects:
- (i) 1995 Prospectus (1995) Project (269.7 Hectares);
 - (ii) 1996 Prospectus Project (171.4 Hectares);

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- (iii) 1997 Prospectus Project (301.2 Hectares);
- (iv) 1998 Prospectus Project (304.8 Hectares); and
- (v) 1999 Prospectus Project (133.8 Hectares).

37. WFL's interest in each of the projects comprising the Scheme is summarised in the following table:

	Total Area	WFL's Interest			
		Owned Holdings	Assigned (Equiv. Ha)	Total (Ha.)	Total (%)
1995 Prospectus (1995)	967.0 ha	22.0 ha	269.7 ha	291.7 ha	30.17%
1995 Prospectus (1996)	3.0 ha	-	-	-	0%
1996 Prospectus (1996)	1,030.0 ha	399.0 ha	171.4 ha	570.4 ha	55.38%
1997 Prospectus (1997)	1,288.0 ha	23.0 ha	301.2 ha	324.2 ha	25.17%
1998 Prospectus (1998)	1,309.0 ha	-	304.8 ha	304.8 ha	23.28%
1999 Prospectus (1999)	876.0 ha	11.0 ha	133.8 ha	144.8 ha	16.52%
Total	5,473.0 ha	455.0 ha	1,180.8 ha	1,635.8 ha	

38. WFL's interest in the Hectares described in paragraph 36(b) above arose in two ways:

- (a) first, by the Deeds of Assignment, Deferment and Variation referred to in paragraph 33 above, 483 Growers in the 1995 to 1998 Prospectus Projects assigned to WFL a percentage (generally, 25% or 30%) of their interests in the Scheme, in exercise of the Deferment Option; and
- (b) secondly, by other Deeds of Assignment, Deferment and Variation, 51 Growers in the 1999 Prospectus Project assigned to WFL (generally) 25% or 30% of their leasehold interest in the Scheme in consideration of WFL suspending payments due by those Growers under their Maintenance Agreements and Lease Agreements until the date on which those Growers' trees are cleared and felled pursuant to the provisions of the Maintenance Agreements. Now produced and shown to me and marked **BW-20** is a copy of a sample Deed of Assignment, Deferment and Variation for a Grower in the 1999 Prospectus Project.

BACKGROUND TO THE MEETING OF GROWERS

Withdrawn Notice of Meeting

39. On 23 December 2010, a notice of meeting (**23 December Notice**) was sent to Growers by WGG for the purpose of calling a meeting of Growers to be held on 3 February 2011. Now produced and shown to me marked **BW-21** is a true copy of the 23 December Notice.
40. The 23 December Notice indicated that WGG proposed to put resolutions to a vote of Growers which would have the effect of:
- (a) changing the RE of the Scheme; and
 - (b) changing the constitution of the Scheme to enable the new RE to invoice Growers for the annual cost of maintaining their investment through to the year in which it would be clear felled.
41. On 10 January 2011, WGG published on its website a "Meeting Update" which clarified that the meeting was scheduled to occur on 4 February 2011. Now produced and shown to me marked **BW-22** is a true copy of the Meeting Update.
42. On 28 January 2011, I instructed my solicitors, Allens Arthur Robinson (**AAR**), to send a letter to Mr Paul Challis of WGG which stated that the Receivers' considered that WGG had failed to call the proposed meeting in accordance with the requirements of ss 252F and 252J of the Corporations Act and common law due to the fact that, among other things, the 23 December Notice:
- (a) failed to provide sufficient information to fully and fairly inform Growers of the matters to be considered, and to enable them to decide whether to attend and how to exercise their voting powers; and
 - (b) was materially misleading by omission of information important and relevant to the decision which Growers were asked to make.
43. Now produced and shown to me marked **BW-23** is a true copy of the letter from AAR to Mr Challis dated 28 January 2011.
44. I am informed by Clint Hinchey of AAR and believe that on 31 January 2011 he received a letter from Clarendon Lawyers, which acts on behalf of WGG, stating that WGG intended to adjourn the Growers meeting to a later date. Now produced and shown to me marked **BW-24** is a true copy of the letter from Clarendon Lawyers to AAR dated 31 January 2011.
45. I subsequently instructed AAR to send a further letter to Clarendon Lawyers on 2 February 2011 which reiterated the Receivers' request that WGG withdraw the 23 December Notice

and issue a fresh notice, together with an appropriate Explanatory Memorandum. Now produced and shown to me marked **BW-25** is a true copy of the letter from AAR to Clarendon Lawyers dated 2 February 2011.

