

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

Interlocutory process

Date of documents:

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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A. DETAILS OF APPLICATION

This application is made under Order 2.13(1)(c) of the *Supreme Court (Corporations) Rules* 2003.

On the facts stated in the supporting affidavit(s), the applicant, WILLMOTT ACTION GROUP INC (Reg No A0055149L) (**WAG**), applies for the following relief:

1. Leave be granted to WILLMOTT ACTION GROUP INC (Reg No A0055149L) to be heard in the proceeding;
2. Consequent upon paragraph 1, in respect of the schemes listed in Schedule 1, Schedule 2 and Schedule 3 (**the Schemes**) that the Second and Third Plaintiffs (collectively "**the**

Respondents" in this Application) convene a 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:

- a. 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
 - b. the terms of any alternative proposals put forward in respect of the Schemes.
3. That the hearing of the Respondents' Application dated 13 December 2012 be adjourned to a date convenient to the court after the meetings of members of the Schemes;
 4. That the Respondents be ordered to provide WAG with access to all of the confidential exhibits to the Crosbie Affidavit.
 5. In the alternative to paragraphs 2 and or 3, that the Orders sought by the Respondents be refused by the court on the basis that:
 - (a) The Respondents are not justified in seeking to enter into the Sale Contracts;
 - (b) The Respondents are not justified in seeking to procure the First Plaintiff to enter into and perform the Sale Contracts.
 - (c) The Respondents are not justified in seeking to procure the First Plaintiff to terminate or surrender the Project Documents (as defined in the Crosbie Affidavit) of the schemes in Schedule 1 and to surrender, relinquish or release the Rights of Growers in the Trees the subject of the Sales Contracts.
 - (d) The Respondents are not justified in seeking to procure the First Plaintiff to terminate or surrender the Project Documents of the schemes in Schedule 2 and to surrender, relinquish or release the Rights of Growers in the Trees the subject of the Sales Contracts.
 - (e) The Respondents are not justified in seeking the Court's consent to the disclaimer of the Project Documents of the Contractual and Partnership Schemes listed in Schedule 3.

- (f) There has been a failure by the Respondents to provide growers/investors in the schemes listed in Schedule 1, Schedule 2 and Schedule 3 with proper information concerning viability or the opportunity for consultation;
 - (g) The Orders sought by the Respondents are inappropriate and the Respondents ought first consider the wishes of the growers/investors;
 - (h) The Respondents are not justified in seeking to enter into the Sales Contracts to sell the assets of the schemes listed in the Schedules;
 - (i) There are currently a number of proposals and alternatives to either appoint a new Responsible Entity/Manager or to continue to the schemes listed in Schedule 1, Schedule 2 and Schedule 3;
 - (j) The Poyry Report (as defined in the Crosbie Affidavit) upon which the Respondents rely to demonstrate that the schemes listed in Schedule 1, Schedule 2 and Schedule 3 are unviable, has insufficient basis and is flawed;
 - (k) There were substantial flaws in the expressions of interest campaign and sale process conducted by the Respondents;
 - (l) There is a dispute about whether the Bombala land constitutes "scheme property" under the schemes listed in Schedule 1, Schedule 2 and Schedule 3; and
 - (m) The Orders sought by the Respondents fail to comply with and/or to properly take into account the provisions of the Consent Deed executed on 17 March 2009 by Willmott Forests Pty Ltd, Willmott Forests Investment Manager Pty Ltd in its capacity as trustee under the CBA Security Trust, CBA Corporate Services (NSW) Pty Ltd in its capacity as trustee under the Willmott Security Trust and William Subscriber Pty Ltd.
6. That the costs of WILLMOTTACTIONGROUP INC (Reg No A0055149L) be paid by the Plaintiffs alternatively be costs in the winding up of the Schemes.

Date: 10 January 2012



Eales & Mackenzie

Eales & Mackenzie
As Town Agents for Lloyd and Lloyd
Solicitor for the Plaintiff

This application will be heard by the Honourable Justice Davies in Court No. ²~~3~~, Supreme Court,
~~405~~ ⁴⁵⁰ Little Bourke Street, Melbourne at 2.15pm on 23 January 2012.

B. NOTICE TO RESPONDENT(S) (IF ANY)

TO:

Willmott Forests Limited (Receivers and Managers Appointed) (In Liquidation), ACN 063 263 650
in its Personal Capacity and 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 and 3

c/o Allens Arthur Robinson Lawyers

530 Collins Street

Melbourne Victoria 3000

Craig David Crosbie

c/o Arnold Bloch Leibler

Level 21

333 Collins Street

Melbourne Victoria 3000

Ian Menzies Carson

c/o Arnold Bloch Leibler

Level 21

333 Collins Street

Melbourne Victoria 3000

Willmott Growers Group Inc

c/o Clarendon Lawyers

Level 17, Rialto North Tower

525 Collins Street

Melbourne VIC 3000

If you or your legal practitioners do not appear before the Court at the time shown above, the application may be dealt with, and an order made, in your absence.

Before appearing before the Court you must, except if you have already done so or you are the plaintiff in this proceeding, file a notice of appearance, in the prescribed form, in the Registry and serve a copy of it on the plaintiff in the originating process.

Note Unless the Court otherwise orders, a defendant that is a corporation must be represented at a hearing by a legal practitioner. It may be represented at a hearing by a director of the corporation only if the Court grants leave.

C. FILING

This interlocutory process is filed Eales & Mackenzie as Town Agents for Lloyd and Lloyd Solicitors for the Plaintiff.

D. SERVICE

The applicant's address for service is:

WILLMOTTACTIONGROUP INC

C/- Eales and Mackenzie

Level 5, 95 Queen Street, Melbourne in the State of Victoria

It is intended to serve a copy of this interlocutory process on each Respondent.

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**

(g) 1983 (No project);

(h) 1984 (No project):

(i) 1985 (No project);

(j) 1986 (No project);

(k) 1987 (No project):

(l) 1989 (No project);

(m) 1990 (No project) Interest only offer;

(n) 1991 (No project):

(o) 1995 (No project) (Custom);

(p) Sharp/Reed Plantation Project – 1998 Information Memorandum;

(q) 2001 (No project).

Partnership schemes

(r) McKenzie & Partners – Forestry Partnership No. 1 (1993);

(s) Grimsey & Associates Pty Ltd Forestry Partnership No. 1 (1994);

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

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

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