

IN THE SUPREME COURT OF WESTERN AUSTRALIA

COR _____ of 2011

IN THE MATTER OF REWARDS PROJECTS LIMITED (ACN 089 582 427) (IN LIQUIDATION)

EX PARTE

REWARDS PROJECTS LIMITED (ACN 089 582 427) (IN LIQUIDATION) IN ITS OWN RIGHT AND IN ITS CAPACITY AS THE RESPONSIBLE ENTITY OF THE FOREST REWARDS BRUSHWOOD PROJECT 2001, FOREST REWARDS SANDALWOOD PROJECT 2001, FOREST REWARDS SANDALWOOD PROJECT 2002, REWARDS GROUP SANDALWOOD PROJECT 4, REWARDS GROUP SANDALWOOD PROJECT 5, FOREST REWARDS TEAK PROJECT 2001, REWARDS GROUP TEAK PROJECT 3, REWARDS GROUP TEAK PROJECT 4 AND THE REWARDS GROUP TEAK PROJECT 2006

First plaintiff

ANDREW JOHN SAKER, MARTIN BRUCE JONES AND DARREN GORDON WEAVER IN THEIR CAPACITY AS THE LIQUIDATORS OF REWARDS PROJECTS LIMITED (ACN 089 582 427) (IN LIQUIDATION)

Second plaintiffs

AFFIDAVIT OF MARTIN BRUCE JONES SWORN 10 OCTOBER 2011 IN SUPPORT OF APPLICATION FOR DIRECTIONS UNDER SECTIONS 511 AND 479(3) OF THE CORPORATIONS ACT 2001 (CTH) AND SECTION 92 OF THE TRUSTEES ACT 1962 (WA), TOGETHER WITH ATTACHMENTS "MBJ-1" TO "MBJ-15"

Date of Document: 10 October 2011

Filed on behalf of: The Plaintiffs

Date of Filing: 10 October 2011

Prepared by:
TOTTLE PARTNERS
Lawyers
Level 40
BankWest Tower
108 St Georges Terrace
PERTH WA 6000

Tel:9217 6700
Fax:9217 6710
Ref: SJP:CS:20110559
Contact: Stephen Penrose

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I, **MARTIN BRUCE JONES**, of 12 Koorda Street, Coolbinia in the State of Western Australia, chartered accountant and official liquidator, being duly sworn MAKE OATH AND SAY as follows: -

The Companies

- On 16 May 2010, along with my partners Andrew John Saker and Darren Gordon Weaver, I was appointed administrator of Rewards Group Limited (**RGL**), Rewards Projects Limited (**RPL**), Rewards Land Pty Ltd (**RLPL**), Rewards Management Pty Ltd (**RMPL**), Ord Packers Pty Ltd (**OPPL**), Berry Packers Pty Ltd (**BPPL**), Rural




Labour Pty Ltd (**Rural**) and Greentree Capital Pty Ltd (**GCPL**) (together the **Companies**). Attached and marked "MBJ – 1" are current and historical ASIC searches for each of the Companies.

2. I am duly authorised by Messrs Saker and Weaver to swear this affidavit on their behalf and on behalf of the Companies. References to "the Liquidators", "we", "us" or "ourselves" are references to Messrs Saker, Weaver and me.
3. Save where otherwise stated, the facts set out in this affidavit are within my own knowledge.
4. RPL is the responsible entity for a large number of agricultural and horticultural managed investment schemes (**Schemes**). The Companies are members of the Rewards group, and each served a particular function in respect of the operation of the Schemes.
5. On 19 May 2010 Messrs James Gerard Thackray, Peter McKenzie Anderson and William James Harris (the **Receivers**) were appointed as receivers and managers of RGL and RLPL. On 1 June 2010, the Receivers were also appointed to OPPL, BPPL and RMPL, as well as The ARK Fund Limited (**ARK**). The receivers were appointed by the National Australia Bank Limited (**NAB**), a secured creditor of those companies. The Receivers' appointment is ongoing.
6. NAB also holds security over RPL, namely, a fixed and floating charge over all its assets and undertakings. That charge secures the repayment of the same money that is secured by the charges over the assets of the Companies to which the Receivers have been appointed. However, NAB has not appointed any person as receiver and manager in respect of RPL.
7. The Receivers have however been appointed as receivers of certain of the properties owned by RPL and on which the Schemes are conducted, for the limited purpose of attempting to sell those properties.
8. In October 2010, we received a proposal for a deed of company arrangement (**DOCA**) from the Rewards Growers Advocacy Group Inc. (**RGAG**), which is a group consisting largely of financial advisors whose clients had invested in the



Schemes. Through the DOCA proposal, RGAG was seeking to restructure and ultimately continue as many of the Schemes as possible and, if necessary, appoint a replacement responsible entity for the Schemes.

