

JURISDICTION : SUPREME COURT OF WESTERN AUSTRALIA
IN CHAMBERS

CITATION : RE QUINTIS (AUSTRALIA) PTY LTD
(RECEIVERS AND MANAGERS APPOINTED)
(ADMINISTRATORS APPOINTED) & ORS [No 3]
[2025] WASC 248

CORAM : STRK J

HEARD : 14 OCTOBER 2024 (WITH SUPPLEMENTARY
SUBMISSIONS AND AFFIDAVITS FILED AFTER
THE HEARING)

DELIVERED : 23 JUNE 2025

FILE NO/S : COR 62 of 2024

BETWEEN : DANIEL WOODHOUSE, HAYDEN WHITE,
JOHN PARK as joint and several receivers and
managers of QUINTIS (AUSTRALIA) PTY LTD
(RECEIVERS AND MANAGERS APPOINTED)
(IN LIQUIDATION)
First Plaintiff

DANIEL WOODHOUSE, HAYDEN WHITE,
JOHN PARK as joint and several receivers and
managers of SANDALWOOD PROPERTIES LTD
(FORMERLY KNOWN AS T.F.S. PROPERTIES
LTD) (RECEIVERS AND MANAGERS
APPOINTED) (IN LIQUIDATION)
Second Plaintiff

DANIEL WOODHOUSE, HAYDEN WHITE,
JOHN PARK as joint and several receivers and
managers of QUINTIS FORESTRY PTY LTD
(FORMERLY KNOWN AS TROPICAL FORESTRY
SERVICES LTD) (RECEIVERS AND MANAGERS
APPOINTED) (IN LIQUIDATION)
Third Plaintiff

DANIEL WOODHOUSE, HAYDEN WHITE,
JOHN PARK as joint and several receivers and
managers of ARWON FINANCE PTY LTD
(RECEIVERS AND MANAGERS APPOINTED)
(IN LIQUIDATION)
Fourth Plaintiff

DANIEL WOODHOUSE, HAYDEN WHITE,
JOHN PARK as joint and several receivers and
managers of QUINTIS LEASING PTY LTD
(FORMERLY KNOWN AS T.F.S. LEASING PTY
LTD) (RECEIVERS AND MANAGERS
APPOINTED) (IN LIQUIDATION)
Fifth Plaintiff

DANIEL WOODHOUSE, HAYDEN WHITE,
JOHN PARK as joint and several receivers and
managers of FIELDPARK PTY LTD (RECEIVERS
AND MANAGERS APPOINTED)
(IN LIQUIDATION)
Sixth Plaintiff

DANIEL WOODHOUSE, HAYDEN WHITE,
JOHN PARK as joint and several receivers and
managers of MT ROMANCE HOLDINGS PTY LTD
(RECEIVERS AND MANAGERS APPOINTED)
(IN LIQUIDATION)
Seventh Plaintiff

DANIEL WOODHOUSE, HAYDEN WHITE,
JOHN PARK as joint and several receivers and
managers of QUINTIS SANDALWOOD PTY LTD
(FORMERLY KNOWN AS MT ROMANCE
AUSTRALIA PTY LTD) (RECEIVERS AND
MANAGERS APPOINTED) (IN LIQUIDATION)
Eighth Plaintiff

DANIEL WOODHOUSE, HAYDEN WHITE,
JOHN PARK as joint and several receivers and
managers of ABOUT TIME WE MET PTY LTD
(FORMERLY KNOWN AS AUSTRALIA
SANDALWOOD OIL CO. PTY LTD) (RECEIVERS
AND MANAGERS APPOINTED)
(IN LIQUIDATION)
Ninth Plaintiff

AND

PAUL BEGLEY, SHIRLEY SPENCER AS
EXECUTOR OF THE DECEASED ESTATE OF
COLIN SPENCER, GREGORY BRUDENELL, AND
OTHERS NAMED IN THE SCHEDULE TO THE
INTERLOCUTORY PROCESS FILED ON
21 AUGUST 2024
Defendants

AND

RICHARD TUCKER and SCOTT KERSHAW in their
capacity as joint and several liquidators of
SANDALWOOD PROPERTIES LTD (FORMERLY
KNOWN AS T.F.S. PROPERTIES LTD)
(RECEIVERS AND MANAGERS APPOINTED) (IN
LIQUIDATION), QUINTIS FORESTRY PTY LTD
(FORMERLY KNOWN AS TROPICAL FORESTRY
SERVICES LTD) (RECEIVERS AND MANAGERS
APPOINTED) (IN LIQUIDATION) and QUINTIS
LEASING PTY LTD (FORMERLY KNOWN AS
T.F.S. LEASING PTY LTD) (RECEIVERS AND
MANAGERS APPOINTED) (IN LIQUIDATION)
Interested Party

Catchwords:

Corporations - Insolvency - External administration - Receivers and managers appointed - Managed investment scheme - Whether scheme trees and leases and subleases in respect of land used for the purposes of various managed investment schemes are 'scheme property' as defined in the *Corporations Act 2001* (Cth) s 9 and held on trust for scheme investors by the responsible entity - Whether the scheme trees and leases and subleases in respect of land used for the purposes of various managed investment schemes are subject to an equitable lien in favour of scheme investors arising by implication of law - Directions pursuant to the *Corporations Act 2001* (Cth) s 424 - Whether the receivers would be justified and acting properly in proceeding on the basis that scheme investors under various managed investment schemes have no right, title or interest on any scheme trees on certain land assets or in those land assets - Whether the receivers would be justified and acting properly in executing deeds of surrender in respect of leases and subleases and withdrawal of caveats with respect to land used for the purposes of various managed investment schemes - Whether the receivers would be justified and acting properly in selling certain land assets notwithstanding claims asserted by scheme investors in respect of scheme trees and/or the various land assets used for the purposes of various managed investment schemes - Whether the receivers would be justified and acting properly in applying proceeds of sale in accordance with appointment deeds notwithstanding claims asserted by scheme investors - Declarations regarding right, title and interest in land used for the purposes of various managed investment schemes and scheme trees on that land - Declarations regarding the application of proceeds of sale of scheme trees

Legislation:

Corporations Act 2001 (Cth), s 424, s 601GA, s 601ND

Supreme Court Act 1935 (WA), s 25(6)

Supreme Court (Corporations) (WA) Rules 2004 (WA), r 2.2(1)(b)

Rules of the Supreme Court 1971 (WA), O 2 r 1(2), O 5 r 9, O 10 r 11, O 18 r 6

Result:

Application granted; directions given and declarations made

Category: B

Representation:*Counsel:*

First Plaintiff	:	WCJ Zappia
Second Plaintiff	:	WCJ Zappia
Third Plaintiff	:	WCJ Zappia
Fourth Plaintiff	:	WCJ Zappia
Fifth Plaintiff	:	WCJ Zappia
Sixth Plaintiff	:	WCJ Zappia
Seventh Plaintiff	:	WCJ Zappia
Eighth Plaintiff	:	WCJ Zappia
Ninth Plaintiff	:	WCJ Zappia
Represented Defendants	:	GR Donaldson SC & NA Tiverios
Other Defendants	:	No appearance
Interested Party	:	JG Abberton

Solicitors:

First Plaintiff	:	Clifford Chance
Second Plaintiff	:	Clifford Chance
Third Plaintiff	:	Clifford Chance
Fourth Plaintiff	:	Clifford Chance
Fifth Plaintiff	:	Clifford Chance
Sixth Plaintiff	:	Clifford Chance
Seventh Plaintiff	:	Clifford Chance
Eighth Plaintiff	:	Clifford Chance
Ninth Plaintiff	:	Clifford Chance
Represented Defendants	:	Mizen+Mizen
Other Defendants	:	No appearance
Interested Party	:	Lavan

Cases referred to in decision:

Angelopoulos v Sabatino (1995) 65 SASR 1
Anglican Insurance Ltd [2008] NSWSC 41; (2008) 26 ACLC 147
Aussie Airlines Pty Ltd v Australian Airlines Ltd (1996) 68 FCR 406
Bridgewater v Leahy (1998) 194 CLR 457
Brookfield Multiplex Limited v International Litigation Funding Partners Pte Ltd [2009] FCAFC 147
Cadorange Pty Ltd (in liq) v Tanga Holdings Pty Ltd (1990) 20 NSWLR 26
Capelli v Shepard [2010] VSCA 2
Coad v Wellness Pursuit Pty Ltd (in liq) (2009) 40 WAR 53
Davies v Littlejohn (1923) 34 CLR 174
Ellison v Sandini Pty Ltd (2018) 263 FCR 460
Federal Commissioner of Taxation v ElecNet (Aust) Pty Ltd [2015] FCAFC 178; (2015) 239 FCR 359
Fensom v Cootamundra Racecourse Reserve Trust [2000] NSWSC 1072
Forsket v McKeown [2001] 1 AC 102
Hance v Federal Commissioner of Taxation [2008] FCAFC 196
Handberg (in his capacity as liquidator of S & D International Pty Ltd (ACN 075 030 447) (in liq) v MIG Property Services Pty Ltd (ACN 006 657 174) [2010] VSC 336; (2010) 79 ACSR 373
Hewett v Court (1983) 149 CLR 639
Hunter v Moss [1994] 1 WLR 452
In the matter of i-Prosperity Waterside Rhodes Pty Ltd in its own capacity and as trustee for the i-Prosperity Waterside Rhodes Unit Trust [2021] NSWSC 1065
Jackson v Crosby (No 2) (1979) 21 SASR 280
JN Taylor Holdings Ltd (in liq) v Bond (1993) 59 SASR 432
Johnco Nominees Pty Ltd v Albury-Wodonga (New South Wales) Corporation [1977] 1 NSWLR 43
Kauter v Hilton (1953) 90 CLR 86
Knight v Knight (1840) 3 Beav 148, 173; 49 ER 58
Litigation Capital Partners LLP Pte Ltd (Registration No 200922518M) v ACN 117 641 004 Pty Ltd (in liquidation) (formerly known as Vale Cash Management Fund Pty Ltd) [2021] WASC 161
Macks v Viscariello [2017] SASCFC 172; (2017) 328 FLR 115
Mark Anthony Korda and David John Winterbottom As Receivers and Managers of Westpoint Corporation Pty Ltd (In Liq) (Receivers and Managers Appointed) and the companies listed in Schedule 1 v Silkchime Pty Ltd (Receivers and Managers Appointed) atf Silkchime Unit Trust [2010] WASC 155; (2010) 243 FLR 269

