

IN THE FEDERAL COURT OF AUSTRALIA
VICTORIA DISTRICT REGISTRY

VID 386 of 2011

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

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

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

CRAIG DAVID CROSBIE
Second Plaintiff

IAN MENZIES CARSON
Third Plaintiff

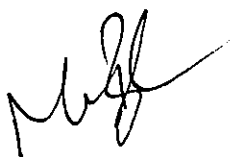
FOURTH AFFIDAVIT OF MARK ALBERT BLAND DATED 24 JUNE 2011
(Order 14, rule 2)

Document number	Details	Affidavit paragraph	page	MAB-3 page
1	Fourth affidavit of Mark Albert Bland in opposition to application for orders and directions affirmed on 24 June 2011	n/a	n/a	n/a
2	Exhibit MAB-3 being a bundle of copy documents referred to in the affidavit of Mark Albert Bland affirmed 24 June 2011	-	4	n/a
2.1	Originating process dated 21 June 2011 filed in Supreme Court of Victoria proceeding SCI 2011 3155 (Supreme Court OP)	14.a.	4	1
2.2	Affidavit of Bryan Webster affirmed 21 June 2011 and filed in proceeding SCI 2011 3155 (Webster SC Affidavit)	14.b.	4	6
2.3	Affidavit of Mark Albert Bland affirmed 22 June 2011 and filed in proceeding SCI 2011 3155	17	4	25

Filed on behalf of Willmott Growers Group Inc (Reg No A0055077L) an Intervener

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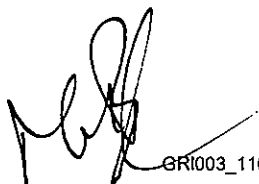


Document number	Details	Affidavit paragraph	page	MAB-3 page
2.4	Affidavit of Craig David Crosbie sworn 22 June 2011 and filed in proceeding SCI 2011 3155 (Unsworn Crosbie SC Affidavit)	20	5	39
2.5	Plaintiffs' outline of submissions in proceeding SCI 2011 3155	23.a.	5	51
2.6	Defendants' outline of submissions in proceeding SCI 2011 3155	23.b.	5	67
2.7	Orders made by the Honourable Justice Beach in proceeding SCI 2011 3155	25.a.	5	75
2.8	Transcript of proceedings 22 June 2011 in SCI 2011 3155	25.b.	5	78

On 24 June 2011, I, **MARK ALBERT BLAND**, of Level 17, Rialto North Tower, 525 Collins St Melbourne, Victoria, solicitor, affirm and say as follows:

1. I am a director of Clarendon Lawyers.
2. Clarendon Lawyers are solicitors for the Willmott Growers Group Inc (Reg No A0055077L) (**WGG**), an intervener in this proceeding.
3. I have care and conduct of this matter on behalf of Clarendon Lawyers and am authorised to make this affidavit on WGG's behalf.
4. I refer to the following affidavits I have previously made and filed in this proceeding and the exhibits thereto:
 - a. affidavit affirmed 3 June 2011 (**First Affidavit**) and exhibit MAB-1;
 - b. affidavit affirmed 20 June 2011 (**Second Affidavit**);
 - c. affidavit affirmed 22 June 2011 and exhibits MAB-2 to MAB-4 (**Third Affidavit**);

(together, **Previous Affidavits**).
5. This affidavit supplements my Previous Affidavits.
6. I make this affidavit from information within my own knowledge except where otherwise stated.




7. I have read the following affidavits filed in this proceeding and viewed the exhibits referred to therein:

- a. Affidavit of Craig Crosbie sworn 25 November 2010 (**First Crosbie Affidavit**);
- b. Affidavit of Craig Crosbie sworn 4 February 2011 (**Second Crosbie Affidavit**);
- c. Affidavit of Craig Crosbie sworn 11 May 2011 (**Third Crosbie Affidavit**);
- d. affidavit of Bryan Webster affirmed on 17 June 2011 and filed in this proceeding (**Webster Affidavit**) and viewed the exhibits referred to therein.
- e. affidavit of Craig Crosbie sworn 22 June 2011 (**Fourth Crosbie Affidavit**).

8. I adopt the definitions used in my Previous Affidavits.

9. Now produced and shown to me marked **MAB-3** is a folder containing copy documents I refer to in this affidavit. Unless otherwise indicated, where I refer to page numbers of documents in this affidavit, they are references to the paginated numbers of MAB-3.

Supreme Court Proceeding SCI 2011 3155

10. I refer to paragraph 11 of my Second Affidavit where I depose to the adjournment of the 1995-99 Project members meeting to 23 June 2011 at 10:00am.