9. On 19 October 2010, the creditors of each of RGL, RPL, RLPL, RMPL and Rural (the **DOCA Companies**) voted in favour of each of those companies executing DOCAs in terms of the RGAG proposal.
10. On 9 November 2010, the DOCAs were executed and we were appointed the deed administrators of the DOCA companies.
11. The DOCAs did not ultimately complete, and on 26 September 2011, the creditors of each of the DOCA Companies voted to place those companies into liquidation. We were appointed as the liquidators of each of those companies.

The managed investment schemes

12. As mentioned above, RPL's main business was to be the responsible entity of the Schemes.
13. Certain Schemes involved growing timber products (brushwood, teak and sandalwood) on behalf of investors (also known as 'growers'), who would then receive the proceeds (minus fees) of the eventual harvest of those timber products.
14. The timber Schemes relevant to this application (together the **Timber Schemes**) are:
 - (a) Forest Rewards Brushwood Project 2001 (ARSN 096 619 457), Releases 1 and 2 (**BW01**);
 - (b) Forest Rewards Sandalwood Project 2001 (ARSN 096 165 874), Release 1 (**SW01**);
 - (c) Forest Rewards Sandalwood Project 2002 (ARSN 099 571 285), Release 1 (**SW02**);



- (d) Rewards Group Sandalwood Project 4 (ARSN 104 486 240), Releases 1 and 2 (**SW04**);
 - (e) Rewards Group Sandalwood Project 5 (ARSN 104 486 240), Releases 1, 2 and 3 (**SW05**);
 - (f) Forest Rewards Teak Project 2001 (ARSN 096 619 416), Releases 1 and 2 (**TK01**);
 - (g) Rewards Group Teak Project 3 (ARSN 104 486 222), Releases 1 and 2 (**TK03**);
 - (h) Rewards Group Teak Project 4 (ARSN 111 957 843), Releases 1 and 2 (**TK04**); and
 - (i) Rewards Group Teak Project 2006 (ARSN 119 363 727), Releases 1 and 2 (**TK06**).
15. Attached and marked "MBJ – 2" to "MBJ – 6" are copies of the Product Disclosure Statement, Constitution, Management Agreement, Licence Agreement, and Operations Agreement (together the **Scheme Documents**) in respect of TK06.
16. Attached and marked "MBJ – 7" is a CD containing copies of the Scheme Documents for each of the Timber Schemes apart from TK06. These documents are in substantially the same terms as the equivalent documents for TK06.
17. Broadly, the Timber Schemes operated as follows:
- (a) RPL either bought, or entered into head leases with landowners (generally ARK or RLPL) for, properties suitable for conducting the timber-growing pursuits of each Timber Scheme;
 - (b) investors purchased one or more shares in the particular Timber Scheme, known as a 'Woodlot', which ultimately entitled them to a share of the proceeds of the harvest of the timber product grown under that Timber Scheme;

