Summary of Judgment

BETWEEN: TIMBERCORP FINANCE PTY LTD (IN LIQUIDATION) v DOUGLAS JAMES COLLINS & ORS - AND - BETWEEN: TIMBERCORP FINANCE PTY LTD (IN LIQUIDATION) v PETER JOHN WHITE & ANON - AND - BETWEEN: TIMBERCORP FINANCE PTY LTD (IN LIQUIDATION) v PETER JEFFREY GRUYTERS - AND - BETWEEN: TIMBERCORP FINANCE PTY LTD (IN LIQUIDATION) v MORAG LOWE

[2016] VSC 776

15 December 2016

Justice James Judd of the Commercial Court today handed down judgment in favour of the plaintiff, Timbercorp Finance Pty Ltd, upholding its claims for the unpaid balance of loans, together with interest, against defendants in four ‘test case’ proceedings.

The Timbercorp group, including Timbercorp Finance, was put into liquidation in June 2009. Thousands of people had borrowed sums from Timbercorp Finance to finance their investments in Timbercorp’s various agricultural-based managed investment schemes. Timbercorp Finance (in liquidation) subsequently commenced more than 1,500 proceedings to recover funds lent to the investors. The sums outstanding run to hundreds of millions of dollars.

The recovery proceedings have been complex and protracted. To resolve the proceedings, four ‘test cases’ were selected to represent the arguments shared by many of the defendants.

The main dispute at trial concerned the construction of certain provisions of the management and loan agreements. The defendants sought to resist liability by advancing two distinct, and ultimately inconsistent, categories of defence.

In the Gruyters and Lowe proceedings, the defendants alleged that Timbercorp Finance had knowingly assisted in a dishonest breach of trust by the responsible entity, Timbercorp Securities Ltd, when it applied their money towards payment for management fees. Separately, in the Collins and White proceedings, defendants alleged Timbercorp Finance had failed to satisfy its contractual obligation to make a loan.
The court rejected the defences. It held that the Gruyters and Lowe defendants did not establish a breach of trust. The conversion of their application money into management fees was a fundamental purpose of each Scheme, which provided investors with tax deductions for the whole of the amount invested. In the Collins and White proceedings, the court held that loans had been made by the plaintiff, for which the defendants are liable.

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**NOTE:** This summary is necessarily incomplete. It is not intended as a substitute for the Court’s reasons or to be used in any later consideration of the Court’s reasons. The only authoritative pronouncement of the Court’s reasons and conclusions is that contained in the published reasons for judgment.