Mier & Jonsson v FN Management Pty Ltd [2006] 1 Qd R 339
Morris v Morris [1982] 1 NSWLR 61
Muschinski v Dodds (1985) 160 CLR 583
Pearson v Lehman Brothers Finance SA [2011] EWCA Civ 1544;
[2012] 2 BCLC 151
Preston, in the matter of Sandalwood Properties Ltd [2018] FCA 547
Re CA Pacific Finance Ltd (in liq) [2000] 1 BCLC 494
Re GB Nathan & Co Pty Ltd (in liq) (1991) 24 NSWLR 674
Re Mirabela Nickel Ltd (receivers and managers appointed) (in liq); ex parte
Madden [2018] WASC 335
Re Quintis (Australia) Pty Ltd (receivers and managers appointed)
(administrators appointed) [2024] WASC 181
Re Quintis (Australia) Pty Ltd (receivers and managers appointed)
(administrators appointed) [No 2] [2024] WASC 278
Re Southern Cross Airlines Holdings Ltd (in liq) [2000] 1 Qd R 84;
(1998) 145 FLR 386
Re Willmott Forest Ltd (receivers and managers appointed) (in liquidation)
(ACN 063 263 650) & Ors (No 2) [2012] VSC 125; (2012) 88 ACSR 18
Revroof Pty Ltd (receivers and managers appointed) v Taminga Street
Investments Pty Ltd [2023] FCA 543
Sanderson v Classic Car Insurances Pty Ltd (1985) 10 ACLR 115;
(1986) 4 ACLC 114
Saraceni v Jones [2012] WASCA 59; (2012) 42 WAR 518
Treecorp Australia Ltd (in liquidation) v Dwyer [2009] FCA 278;
(2009) 175 FCR 373
White v Shortall [2006] NSWSC 1379; (2006) 68 NSWLR 650

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STRK J:**Overview**

- 1 On 2 April 2024 Daniel Hillston Woodhouse, Hayden White and John Park were appointed as joint and several receivers and managers of the nine companies described at sch A to these reasons. They are all senior managing directors of FTI Consulting (Australia) Pty Ltd. In these reasons I refer to Messrs Woodhouse, White and Park as the Receivers, and the nine companies collectively as the Quintis Group entities.
- 2 These reasons concern directions and declaratory relief sought on behalf of the Receivers. The application was made in circumstances where earlier directions had been sought and were obtained from this court at the request of the Receivers pursuant to s 424 of the *Corporations Act 2001* (Cth): see *Re Quintis (Australia) Pty Ltd (receivers and managers appointed) (administrators appointed) [No 2]* [2024] WASC 278.
- 3 As was recorded in the published reasons,¹ the earlier application for directions had concerned the sale of sandalwood trees grown on land leased by Quintis Forestry Pty Ltd that had been subleased and used for the purposes of the 2007, 2008 and 2009 Quintis Managed Investment Schemes, being Lot 240 on Deposited Plan 209468 and Lot 257 on Deposited Plan 209747 located in Western Australia. In my earlier reasons, the 2007, 2008 and 2009 Quintis Managed Investment Schemes were described collectively as the Quintis Managed Investment Schemes; the sandalwood trees grown on the land that was the subject of the Quintis Managed Investment Schemes were described as the Scheme Trees; the investors in the Quintis Managed Investment Schemes were described collectively as the Scheme Investors or Growers; and Lot 240 on Deposited Plan 209468 and Lot 257 on Deposited Plan 209747 on which the Scheme Trees were grown, were together described as the Voyager Land. In these reasons, for ease and consistency of reference, I adopt the same descriptions, save that reference to the Quintis Managed Investment Schemes will also include reference to the 2012 and 2014 Quintis Managed Investment Schemes.
- 4 As was also recorded in the earlier published reasons,² various Quintis Managed Investment Schemes operated within a structure

¹ *Re Quintis (Australia) Pty Ltd (receivers and managers appointed) (administrators appointed) [No 2]* [3].

² *Re Quintis (Australia) Pty Ltd (receivers and managers appointed) (administrators appointed) [No 2]* [5].

established and defined by a constitution, a product disclosure statement, and a lease and management agreement, on the Voyager Land which was leased and subleased.

5 Directions were sought and obtained in circumstances where the Receivers had informed the court that they wished to sell the unharvested Scheme Trees located on the Voyager Land, for the benefit of their appointors and to minimise costs, but where they were on notice that some investors (described as Scheme Investors or Growers) had asserted a claim, right or interest in the Scheme Trees, and that some Scheme Investors claimed to hold a security interest in the Scheme Trees and had registered that claimed interest on the Personal Property Securities Register (PPSR).³

6 Directions were sought by the Receivers (as the joint and several receivers and managers of Quintis Forestry Pty Ltd), and were given to the effect that they would be acting properly and would be justified in:

- (a) treating the sandalwood trees located on the Voyager Land as being trees previously the subject of the Quintis Managed Investment Schemes to which neither 'Non-Electing Growers' nor 'Electing Growers' (as defined in the lease and management agreements) have any interest, right or title under the Quintis Managed Investment Schemes in light of cl 5.14, cl 15 and cl 16 of the lease and management agreements; and
- (b) entering into a sale agreement and paying the net proceeds of sale of the Scheme Trees on the Voyager Land (after deduction of marketing and selling costs) into an interest bearing escrow account on an interim basis pending determination by this court, or agreement, as to the distribution of the proceeds of sale.

7 The directions given with respect to the sale and the holding of the proceeds of sale of the Scheme Trees on the Voyager Land were reproduced at sch B to the published reasons.⁴

8 The Receivers now propose to sell and transfer clean title to the purchasers of five land titles owned by Quintis Group entities (not the Voyager Land) for the benefit of noteholders in accordance with the Receivers' deeds of appointment. The five land titles were formerly used to grow plantations of sandalwood trees for Quintis Managed

³ *Re Quintis (Australia) Pty Ltd (receivers and managers appointed) (administrators appointed)* [No 2] [6].

⁴ *Re Quintis (Australia) Pty Ltd (receivers and managers appointed) (administrators appointed)* [No 2] sch B.

Investment Schemes (the relevant schemes being the 2007, 2008, 2009, 2012 and 2014 Quintis Managed Investment Schemes). Certain investors have raised objections or have indicated that they have an interest in the Scheme Trees on that land.

9 These reasons concern a further application made by the Receivers for directions under s 424 of the *Corporations Act*, and for declarations pursuant to the court's inherent jurisdiction and s 25(6) of the *Supreme Court Act 1935* (WA). Like the earlier application, the further application was made in an existing proceeding (known as COR 62 of 2024) by the filing of an interlocutory process.⁵

10 By the further application, the Receivers moved for directions and declarations concerning the right, title or interest in the five land titles owned by Quintis Group entities, and the Scheme Trees on that land.

11 They also moved for a direction for the purpose of securing clear title to the five land titles (which will involve the surrender of leases and subleases and the withdrawal of caveats); a direction regarding the sale of the five land titles and the Scheme Trees on that land; a direction regarding the application of proceeds of sale of the five land titles; and declarations concerning the application of proceeds of sale from the sale of Scheme Trees on the five land titles and the Voyager Land.

12 The declaration sought concerning the application of proceeds of sale from the sale of Scheme Trees on the Voyager Land was an application made further to the directions given on 18 July 2024 pursuant to s 424 of the *Corporations Act*.

13 Counsel for the Receivers emphasised that the further application was made in circumstances where all of the Quintis Group entities were in external administration, and all of the Quintis Managed Investment Schemes the subject of the application had been ordered to be wound up.⁶

14 In summary, the Receivers maintained that the Scheme Investors did not have any continuing interest in the Scheme Trees (or if they did, that interest was valueless given the findings made by Cobby J when his Honour ordered that Sandalwood Properties Ltd (as the responsible entity) wind up ten managed investment schemes dating from 2007 to

⁵ As permitted by the *Supreme Court (Corporations) (WA) Rules 2004* r 2.2(1)(b).

⁶ ts 128 (14 October 2024).

2016, being all of the managed investment schemes of the Quintis Group entities that were on foot at that time, pursuant to s 601ND(1)(a) of the *Corporations Act*).⁷ Further, the Receivers maintained that the noteholders on whose behalf the Receivers were appointed had security over the five land titles (and the Scheme Trees that were sold on the Voyager Land), which are otherwise realisable and available for sale in order to reduce the outstanding secured debt which is owed to those noteholders by Quintis Group entities.⁸

15 The Receivers named over 2700 individuals and companies as defendants to this application made by interlocutory process. Those named as defendants to the interlocutory process were Paul Begley, Shirley Spencer as executor of the deceased estate of Colin Spencer, Gregory Brudenell, and each person and entity listed in the schedule to the interlocutory process titled 'MIS Investors'.

16 On 27 August 2024 the Receivers moved for a number of 'procedural orders' to be made with respect to this application, which orders concerned service of the interlocutory process on the persons and entities named as defendants in the interlocutory process, and the programming of the application to substantive hearing. The orders made on 27 August 2024 are reproduced at sch C to these reasons.

17 On 20 September 2024 the Receivers moved for a number of 'corrective orders', which included an order that each person described as a defendant in the interlocutory process be joined as a defendant to the proceeding pursuant to O 18 r 6 of the *Rules of the Supreme Court 1971* (WA); to the extent required, an order that any irregularity in the issue of the interlocutory process for service outside of Australia by operation of O 5 r 9 of the *Rules of the Supreme Court* be cured nunc pro tunc pursuant to O 2 r 1(2) of the *Rules of the Supreme Court*; and granting the plaintiffs' leave nunc pro tunc to serve the papers on each defendant outside of Australia pursuant to O 10 r 11 of the *Rules of the Supreme Court*. In this regard, I note that of the 2,707 defendants named to the interlocutory process, the court understood that 2,166 were located outside of Western Australia (2139 interstate, and 27 overseas).⁹ By the 'corrective orders', adjustments were also made to the programming orders depending upon whether a defendant was

⁷ The *extempore* reasons of Cobby J: ts 36 - 50 (12 March 2024), and the orders made on 12 and 14 March 2024; first affidavit of DH Woodhouse affirmed on 15 April 2024, par 20, DHW-6; sixth affidavit of DH Woodhouse affirmed on 21 August 2024, par 11(a).

⁸ Receivers' outline of submissions filed on 4 October 2024, par 11.

⁹ Affidavit of service of W Ndhlovu affirmed on 26 August 2024, par 8; affidavit of service of M De Grys affirmed on 13 September 2024, par 7.

based in Western Australia, interstate, or outside of Australia. The orders made on 20 September 2024 are reproduced at sch D to these reasons.

