

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

No. S CI 2011 5202

IN THE MATTER OF **TASMANIAN PLANTATION PTY LTD** ACN 009 560 463 (subject to deed of company arrangement) (controllers acting), **FOREST ENTERPRISES AUSTRALIA LIMITED** ACN 009 553 548 (subject to deed of company arrangement) (receivers and managers appointed) and **FEA CARBON PTY LTD** ACN 009 505 195 (subject to deed of company arrangement) (receivers and managers appointed)

BETWEEN

**TASMANIAN PLANTATION PTY LTD** ACN 009 560 463 (subject to deed of company arrangement) (controllers acting) and others

Plaintiffs

AND

**FEA PLANTATIONS LIMITED** ACN 055 969 429 (subject to deed of company arrangement) (receivers appointed)

Defendant

**INTERLOCUTORY PROCESS**

Date of document:  
Filed on behalf of: The Plaintiffs  
Prepared by:  
**Maddocks**  
Lawyers  
140 William Street  
Melbourne VIC 3000

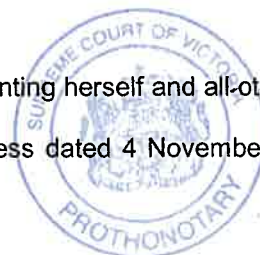
2 November 2012  
Solicitor's Code: 230  
DX 259 Melbourne  
Tel: (03) 9288 0555  
Fax: (03) 9288 0666  
Ref: IMJ:MBP:5674554.023  
Attention: Michael Johns  
E-mail Address: michael.johns@maddocks.com.au

**A. DETAILS OF INTERLOCUTORY APPLICATION**

This is an application for the joinder of a representative defendant under rules 9.06 and 18.03 of the *Supreme Court (General Civil Procedure) Rules 2005*.

On the facts stated in the supporting affidavit(s), the applicants (the Plaintiffs) apply for the following interlocutory relief:

1. Patricia Anne Bennett be joined as the Third Defendant, representing herself and all other Growers (as described in Annexure B to the Amended Originating Process dated 4 November 2011) who



have, or claim to have, one or more woodlots on the Land (as described in Annexure D to the Amended Originating Process) granted under Grower Leases (as described in Annexure B to the Amended Originating Process), in respect of their interests in the Land under any Grower Lease in respect of which the relevant Grower has elected or is required to pay rent (or analogous charges) periodically under the Grower Lease. (For the sake of clarity, the interests referred to in this paragraph do not include interests under any Grower Lease which concerns only woodlots that are not on the Land.)

2. The title to the proceeding be amended to add Ms Bennett as the Third Defendant.
3. Paragraph 3 of the Order made in this proceeding on 3 August 2012 by Ferguson J (the **First Representative Order**, attached as **Annexure A** to this Interlocutory Process) be amended to read as follows:

Provided that the Second and Third Defendants and any additional Defendants joined as representatives of Growers during the course of this proceeding (if any) (**Representative Defendants**) engage and retain common legal representatives to act on their behalf in connection with the proceeding, the Plaintiffs pay to the solicitors engaged by the Representative Defendants (**Common Solicitors**), the legal costs and disbursements of the Representative Defendants of and incidental to this proceeding on an indemnity basis pursuant to Rule 63.28(c) of the *Supreme Court (General Civil Procedure) Rules 2005* (Vic), provided that the Common Solicitors provide the Plaintiffs with an itemised invoice for the Representative Defendants' legal costs of and incidental to the proceeding for each calendar month (**Monthly Invoice**), by the 14<sup>th</sup> day of the following calendar month, and then within 30 days of receiving a Monthly Invoice, the Plaintiffs either:

- (a) pay the amount specified in the Monthly Invoice; or
- (b) pay a lesser amount as agreed between the Plaintiffs and the Representative Defendants; or
- (c) request from the Common Solicitors a bill of costs prepared and certified by an appropriately qualified costs consultant, to be agreed between the Plaintiffs and the

Representative Defendants, pursuant to the fee agreement between the Common Solicitors and the Representative Defendants.

4. Paragraph 5 of the First Representative Order is vacated.
5. The amounts payable in accordance with paragraph 3 of the First Representative Order as amended will include:
  - (a) the costs of any future application brought by the Representative Defendants to vary the Costs Cap, subject to the Court being satisfied that the Representative Defendants acted reasonably in bringing that application;
  - (b) the Second Defendant's costs of and incidental to the Plaintiff's Interlocutory Process dated 1 June 2012;
  - (c) the Third Defendant's costs of and incidental to this Interlocutory Process; and
  - (d) the costs of any future application to vary the orders made in paragraphs 1 or 2 of the First Representative Order or paragraphs 1 to 3 of this Order, subject to the Court being satisfied that that the applicant acted reasonably in bringing that application.
6. In addition to the amounts payable in accordance with paragraph 5, the Plaintiffs reimburse the Third Defendants' reasonable:
  - (a) expenses of travel to and from New South Wales; and
  - (b) accommodation expenses;as required in order for the Third Defendant to attend the trial of this proceeding.
7. As soon as practicable:
  - (a) the Second Plaintiff (**FEA**) and the Fourth and Fifth Plaintiffs (**the Receivers**) publish a notice on the FEA website ([www.fealtd.com](http://www.fealtd.com)) and the Receivers' website, in the form of



Exhibit **IMJ-42** to the Affidavit of Ian Michael Johns dated ## October 2012 (**the Proposed Notice**);

- (b) the First Defendant take all reasonable steps to procure that the Proposed Notice be published on the websites of its administrators (BRI Ferrier); and
- (c) the Second and Third Defendants take all reasonable steps to procure that the Proposed Notice be published on the website of the FEA Growers Group Inc.

8. There be liberty to apply to vary these orders upon giving reasonable notice to the other parties.

9. Such further or other orders as to the Court deems appropriate.

Date: *2 November 2012*

*Maddocks*  
.....  
Maddocks  
Solicitors for the Applicants (the Plaintiffs)

This interlocutory application will be heard by Justice Robson at 210 William Street, Melbourne at *10.00 am* on Friday 9 November 2012.



**B. NOTICE TO RESPONDENTS**

TO:

1. the First Defendant,  
whose address for service is c/- DLA Piper Australia, Level 17, 140 William Street,  
Melbourne, Victoria 3000;
2. the Second Defendant, Richard Ian Latham,  
whose address for service is c/- Mills Oakley, Level 6, 530 Collins Street, Melbourne,  
Victoria 3000;
3. Patricia Anne Bennett,  
whose address for service is c/- Mills Oakley, Level 6, 530 Collins Street, Melbourne,  
Victoria 3000.

If you or your legal practitioner 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 office of the Prothonotary and serve a copy of it on the plaintiff in the originating process.

*Note:* Unless the Court otherwise orders, a respondent 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 by Maddocks, solicitors for the Applicants (the Plaintiffs).

**D. SERVICE**

The Applicants' (the Plaintiffs') address for service is C/- Maddocks, 140 William Street, Melbourne, (Ref: IMJ:MBP:5674554.023)

It is intended to serve a copy of this interlocutory process on each of the respondents named above.