11. By originating process dated 21 June 2011 (the **Supreme Court OP**) the Receivers issued proceedings in the Supreme Court of Victoria against WGG, Grimsey Financial Services Pty Ltd, Paul Challis and Redisland Australia Ltd (the **Defendants**) (the **Receivers Injunction Application**) seeking the following orders.

1. *Interim, interlocutory and/or final injunctions under subsections 1324(1) and (4) of the Corporations Act and/or section 37(1) of the Supreme Court Act:*

(a) *prohibiting any meeting being held pursuant to the notice of meeting issued by the 1st and 2nd Defendants on 20 May 2011;*

(b) *alternatively, prohibiting resolutions 1 and 2, alternatively resolution 2, as set out in the notice of meeting issued by the 1st and 2nd Defendants on 20 May 2011, or any resolutions to substantially the same effect, being put to the meeting called for 14 June 2011 or to any subsequent meeting of the members of the Scheme.*




2. *Further or alternatively, interim, interlocutory and/or final injunctions under subsections 1324(1) and (4) of the Corporations Act and/or section 37(1) of the Supreme Court Act prohibiting the defendants and each of them from procuring, causing or acquiescing in resolutions 1 and 2, alternatively resolution 2, as set out in the notice of meeting issued by the 1st and 2nd Defendants on 20 May 2011, or any resolutions to substantially the same effect, being put to the meeting called for 14 June 2011 or to any subsequent meeting of the members of the Scheme.*

3. *Such further or other orders as the Court deems appropriate.*

12. This relief was sought on the basis that the amendments to the 1995-99 Project constitution proposed by resolution 2 of the WGG 1995-99 Proposal would constitute a fraud on the power and was supported by an affidavit from Bryan Webster affirmed 21 June 2011 and exhibits thereto (**Webster SC Affidavit**).

13. The Receivers' Injunction Application was listed for hearing at 10:30am the following morning, Wednesday 22 June 2011.

14. I refer to pages 1-25 of **MAB-3** where copies of the following documents appear:

- a. the Supreme Court OP (pages 1 to 5);
- b. the Webster SC Affidavit (pages 6 to 24); and

15. The originating process and affidavit in support were served upon the Defendants at 5:46pm on Tuesday 22 June 2011.

16. On the morning of 22 June 2011, prior to the hearing, I affirmed an affidavit in response to the Supreme Court OP and Webster SC Affidavit. This was served upon the Receivers and provided to the Court, the Liquidators and the Australian Securities and Investments Commission prior to the hearing.

17. I refer to pages 25-38 of MAB-3 where a copy of that affidavit appears.

18. The Webster SC Affidavit fails to explain the delay in the Receivers issuing proceedings to enjoin the meeting until the two days before, given there had been no material changes in the circumstances surrounding the meeting since 10 June 2011.

19. Subsequently to affirming and serving my affidavit but prior to the hearing, Clarendon Lawyers received from ABL a copy of an unsworn affidavit of Mr Crosbie and draft exhibits thereto in support of the Receivers SC Application (**Unsworn Crosbie SC Affidavit**).
20. I refer to pages 39 to 50 of MAB-3 where a copy of the Unsworn Crosbie SC Affidavit appears.
21. Clarendon Lawyers has been advised by Ms Kimberley MacKay of ABL that as at 9:45am today, 24 June 2011 the Unsworn Crosbie SC Affidavit had not been sworn nor filed.
22. Both the defendants and the plaintiffs filed outlines of submissions.
23. I refer to pages 51 to 74 of MAB-3 where the following appear:
- a. Outline of submissions of the plaintiffs dated 22 June 2011 (pages 51 to 66); and
 - b. Outline of submissions of the defendants dated 22 June 2011 (pages 67 to 74).
24. The matter proceeded before the Honourable Justice Beach and his Honour made the orders *inter alia* restraining the putting of the proposed special resolution.
25. I refer to pages 75 to 86 of MAB-3 where the following appear:
- a. A copy of the orders made by the Honourable Justice Beach dated 22 June 2011 (pages 75 to 77); and
 - b. A copy of the transcript of the hearing (pages 78 to 86).
26. The matter is adjourned to 1 July 2011 for further hearing before her Honour Justice Ferguson.
27. The evidence adduced so far on behalf of the Liquidators and Receivers in the present matter omits the fact that the Receivers have taken recent steps to prevent a viable alternative involving the continuation of the 1995-99 Project from proceeding, such steps being actively supported by the Liquidators.