Kagira  

- (c) each Woodlot purchased by an investor was constituted by a licence (sometimes termed a 'sub-lease') from RPL of a portion of the relevant Timber Scheme property, in similar form to attachment "MBJ – 5";
 - (d) under the Constitution and Licence Agreement, each investor was obliged to carry out the timber-growing pursuit on his, her or its individual Woodlot;
 - (e) however, under the Management Agreement, each investor engaged RPL to manage his, her or its Woodlot, including carrying out the relevant timber-growing pursuit; and
 - (f) under the Operations Agreement, RPL then engaged RMPL to carry out the relevant timber-growing pursuit on behalf of RPL.
18. Under a series of Service Agreements between RPL and RMPL, RPL also engaged RMPL to carry out various higher-level corporate functions on RPL's behalf. Attached and marked "MBJ – 8" is a copy of the Service Agreement dated 30 June 2006, which was still in force at the time of our appointment.
19. Under the Scheme Documents for each Timber Scheme, investors were required to pay the following fees (together the **Project Fees**):
- (a) an initial Application Fee, which varied in amount across the various Schemes, and was either paid up-front in cash with the investor's application or by a third-party funder, under a loan agreement between the funder and the investor;
 - (b) a Maintenance Fee, which was calculated as a percentage of the harvest proceeds due to be paid to each investor and would be taken out of the investor's share of the proceeds of each harvest before the balance was remitted to the investor; and
 - (c) a Licence Fee, which was also calculated as a percentage of the harvest proceeds due to be paid to each investor and was taken out of the investor's share of the proceeds of each harvest before the balance was remitted to the investor.



20. The Constitution for each of the Timber Schemes provides that the Scheme may be terminated in any of the following ways:

- (a) termination in the ordinary course, being upon the later of:
 - (i) termination of the Licence Agreement; or
 - (ii) the final distribution to the investors of Receipts following the sale of all the Timber (as defined in the Constitution);

unless it has been terminated earlier by:

- (b) an extraordinary resolution of the investors resolving that the Scheme be terminated; or
- (c) termination by the responsible entity pursuant to the Corporations Act, which provides that a managed investment scheme may be terminated:
 - (i) at the direction of members;
 - (ii) if the responsible entity considers that the purpose of the scheme has been accomplished; or
 - (iii) if the responsible entity considers that the purpose of the scheme cannot be accomplished.

21. The Management Agreement for each of the Timber Schemes provides that the Management Agreement may be terminated in any of the following ways:

- (a) by the responsible entity if:
 - (i) the investor is declared bankrupt, goes into liquidation, or if a receiver is appointed to an undertaking of the investor;

- (ii) the investor is in default of any obligation under the Management Agreement, the Constitution or the Licence Agreement and the default continues for more than 21 days after the investor receives a notice from the responsible entity specifying the default and requiring the investor to remedy it;
 - (iii) the Scheme is terminated;
 - (iv) the responsible entity retires or is removed from office; or
 - (v) a determination is made under the Management Agreement that the investor's Woodlots have been totally destroyed;
- (b) by the investor if:
- (i) the responsible entity is in default of any obligation under the Management Agreement; and
 - (ii) that default has continued for more than 21 days after the Responsible Entity receives a notice from the investor specifying the default and requiring the responsible entity to remedy it; or
- (c) without fault if:
- (i) the Licence Agreement is terminated for any reason other than a default by the investor;
 - (ii) the Scheme is terminated early, either by an extraordinary resolution of the investors or by the responsible entity;
 - (iii) the parties otherwise mutually agree to terminate the Management Agreement other than for a default by either of them, or the Scheme itself is terminated.

22. The Licence Agreement for each of the Timber Schemes provides that the Licence Agreement can be terminated in any of the following ways:

- (a) by the responsible entity if:



- (i) the investor is declared bankrupt, goes into liquidation, or if a receiver is appointed to an undertaking of the investor; or
 - (ii) the investor is in default of any obligation under the Management Agreement, the Constitution or the Licence Agreement and the default continues for more than 21 days after the investor receives a notice from the responsible entity specifying the default and requiring the investor to remedy it; or
- (b) by the investor if:
- (i) the responsible entity is in default of any obligation under the Licence Agreement; and
 - (ii) that default has continued for more than 21 days after the responsible entity receives a notice from the investor specifying the default and requiring the responsible entity to remedy it.

The Maintenance Fund


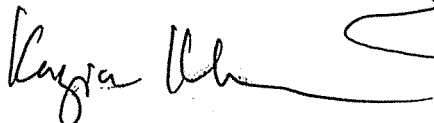
23. Based on my review of the Scheme Documents in respect of the Timber Schemes, I understand that because of the long time-frame involved in growing timber products, it was anticipated that:
- (a) the first harvest of the trees grown as part of the Timber Schemes would occur not until the trees were approximately 5 – 6 years old;
 - (b) the intermediate harvests would not generate a significant amount of profits, and the bulk of the profits would come from the final harvest, which was not anticipated to take place until 15 – 20 years after the establishment of the Scheme.
24. Further, I understand from my review of the Companies' records that, notwithstanding that the Timber Schemes would not be generating any income in the early years, they required both up-front and ongoing funding for planting and maintenance activities.