46. I am informed by Mr Hinchon of AAR and believe that on 2 February 2011 he received a letter from Clarendon Lawyers which indicated that the 23 December Notice would be withdrawn. Now produced and shown to me marked **BW-26** is a true copy of the letter from Clarendon Lawyers to AAR dated 2 February 2011.

Meeting of 14 June 2011

47. I am informed by Mr Hinchon of AAR and believe that, following the withdrawal of the 23 December Notice, AAR received a letter from Clarendon Lawyers dated 1 March 2011 which stated that WGG was further developing its proposals to restructure and continue the Schemes, amongst other WFL schemes (**WGG Proposal**). Now produced and shown to me marked **BW-27** is a true copy of the letter from Clarendon Lawyers to AAR dated 1 March 2011.
48. On 15 March 2011, I instructed AAR to send a letter to Clarendon Lawyers seeking further information about WGG's proposal, including in relation to any annual contributions which would be required of Growers. Now produced and shown to me marked **BW-28** is a true copy of the letter from AAR to Clarendon Lawyers dated 15 March 2011.
49. I am informed by Mr Hinchon of AAR and believe that on 17 March 2011 AAR received a response from Clarendon Lawyers which stated, among other things, that WGG intended to propose a change of RE / Manager in relation to certain registered and unregistered WFL managed investment schemes, Scheme. Now produced and shown to me marked **BW-29** is a true copy of the letter from Clarendon Lawyers to AAR dated 17 March 2011.
50. On 29 March 2011, I instructed AAR to send a letter to Clarendon Lawyers asking for further information in relation to WGG's proposal. Now produced and shown to me marked **BW-30** is a true copy of the letter from AAR to Clarendon Lawyers dated 29 March 2011.
51. On 11 May 2011, Willmott Forests, by its Liquidators and in its capacity as responsible entity of the Scheme, made an application to the Federal Court of Australia (the **Liquidators' approval application**) seeking directions pursuant to section 511 of the Corporations Act in relation to the Scheme (and in relation to 29 other managed investment schemes) that the Liquidators are justified:

- (a) in procuring Willmott Forests to amend the Constitution of the Scheme to give the responsible entity power to extinguish the rights of Growers under the Scheme Documents and with respect to the Trees; or
- (b) alternatively, in disclaiming the Scheme Documents of the Scheme as onerous, on certain conditions, in order to enable an informal winding-up of the Scheme through which it will become possible to offer for sale the Land on an unencumbered basis, and thereby to achieve the best outcome for the Growers and creditors of Willmott Forests (the *Liquidators' realisation proposal*). Now produced and shown to me marked **BW-31** are true copies of the Originating Process filed by the Liquidators and the supporting affidavit of Craig Crosbie sworn on 11 May 2011.
52. I am informed by Mr Hinchin of AAR and believe that on 19 May 2011 AAR sent a further letter to Clarendon Lawyers seeking a response to the queries raised in its letter dated 29 March 2011. Now produced and shown to me marked **BW-32** is a true copy of the letter from AAR to Clarendon Lawyers dated 19 May 2011.
53. I am informed by Mr Hinchin of AAR and believe that on 20 May 2011 AAR received a letter from Clarendon Lawyers which attached a copy of the 20 May Notice and accompanying Explanatory Memorandum in respect of the Scheme. Now produced and shown to me marked **BW-33** is a true copy of the letter from Clarendon Lawyers to AAR dated 20 May 2011 and enclosures.
54. I am informed by Mr Hinchin of AAR and believe that on 27 May 2011 AAR received a further letter from Clarendon Lawyers which indicated that WGG proposed to nominate Paul Challis as chairman of the meeting of Growers and sought submissions on WFL's entitlement to vote at the meeting. Now produced and shown to me marked **BW-34** is a true copy of the letter from Clarendon Lawyers to AAR dated 27 May 2011.
55. On 30 May 2011, I instructed AAR to send a letter to Clarendon Lawyers summarising the Receivers' response to the "WGG Proposal" (as described in the 20 May Notice and Explanatory Memorandum) and highlighting the deficiencies in the information provided to Growers in the 20 May Notice and Explanatory Memorandum. Now produced and shown to me marked **BW-35** is a true copy of the letter from AAR to Clarendon Lawyers dated 30 May 2011 (**30 May Letter**).
56. The Receivers are particularly concerned about the WGG Proposal insofar as it provides for a mechanism by which Growers who are unable, or unwilling, to pay the Reconstruction Fee, Initial Management Fee, Management Fees or any supplementary fees, will have their interests in the Scheme reduced (the *Dilution Mechanism*). The Dilution Mechanism is