Prospects of the WGG 1995-99 Proposal being passed by Growers

28. I am informed by Paul Challis and believe that the proxies provided to Primary RE for the proposed meeting on 23 June 2011 are such that all resolutions propounded by WGG would have carried by the requisite majorities on the basis of each 'Hectare' in the register of Growers having an equal voting value. I am further informed by Paul Challis and believe that he proposes to make an affidavit to that effect on Monday.

Viability of the 1995-99 Project

29. WGG has conducted an assessment of the viability of the 1995-99 Project (**WGG Viability Analysis**) using the data and assumptions relied upon in the Poyry Report (**Poyry Data**) in combination with its own estimation of reconstruction costs of the 1995-99 Project used in the WGG 1995-99 Proposal.

30. The following table sets out the Net Present Values and Net Cash Flows of each year on a Per Hectare basis using the 11% discount rate (as recommended in the Poyry Report) and 15% discount rate (adopted by Poyry's sensitivity analysis).

Year	Net Cash Flow	Net Present Value	Discount Rate
1995	\$8,400	\$2,451.46	11%
	\$8,400	\$1,539.81	15%
1996	\$3,698	\$677.44	11%
	\$3,698	\$266.28	15%
1997	\$9,656	\$1,784.36	11%
	\$9,656	\$767.10	15%
1998	\$9,568	\$1,454.62	11%
	\$9,568	\$494.89	15%
1999	\$882	(\$1,030.39)	11%
	\$882	(\$1,114.52)	15%

31. I note that even with the inclusion of Reconstruction Costs taken from the WGG 1995-99 Proposal, the Net Cash Flow is positive for every year and the Net Present Value of each year within the 1995-99 Project is positive with the exception of 1999. I note that the Net Cash Flow is not net of taxes as the tax position of each Grower will be different.

32. With respect to the 1999 year, I am informed by Mr Paul Challis and believe that there are currently a number of outstanding insurance claims, the benefit of which have not been incorporated in the WGG Viability Analysis. Although the quantum is unknown at present, payment of the outstanding insurance claims would increase the Net Cashflow and Net Present Value in relation to 1999.

33. I am further informed by Mr Challis and believe that to the extent that WFL (in its capacity as a Grower) cannot make the contributions as set out in the WGG 1995-99 Proposal, that will not impact on the viability of the 1995-99 Project because WFL's interests in Hectares were acquired from Growers whose lots were affected by snow (as in the Numeralla plantation relating to the 1996 year) or otherwise damaged.


34. I am informed by Mr Challis and believe that such damaged Hectares will be excised from the 1995-99 Project. Accordingly, any reduction in yield will be offset by reduction in maintenance and insurance costs. As such, by carving out a low performing area, it can be expected that the overall 1995-99 Project performance will increase.

35. I believe on the basis of the WGG Viability Analysis and matters set out in paragraphs 29 to 35 below in this affidavit, that the 1995-99 Project is viable if continued pursuant to the WGG Proposal.

36. I am further informed by Paul Challis and believe that he proposes to make an affidavit confirming the above on Monday.

AFFIRMED by the said)
MARK ALBERT BLAND)
at Melbourne in the State of Victoria)
this 24nd day of June 2011)



Before me:.....


DAN MACKAY
of Clarendon Lawyers Pty Ltd
Level 17, Rialto North Tower
525 Collins St, Melbourne Victoria 3000
an Australian Legal Practitioner within the
meaning of the *Legal Profession Act 2004*

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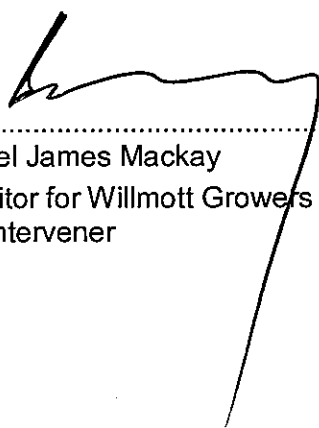
CRAIG DAVID CROSBIE
Second Plaintiff

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Third Plaintiff

AFFIDAVIT – CERTIFICATE OF COMPLIANCE
(Order 14, rule 5A)

I, DANIEL JAMES MACKAY, certify to the Court that the affidavit of **MARK ALBERT
BLAND** affirmed on 22 June 2011 filed on behalf of the plaintiffs complies with Order 14,
rule 2 of the Federal Court Rules.

Date: 24 June 2011



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Daniel James Mackay
Solicitor for Willmott Growers Group Inc
an Intervener