Kagica [Signature]

25. Under the Constitution for each Timber Scheme, RPL as the responsible entity of the Timber Schemes undertook to set aside a nominated amount of money out of its own funds to secure RPL's obligation to perform those initial and ongoing maintenance activities. The nominated amounts were as follows:
- (a) in respect of BW01, \$175 per Woodlot;
 - (b) in respect of SW01, \$1000 per Woodlot;
 - (c) in respect of SW02, \$420 per Woodlot;
 - (d) in respect of SW04, \$380 per Woodlot;
 - (e) in respect of SW05, \$320 per Woodlot;
 - (f) in respect of TK01, \$600 per Woodlot;
 - (g) in respect of TK03, \$600 per Woodlot;
 - (h) in respect of TK04, \$480 per Woodlot; and
 - (i) in respect of TK06, \$480 per Woodlot.
26. The money set aside by RPL in respect of each Timber Scheme was known as the 'Maintenance Fund'.
27. Attached and marked "MBJ – 9" are copies of:
- (a) the Maintenance Fund Deed dated 29 March 2005; and
 - (b) the Replacement Maintenance Fund Deed dated 30 June 2006, which consolidated the existing Maintenance Funds for each of the Timber Schemes.
28. From my review of the records of RPL, I believe that:

Kayla Ku *Myers*

- (a) when each Timber Scheme was established, RPL (possibly with input from RMPL and the Independent Forester) estimated the maintenance costs for the lifetime of the scheme, then calculated a suitable amount per Woodlot (taking into account the number of Woodlots to be issued in the particular Timber Scheme) to be set aside in the Maintenance Fund, and calculated how the funds from the Maintenance Fund should be progressively released over the lifetime of the Timber Scheme (as a percentage per year). Attached and marked "MBJ - 10" is a CD containing a copy of a spreadsheet dated 30 June 2009, which is the most up-to-date spreadsheet that I have been able to find showing these details; and
- (b) it was intended that the Maintenance Fund in respect of each Timber Scheme would continue until the majority of the maintenance costs had been incurred, and the timber products began to be harvested, thereby generating income from which the maintenance costs could be funded (the **Maintenance Period**). On average, this appears to have been approximately 10 – 12 years from the establishment of the relevant Timber Scheme; but
- (c) it was not intended that the amounts released from the Maintenance Fund each year would necessarily reflect the actual maintenance costs for the Timber Schemes for that particular year.
29. Attached and marked "MBJ – 11" is a copy of a letter from RPL to ASIC, in response to a query from ASIC, that sets out the operation of the Maintenance Fund and which I believe is an accurate summary.
30. Although each Timber Scheme in theory had its own Maintenance Fund, the money contributed to the Maintenance Fund in respect of each individual Timber Scheme was not kept in separate accounts. Instead, it was pooled and held in a term deposit account (number TD-7-00001 at the Perth branch of the ANZ). I note that pooling was authorised by clause 3 of the Replacement Maintenance Fund Deed.
31. I also note that clause 3 of the Replacement Maintenance Fund Deed required RPL, when making deposits into the Maintenance Fund, to record the following



details:

- (a) the name of the Scheme and, if applicable, its Australian Registered Scheme Number;
- (b) the amount contributed into the Maintenance Fund on behalf of the Scheme;
- (c) whether the contribution related to some or all of the Woodlots in the Scheme;
- (d) the date that the amount was accepted as part of the Maintenance Fund; and
- (e) the circumstances in which the responsible entity was entitled to withdraw money from the Maintenance Fund.

To date, my investigations of the records of the Rewards companies have not identified any discrete document recording all of these matters.