summarised at pages 12 and 13 of the Explanatory Memorandum under the heading '*Consequences of non-payment of fees.*'

57. In light of its insolvency, WFL is unable to pay any Reconstruction Fee, Initial Management Fee, Management Fees or any supplementary fees under the WGG Proposal.
58. The Receivers are of the view that the Dilution Mechanism is unfair and unnecessarily prejudicial to Growers (like WFL):
- (a) who are unable to pay the fees contemplated under the WGG Proposal; and/or
 - (b) who do not wish to invest further funds in the Scheme and who might consider that a better return is available to them under the Liquidators' realisation proposal.
59. On 30 May 2011, I sent a letter to Growers in the Scheme by email which summarised the Receivers' response to the WGG Proposal as described in paragraph 55 above. Now produced and shown to me and marked **BW-36** is a sample of one of the letters sent to Growers.
60. I am informed by Mr Hinchey of AAR and believe that on 2 June 2011 AAR received a letter from Clarendon Lawyers in response to AAR's letter of 30 May 2011 referred to in paragraph 55 above. Now produced and shown to me and marked **BW-37** is a true copy of that letter. In that letter, Clarendon Lawyers stated that WGG '*does not currently intend to take steps to adjourn the Meeting.*'
61. I am informed by Mr Hinchey of AAR and believe that on 7 June 2011 AAR received a letter from Clarendon Lawyers, in which Clarendon Lawyers stated that:
- (a) WGG '*will support an adjournment of the meeting for approximately 10 days to enable Growers to consider the updated information we foreshadowed in our letter of 2 June 2011 and also new information in relation to a proposed liquidity mechanism*'; and
 - (b) WGG was refining a proposed 'liquidity mechanism' which would enable Growers who do not wish to make contributions under the WGG Proposal to offer their interests in the Scheme for sale to other Growers or the general public.

Now produced and shown to me and marked **BW-38** is a true copy of that letter.

62. On 7 June 2011, I instructed AAR to send a letter to Clarendon Lawyers seeking confirmation that the First and Second Defendants would issue a notice to Growers advising of the adjournment foreshadowed in Clarendon Lawyers' letter referred to in



paragraph 61 above. Now produced and shown to me and marked **BW-39** is a true copy of that letter.

63. I am informed by Mr Hinchin of AAR and believe that on 7 June 2011 AAR received a further letter from Clarendon Lawyers, responding to AAR's letter referred to in paragraph 62 above, in which Clarendon Lawyers stated that WGG would advise Growers of the proposed adjournment by close of business on 9 June 2011.
64. I am informed by Mr Hinchin of AAR and believe that on the morning of 8 June 2011, Mr Hinchin and Mr Matthew Whittle, a solicitor employed by AAR, had a telephone discussion with Ms Raelene Harrison and Mr Dan Mackay of Clarendon Lawyers, in which Messrs Hinchin and Whittle:
- (a) expressed concern that WGG had not given the Receivers any comfort that the Meeting would, in fact, be adjourned; and
 - (b) asked Clarendon Lawyers to provide AAR with information about how WGG proposes to effect an adjournment of the meeting or otherwise withdraw the 20 May Notice.
65. I am informed by Mr Hinchin of AAR and believe that on 10 June 2011 Clarendon Lawyers sent AAR a letter which indicated that:
- (a) WGG would issue a letter to Growers advising of WGG's intention to adjourn the meeting; and
 - (b) WGG members holding approximately 40% of the votes undertook to attend the meeting and vote in favour of the adjournment.