18 Notices of appearance were filed on behalf of:

- (a) the Sandalwood Farmers Co-op Limited ABN 68 126 953 072, in which Sandalwood Farmers Co-op Limited was described as being 'a Cooperative under the Co-operatives Act 2009 having members who are growers in this action';¹⁰
- (b) Kenneth Williams and Peta Williams, in which Mr and Ms Williams were described as being 'Growers G1-0694 and named as a defendant';¹¹
- (c) Kennpet Pty Ltd ACN 085 043 885, in which Kennpet Pty Ltd was described as being 'Grower G1-0762';¹² and
- (d) Richard Tucker and Scott Kershaw as joint and several liquidators of:
 - (i) Sandalwood Properties Ltd (receivers and managers appointed) (in liquidation);
 - (ii) Quintis Leasing Pty Ltd (receivers and managers appointed) (in liquidation); and
 - (iii) Quintis Forestry Pty Ltd (receivers and managers appointed) (in liquidation).¹³

19 In these reasons I refer to Messrs Tucker and Kershaw as the Liquidators. The Liquidators appeared at the hearing of the application through counsel, as persons with an interest in the proceeding. They did not seek to be joined as defendants.¹⁴

20 While Sandalwood Farmers Co-op Limited, Mr and Ms Williams and Kennpet Pty Ltd were each represented by the same firm of solicitors in the proceeding, only Mr and Ms Williams and Kennpet Pty Ltd sought to be heard through their common counsel at the hearing of

¹⁰ Notice of appearance filed on 20 September 2024.

¹¹ Notice of appearance filed on 20 September 2024.

¹² Notice of appearance filed on 20 September 2024.

¹³ Notice of appearance filed on 14 October 2024.

¹⁴ Pursuant to *Supreme Court (Corporations) (WA) Rules 2004* r 2.13(1)(c); ts 126 (14 October 2024); Liquidators' outline of submissions filed on 14 October 2024, par 3.

the Receivers' application.¹⁵ In these reasons I refer to Mr and Ms Williams and Kennpet Pty Ltd as the Represented Defendants. The application was heard on a defended basis.

- 21 The court had the benefit of written submissions filed in advance of the hearing on behalf of the Receivers,¹⁶ the Represented Defendants,¹⁷ and the Liquidators,¹⁸ and also supplementary submissions filed after the hearing on behalf of the Represented Defendants,¹⁹ and the Receivers.²⁰

Evidence

- 22 At the hearing of the application, counsel for the Receivers read six affidavits made by Mr Woodhouse, an affidavit made by Marina De Grys sworn on 14 October 2024, and various affidavits which concerned service of the application and papers on the defendants and communications with Scheme Investors.²¹ Mr Woodhouse has been a registered liquidator since 2018, and is an experienced insolvency practitioner with over 20 years' experience in corporate restructuring and turnaround review, and advisory services.²²

- 23 Three of the six affidavits made by Mr Woodhouse were also read at the hearing of the Receivers' earlier application for directions.²³

First Woodhouse affidavit

- 24 The first was Mr Woodhouse's affidavit affirmed on 15 April 2024 (that is, the first affidavit affirmed by Mr Woodhouse and filed in the proceeding), to which he annexed documents marked DHW-1 to DHW-20.

- 25 The first Woodhouse affidavit was made in support of the Receivers' application for relief from liability under s 419A(7) of the *Corporations Act*: see ***Re Quintis (Australia) Pty Ltd (receivers and managers appointed) (administrators appointed)*** [2024] WASC 181. Among other things, in his first affidavit, Mr Woodhouse provided

¹⁵ ts 126 (14 October 2024).

¹⁶ Receivers' outline of submissions filed on 4 October 2024; Receivers' responsive outline of submissions filed on 14 October 2024.

¹⁷ Represented Defendants' outline of submissions filed on 11 October 2024.

¹⁸ Liquidators' outline of submissions filed on 14 October 2024.

¹⁹ Represented Defendants' supplementary outline of submissions filed on 21 October 2024.

²⁰ Receivers' supplementary outline of submissions filed on 28 October 2024.

²¹ ts 127 - 128 (14 October 2024).

²² Sixth affidavit of DH Woodhouse affirmed on 21 August 2024, par 1.

²³ ***Re Quintis (Australia) Pty Ltd (receivers and managers appointed) (administrators appointed)*** [No 2] [11] - [14].

background to the appointment of the Receivers and the receivership of the Quintis Group entities. For the purposes of this application, counsel did not read paragraphs 6, nor 28 to 47 of Mr Woodhouse's first affidavit.²⁴

- 26 Before the hearing of the application, on behalf of the Receivers a schedule was filed in which the annexures to the various affidavits of Mr Woodhouse relevant to this application were identified.²⁵ As to the first Woodhouse affidavit, the following annexures were identified as being relevant for the purposes of this application: document marked DHW-1 described as a 'Quintis Group Corporate Structure Chart'; document marked DHW-3 described as '19 December 2024 SPL Announcement on MIS Winding Up';²⁶ document marked DHW-7 described as 'Main Appointment Deed'; and document marked DHW-8 described as 'Supplement Appointment Deeds'.

Fourth Woodhouse affidavit

- 27 The second was Mr Woodhouse's affidavit affirmed on 5 July 2024, to which Mr Woodhouse annexed documents marked DHW-21 to DHW-48 (which was the fourth affidavit affirmed by Mr Woodhouse and filed in this proceeding). Mr Woodhouse's fourth affidavit was made for the purposes of the Receivers' earlier application for directions under s 424 of the *Corporations Act*.

- 28 As to the fourth Woodhouse affidavit, the following annexures were identified as being relevant for the purposes of this application: document marked DHW-25(a) described as the 'Ex Tempore Decision of the Honourable Justice Cobby dated 12 March 2024'; and the document marked DHW-26 described as the 'Termination Notices issued by SPL in respect of the TFS 2007 - TFS 2016 Scheme Lease and Management Agreements dated on or about 26 March 2024'.

- 29 The following annexures were also identified as being relevant for the purposes of this application, particularly with respect to 'MIS 2007':²⁷ document marked DHW-33 described as '2007 Quintis Lease and Management Agreement (2007 Quintis LMA)'; document marked DHW-33(a) described as 'Constitution between Sandalwood Properties Ltd and the ex-Scheme Investors of the 2007 Quintis MIS

²⁴ ts 127 (14 October 2024).

²⁵ Schedule of relevant annexures from Woodhouse affidavits filed on 11 October 2024.

²⁶ The references to SPL in the documents annexed to the various affidavits made by Mr Woodhouse is a reference to Sandalwood Properties Ltd.

²⁷ That is, the 2007 Quintis Managed Investment Scheme.

dated 2007'; document marked DHW-33(b) described as 'Lease (unregistered) between SPL and Quintis Leasing in respect of Lot 257 and Lot 240 of the Voyager Land dated 2008'; and document marked DHW-33(c) described as 'TFS 2007 Product Disclosure Statement dated 27 June 2007'.

30 The following annexures were identified as being relevant for the purposes of this application, particularly with respect to 'MIS 2008':²⁸ document marked DHW-34 described as '2008 Quintis Lease and Management Agreement (2008 Quintis LMA)'; document marked DHW-34(a) described as 'Constitution between Sandalwood Properties Ltd and the ex-Scheme Investors of the 2008 Quintis MIS dated 2008 (with a deed of amendment of constitution dated 5 October 2021)'; and document marked DHW-34(b) described as 'TFS 2008 Product Disclosure Statement dated 1 February 2008'.

31 The following annexures were identified as being relevant for the purposes of this application, particularly with respect to 'MIS 2009':²⁹ document marked DHW-35 described as '2009 Quintis Lease and Management Agreement (2008 Quintis LMA)';³⁰ document marked DHW-35(a) described as 'Constitution between Sandalwood Properties Ltd and the ex-Scheme Investors of the 2009 Quintis MIS dated 25 February 2009'; and document marked DHW-35(b) described as 'TFS 2009 Product Disclosure Statement dated 4 March 2009'.

32 The following annexures were identified as being relevant for the purposes of this application, particularly with respect to 'allocations': document marked DHW-36 described as 'Quintis MIS ex-Scheme Investors - TFS 2007 - Lot 257 Allocation'; document marked DHW-37 described as 'Grower Application forms for the 2008 and 2009 Quintis LMAs referable to Lot 240'; and document marked DHW-38 described as 'Quintis MIS ex-Scheme Investors - TFS 2007, 2008 & 2009 - Lot 240 Allocation'.

33 The following annexures were identified as being relevant for the purposes of this application, particularly with respect to the PPSR: document marked DHW-40 described as a 'Spreadsheet summarising the PPSR registrations that have been made against the Quintis Group Companies dated on or about 27 March 2024 (FTI Spreadsheet)';

²⁸ That is, the 2008 Quintis Managed Investment Scheme.

²⁹ That is, the 2009 Quintis Managed Investment Scheme.

³⁰ The reference to '2008 Quintis LMA' appears to be a misdescription, as the document concerns the 2009 Quintis Managed Investment Scheme.

document marked DHW-41 described as 'PPR Searches on the Quintis Group Companies dated 3 June 2024'; and document marked DHW-42 described as 'PPSR Searches on the Australian Registered Scheme Numbers of the Relevant Schemes dated 22 June 2024'.

- 34 The following annexures were identified as being relevant for the purposes of this application, particularly with respect to 'Ex Scheme Investor Communications': document marked DHW-43 described as 'Correspondence from Mr Steven Hendry dated on or about 19 April 2024'; document marked DHW-43(a) described as 'Correspondence dated between 20 December 2023 and 4 March 2024 by KordaMentha, to persons who had made PPSR registrations against Quintis Leasing'; document marked DHW-44 described as 'Letter from Clifford Chance on behalf of the Receivers to Mr Des Caling dated 23 April 2024'; document marked DHW-45 described as 'Termination Notices issued to Mr Desmon Caling dated 26 March 2024'; document marked DHW-46 described as 'Correspondence with Messrs Barry Thompson and Graeme Scott and the Receivers and Clifford Chance from 10 May 2024 to 17 June 2024'; document marked DHW-47 described as 'Email dated 19 June 2024 from SGC to Clifford Chance, responding to the matters set out in Clifford Chance's letter dated 31 May 2024'; and document marked DHW-48 described as 'Emails from the SGC to ex-Scheme Investors dated between 1 March 2024 to 9 May 2024'.

Fifth Woodhouse affidavit

- 35 The third was Mr Woodhouse's affidavit affirmed on 17 July 2024, to which Mr Woodhouse annexed documents marked DHW-49 to DHW-52(c) (which was the fifth affidavit affirmed by Mr Woodhouse and filed in this proceeding). Mr Woodhouse's fifth affidavit was also made for the purposes of the Receivers' earlier application for directions under s 424 of the *Corporations Act*.

- 36 In his fifth affidavit, Mr Woodhouse outlined the steps he had undertaken (or had caused to be undertaken) in compliance with procedural orders made by the court, which principally related to the provision of notice of the substantive hearing to Scheme Investors. He also deposed to the response received from Scheme Investors to the notices issued or published.

Sixth Woodhouse affidavit

- 37 The fourth was Mr Woodhouse's affidavit affirmed on 21 August 2024, to which Mr Woodhouse annexed documents marked DHW-53

to DHW-62 (which was the sixth affidavit affirmed by Mr Woodhouse and filed in this proceeding).

38 As to the sixth Woodhouse affidavit, the following annexures were identified as being relevant for the purposes of this application: document marked DHW-54(a) described as 'Land Title Searches undertaken on 9 August 2024 for the Voyager Land'; document marked DHW-54(b) described as 'Land Title Searches undertaken on 9 August 2024 for Relevant Land Assets'; and DHW-55 described as a 'Spreadsheet listing the Quintis-Owned Land Assets of the Quintis Group Companies provided on or about 1 August 2024 (Land Spreadsheet)'.

