

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

LIST E
S CI 2011 3155

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

BETWEEN

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
Defendants

AFFIDAVIT OF CRAIG DAVID CROSBIE
DATED 22 JUNE 2011

On 22 June 2011, I, **CRAIG DAVID CROSBIE** of Level 21, 181 William Street, Melbourne, in the State of Victoria, 3000, Chartered Accountant, **SAY ON OATH** that:


- 1 On 22 March 2011, I was appointed joint and several Liquidator of Willmott Forests Limited (ACN 063 263 650) (**WFL**) and its wholly owned subsidiaries (together, the **Willmott Group of Companies**) along with my partner Ian Carson (the **Liquidators**). I am authorised to make this affidavit on behalf of the Liquidators.
- 2 Except where I otherwise indicate, I make this affidavit from my own knowledge. Where I depose to matters from information and belief, I believe those matters to be true. I am authorised by Mr Carson to make this affidavit on his behalf. Reference in this affidavit to "we", "us", "our" or "ourselves" is a reference to Mr Carson and me.
- 3 I have been a partner of the firm PPB Advisory since 2002. I am a Registered Liquidator and an Official Liquidator of the Court. I am a member of the Institute of Chartered Accountants, the Australian Institute of Company Directors and the

Filed on behalf of the Liquidators



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Insolvency Practitioners Association of Australia. I also hold a Bachelor of Business. I have worked in corporate insolvency for over 21 years.

- 4 I have reviewed the Receiver's application and the affidavit of Brian Webster affirmed on 21 June 2011 (**Webster Affidavit**). The Liquidators support the relief sought by the Receivers.

Current Federal Court Proceedings

- 5 On 11 May 2011, I issued on WFL's behalf proceeding VID 386 of 2011 in the Federal Court of Australia. In those proceedings, we seek orders and directions pursuant to s 511 of the Corporations Act 2001 in connection with a number of managed investment schemes, including the Willmott Forests 1995-1999 Project (ARSN 089 589 612) (the **Scheme**) for which WFL is the responsible entity.
- 6 Insofar as the application affects the Scheme, we seek orders and directions that the Liquidators are justified and reasonable in causing WFL to exercise its power pursuant to section 601GC of the Act to amend the constitution of the Scheme to empower WFL to terminate, relinquish or surrender the leases, sub-leases, forestry management agreements and other project documents between WFL and Growers and any rights of the Growers arising from on in connection with the Project Documents.
- 7 The directions and orders sought are on the basis that WFL considers that they will not adversely affect Growers' rights and Growers will be entitled to the net proceeds of sale, or any other value or consideration received for or referable to the amendment or disclaimer, of the Project Documents or Grower Rights.
- 8 The directions and orders sought are limited to amending the constitution of the Scheme to provide the power to disclaim and that WFL does not intend to exercise that power at this stage. In fact, we set out in that application that we will apply to the Court for further orders and directions before seeking to exercise that power.
- 9 The purpose of our application and the directions and orders being sought is facilitative in nature in order to allow the Liquidators and Receivers to commence a sale campaign of the assets of WFL. We consider that the granting of a power of sale and/or the confirmation of the Liquidators' right to disclaim the Project Documents will provide sufficient comfort to potential purchasers of the ability of the liquidators to give clear title on settlement of any sale. Potential purchasers should




therefore be willing to participate in the sale process and incur the costs and take the time needed to submit a binding bid. This should maximise the price obtained both for the land and trees.

- 10 VID 386 of 2011 is listed for final hearing on Tuesday 28 June 2011 and has been set down for two days.

WGG Proposal

- 11 On 12 May 2011, I was forwarded a copy of an email from Mark Bland of Clarendons to Jane Sheridan, a partner of our solicitors Arnold Bloch Leibler (**ABL**) attaching a draft Notice of Meeting and Explanatory Memorandum in relation to the WGG Proposal and seeking comments within 24 hours.

- 12 On 13 May 2011, I instructed ABL to send a letter to Clarendons setting out our main concerns with the WGG Proposal. Now produced and shown to me and marked "**CDC-1**" is a true copy of ABL's response.

- 13 On 20 May 2011, I was forwarded a copy of the Notice of Meeting and Explanatory Memorandum in relation to the WGG Proposal which was issued to members of the Scheme. A copy of those documents are at BW-33 of the Webster Affidavit. Whilst the Explanatory Memorandum had been amended to take into account some of the matters raised in ABL's response of 13 May 2011, a number of those matters had not been addressed including those set out in paragraph 15 below.

- 14 On 10 June 2011 I was forwarded a copy of an email from Mark Bland of Clarendons to Jane Sheridan of ABL attaching a copy of a letter sent by WGG to Growers (**Further Notice**) providing additional information in relation to the WGG Proposal and addressing certain concerns which the Receivers had raised. A copy of that Further Notice is at BW-41.

