

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

S CI 2011 5202

IN THE MATTER of TASMANYAN 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 & managers appointed) and FEA CARBON PTY LTD ACN 009 505 195 (subject
to deed of company arrangement) (receivers and managers appointed)

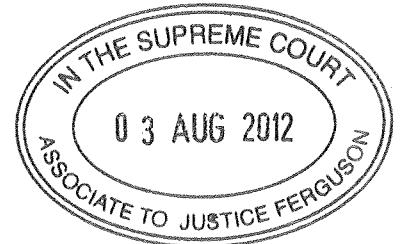
BETWEEN:

TASMANYAN PLANTATION PTY LTD ACN 009 560 Plaintiffs
463 (SUBJECT TO DEED OF COMPANY
ARRANGEMENT) (CONTROLLERS ACTING) and
Others (according to the attached Schedule)

- and -

FEA PLANTATIONS LIMITED ACN 055 969 429 Defendants
(SUBJECT TO DEED OF COMPANY ARRANGEMENT)
(RECEIVERS APPOINTED) and Another (according to the
attached Schedule)

ORDER



JUDGE: The Honourable Justice Ferguson
DATE MADE: 3 August 2012
ORIGINATING PROCESS: Originating Process filed 30 September 2011
HOW OBTAINED: On the return of the Interlocutory Process filed 1 June 2012.
ATTENDANCE: Mr P Crutchfield, Senior Counsel, with Mr O Bigos, of
Counsel, for the Plaintiffs.
Ms V Priskich, of Counsel, for the First Defendant.
Mr S Hopper, of Counsel, for Richard Latham.
OTHER MATTERS: Not applicable.



THE COURT ORDERS BY CONSENT THAT:

1. Richard Ian Latham be joined as the Second Defendant, representing himself 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 except for those Grower Leases:

- (a) concerning only woodlots that are not on the Land; or
- (b) in respect of which the relevant Grower has elected or is required to pay rent (or analogous charges) periodically under the Grower Lease.

2. The title to the proceeding be amended accordingly.

3. Provided that the Second Defendant 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 14th 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. The Plaintiffs' liability to pay costs in accordance with paragraph 3 is not to exceed, in total, \$125,000 (**Costs Cap**).



5. The amounts payable in accordance with paragraph 3 of this Order 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 Plaintiffs' Interlocutory Process dated 1 June 2012; and
 - (c) the costs of any future application to vary the orders in paragraph 1 or 2 above, subject to the Court being satisfied that the Second Defendant acted reasonably in bringing that application.
6. In addition to the amounts payable in accordance with paragraph 3, the Plaintiffs reimburse the Second Defendant's reasonable:
- (a) expenses of travel to and from Tasmania; and
 - (b) accommodation expenses;
- as required in order for the Second Defendant to attend the trial of this proceeding.
7. There be liberty to apply to vary these orders upon giving reasonable notice to the other parties.
8. The Plaintiffs' Interlocutory Process dated 1 June 2012:
- (a) be discontinued in respect of Ronald Michael Blessington, with no order as to costs; and
 - (b) be adjourned to a hearing on 31 August 2012, in respect of Taunton Enterprises Pty Ltd and Peter Edward Lamb.
9. Costs otherwise be reserved.

DATE AUTHENTICATED: 3 August 2012

THE HONOURABLE JUSTICE FERGUSON



Schedule of Parties

Between:

TASMANIAN PLANTATION PTY LTD ACN 009 560 463 (SUBJECT TO DEED OF COMPANY ARRANGEMENT) (CONTROLLERS ACTING)

First Plaintiff

FOREST ENTERPRISES AUSTRALIA LTD ACN 009 553 548 (SUBJECT TO DEED OF COMPANY ARRANGEMENT) (RECEIVERS AND MANAGERS APPOINTED)

Second Plaintiff

FEA CARBON PTY LTD ACN 009 505 195 (SUBJECT TO DEED OF COMPANY ARRANGEMENT) (RECEIVERS AND MANAGERS APPOINTED)

Third Plaintiff

TIMOTHY BRYCE NORMAN AND SALVATORE ALGERI IN THEIR CAPACITY AS JOINT AND SEVERAL RECEIVERS AND MANAGERS OF FOREST ENTERPRISES AUSTRALIA LTD ACN 009 553 548 (SUBJECT TO DEED OF COMPANY ARRANGEMENT) (RECEIVERS AND MANAGERS APPOINTED) AND OF FEA CARBON PTY LTD ACN 009 505 195 (SUBJECT TO DEED OF COMPANY ARRANGEMENT) (RECEIVERS AND MANAGERS APPOINTED) AND AS CONTROLLERS OF TASMANIAN PLANTATION PTY LTD ACN 009 560 463 (SUBJECT TO DEED OF COMPANY ARRANGEMENT) (CONTROLLERS ACTING)

Fourth and Fifth Plaintiffs

- and -

FEA PLANTATIONS LIMITED ACN 055 969 429 (SUBJECT TO DEED OF COMPANY ARRANGEMENT) (RECEIVERS APPOINTED)

First Defendant

RICHARD IAN LATHAM

Second Defendant