39 The following annexures were identified as being relevant for the purposes of this application, particularly with respect to 'MIS 2012':³¹ document marked DHW-56(a) described as 'The Lease and Management Agreement between SPL, Quintis Leasing and the ex-Scheme Investors of the TFS 2012 Scheme dated 26 June 2012 (Quintis 2012 LMA)'; document marked DHW-56(b) described as 'The constitution between SPL and the ex-Scheme Investors of the Quintis 2012 Scheme dated 18 April 2012'; and document marked DHW-56(c) described as 'The product disclosure statement in respect of the Quintis 2012 Scheme dated 2 May 2012'.

40 The following annexures were identified as being relevant for the purposes of this application, particularly with respect to 'MIS 2014':³² document marked DHW-57(a) described as 'The Lease and Management Agreement between SPL, Quintis Leasing and the ex-Scheme Investors of the TFS 2014 Scheme dated 29 May 2014 (Quintis 2014 LMA)';³³ document marked DHW-57(b) described as 'The constitution between SPL and the ex-Scheme Investors of the Quintis 2014 Scheme dated 13 February 2014'; document marked DHW-57(c) described as 'The product disclosure statement in respect [of] the Quintis 2014 Scheme dated 26 February 2014'; document marked DHW-58 described as 'Lease No. 716363792 between SPL (as lessor) and Quintis Leasing (as lessee in its own right and SPL as sublessee and bare trustee for Scheme Investors) dated on or about 23 February 2015'; document marked DHW-59(a) described as 'Lease No. 717117727 between SPL (as lessor) and Quintis Leasing (as lessee)

³¹ That is, the 2012 Quintis Managed Investment Scheme.

³² That is, the 2014 Quintis Managed Investment Scheme.

³³ DHW-57(a) comprises only pages 585 - 629, as noted in the seventh Woodhouse affidavit affirmed on 21 August 2024 at par 8.

dated on or about 19 February 2016, for Lot 13 of Survey Plan 195138 and Lot 2 of Survey Plan 262859'; document marked DHW-59(b) described as 'Lease No. 717117755 between SP (as lessor) and Quintis Leasing (as lessee) dated on or about 19 February 2016, for Lot 13 of Survey Plan 195138 and Lot 2 of Survey Plan 262859'; document marked DHW-59(c) described as 'Sublease No. 717176952 between Quintis Leasing (as sublessor) and SPL (as sublessee and bare trustee for Scheme Investors), dated on or about 21 March 2016, for Lot 13 of Survey Plan 195138 and Lot 2 of Survey Plan 262859'; document marked DHW-59(d) described as 'Sublease No. 717176953 between Quintis Leasing (as sublessor) and SPL (as sublessee and bare trustee for Scheme Investors), dated on or about 21 March 2016, for Lot 13 of Survey Plan 195138 and Lot 2 of Survey Plan 262859'; document marked DHW-60(a) described as 'Lease No. L470429 between SPL (as lessor) and Quintis Leasing (as lessee and SPL as bare trustee for Scheme Investors) dated on or about 22 October 2010, for Lot 6 of Plan 156131'; document marked DHW-60(b) described as 'Caveat No. L555342 by SPL dated on or about 14 February 2011, for Lot 6 of Plan 156131'; document marked DHW-60(c) described as 'Lease No. L732170 between SP (as lessor) and Quintis Leasing (as lessee and SPL as sublessee and bare trustee for Scheme Investors) dated on or about 2 September 2011, for Lot 6 of Plan 156131'; document marked DHW-61(a) described as 'Lease No. L470430 between SPL (as lessor) and Quintis Leasing (as lessee and SPL as sublessee and bare trustee for Scheme Investors) dated on or about 22 October 2010, for Lot 52 of Deposited Plan 32046'; document marked DHW-61(b) described as 'Surrender of Lease L470430 (Dealing No. M634812) dated on or about 31 March 2014, for Lot 52 of Deposited Plan 32046'; document marked DHW-61(c) described as 'Caveat No. L555346 by SPL dated on or about 11 February 2011, for Lot 52 of Deposited Plan 32046'; document marked DHW-61(d) described as 'Lease No. M663181 between SPL (as lessor) and Quintis Leasing (as lessee and SPL as sublessee and bare trustee for Scheme Investors) dated on or about 5 May 2014, for Lot 52 of Deposited Plan 32046'; and document marked DHW-62 described as 'ASIC Form 5138 documents filed by SPL commencing the winding up of the MIS Schemes'.

Seventh Woodhouse affidavit

- 41 The fifth was Mr Woodhouse's affidavit affirmed on 27 August 2024, to which Mr Woodhouse annexed a document marked DHW-55(a) (which was the seventh affidavit affirmed by Mr Woodhouse and filed in this proceeding).

42 As to the seventh Woodhouse affidavit, the sole annexure was identified as being relevant for the purposes of this application, being the document marked DHW-55(a) described as a 'Spreadsheet listing the Quintis-Owned Land Assets of the Quintis Group Companies provided on or about 1 August 2024 (Land Spreadsheet).' The document marked DHW-55(a) was intended to replace the document marked DHW-55 to the sixth Woodhouse affidavit (including row numbers in the table).

Eighth Woodhouse affidavit

43 The sixth was Mr Woodhouse's affidavit affirmed on 3 October 2024, to which Mr Woodhouse annexed documents marked DHW-63 to DHW-69 (which was the eighth affidavit affirmed by Mr Woodhouse and filed in this proceeding).

44 As to the eighth Woodhouse affidavit, all of the annexures were identified as being relevant for the purposes of this application. They were: document marked DHW-63 described as 'Amendment Deed dated 27 July 2016 and Fixed and floating charge dated 21 June 2011'; document marked DHW-64 described as 'Chargor accession deed in respect of Quintis (Australia) Pty Limited dated 11 October 2018'; document marked DHW-65 described as 'Chargor accession deed in respect of Fieldpark Pty Ltd dated 11 October 2018'; document marked DHW-66 described as 'Release (deed poll) between the security agent and Sandalwood Properties Limited (Subject to Deed of Company Arrangement) (Receivers and Managers Appointed) dated 2018'; document marked DHW-67 described as 'Real property mortgage, an amendment of mortgage and transfer of mortgage referable to Mugica'; document marked DHW-68 described as 'Real property mortgage, an amendment of mortgage and transfer of mortgage referable to Woods Farm 1 and Woods Farm 2'; and document marked DHW-69 described as 'Real property mortgage, an amendment of mortgage and transfer of mortgage referable to Chapman and Rogers'.

Third De Grys affidavit

45 Counsel for the Receivers read the affidavit made by Ms De Grys sworn on 14 October 2024 (which was the third affidavit sworn by her and filed in this proceeding), to which Ms De Grys annexed documents marked MDG-14 to MDG-24. Ms De Grys is an employee of the Quintis Group entities. She has been an employee since January 2001 and now holds the position of Manager-Investor Relations.

46 In her third affidavit Ms De Grys deposed to communications that she had had, or caused to be had, with certain Scheme Investors after she had become aware that correspondence posted to them was undelivered and 'returned to sender'. (In this regard, Ms De Grys' third affidavit was supplementary to her earlier affidavits of service, described below.)

47 In her third affidavit Ms De Grys also deposed that in 2022 and 2023, correspondence had been exchanged as between various Quintis Group entities and the Australian Securities and Investment Commission (ASIC) regarding the financial reports for the Quintis Managed Investment Schemes. Ms De Grys annexed to her affidavit five letters, the first dated 6 June 2022 and the last (from ASIC, advising that ASIC had discontinued its enquiries) dated 29 September 2023.

48 Ms De Grys also annexed to her affidavit various scheme accounts and a copy of the Australian Taxation Office Product Ruling PR 2008/10 - Income tax: TFS Sandalwood Project 2007 (Post 30 June 2007 Growers).

Service affidavits

49 Counsel for the Receivers read the following affidavits of service at the hearing on 14 October 2024: the affidavit of Wanipa Ndhlovu affirmed on 26 August 2024; the first affidavit of Ms De Grys affirmed on 13 September 2024, to which Ms De Grys annexed documents marked MDG-1 to MDG-5; the affidavit of service by registered post of Gabriel Merga affirmed on 17 September 2024, to which Mr Merga annexed documents marked GM-1 to GM-9; the affidavit of compliance with service obligations of Mitchell Hutchinson affirmed on 19 September 2024, to which Mr Hutchinson annexed a document marked MH-1; the affidavit of service of Jasmin L'Green affirmed on 24 September 2024; the second affidavit of Ms De Grys affirmed on 4 October 2024, to which Ms De Grys annexed documents marked MDG-6 to MDG-13; and the affidavit of Patricia Saraceni sworn on 4 October 2024, to which Ms Saraceni annexed documents marked PS-1 to PS-3.

50 Following the hearing, further affidavits of service were filed, being the fourth affidavit of Ms De Grys affirmed on 28 October 2024, to which Ms De Grys annexed documents marked MDG-25 to MDG-28; the fifth affidavit of Ms De Grys affirmed on 15 November 2024, to which Ms De Grys annexed a document marked MDG-29; the

sixth affidavit of Ms De Grys affirmed on 20 December 2024, to which Ms De Grys annexed a document marked MDG-30; the seventh affidavit of Ms De Grys affirmed on 18 February 2025, to which Ms De Grys annexed documents marked MDG-31 and MDG-32; and the eighth affidavit of Ms De Grys affirmed on 29 May 2025, to which Ms De Grys annexed a document marked MDG-33.

51 The deponents of the various service affidavits described how they had attended to serving the defendants to this proceeding, Sandalwood Growers Corporation and Indian Sandalwood Farming, with various documents as required by court order. Further, they deposed to various communications with the defendants and other interested parties such as ASIC.

52 Service was affected by email, or in the case where the email was not delivered or only a postal address was held, by registered post or courier.

53 There were 404 defendants who were served by registered post. A number of affidavits deal with post that was returned to sender, and the subsequent efforts made to contact those defendants. From review of the affidavits, it appears that there were only five defendants for whom all attempts at contact and service were exhausted to no avail. It is apparent that all reasonable steps were taken to contact those defendants whose post was returned to sender.

54 The affidavits also describe that the documents were also made available to Scheme Investors via the Sandalwood Properties website at www.sandalwoodproperties.com.au.

Circumstances in which the Receivers sought relief

55 I describe below the circumstances in which the Receivers came before the court for directions on this occasion, drawn from the affidavits read on behalf of the Receivers in support of the application and the submissions made. While a part of the following description was set out in my earlier reasons,³⁴ it is convenient to set out here the relevant circumstances in full.

³⁴ *Re Quintis (Australia) Pty Ltd (receivers and managers appointed) (administrators appointed)* [No 2] [17] - [90].