Now shown and produced to marked **BW-40** is a true copy of that letter.

66. I am informed by Mr Hinchin of AAR and believe that on 10 June 2011 Clarendon Lawyers sent AAR a copy of a letter dated 9 June 2011 from WGG addressed to Growers which stated that at *'the meeting of Growers scheduled for 14 June 2011, the WGG intends to move and vote on a resolution to adjourn the meeting until 10am EST on Thursday 23 June 2011'*. Now shown and produced to marked **BW-41** is a true copy of that letter (the **9 June Letter**).
67. I attended the meeting of Growers in the 1995-1999 Scheme on 14 June 2011. At that meeting, a resolution was passed adjourning the meeting to 10:00 am on 23 June 2011.
68. On 20 June 2011, I instructed AAR to send a letter to Clarendon Lawyers summarising the Receivers' response to the 9 June Letter and highlighting the deficiencies in the information



provided to Growers in the 20 May Notice, the Explanatory Memorandum and the 9 June Letter. Now produced and shown to me and marked **BW-42** is a true copy of that letter.

69. The Receivers remain particularly concerned regarding the Dilution Mechanism. The 9 June Letter describes an amendment to the WGG Proposal to incorporate an 'Exit Option', whereby Growers can elect to withdraw from the Scheme (the **Exit Option**). The Exit Option is summarised at pages 3 and 4 of the 9 June Letter under the heading 'Exit Option.'
70. The Receivers are of the view that the Exit Option does not provide Growers who are unable (or do not wish) to make the annual contributions contemplated by the WGG Proposal with a mechanism to realise a fair and reasonable price for their Scheme interests.
71. Accordingly, the Receivers remain of the view that, in the absence of an effective mechanism facilitating the sale or transfer of Growers' interests in the Scheme, the Dilution Mechanism is unfair and unnecessarily prejudicial to Growers (like WFL):
- (a) who are unable to pay the fees contemplated under the WGG Proposal; and/or
 - (b) who do not wish to invest further funds in the Scheme and who might consider that a better return is available to them under the Liquidators' realisation proposal.
72. The AAR Letter to Clarendon Lawyers described in paragraph 68 above requested confirmation by 3:00 pm on 21 June 2011 from Grimsey and Redisland as to whether they would withdraw the Notice of Meeting, and stated that if such confirmation was not received by 3:00 pm on 21 June 2011 the Receivers would issue proceedings seeking appropriate relief in relation to the meeting of Growers.
73. I am informed by Mr Hinchey of AAR and believe that at 2:07 pm on 21 June 2011, AAR received an email from Arnold Bloch Liebler, solicitors to the Liquidators, attaching a letter from Arnold Bloch Liebler to Clarendon Lawyers dated 21 June 2011. Now produced and shown to me and marked **BW-43** is a true copy of that letter.
74. I am informed by Mr Hinchey of AAR and believe that on 21 June 2011, Clarendon Lawyers sent AAR a letter in response to the letter referred to in paragraph 68. The letter indicated that Grimsey and Redisland would not be withdrawing the Notice of Meeting. Now produced and shown to me and marked **BW-44** is a true copy of that letter.