- 15 I continue to have serious concerns with the WGG Proposal, in particular:

- (a) Unknown and Uncapped Fees: The WGG Proposal effectively changes the Scheme from a non-contributory scheme to a contributory scheme. Members are required to make an initial contribution of \$500 per hectare (being a \$200 reconstruction fee plus \$300 initial management fee). An annual management fee, estimated at \$150 to \$250 per hectare, would also be payable under the WGG Proposal. However, the new responsible entity may issue supplementary invoices if the initial contribution or annual management

fees are insufficient to cover its costs. Without any guarantee about how much they will be required to contribute, Growers cannot properly assess if the WGG Proposal is in their best interests.

- (b) Dilution of Interest: The WGG Proposal provides a dilution mechanism in the event that a Grower is unable or unwilling to contribute to the Scheme. Growers will lose 1.5% of their interest for every \$10 invoiced but not paid. Accordingly, if a Grower does not contribute the initial contribution of \$500 per hectare, their interest will automatically be diluted by 75%. The new responsible entity has not agreed to apply to the Court for approval of the WGG Proposal and, accordingly, there is no safeguard for the minority interests. The Further Notice attempted to provide some mechanism for matching Growers who wanted to sell their interests with potential purchasers. However, I do not consider this mechanism would adequately protect those Growers.
- (c) No guarantee the Scheme will continue: If the WGG Proposal is passed, the new responsible entity will undertake due diligence and a viability report in the first 60 days. If this study results in the new responsible entity concluding that the Scheme is not viable, then it may sell the assets and wind up the scheme. Growers who have not contributed the initial contribution of \$500 per hectare will have had their interest diluted by 75%, even though the new responsible entity has elected to wind up the Scheme. Concurrently, if it does not receive sufficient contributions to fund the operations, either immediately or at any time during the life of the scheme, then it may sell the assets and wind up the Scheme. If the Scheme is to be wound up, then we consider it would be more beneficial for Growers that it be wound up by WFL at the same time as the other Willmott Schemes. This is because a joint sale campaign for all of the WFL and Scheme assets will probably result in a higher purchase price and will reduce the costs on a scheme-by-scheme basis. In addition, it means that Growers in the Scheme will not have paid any fees to the new responsible entity and/or lost any of their interest due to the dilution mechanism.
- (d) Payment of any outstanding debt: The WGG Proposal does not adequately address the payment of any outstanding debt that is owing in relation to the Scheme. We estimate the Liquidators have incurred approximately \$200,000 in costs attributable to the Scheme. The Receivers' costs will also need to be considered.

Effect of the WGG Proposal on VID 386 of 2011

- 16 If the WGG Proposal is passed, then WFL will be replaced as responsible entity of the Scheme and the orders sought in VID 386 of 2011 insofar as they relate to the Scheme can no longer be sought. As a result, we may not be able to include the land affected by the Scheme in any sale campaign. The Growers could lose the opportunity to properly evaluate their options between terminating or continuing the scheme. The intermingling of land will also make any attempt by the Liquidators to sell the land used in the schemes complex and may reduce the attractiveness of any sale to potential purchasers. Due to the statement in the Further Notice that WGG was "not aware of any reason why, if the WGG Proposal fails or cannot be implemented, the land and trees in the Project cannot be sold under the Liquidator's proposal", Growers have been led to believe that the replacement of WFL as responsible entity would not affect their right to participate in a sale by the Liquidators.
- 17 In my view, it would be more sensible for the WGG to undertake its due diligence and viability report prior to putting the WGG Proposal to members. That way, Growers would not be prejudiced if it is concluded that the Scheme is not viable and the WGG decides to withdraw its proposal. The defendants (and/or their associates) participated in an Expressions of Interest campaign and were provided with access to all relevant information and essentially all documentation in the Liquidators' control. We would also be willing to provide additional access and assistance to the WGG.
- 18 In addition, the due diligence and viability analysis will take place at the same time as the sale campaign. If the WGG does intend to issue another proposal to replace the responsible entity and continue running the Scheme, then members will be able to assess the proposal at the same time as any offers received from the Liquidators and/or Receivers in the sale process. Growers and the responsible entity will be in a better position to assess what is in the Growers' best interests.
- 19 I do not consider the WGG Proposal would be prejudiced by the granting of the orders and directions sought in VID 386 of 2011.

Valuation of Voting Interests

- 20 Pursuant to s253F(c) of the Act, WFL as responsible entity is required to calculate values for interests in the Scheme for the purposes of voting. The value of an

interest in a registered scheme is calculated relevantly as the amount that the responsible entity determines a willing but not anxious buyer would pay for the interest if it was sold on the business day immediately before the day on which the poll is taken.