The Quintis Group entities

56 The Quintis Group entities have been involved in growing and harvesting heartwood from sandalwood trees for the purposes of producing logs, oil, chips, and powder. The business has operations in Australia and in China. It also has business development teams in America, France, India and Japan.³⁵

57 Historically, the Quintis Group entities and its operations sought investment via retail investors (through managed investment schemes registered and operated in accordance with pt 5C of the *Corporations Act*), institutional investors and high net worth investors.³⁶ In 2018, various Quintis Group entities went through a voluntary administration, receivership, deed of company arrangement and scheme of arrangement process.³⁷

58 Mr Woodhouse deposed that the primary operating companies were Quintis Leasing Pty Ltd (the lessee for leases where the lessor was a third party); Sandalwood Properties Ltd (which holds an Australian Financial Services Licence and is the responsible entity of the Quintis Managed Investment Schemes); Quintis Forestry Pty Ltd (the primary employing entity and the manager for managed investment schemes and non-scheme plantations); and Quintis Sandalwood Pty Ltd (the primary employing entity for the Albany oil distillery, and which entity ran the Albany operations).³⁸

59 Mr Woodhouse deposed that the Quintis Managed Investment Schemes had three tiers of plantation investors with over 3,000 Managed Investment Scheme Investors, approximately 79 sophisticated investors (some with bespoke arrangements), and three institutional investors with bespoke arrangements.³⁹ He further deposed that different categories of investments had operated over time, including retail managed investment schemes, collective investment schemes with 'high net worth' investors, and forestry management arrangements with institutional investors. Each of those investments had been structured slightly differently (and there were also differences between schemes within each category of investment).⁴⁰

³⁵ First affidavit of DH Woodhouse affirmed on 15 April 2024, par 12(a) - (b).

³⁶ First affidavit of DH Woodhouse affirmed on 15 April 2024, par 12(d).

³⁷ First affidavit of DH Woodhouse affirmed on 15 April 2024, par 12(e).

³⁸ First affidavit of DH Woodhouse affirmed on 15 April 2024, par 13.

³⁹ First affidavit of DH Woodhouse affirmed on 15 April 2024, par 14.

⁴⁰ First affidavit of DH Woodhouse affirmed on 15 April 2024, par 15.

60 As is noted above, Mr Woodhouse attached to his fourth affidavit a copy of the applicable lease and management agreement, constitution, and product disclosure statement for each of the 2007, 2008 and 2009 Quintis Managed Investment Schemes.⁴¹ Mr Woodhouse attached to his sixth affidavit a copy of the lease and management agreement, constitution and product disclosure statement for each of the 2012 and 2014 Quintis Managed Investment Schemes.⁴²

61 The Represented Defendants noted, and it appeared to be common ground, that the various instruments creating the Quintis Managed Investment Schemes were on materially similar terms.⁴³ For ease, references to the various instruments in these reasons are references to the 2012 Quintis Managed Investment Scheme. Differences in the instruments between schemes are noted in the footnotes and schedules to these reasons.

Product disclosure statements

62 Sandalwood Properties Ltd had been granted an Australian Financial Services Licence (No. 241192) by ASIC, which authorised it to act as responsible entity for a number of Quintis Managed Investment Schemes. Product disclosure statements were issued by Sandalwood Properties Ltd as the responsible entity of the schemes.

63 As was recorded in the product disclosure statements, Sandalwood Properties Ltd invited potential investors to invest in a 'Project'. It would be the issuer of interests in the 'Project' (called 'Sandalwood Lots').⁴⁴

64 Among other things, for the purposes of the 2012 Quintis Managed Investment Scheme, it was explained that the 'Project' would give investors the opportunity to grow their own Indian Sandalwood.

⁴¹ Fourth affidavit of DH Woodhouse affirmed on 5 July 2024, par 25, DHW-33, DHW-33(a), DHW-33(c) (2007 Quintis Managed Investment Scheme); par 26, DHW-34, DHW-34(a), DHW-34(b) (2008 Quintis Managed Investment Scheme); par 27, DHW-35, DHW-35(a), DHW-35(b) (2009 Quintis Managed Investment Scheme).

⁴² Sixth affidavit of DH Woodhouse affirmed on 21 August 2024, par 26(a), DWH-56(a), DWH-56(b), DWH-56(c) (2012 Quintis Managed Investment Scheme); par 26(b), DWH-57(a), DWH-57(b), DWH-57(c) (2014 Quintis Managed Investment Scheme).

⁴³ Represented Defendants' outline of submissions filed on 11 October 2024, par 4.

⁴⁴ Sixth affidavit of DH Woodhouse affirmed on 21 August 2024, DHW-56(c) (2012 Quintis Managed Investment Scheme product disclosure statement, page 468).

Further, as a Grower, the investor would establish and maintain their own stand of Indian Sandalwood by:⁴⁵

- (a) subleasing one or more land parcels from the lessor (Quintis Leasing Pty Ltd), each land parcel being one twelfth of a hectare. Each 'Sandalwood Lot' would be identifiable by reference numbers on a plan of the plantation, and the plan would be forwarded to the Grower once their 'Sandalwood Lots' had been planted;
- (b) engaging Sandalwood Properties Ltd (the responsible entity) to establish and maintain a plantation on the 'Sandalwood Lot'. Sandalwood Properties Ltd would in turn appoint Quintis Forestry Pty Ltd to manage the 'Sandalwood Lot' together with all other Growers' 'Sandalwood Lots' for the 'Project' as one commercially viable plantation. This engagement would continue until all of the sandalwood had been harvested;
- (c) engaging Quintis Forestry Pty Ltd to supervise the harvest of the sandalwood from the 'Sandalwood Lot', as well as the processing of the sandalwood into cleaned logs and their transport to store. The harvest was expected to take place during year 14 (although it was noted that this may vary dependent upon the assessment of Quintis Forestry Pty Ltd of heartwood and oil yields); and
- (d) engaging Sandalwood Properties Ltd to market and sell the Grower's interest in the sandalwood for the maximum price obtainable, unless the Grower elected to collect the sandalwood for their own purposes (it was noted that Growers who elected to collect sandalwood could not rely on the ATO Product Ruling in respect of their 'Sandalwood Lots' in the 'Project').

⁶⁵ The product disclosure statements (save for the 2007 Quintis Managed Investment Scheme) made reference to various insolvency scenarios, noting that there was no certainty that the 'Project' would continue if certain Quintis Group entities were to become insolvent.⁴⁶

⁴⁵ Sixth affidavit of DH Woodhouse affirmed on 21 August 2024, DHW-56(c) (2012 Quintis Managed Investment Scheme product disclosure statement, pages 468 - 469).

⁴⁶ Sixth affidavit of DH Woodhouse affirmed on 21 August 2024, DHW-56(c) (2012 Quintis Managed Investment Scheme product disclosure statement, page 487); fourth affidavit of DH Woodhouse affirmed on 5 July 2024, DHW-33(c).

The constitutions

66 The Quintis Managed Investment Schemes operated within a structure which included a constitution. As noted above, Mr Woodhouse annexed to his fourth affidavit a copy of the constitution for each of the 2007, 2008 and 2009 Quintis Managed Investment Schemes,⁴⁷ and annexed to his sixth affidavit a copy of the constitution for each of the 2012 and 2014 Quintis Managed Investment Schemes.⁴⁸

67 It was the position of the Represented Defendants that for the purposes of the application, there was no material difference in the terms of the 2007, 2008, 2009, 2012 and 2014 constitutions.⁴⁹ I did not understand this to be contentious. For ease of reference in the course of submissions, counsel for the Represented Defendants referred to the constitution for the 2012 Quintis Managed Investment Scheme.⁵⁰ Unless otherwise indicated, when describing the various provisions of the relevant constitutions below, I too refer to and reference the constitution for the 2012 Quintis Managed Investment Scheme.

Overview

68 As was observed in *Re Quintis (Australia) Pty Ltd (receivers and managers appointed) (administrators appointed) [No 2]* at [43], s 601GA(1) of the *Corporations Act* provides that the constitution of a registered scheme must make adequate provision for the consideration that is to be paid to acquire an interest in the scheme; the powers of the responsible entity in relation to the making of investments of, or otherwise dealing with, scheme property; the method by which complaints made by members in relation to the scheme are to be dealt with; and winding up the scheme.

69 That requirement was acknowledged in the constitutions at par C of the part titled introduction, and it was also there noted that where appropriate, the relevant sections of the *Corporations Act* had been referenced at the end of the relevant clause of the constitution.⁵¹

⁴⁷ Fourth affidavit of DH Woodhouse affirmed on 5 July 2024, par 25, DHW-33(a) (2007 Quintis Managed Investment Scheme); par 26, DHW-34(a) (2008 Quintis Managed Investment Scheme); par 27, DHW-35(a) (2009 Quintis Managed Investment Scheme).

⁴⁸ Sixth affidavit of DH Woodhouse affirmed on 21 August 2024, par 26, DHW-56(b) (2012 Quintis Managed Investment Scheme), DHW-57(b) (2014 Quintis Managed Investment Scheme).

⁴⁹ Represented Defendants' outline of submissions filed on 11 October 2024, par 4.

⁵⁰ Represented Defendants' outline of submissions filed on 11 October 2024, par 5(a).

⁵¹ Sixth affidavit of DH Woodhouse affirmed on 21 August 2024, DHW-56(b) (2012 Quintis Managed Investment Scheme constitution, page 420).

70 Clause 2 is titled 'The Project'. By cl 2.2 the responsible entity is appointed and agrees to act as responsible entity of the relevant 'Project' subject to the terms and conditions of the constitution.⁵²

71 The constitutions were all executed as deeds by the entity that was appointed and had agreed to act as the responsible entity of the 'Project'.⁵³ The constitutions also provided that they operated as deeds and were binding on all Growers (as constituted from time to time) and the responsible entity.⁵⁴ When a Grower executed the application form annexed to the product disclosure statement, they among other things agreed and acknowledged that they would be bound by the constitution and the lease and management agreement (as amended) or the agreement for sublease (as applicable), for that scheme.⁵⁵

72 To acquire a 'Sandalwood Lot' in the 'Project' and become a Grower an applicant had to pay the applicable fees (referred to in the constitution as the 'Application Money').⁵⁶ Clause 11 of the constitutions concerns applications for interests in the relevant scheme, including the form in which applications were to be made, the payment of the 'Application Money', and the payment of 'Upfront Payment Money'.⁵⁷

73 'Application Money' is defined as follows:⁵⁸

Application Money means the price that is payable on Application by an Applicant in accordance with the relevant Application Form completed and executed by the Applicant for one or more Interests. In the Lease and Management Agreement, it is referred to as the Establishment Fee. The Application Money is specified in the Product

⁵² Sixth affidavit of DH Woodhouse affirmed on 21 August 2024, DHW-56(b) (2012 Quintis Managed Investment Scheme constitution, page 427).