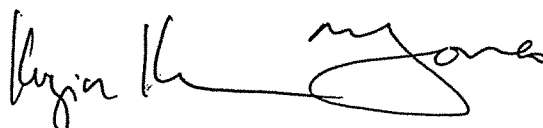
32. However, I understand from my review of the Companies' records that spreadsheets were kept that set out:

- (a) how much was contributed to the Maintenance Fund in respect of each Timber Scheme;
- (b) the names of the investors in respect of the Woodlots for which contributions were made to the Maintenance Fund;
- (c) how the money in the Maintenance Fund would be paid out over time (this was calculated by allocating a percentage of the funds to be disbursed each year); and
- (d) after making the payment for the particular year, and taking into account any previous payments made, how much was required to remain in the Maintenance Fund in respect of a particular Timber Scheme.



Attachment "MBJ 10" is the most up-to-date version of that spreadsheet that I have been able to find (as at 30 June 2009).

33. Under the Maintenance Fund Deed and Replacement Maintenance Fund Deed, RPL as responsible entity of the Timber Schemes was entitled to the income and capital appreciation on the funds held in the Maintenance Fund.
34. Under the Constitutions for each of the Timber Schemes, money could be released from the Maintenance Fund annually, with the authorisation of the Independent Forester.
35. At all times and in respect of all Timber Schemes, the Independent Forester consulted by RPL was Mr Nicholas Malajczuk of Tretec Consulting Pty Ltd.
36. From my review of the Companies' records, I understand that in order to satisfy the condition that the Independent Forester authorise all withdrawals by RPL from the Maintenance Funds:
 - (a) Mr Malajczuk visited a selection of the Scheme properties each year to inspect the work that had been performed by RMPL as part of the Ongoing Services, and to confirm that those Ongoing Services were being performed;
 - (b) RPL sent Mr Malajczuk a draft letter each year that:
 - (i) set out the amount required to be held in the Maintenance Fund in respect of each Timber Scheme;
 - (ii) provided Mr Malajczuk's confirmation that there were sufficient funds in the Maintenance Fund to carry out the Ongoing Services;
 - (iii) provided Mr Malajczuk's confirmation that he was satisfied that the Ongoing Services were being performed; and
 - (iv) authorised the withdrawal of that year's allocation from the Maintenance Fund; and




(c) Mr Malajczuk then put that letter on Treetec Consulting letterhead, signed it and returned it to RPL. I note that the Constitutions required only that the Independent Forester confirm that the Ongoing Services were being performed before RPL was entitled to withdraw the money from the Maintenance Fund, and that the amounts to be withdrawn each year were pre-determined.

37. Attached and marked "MBJ – 12" are copies of the draft letter from RPL, and the final signed version from Mr Malajczuk, in respect of the May 2009 withdrawal. In my review of RPL's records, I have not been able to locate all of the letters for the previous years.
38. Attached and marked "MBJ – 13" is a copy of a similar letter from Mr Malajczuk to the Liquidators dated 6 July 2010, pursuant to which Mr Malajczuk authorised the Liquidators to withdraw the 2010 maintenance costs from the Maintenance Fund.

The current status of the Timber Schemes

39. Upon our appointment in May 2010, we conducted an urgent financial and operational assessment of all of the Schemes, including the Timber Schemes, and the properties on which those Schemes were operated. Based on that assessment, we decided to cease maintaining certain Scheme properties, and to continue operating others in the hope that the Companies, or at least the Schemes, could ultimately continue in existence.
40. During the period 16 May 2010 to 19 October 2010, the properties on which the Timber Schemes were conducted remained in the possession of RPL, notwithstanding that the owners of each of those properties had purported to terminate RPL's lease due to RPL's default.
41. As neither RPL nor the Liquidators had funds to pay for maintenance, rent and other costs in respect of those properties, RGAG provided temporary funding to the Liquidators to maintain certain of the properties on which potentially viable Schemes, including all of the Timber Schemes, were operating.
42. As set out in paragraph 37 above, we also used funds from the Maintenance Fund



to perform maintenance work on the Timber Scheme properties, after having obtained approval from the Independent Forester in accordance with the Replacement Maintenance Fund Deed.

