

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

CORPORATIONS LIST
S CI 2011 6816

**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 INVESTMENT SCHEMES LISTED IN
SCHEDULE 2 AND IN ITS CAPACITY AS MANAGER OF THE UNREGISTERED MANAGED
INVESTMENT SCHEMES LISTED IN SCHEDULES 3 AND 4 AND ORS ACCORDING TO
SCHEDULE 1**

Plaintiffs

AFFIDAVIT OF MARK JAMES HODDINOTT

Date of documents: January 2012
Filed on behalf of: WILLMOTT ACTION GROUP INC (Reg No A0055149L) seeking leave
under Order 2.13 Supreme Court (Corporations) Rules 2003

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On January 2012, I, Mark James Hoddinott of 517 Old Maitland Road, Mardi
NSW, financial planner, accountant and tax agent, **affirm and say** that:

1. I am a member and Chair of the Executive Committee of the
WILLMOTT ACTION GROUP INC (Reg No A0055149L) (**WAG**) and am
authorised to make this affidavit on WAG's behalf.
2. I make this affidavit from my own knowledge, except where otherwise stated,
and after having made all due and proper enquiries. Where I depose to
matters on the basis of information or belief, I believe those matters to be true.

3. I refer to my affidavit affirmed in this proceeding on 9 January 2012 (**First Affidavit**). I have defined a number of terms in that affidavit and I adopt those definitions in this affidavit.
4. I am personally a member of some of the Schemes. I refer to paragraphs 14 to 22 of my First Affidavit, which set out the details of my personal investments in the Schemes.
5. I refer to paragraphs 23 to 29 and exhibits “MJH-7” and “MJH-8” of my First Affidavit regarding WAG. WAG has 1,600 registered Growers, and cumulative historical cost of those Growers’ investments in the Schemes is approximately \$132 million.
6. WAG specifically seeks intervention and opposition to the plaintiffs’ proposals in so far as they affect:
 - a. Willmott Forests Project (ARSN 089 379 975)
 - b. BioForest Dual Income Project 2006 (ARSN 1149 153 535)
 - c. BioForest Sustainable Timber and Biofuel Project 2007 (ARSN 124 135 535)
 - d. Willmott Forests Premium Forestry Blend Project (ARSN 131 549 589)
 - e. Willmott Forests Premium Forestry Blend Project – 2010 (ARSN 142 722 585)
 - f. Willmott Forests Premium Timberland Fund No. 1 (ARSN 136 768 520)
 - g. Willmott Forests – Professional Investor – 2001 Project – 2001 Information Memorandum;
 - h. Willmott Forests – Professional Investor – 2002 Project – 2002 Information Memorandum;

- i. Willmott Forests – Professional Investor – 2003 Project – 2003 Information Memorandum (2003) and 2003 Information Memorandum (2004);
- j. Willmott Forests – Professional Investor – 2004 Project – 2004 Information Memorandum and 2004 Information Memorandum (2005); and
- k. 2005 BioForest Wholesale Project No. 2 – 2005 Wholesale Forestry Memorandum (BioForest).
- l. Willmott Forests – Professional Investor – 2006 Project – 2006 Information Memorandum

Grower Statement of Wishes

- 7. I refer to paragraph 92 and exhibits “MJH-24” and “MJH-25” of my First Affidavit, regarding Grower Statements of Wishes sent out by WAG on 22 December 2011. Since affirming the First Affidavit, WAG has received an additional 237 signed Grower Statements of Wishes. The total number of signed Grower Statements of Wishes now received by WAG is 809. Now produced and shown to me and marked “**MJH-28**” is a copy of an updated spread sheet listing the Growers who have signed a Grower Statement of Wishes to date.

Sale of land

- 8. I refer to paragraphs 75 to 120 of the Crosbie Affidavit, in so far as they refer to the sale of freehold land owned by WFL (**Freehold Land**).
- 9. WAG does not object to the sale of the Freehold Land, provided that Grower Leases and Forestry Rights Agreements (as defined in the Crosbie Affidavit) are maintained (i.e. that the land is sold on an encumbered basis). As far as I am aware, the Liquidator has not to date offered the Freehold Land for sale on an encumbered basis (i.e. being encumbered by leases or the banks’ securities).