⁵³ Sixth affidavit of DH Woodhouse affirmed on 21 August 2024, DHW-56(b) (cl 2.2 of 2012 Quintis Managed Investment Scheme constitution, page 427).

⁵⁴ Sixth affidavit of DH Woodhouse affirmed on 21 August 2024, DHW-56(b) (cl 2.3 of 2012 Quintis Managed Investment Scheme constitution, page 427).

⁵⁵ Receivers' outline of submissions filed on 4 October 2024, par 50; sixth affidavit of DH Woodhouse affirmed on 21 August 2024, DHW-56(c) (s 6 of the application form of 2012 Quintis Managed Investment Scheme product disclosure statement, page 550).

⁵⁶ Sixth affidavit of DH Woodhouse affirmed on 21 August 2024, DHW-56(b) (cl 11 of 2012 Quintis Managed Investment Scheme constitution, pages 435 - 438).

⁵⁷ Sixth affidavit of DH Woodhouse affirmed on 21 August 2024, DHW-56(b) (2012 Quintis Managed Investment Scheme constitution, pages 435 - 438). Note: cl 11 of the 2007, 2008 and 2009 Quintis Managed Investment Schemes constitutions does not provide for the payment of 'Upfront Payment Money'.

⁵⁸ Sixth affidavit of DH Woodhouse affirmed on 21 August 2024, DHW-56(b) (2012 Quintis Managed Investment Scheme constitution, page 421). While the term has the same definition in the 2014 Quintis Managed Investment Scheme constitution, in the constitutions of the 2007, 2008, and 2009 Quintis Managed Investment Schemes, 'Application Money' means the total amount payable on Application by an Applicant in accordance with the relevant Application Form completed and executed by the Applicant for one or more Interests.

Disclosure Statement and Lease and Management Agreement (in which it is referred to as the Establishment Fee) and varies depending on the number of Interests applied for.

The Application Moneys are as set out below:

(Annual Investment Option and Deferred Option)

Number of Sandalwood Lots Applied For by Applicant	Establishment Fee \$
Between 1 and 11	\$6,875 (including GST)
12 or more	\$6,600 (including GST)

74 'Upfront Payment Money' is defined in the 2012 and 2014 Quintis Managed Investment Schemes' constitutions to mean the upfront rent and annual fee payments payable on 'Application' by an applicant in accordance with the relevant 'Application Form' completed and executed by the applicant for one or more 'Interests', being the 'Upfront Rent' and the 'Upfront Annual Fee'.⁵⁹

75 The 'Upfront Rent' is defined in the 2012 and 2014 Quintis Managed Investment Schemes' constitutions to mean an upfront payment of the 'Rent' (as defined in the lease and management agreements) payable on 'Application' by an applicant in respect of one 'Interest', being \$138 (including GST).⁶⁰ The 'Upfront Annual Fee' is defined in the 2012 and 2014 constitutions to mean an upfront payment of the 'Annual Fee' (as defined in the lease and management agreements) payable on 'Application' by an applicant in respect of one 'Interest', being \$456 (including GST).⁶¹

76 Clause 2.5 of the constitutions concerns the creation of certain funds. Clause 2.5 of the 2012 and 2014 Quintis Managed Investment Schemes' constitutions provide that the responsible entity must create (or cause the creation of) four separate funds for each scheme, being an

⁵⁹ Sixth affidavit of DH Woodhouse affirmed on 21 August 2024, DHW-56(b) (2012 Quintis Managed Investment Scheme constitution, page 425). In the 2007, 2008, and 2009 Quintis Managed Investment Schemes constitutions, 'Upfront Payment Money' is not a term that is defined or used.

⁶⁰ Sixth affidavit of DH Woodhouse affirmed on 21 August 2024, DHW-56(b) (2012 Quintis Managed Investment Scheme constitution, page 426). In the 2007, 2008, and 2009 Quintis Managed Investment Schemes constitutions, 'Upfront Rent' is not a term that is defined or used.

⁶¹ Sixth affidavit of DH Woodhouse affirmed on 21 August 2024, DHW-56(b) (2012 Quintis Managed Investment Scheme constitution, page 425). In the 2007, 2008, and 2009 Quintis Managed Investment Schemes constitutions, 'Upfront Annual Fee' is not a term that is defined or used.

'Application Fund' (to hold the sum initially paid into the fund pending acceptance of the application, the investments (if any) for the time being representing the sums initially paid into the fund, and the proceeds of the sale, redemption, repayment or realisation of any of these investments); a 'Subsequent Establishment Payment Fund' (to hold a percentage of the total fees received from all Growers from acceptance of the application, that is, an amount equal to four 'Subsequent Establishment Payments', the investments (if any) for the time being representing the sums initially paid into the fund, and the proceeds of the sale, redemption, repayment or realisation of any of these investments); an 'Upfront Payment Fund' (to hold the 'Upfront Payment Money', being the 'Upfront Rent' and the 'Upfront Annual Fee', the investments (if any) for the time being representing the sums initially paid into the fund, and the proceeds of the sale, redemption, repayment or realisation of any of these investments); and a 'Proceeds Fund' (to hold the 'Gross Proceeds of Sale' that are received in accordance with the lease and management agreements (see cl 18.2 of the lease and management agreements), the investments (if any) for the time being representing the sums initially paid into the fund, and the proceeds of the sale, redemption, repayment or realisation of any of these investments) (which capitalised terms were defined at cl 1.1 of the constitutions).⁶²

77 There was a positive obligation on the responsible entity to appoint a custodian to establish certain trust bank accounts for the purposes of the 2012 and 2014 Quintis Managed Investment Schemes. Clause 2.5(b) to (e) provided as follows:⁶³

- (b) To form the Application Fund, the Responsible Entity must appoint a Custodian to establish a trust bank account and then lodge (or cause to be lodged) in that account the Application Money and Upfront Payment Money received by the Responsible Entity pursuant to this Constitution.

⁶² While cl 2.5 of the 2007, 2008 and 2009 Quintis Managed Investment Schemes constitutions concern the creation of funds, the clause provides that the responsible entity must create (or cause the creation of) two separate funds for each scheme, being an 'Application Fund' and a 'Proceeds Fund'.

⁶³ Sixth affidavit of DH Woodhouse affirmed on 21 August 2024, DHW-56(b) (2012 Quintis Managed Investment Scheme constitution, pages 427 - 428). There was no positive obligation on the responsible entity to appoint a custodian to establish certain trust bank accounts in the 2007, 2008 and 2009 Quintis Managed Investment constitutions. Instead, cl 2.5(b) and (c) provided as follows: (b) To form the Application Fund, the Responsible Entity must arrange to establish a trust bank account and then lodge (or cause to be lodged) in that account the first Application Money received by the Responsible Entity pursuant to this Constitution; (c) To form the Proceeds Fund, when the Responsible Entity considers it reasonable to do so, it must arrange to establish a trust bank account and then lodge (or cause to be lodged) in that account the first of the Gross Proceeds of Sale that are received in accordance with the Lease and Management Agreement.

- (c) To form the Subsequent Establishment Payment Fund, the Responsible Entity must appoint an Independent Custodian to establish a trust bank account and then cause to be transferred into that account from the Application Fund an amount equal to four Subsequent Establishment Payments within 14 days from the Commencement Date.
- (d) To form the Upfront Payment Fund, the Responsible Entity must appoint an Independent Custodian to establish a trust bank account and then cause to be transferred into that account from the Application Fund the Upfront Payment Money within 14 days from the Commencement Date.
- (e) To form the Proceeds Fund, when the Responsible Entity considers it reasonable to do so, it must establish a trust bank account and then lodge (or cause to be lodged) in that account the Gross Proceeds of Sale that are received in accordance with the Lease and Management Agreement.

78 Clause 14 of the constitutions for the 2012 and 2014 Quintis Managed Investment Schemes concerns the release of money, including the release of 'Application Money' and 'Upfront Payment Money' in prescribed circumstances.⁶⁴

79 Counsel for the Represented Defendants suggested that for present purposes, cl 3 and cl 6 of each constitution were the 'principally relevant clauses'.⁶⁵ I summarise below these clauses, and cl 14 (which concerns the release of money), cl 15 (which concerns the entitlement to income from certain moneys), cl 23 (which concerns restrictions on applicants and Growers); and cl 30.8 (perpetuity period).

Clause 3 - 'Project Property'

80 Clause 3 in the constitutions for the 2008, 2012 and 2014 Quintis Managed Investment Schemes concerns 'Project Property' and provided as follows.⁶⁶

⁶⁴ Sixth affidavit of DH Woodhouse affirmed on 21 August 2024, DHW-56(b) (2012 Quintis Managed Investment Scheme constitution, pages 439 - 440). Clause 14 of the 2007, 2008 and 2009 Quintis Managed Investment Schemes constitutions provided for the release of Application Money but not the release of 'Upfront Payment Money'.

⁶⁵ Represented Defendants' outline of submissions filed on 11 October 2024, par 5(a).

⁶⁶ In the 2007 and 2009 Quintis Managed Investment Schemes constitutions, cl 3.3 provided as follows: 'An Applicant will have an interest in the Application Fund equal to his Proportional Interest but shall not have any interest in any particular or specific part of the Application Fund.' Clause 3 is otherwise in the same terms as reproduced at [80].

3. PROJECT PROPERTY

3.1 Responsible Entity to hold property for the Growers

- (a) Subject to clause 3.2, all Project Property will be held by the Responsible Entity for the Growers for the term of the Scheme.
- (b) The property for each Scheme will be kept separate and distinct from the property for any other Scheme.

[Section 601FC(2)]

3.2 Dealing with and Holding Project Property

If the Responsible Entity does not satisfy the Custodial Standards, the Responsible Entity must appoint a Custodian as agent to hold Project Property. The terms of the appointment must be consistent with the provisions of this Constitution and will be determined by the Responsible Entity and the Custodian.

[Section 601FB(2)]

3.3 Interests of Applicants in funds

An Applicant will have an interest in each of the Application Fund, the Subsequent Establishment Payment Fund and the Upfront Payment Fund equal to his Proportional Interest but shall not have any interest in any particular or specific part of those funds.

3.4 Interests of Growers in Project Property

A Grower will have an interest in the Scheme (and therefore the Project Property) equal to his Proportional Interest but, with the exception of each Grower's interest in specified Sandalwood Lots pursuant to the sub-lease granted by the relevant Lease and Management Agreement to which the Grower is a party, shall not have any interest in any particular or specific part of the Scheme.

81 The term 'Project Property' is defined to mean the scheme property of any 'Scheme' or the 'Project' (as the case may be) as determined in accordance with the definition of scheme property contained in s 9 of the *Corporations Act*,⁶⁷ which is as follows:

'scheme property' of a registered scheme means:

⁶⁷ Sixth affidavit of DH Woodhouse affirmed on 21 August 2024, DHW-56(b) (2012 Quintis Managed Investment Scheme constitution, page 424).