43. On 19 October 2010, the creditors of RPL voted in favour of the DOCA, which ended the statutory moratorium period and entitled the owners of the relevant properties to re-take possession of those properties. Possession of the properties was given to the Receivers on 20 October 2010. From that date onwards, the Receivers have had full control over the properties, and have been responsible for maintaining them.
44. Although possession of the properties was given to the Receivers on 20 October 2010, the Receivers and the Liquidators entered into a deed of forbearance on 29 October 2010, with the purpose of preventing the Receivers from selling the Scheme properties while there was still a chance that the DOCA would complete and the Companies, the Schemes or both would be restructured and continue. Attached and marked "MBJ- 14" is a copy of the deed of forbearance.
45. Pursuant to the deed of forbearance, the Receivers undertook not to dispose of, or agree to dispose of, the Scheme properties provided that RPL continued to meet certain conditions set out in the deed of forbearance.
46. As part of RGAG's DOCA proposal, offers to purchase various Scheme properties and restructure certain Timber Schemes were made to Ark and RLPL by Black Tree Pty Ltd and its nominees (the **Black Tree offers**). The Black Tree restructuring proposals were approved at meetings of the investors in the relevant Schemes held on 22 December 2010.
47. One of the key conditions contained in the deed of forbearance was that the Black Tree offers (and offers to purchase other Scheme properties) become unconditional by 31 January 2011. That did not occur, and the deed of forbearance was terminated by the Receivers on 1 February 2011. The Receivers then commenced their own marketing campaigns to sell the properties, and I understand from my discussions with the Receivers that those campaigns are continuing.
48. Given that:



Handwritten signatures of Kayia and another person.

- (a) RPL's leases over the Timber Scheme properties have been terminated;
- (b) possession of the Timber Scheme properties has reverted to the Receivers following the termination of the deed of forbearance;
- (c) the Timber Scheme properties are likely to be sold in the near future;
- (d) RPL (and the other DOCA Companies) are now in liquidation; and
- (e) RPL has not received any proposals from third parties to replace it as the responsible entity of the Timber Schemes,

it is my view that the purpose of the Timber Schemes can no longer be achieved. Further, it is my view that the Licence Agreements and the Management Agreements terminated in accordance with their terms when RPL's leases over the Scheme properties were terminated and possession of the Scheme Properties reverted to the Receivers.

49. Accordingly, I intend to issue notices to investors pursuant to section 601NC of the *Corporations Act* in the near future advising that RPL intends to wind up the Timber Schemes.
50. If the Timber Schemes were wound up, the Constitution, Management Agreement and Licence Agreement would be terminated in accordance with their terms (outlined at paragraphs 20 to 22 above), if they have not already terminated as a result of the termination of RPL's leases over the Scheme properties.

The current status of the Maintenance Fund

51. As at 12 September 2011, there was \$1,909,812.06 in the Maintenance Fund account, and I do not believe that there has been any material change to that amount, other than any interest that may have been credited.
52. It is, in my view, highly likely the Timber Schemes will be wound up in the near future and the relevant agreements between RPL and the investors terminated (if they have not already terminated). If that occurs, the obligations of RPL that are secured by the Maintenance Fund will be at an end.

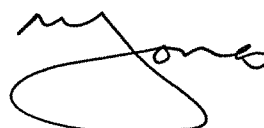
The image shows two handwritten signatures in black ink. The signature on the left is written in a cursive style and appears to be 'Kazia A'. The signature on the right is also cursive and appears to be 'Myron'.


53. I have caused to be prepared a spreadsheet setting out:

- (a) the total amount received into the Maintenance Fund in respect of each Timber Scheme (being the amount specified in the Constitution for that Scheme, multiplied by the total number of Woodlots sold in respect of that Scheme);
- (b) the amounts withdrawn and utilised in respect of each Timber Scheme in each of the years 2001 – 2010, and allocated to be withdrawn in respect of each Timber Scheme in each of the years from 2010 onwards; and
- (c) the total balance required to be held in the Maintenance Fund at the end of each of the years 2001 – 2018.

54. Attached and marked "MBJ – 15" is a copy of that spreadsheet. To the best of my knowledge and belief, it is an accurate portrayal of the allocation of funds in the Maintenance Fund.

Sworn by the Deponent at Perth)
 in the State of Western Australia)
 this tenth day of October 2011)
 Before me:)





 KASIA KLOPPER

A legal practitioner who has held a practice certificate at least 2 years and who holds a current practice certificate