RECEIVERS' OBSERVATIONS ON THE WGG PROPOSAL

75. As noted in paragraph 29 above, WFL is the owner of the Bombala Land on which the Scheme is operated.

76. The Receivers' review of WFL's books and records and other inquiries have revealed no evidence that the Bombala Land was acquired by WFL using contributions of Growers in the Scheme (or in any other scheme operated by WFL) or any other basis to conclude that the Bombala Land can be characterised as 'scheme property' (of the Scheme or otherwise).
77. The Receivers are therefore of the view that, even if the WGG Proposal is adopted, WFL will retain the freehold in the Bombala Land and will remain the lessor under the Lease Agreements for the Scheme.
78. The receivers agree with the Liquidators' realisation proposal and, in particular, that:
- (a) the Bombala Land should be realised, as part of a sale of all the freehold and Forestry Commission leasehold land owned by WFL, on terms that Growers will receive the net proceeds of sale of the Trees on the land;
 - (b) the sale of the Bombala Land should occur as soon as possible as the trees are not being maintained, the assets are wasting;
 - (c) the liquidators of WFL are entitled to disclaim the Lease Agreements relating to the Scheme, or alternatively should have the power to terminate the Lease Agreements in order to effect an orderly and swift realisation of WFL's assets.
79. Regardless of whether the WGG Proposal is adopted, the Receivers propose to press the liquidators of WFL to take whatever steps are open to them to effect an orderly and swift realisation of the Bombala Land, including by disclaimer of the Lease Agreements for the Scheme.
80. A disclaimer of the Lease Agreements for the Schemes will, on the terms of the Grower Loans, accelerate Growers' repayment obligations under the Grower Loans.
81. The Receivers are concerned that:
- (a) despite their letter to Growers of 30 May 2011 (referred to in paragraph 59 above) and the 9 June Letter, these matters have not been adequately brought to the attention of Growers by WGG;
 - (b) the Explanatory Memorandum and accompanying material could leave Growers with the misleading impression that, if they vote for the WGG Proposal, the Scheme (and their Lease Agreements) will continue and their Grower Loans cannot be accelerated; and
 - (c) some Growers might be induced to vote in favour of the WGG Proposal in the mistaken belief that, by doing so, their Grower Loans cannot be accelerated.

GROWER CORRESPONDENCE

82. Since the Receivers' sent their letter to Growers of 30 May 2011 (referred to in paragraph 59 above), my staff and I have had discussions with a number of Growers, who have expressed concern about the WGG Proposal and, in particular, the Dilution Mechanism and the inadequacy of the information provided by the WGG.
83. On 13 June 2011, I received a letter from one such Grower, Ms Susan Logan, in which Ms Logan describes a number of concerns she has with respect to the WGG Proposal. Now produced and shown to me and marked **BW-45** is a copy of the letter.

UNDERTAKING AS TO DAMAGES

84. WFL and the Receivers are prepared to give the usual undertaking as to damages in respect of the relief sought pursuant to their application. The Receivers are holding the proceeds of sale of certain asset sales (in excess of \$1,000,000) as funds in the receivership and, on that basis, in the event the undertaking were to be called upon, the Receivers believe that WFL will be in a position to meet any call out of the proceeds of sale of WFL's charged assets.

ORDERS

85. In light of the matters set out above, the Plaintiffs respectfully seek orders of this Honourable Court granting the Plaintiffs' application as set out in the originating motion.
86. Now produced and shown to me and marked **BW-46** is a copy of the plaintiffs' draft statement of claim.

AFFIRMED by BRYAN WEBSTER at
Melbourne in the State of Victoria this
21st day of June 2011



Before me



MATTHEW SIMON McCARTHY
of 530 Collins Street, Melbourne
Victoria 3000
An Australian Legal Practitioner
within the meaning of the
Legal Profession Act 2004

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

**LIST
S CI 2011**

**IN THE MATTER OF THE WILLMOTT FORESTS 1995-1999 PROJECT
ARSN 089 598 612**

B E T W E E N

**WILLMOTT FORESTS LIMITED (RECEIVERS AND MANAGERS APPOINTED)
(IN LIQUIDATION) ACN 063 263 650 (IN ITS CAPACITY AS A MEMBER OF
THE SCHEME) AND OTHERS**

Plaintiffs

and

**GRIMSEY FINANCIAL SERVICES PTY LTD ACN 113 911 247
AND OTHERS**

Defendants

SCHEDULE OF PARTIES

**WILLMOTT FORESTS LIMITED (RECEIVERS AND MANAGERS APPOINTED)
(IN LIQUIDATION) (IN ITS CAPACITY AS A MEMBER OF THE SCHEME)
ACN 063 263 650**

First Plaintiff

BRYAN WEBSTER

Second Plaintiff

MARK ANTHONY KORDA

Third Plaintiff

MARK FRANCIS XAVIER MENTHA

Fourth Plaintiff

and

**GRIMSEY FINANCIAL SERVICES PTY LTD
ACN 113 911 247**

First Defendant

**REDISLAND AUSTRALIA LIMITED
ACN 104 555 455**

Second Defendant

**WILLMOTT GROWERS GROUP INC (VIC)
ABN 34 287 512 211**

Third Defendant

PAUL ROBERT CHALLIS

Fourth Defendant