- (a) contributions of money or money's worth to the scheme; and
- (b) money that forms part of the scheme property under provisions of [the *Corporations Act*] or the [*Australian Securities and Investments Commission Act 2001* (Cth)]; and
- (c) money borrowed or raised by the responsible entity for the purposes of the scheme; and
- (d) property acquired, directly or indirectly, with, or with the proceeds of, contributions or money referred to in paragraph (a), (b) or (c); and
- (e) income and property derived, directly or indirectly, from contributions, money or property referred to in paragraph (a), (b), (c) or (d).

82 There are notes at the end of the definition which include the following:

Note 1: paragraph (a) - if what a member contributes to a scheme is rights over property, the rights in the property that the member retains do not form part of the scheme property.

83 The definition contemplates that there may be forms of managed investment schemes where ownership of rights in property is retained by the member. For example, in a contract based scheme, the member may have a contractual interest rather than a proprietary interest in property, such as the underlying land on which their business forming part of the common enterprise is carried on.⁶⁸

84 In the 2012 Quintis Managed Investment Scheme, the:

- (a) 'Scheme' referred to all those 'Interests' (that is, an interest in the 'Project' comprising the rights, liabilities and obligations of a Grower contained in a lease and management agreement, the constitution and any other relevant documents as they relate to one or more 'Sandalwood Lots'), for which the 'Establishment Period' ends on the same date;⁶⁹ and

⁶⁸ Jessup A, *Managed Investment Schemes* (2012) 76 - 77.

⁶⁹ Sixth affidavit of DH Woodhouse affirmed on 21 August 2024, DHW-56(b) (2012 Quintis Managed Investment Scheme constitution, page 425 with further definitions at pages 423 - 424).

- (b) 'Project' was defined to mean the 'managed investment scheme established by this Constitution to be registered and known as the TFS Sandalwood Project 2012 (ARSN XXXXXXXXX)'.⁷⁰

Clause 6 - winding up a scheme or the project

- 85 As required by s 601GA(1) of the *Corporations Act*, at cl 6 of the constitution for each of the Quintis Managed Investment Schemes, provision was made for winding up. Clause 6.1 provided as follows:⁷¹

6. WINDING UP A SCHEME OR THE PROJECT

6.1 Winding Up a Scheme or the Project

The provisions in this Constitution and in the *Corporations Act* relating to the winding up of a managed investment scheme apply to the winding up of the Project and are deemed to apply to the winding up of a Scheme.

- 86 To this end, cl 6.2 of the constitutions prescribed events which would cause a winding up of the 'Scheme' or 'Project', and relevantly, cl 6.2(c) provided that the responsible entity must wind up the scheme if a court orders that the scheme be wound up pursuant to s 601ND of the *Corporations Act*.⁷²

- 87 Section 601ND of the *Corporations Act* provides that on the application of a responsible entity, among others, the court has the power by order to direct the responsible entity of a registered scheme to wind up the scheme if, among other things, the court thinks it is just and equitable to make the order.

- 88 Clause 6.3 of the constitutions concerns the process of winding up, and provides as follows:⁷³

⁷⁰ Sixth affidavit of DH Woodhouse affirmed on 21 August 2024, DHW-56(b) (2012 Quintis Managed Investment Scheme constitution, page 424).

⁷¹ Sixth affidavit of DH Woodhouse affirmed on 21 August 2024, DHW-56(b) (2012 Quintis Managed Investment Scheme constitution, page 431).

⁷² Sixth affidavit of DH Woodhouse affirmed on 21 August 2024, DHW-56(b) (2012 Quintis Managed Investment Scheme constitution, page 432).

⁷³ Sixth affidavit of DH Woodhouse affirmed on 21 August 2024, DHW-56(b) (2012 Quintis Managed Investment Scheme constitution, page 432). In the 2014 Quintis Managed Investment Scheme constitution, cl 6.3(b) provides 'The Responsible Entity must convert to money all Project Property, deduct all fees, expenses, costs and any other money in accordance with the Constitution, the Lease and Management Agreement and the *Corporations Act* (including any fees payable to the Responsible Entity) and then divide the balance amongst the Growers according to each Grower's Proportional Interest. The Responsible Entity may make interim distributions during the winding up process as it sees fit.' (emphasis added)

6.3 Process of Winding Up

- (a) Unless otherwise required by the Corporations Act, the Responsible Entity is responsible for the winding up of the Scheme or the Project.
- (b) The Responsible Entity must convert to money all Project Property, deduct all fees, expenses, costs and any other money in accordance with the Constitution and the Corporations Act and then divide the balance amongst the Growers according to each Grower's Proportional Interest. The Responsible Entity may make interim distributions during the winding up process as it sees fit.
- (c) The Responsible Entity must proceed with the winding up efficiently, diligently and without undue delay. However, if it is in the interests of Growers to do so, then the Responsible Entity may postpone any part of the winding up for such time as it thinks desirable.

89 By cl 6.4, the responsible entity is empowered to retain from the proceeds of realisation of 'Project Property', money:⁷⁴

- (a) to meet future payment obligations which the Responsible Entity reasonably believes will fall due after a distribution is made to Growers; and
- (b) to pay its own remuneration and expenses for work to be done following the realisation of Project Property.

90 Clause 6.5 concerns the termination of other agreements, and provides that:⁷⁵

During the winding up of the Scheme or the Project, the Responsible Entity may terminate any other agreements or arrangements it has entered into with the Growers which relate to the Scheme or the Project (as the case may be). The Responsible Entity must give notice to the Growers of the termination of those agreements or arrangements.

⁷⁴ Sixth affidavit of DH Woodhouse affirmed on 21 August 2024, DHW-56(b) (2012 Quintis Managed Investment Scheme constitution, page 432). The equivalent provision is found at cl 6.5 of the 2014 Quintis Managed Investment Scheme constitution.

⁷⁵ Sixth affidavit of DH Woodhouse affirmed on 21 August 2024, DHW-56(b) (2012 Quintis Managed Investment Scheme constitution, page 432). The equivalent provision is found at cl 6.6 of the 2014 Quintis Managed Investment Scheme constitution.

91 Finally, cl 6.6 concerns the obligation of the responsible entity to have the final accounts audited when the winding up is complete.⁷⁶

Clause 14 - release of money

92 Clause 14.1 of the constitutions for the 2012 and 2014 Quintis Managed Investment Schemes concerns the release of 'Application Money', and cl 14.2 concerns the release of 'Upfront Payment Money', as each term is defined in those constitutions (see also [73] and [0] above). Clauses 14.1 and 14.2 provide as follows:⁷⁷

14.1 Release of Application Money

(a) Release of Initial Establishment Payment

Within 5 Business Days of being reasonably satisfied with the matters specified in clause 13, the Responsible Entity must direct the Custodian to release from the Application Fund the Initial Establishment Payment to the Responsible Entity. The Initial Establishment Payment must be used to pay the relevant fees that are payable under the Lease and Management Agreement.

(b) Refund

If any of the Initial Establishment Payment relating to an Application has not been released pursuant to clause 14.1(a) by the end of the Quarter in which the Application was made, the Responsible Entity must direct the Custodian to refund all unreleased Application Money and Upfront Payment Money to the relevant Applicant within 20 Business Days of the end of the Quarter in which the Application was made. This obligation does not apply to Application Money that has not been released because of a default by the Applicant.

(c) Extinguishment of Lease and Management Agreement

Upon the refund of the money referred to in clause 14.1(b), any relevant Contract or Lease and Management Agreement must be extinguished. The

⁷⁶ Sixth affidavit of DH Woodhouse affirmed on 21 August 2024, DHW-56(b) (2012 Quintis Managed Investment Scheme constitution, page 432). The equivalent provision is found at cl 6.7 of the 2014 Quintis Managed Investment Scheme constitution.

⁷⁷ Sixth affidavit of DH Woodhouse affirmed on 21 August 2024, DHW-56(b) (2012 Quintis Managed Investment Scheme constitution, pages 439 - 440). There is variation in the respective clauses of the 2007, 2008 and 2009 Quintis Managed Investment Schemes constitutions as set out in sch E to these reasons.

Responsible Entity must make an appropriate entry in the Register.

(d) Release of Subsequent Establishment Payments

Within 5 Business Days after the end of each of the first four Quarters following the Commencement Date or 30 June 2012, whichever is the later, the Responsible Entity must instruct the Independent Custodian to release to the Responsible Entity from the Subsequent Establishment Payment Fund a Subsequent Establishment Payment, which must be used to pay the relevant fees that are payable under the Lease and Management Agreement.

14.2 Release of Upfront Payment Money

(a) Release of Upfront Annual Fee

If the Responsible Entity becomes insolvent and is therefore unable to provide the Ongoing Services in that year of the Project, then upon the passing of an extraordinary resolution of the Growers directing the Independent Custodian to release the Upfront Annual Fee, the Independent Custodian must release the Upfront Annual Fee (or part thereof) and any interest earned on the Upfront Payment Money to the entity managing the Sandalwood Lots to be applied in satisfaction of the Annual Fee which is owing to the management entity for the following year of the Project.

(b) Release of Upfront Rent

If:

- (i) the Responsible Entity becomes unable to pay the Rent (as that term is defined in the Lease and Management Agreement) on behalf of the Grower to the Lessor when it falls due and payable; or
- (ii) the Lessor becomes unable to pay the rent owing to a Head Lessor pursuant to a Head Lease, upon the passing of an extraordinary resolution of the Growers directing the Independent Custodian to release the Upfront Rent, the Independent Custodian must release the Upfront Rent (or part thereof) to the Head Lessor or Head Lessors to be applied in

satisfaction of rental payments that are payable under the Head Lease.

(c) Release of funds from Upfront Payment Fund

If there are funds and any interest earned on the Upfront Payment Money remaining in the Upfront Payment Fund at the commencement of the twelfth Financial Year commencing after the end of the Establishment Period, the Independent Custodian must release those funds and any interest to the Responsible Entity to be applied on behalf of the Growers towards the payment of the Annual Fee and Rent that is due under the Lease and Management Agreement for the twelfth Financial Year commencing after the end of the Establishment Period.

Clause 15 - entitlement to income from certain funds

93 Clause 15 of the constitutions provides that subject to cl 11, the responsible entity is entitled to and is to receive any income earned (including interest) from the money in the 'Application Fund' prior to release of the 'Application Money' in accordance with cl 14.1 and any income earned (including interest) from the money in the 'Subsequent Establishment Payment Fund'.⁷⁸

Clause 23 - restrictions on applicants and Growers

94 Clause 23 of the constitutions provides that no applicant (that is, a person who has lodged an application by completing an application form but is not yet a Grower), or Grower may require the transfer to him of any of all or any part of the Project Property.⁷⁹

Clause 30.8 - perpetuity period

95 Clause 30 of the constitutions contain various miscellaneous provisions, including a perpetuity period, which is as follows:⁸⁰

To the extent that any trust relationship is created under this Constitution, it shall commence on the date on which the Responsible

⁷⁸ Sixth affidavit of DH Woodhouse affirmed on 21 August 2024, DHW-56(b) (2012 Quintis Managed Investment Scheme constitution, page 441). Clause 15 of the 2007, 2008 and 2009 Quintis Managed Investment Scheme constitutions provides: 'Subject to clause 11, the Responsible Entity is entitled to and is to receive any income earned (including interest) from the money in the Application Fund.'