WGG Proposal

10. I refer to paragraphs 59 to 71 of the Crosbie Affidavit, and to paragraphs 35 to 54 of the Bland Affidavit, regarding a proposal by Willmott Growers Group Inc (Reg No A0055077L) (**WGG**) proposal to appoint a replacement entity for the 1995-1999 Registered Scheme (**WGG Proposal**).

Negotiations with potential replacement manager for unregistered schemes

11. I refer to the following schemes, which are included in Schedule 2:

- a. Willmott Forests – Professional Investor – 2001 Project – 2001 Information Memorandum;
- b. Willmot 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); and
- e. 2005 BioForest Wholesale Project No. 2 – 2005 Wholesale Forestry Memorandum (BioForest);
- f. Willmott Forests – Professional Investor – 2006 Project – 2006 Information Memorandum

(collectively, **the Professional Schemes**)

12. WAG, on behalf of the investors in the Professional Investor Schemes, is currently developing a proposal for the continuation of the Professional Investor Schemes. (**WAG Professional Investor Proposal**) The WAG Professional Investor Proposal will involve the replacement of WFL as

manager with Primary Securities Limited (**Primary**), and the continuation of the Professional Investor Schemes under Primary's management.

13. Development of the WAG Professional Investor Proposal and negotiations with Primary are currently being finalised and I anticipate that early next week notices of meeting will be issued calling meetings of members of the Professional Investor Schemes in approximately mid February 2012.

14. It has taken significant time to get to this stage. In addition, finalisation of the WAG Professional Investor Proposal has been delayed by the Christmas break and holiday.

Investigations to identify potential replacement responsible entity for registered schemes

15. I refer to the following schemes, which are included in Schedule 1:

- a. Willmott Forests Project (ARSN 089 379 975);
- b. BioForest Dual Income Project 2006 (ARSN 1149 153 535);
- c. BioForest Sustainable Timber and Biofuel Project 2007 (ARSN 124 135 535);
- d. Willmott Forests Premium Forestry Blend Project (ARSN 131 549 589);
- e. Willmott Forests Premium Forestry Blend Project – 2010 (ARSN 142 722 585); and
- f. Willmott Forests Premium Timberland Fund No. 1 (ARSN 136 768 520).

(collectively, **the Retail Schemes**)

16. WAG on behalf of the members in the Retail Schemes is currently in negotiations with two parties potentially interested in replacing WFL as the responsible entity for all the Retail Schemes. These negotiations are less advanced than the negotiations in respect of the Professional Schemes, however I anticipate that a proposal from one or both of the interested parties will be finalised within four weeks. Again, it has taken many months to get to this stage and due to the time of year, with numerous key personnel still being on vacation, there has been a delay of the usual kind incurred.

Application to be heard in proceedings

17. In WAG's application of 10 January 2012, WAG is seeking, amongst other things;

- a. That leave be granted to be heard in the proceed; and
- b. An order that the Liquidators convene meetings of members of the Schemes by no later than 28 February 2012, giving the members of the Schemes no later than 14 days' notice, to consider and if thought fit approve:
 - i. the terms of the Sales Contracts (as defined in the affidavit of Craig David Crosbie sworn on 13 December 2011 (**Crosbie Affidavit**)) and winding up of the Schemes, and the proposed distribution of the proceeds of the Sales Contracts; and
 - ii. the terms of any alternative proposals put forward in respect of the Schemes.

18. Now produced and shown to me and marked "**MJH-29**" is a printout of the transcript of the directions hearing held before Justice Davies in this proceeding and the 6762 Proceeding on 16 December 2012. I refer specifically to page 17, lines 15 to 24 of this transcript, where senior counsel for the Plaintiffs stated:

“Your Honour, can I please say something in relation to Mr See's position? I hadn't meant to suggest that I didn't know who the WAG Group is. I was trying to elicit the scope of interest in this particular application and Mr See has now made it plain that WAG is interested in the entirety of the schemes. Your Honour, it seems to us prudent that Your Honour have a contradictor. We wouldn't oppose the WAG be granting leave to intervene.”