- 21 On 21 March 2011, I instructed Jane Sheridan of ABL to write to Clarendons (on behalf of the Growers) and Allens (on behalf of the Receivers) inviting them to provide submissions in relation to the manner in which the interests in the Scheme should be valued. Now produced and shown to me and marked "**CDC-2**" is a true copy of ABL's letter.
- 22 I have been forwarded a copy of a letter from Allens to ABL, dated 13 April 2011 which sets out preliminary comments by the Receivers in relation to the valuation of the interests. Now produced and shown to me and marked "**CDC-3**" is a true copy of Allens' letter. I have been informed by Jane Sheridan that Matthew Whittle of Allens advised her that the Receivers intended to supplement their letter of 13 April 2011 with further submissions prior to any meeting going ahead. I am not aware of any further submissions being provided by the Receivers.
- 23 I have also been forwarded a copy of a letter from Clarendons to ABL dated 9 June 2011 which sets out the WGG's submissions in respect of the valuation of voting rights and includes a Deed of Assignment. Now produced and shown to me and marked "**CDC-4**" is a true copy of Clarendons' letter.
- 24 The Scheme covers 5,473 hectares and there are 757 Growers. However, a number of those Growers have entered into deeds of assignment, deferment and variation with WFL pursuant to which Growers assigned a percentage of their interest (being defined in the relevant deeds of assignment, deferment and variation as the trees referred to in the agreements entered into by the Growers as part of their application for an interest in the Scheme) to WFL.
- 25 I refer to paragraphs 36 to 38 of the Webster Affidavit which set out WFL's interest in the Scheme as a member. The Deed of Assignment attached to WGG's Submissions appears to affect some of WFL's interest. I had not seen a copy of the Deed of Assignment before it was provided to ABL by Clarendons. I have not yet been able to confirm its legitimacy.

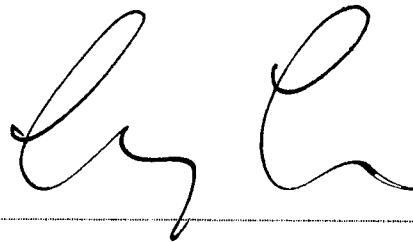
- 26 I understand that an interest in a managed investment scheme is defined in the Act as a right to benefits produced by the scheme (whether the right is actual, prospective or contingent and whether it is enforceable or not).
- 27 On the basis of the information in our possession and the submissions provided to us to date, I intend to determine the valuation of the interests in the Scheme having regard to the following principles:
- (a) Growers have an interest in the Scheme;
 - (b) any person to whom a Grower has assigned an interest under a deed of assignment, deferment and variation (an "Assigned Interest") also has an interest;
 - (c) the value of an Assigned Interest will be taken to have a value equal to the amount obtained by multiplying the percentage of the Grower's interest assigned by the value the Grower's interest would have had if no part of it had been assigned and the value of the interest of the Grower who assigned the Assigned Interest will be reduced accordingly;
 - (d) any person to whom all or part of an Assigned Interest has been assigned ("Further Assigned Interest") also has an interest;
 - (e) the value of a Further Assigned Interest will be taken to have a value equal to the amount obtained by multiplying the percentage of the Assigned Interest which was assigned by the value the Assigned interest would have had if no part of it had been assigned and the value of the interest of the person who assigned the Further Assigned Interest will be reduced accordingly;
 - (f) Growers who invested in the Scheme pursuant to a particular prospectus will be taken to have interests of the same value (subject to any adjustment required by virtue of paragraphs (b) and (c)), regardless of the particular plantation in which their trees are located; and
 - (g) if Growers elected to "walk away" from the interest, including as a consequence of default by the Growers under loan agreements entered into by Growers at the time of acquiring their interest in the Scheme, an interest of corresponding value is held by WFL or the person to whom the interest defaulted.

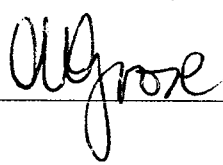
28 On 7 December 2010, in our previous capacity as administrators of the Willmott Group of Companies, we engaged Poyry Management Consulting (Australia) Pty Ltd (**Poyry**) to conduct a detailed viability analysis of the various Willmott Schemes. On 19 January 2011, we received Poyry's final viability analysis of the Willmott schemes (**Poyry Report**). The Poyry Report values the Scheme on a project by project basis (there are six projects within the Scheme, each project corresponding to a prospectus issued by WFL in relation to the Scheme). In undertaking its valuation, Poyry applies a discount rate of between 11-15%.

29 I intend to base my valuation of interests in the Scheme on the Poyry Report. Whilst I do not agree that a discount rate of between 11-15% is correct (I believe that a higher discount rate is appropriate), the discount rate applied will not affect voting values since the same discount rate will be applied to all interests. I propose applying a discount rate of 15%.

30 I have not yet had an opportunity to identify to which project each interest in the Scheme (determined in accordance with the principles set out in paragraph 27) relates and therefore determine the value of each interest for voting purposes. If the meeting proceeds, I will complete the determination of valuation required by section 253F(c) of the Act.

SWORN at Melbourne in the State of Victoria this 22nd day of June 2011

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Before me:

MEAGAN LOUISE GROSE
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Level 21, 333 Collins Street
Melbourne 3000
An Australian Legal Practitioner within the meaning of the Legal Profession Act 2004