19. I refer to paragraphs 13 and 19 of the affidavit of Patrick See sworn in this proceeding on 9 January 2012 (**See Affidavit**), and to exhibits PCS-2 and PSC-8 referred to in those paragraphs.
20. Exhibit PCS-2 to the See Affidavit is a letter to Lloyd & Lloyd Solicitors from the solicitors for the Liquidators dated 20 December 2012, confirming that the Liquidators (at that time) would not object if WAG applied to intervene in this proceeding or the 6762 Proceeding.
21. Exhibit PCS-8 to the See Affidavit is a letter to Lloyd & Lloyd Solicitors from the solicitors for the Liquidators dated 4 January 2012 (**4 January 2012 Letter**). In that letter, the solicitors for the Liquidator state that the Liquidators will object to WAG's applications to be heard in this proceeding and the 6762 Proceeding if WAG seeks adjournment of the hearing of this proceeding and the 6762 Proceeding.
22. My understanding of the 4 January 2012 letter is that the Liquidators will oppose WAG's applications filed in this proceeding and the 6762 Proceeding dated 10 January 2012. I am concerned that WAG may not obtain leave to be heard in this proceeding and the 6762 Proceeding.
23. As a direct result of the 4 January 2012 Letter, on 12 January 2012, WAG has resolved to call informal and if necessary formal meetings of members of the Professional Schemes and Retail Schemes, as set out below.
24. Further, WAG opposes the Liquidators Applications and, as the Liquidators oppose WAG intervening in this proceeding and the 6762 Proceeding, WAG

further objects to the summary form of proceeding being used by the Liquidators. Each investor of the respective Schemes should be joined, as each of their proprietary and leasehold interests are being proposed to be terminated by the Liquidators, without members being parties to the proceedings.

Meeting of members of Professional Schemes

25. WAG (and more precisely the statutory requisite number of members) is facilitating the calling the meetings referred to in paragraph 13 above and it is intended that the meetings will consider interdependent resolutions to consider and if thought fit:

- a. approve the WAG Professional Investor Proposal;
- b. effect amendments to the constituent documents of the Professional Investor Schemes to provide for their continuation;
- c. effect the removal of WFL as manager of the Professional Investor Schemes and replace it with Primary; and
- d. any additional matters as required.

Meetings of members of Retail Schemes

26. WAG (and more precisely a number just short of the statutory requisite number of members) is preparing to call informal meetings of all members of all Retail Schemes across all State capital cities in the first week of March 2012, to provide members of the Retail Schemes with an opportunity to consider the Sale Contracts and any other proposals.

27. WAG intends to issue the notices for the informal meetings of members of Retail Schemes within seven days. These notices will provide, amongst other things, that:

- a. the informal meetings of members of Retail Schemes may not proceed if orders are made by the Court requiring the Liquidators to call formal meetings of members of the Retail Schemes;
- b. members of retail schemes will be asked to call a formal meeting to vote on the Sale Contracts and any other proposals and, if appropriate, to vote on any resolutions necessary to approve and give effect to the Sale Contracts or another proposal.

28. In the above circumstances, WAG requests that the hearing be adjourned and that the Plaintiffs be directed to call meetings of members to enable the members to consider the Sale Contracts and further the proposals set out above.

29. Without such steps being taken, there is a real possibility that Scheme members' rights will be adversely affected by the Court approving the Sales Contracts, as the members consider that the Liquidators (as responsible entity) have not proven to them that the changes to the respective constitutions will not adversely affect members' rights – as they propose to terminate Grower Leases and sell Growers' assets over the opposition of Growers.

Affirmed at _____)
 In the State of New South Wales _____)
 by **MARK JAMES HODDINOTT** _____)
 this _____ day of January 2012. _____)

Before me: _____
 Name:
 Address:

SCHEDULE ONE
REGISTERED MANAGED INVESTMENTS 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 1149 153 535)
- (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 (ARSN 142 722 585)
- (h) Willmott Forests Premium Timberland Fund No. 1 (ARSN 136 768 520)

SCHEDULE TWO

UNREGISTERED MANAGED INVESTMENTS SCHEMES: PROFESSIONAL INVESTOR 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 THREE

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

- (a) McKenzie & Partners – Forestry Partnership No. 1 (1993);
- (b) Grimsey & Associates Pty Ltd Forestry Partnership No. 1 (1994);

(c) Grimsey & Associates Pty Ltd – Forestry Partnership No. 2 (1994);

(d) Grimsey & Associates Pty Ltd – Forestry Partnership No. 3 (1994);

(e) McKenzie & Partners – Forestry Partnership No. 2 (1994).