⁷⁹ Sixth affidavit of DH Woodhouse affirmed on 21 August 2024, DHW-56(b) (2012 Quintis Managed Investment Scheme constitution, page 444). The term 'Applicant' is defined at cl 1.1, at page 421 of DHW-56(b) (2012 Quintis Managed Investment Scheme constitution).

⁸⁰ Sixth affidavit of DH Woodhouse affirmed on 21 August 2024, DHW-56(b) (2012 Quintis Managed Investment Scheme constitution, page 450).

Entity first receives any cash in relation to that trust relationship and, subject to clause 6, shall continue in operation until the expiry of the period of 80 years from that date.

The land holdings

96 Mr Woodhouse deposed that broadly speaking, the Quintis Group entities (primarily via Sandalwood Properties Ltd or Quintis Forestry Pty Ltd) owned (and continue to own) various freehold titles over which the Receivers had been appointed, and certain titles had plantations of Scheme Trees and were therefore affected by claims made by Scheme Investors.⁸¹

The Voyager Land

97 As to the lots which comprise the Voyager Land, the books of the Quintis Group entities record that:

- (a) Lot 257 was the subject of the 2007 Quintis Managed Investment Scheme;⁸² and
- (b) Lot 240 was the subject of the 2006, 2007, 2008 and 2009 Quintis Managed Investment Schemes.⁸³

98 The Voyager Land (that is, together Lots 240 and 257) was owned by Sandalwood Properties Ltd (formerly known as T.F.S. Properties Ltd) until June 2023. In June 2023 the Voyager Land was acquired by Prime Grain Pty Ltd, and was leased to Quintis Forestry Pty Ltd (formerly known as Tropical Forestry Services Ltd).⁸⁴ Quintis Forestry Pty Ltd then subleased the Voyager Land to Quintis Leasing Pty Ltd (formerly known as T.F.S. Leasing Pty Ltd) as bare trustee for Sandalwood Properties Ltd, the responsible entity of each of the Quintis Managed Investment Schemes.⁸⁵

99 While risk of termination of the lease in favour of Quintis Forestry Pty Ltd was a factor considered when the Receivers last sought

⁸¹ Sixth affidavit of DH Woodhouse affirmed on 21 August 2024, par 19(a), (b).

⁸² Fourth affidavit of DH Woodhouse affirmed on 5 July 2024, par 14(a), DHW-33.

⁸³ Fourth affidavit of DH Woodhouse affirmed on 5 July 2024, par 14(b), DHW-33, DHW-34, DHW-35; ts 131 (14 October 2024).

⁸⁴ Fourth affidavit of DH Woodhouse affirmed on 5 July 2024, pars 11, 19.

⁸⁵ Fourth affidavit of DH Woodhouse affirmed on 5 July 2024, par 20.

directions from the court,⁸⁶ the Voyager Land has not reverted to its third party owner and Quintis Forestry Pty Ltd remains lessee.⁸⁷

100 When each Quintis Managed Investment Scheme was established, Quintis Leasing Pty Ltd, Sandalwood Properties Ltd as the responsible entity, and Scheme Investors entered into a lease and management agreement. In each lease and management agreement, the Scheme Investors were described as 'Growers', the relevant Quintis Managed Investment Scheme was described as the 'Project', and that part of the Voyager Land intended to be used for the purposes of the scheme was described as the 'Plantation'.

101 The two lots which comprised the Voyager Land were divided into 'Sandalwood Lots' for the purposes of the schemes. By the lease and management agreements, Quintis Leasing Pty Ltd granted (or 'Allotted') to every Grower a sublease of one or more 'Sandalwood Lots'.⁸⁸

together with all improvements on it and the Fixtures for the Term upon and subject to the Encumbrances and the covenants and provisions set out in this Agreement.

102 However, the subleases of 'Sandalwood Lots' granted to Growers under the lease and management agreements were not in registrable form.⁸⁹

103 Under the constitution for each Quintis Managed Investment Scheme, Sandalwood Properties Ltd as the responsible entity had the power to enter into a sublease in its name, as bare trustee for the Growers, for the purpose of registering at Landgate only the interest of Growers in the subleases of 'Sandalwood Lots' granted to them, and without prejudice to the right of occupation and possession of the Growers under their sublease, or to the Growers' right to remove and harvest sandalwood from their 'Sandalwood Lots', or to any other

⁸⁶ *Re Quintis (Australia) Pty Ltd (receivers and managers appointed) (administrators appointed) [No 2]* [8(e)], [107], [109], [129].

⁸⁷ Sixth affidavit of DH Woodhouse affirmed on 21 August 2024, par 19(c), DHW-54(a).

⁸⁸ Fourth affidavit of DH Woodhouse affirmed on 5 July 2024, DHW-33 (cl 2.1 of the 2007 Quintis Managed Investment Scheme lease and management agreement, page 766), DHW-34 (cl 2.1 of the 2008 Quintis Managed Investment Scheme lease and management agreement, page 973), DHW-35 (cl 2.1 of the 2009 Quintis Managed Investment Scheme lease and management agreement, page 1203).

⁸⁹ As recorded in the Recitals to the subleases, attached to the fourth affidavit of DH Woodhouse affirmed on 5 July 2024, DHW-22(a) (sublease for Lot 257 between Quintis Forestry Pty Ltd and Quintis Leasing Pty Ltd, page 319), DHW-23(a) (sublease for Lot 240 between Quintis Forestry Pty Ltd and Quintis Leasing Pty Ltd, page 358).

contractual rights or obligations of the Growers under the subleases of 'Sandalwood Lots'.⁹⁰

104 As was observed in each registered sublease of the Voyager Land, the sublease was entered into principally to enable the lessee to register and protect the interest of Growers in their subleases of 'Sandalwood Lots', and each sublease operated as a collateral lease confirming the 'Sandalwood Lot' subleases, but in registrable form.

105 The Voyager Land was made subject to caveats in favour of Sandalwood Properties Ltd. Mr Woodhouse deposed to his belief that the caveats relate to Sandalwood Properties Ltd's claimed interests on behalf of Scheme Investors (that is, the Growers) in parcels of land that are the subject of the relevant managed investment schemes.⁹¹

Other land including the 'Relevant Land Assets'

106 The Quintis Group entities also operated schemes on land that was leased from third parties to a Quintis Group entity (usually Quintis Leasing Pty Ltd). Most of the third party leased land has reverted to third party land owners (and are not relevant to this application).⁹²

107 Schemes were also operated on land owned by Quintis Group entities, including on the following land assets described by Mr Woodhouse as the 'Relevant Land Assets'.⁹³

- (a) Lot 73 of Crown Plan GS422 (Title Reference 21226107) owned by Sandalwood Properties Ltd in Queensland (known as 'Mugica');
- (b) Lot 13 of Survey Plan 195138 (Title Reference 50643972) owned by Sandalwood Properties Ltd in Queensland (known as 'Woods Farm');
- (c) Lot 2 of Survey Plan 262859 (Title Reference 50928825) owned by Sandalwood Properties Ltd in Queensland (known as 'Woods Farm');

⁹⁰ As recorded in the Recitals to the subleases, attached to the fourth affidavit of DH Woodhouse affirmed on 5 July 2024, DHW-22(a) (sublease for Lot 257 between Quintis Forestry Pty Ltd and Quintis Leasing Pty Ltd, page 319), DHW-23(a) (sublease for Lot 240 between Quintis Forestry Pty Ltd and Quintis Leasing Pty Ltd, page 358).

⁹¹ Fourth affidavit of DH Woodhouse affirmed on 5 July 2024, pars 20(c), 24, DHW-30.

⁹² Sixth affidavit of DH Woodhouse affirmed on 21 August 2024, par 19(c).

⁹³ Sixth affidavit of DH Woodhouse affirmed on 21 August 2024, pars 13(b), 23(a) - (e), DHW-55; seventh affidavit of DH Woodhouse affirmed on 27 August 2024, par 7, DHW-55(a).

- (d) Lot 6 on Plan 15631, Volume 1746, Folio 292 (Title Reference 1746/292) owned by Sandalwood Properties Ltd in Western Australia (known as 'Chapmans'); and
- (e) Lot 52 on Deposited Plan 32046, Volume 2625, Folio 295 (Title Reference 2625/295) owned by Sandalwood Properties Ltd in Western Australia (known as 'Rogers').

108 All of the land described above is owned by Sandalwood Properties Ltd with plantations of Scheme Trees,⁹⁴ and the Relevant Land Assets were used for the purposes of the 2007, 2008, 2009, 2012 and 2014 Quintis Managed Investment Schemes.⁹⁵ Lot 73 of Crown Plan GS422 (known as 'Mugica') was the subject of the 2012 Quintis Managed Investment Scheme; Lot 13 of Survey Plan 195138 and Lot 2 of Survey Plan 262859) (both known as 'Woods Farm') were the subject of the 2014 Quintis Managed Investment Scheme; Lot 6 on Plan 15631 (known as 'Chapmans') was the subject of the 2008 and 2009 Quintis Managed Investment Schemes; and Lot 52 on Deposited Plan 32046 (known as 'Rogers') was the subject of the 2007 and 2012 Quintis Managed Investment Schemes.⁹⁶

Leases, subleases and caveats over the Relevant Land Assets

109 Mr Woodhouse in his sixth affidavit deposed that the leases and subleases in respect of the Quintis owned land assets (which include the Relevant Land Assets) were entered into in accordance with one of the following structures:⁹⁷

- (a) Sandalwood Properties Ltd (as lessor) leased to Quintis Leasing Pty Ltd (as lessee in its own right and Sandalwood Properties Ltd as sublessee and bare trustee for Scheme Investors) (that is, in one single combined head lease and 'collateral' lease instrument) (combined head lease and collateral sublease); or
- (b) Sandalwood Properties Ltd (as lessor) leased to Quintis Leasing Pty Ltd (as lessee in its own right) (separate head lease), and then Quintis Leasing Pty Ltd subleased to Sandalwood Properties Ltd as bare trustee for Scheme Investors (separate

⁹⁴ Sixth affidavit of DH Woodhouse affirmed on 21 August 2024, pars 22, 23.

⁹⁵ Sixth affidavit of DH Woodhouse affirmed on 21 August 2024, pars 16, 25.

⁹⁶ Sixth affidavit of DH Woodhouse affirmed on 21 August 2024, DHW-55; seventh affidavit of DH Woodhouse affirmed on 27 August 2024, DHW-55(a); ts 130 - 131 (14 October 2024).

⁹⁷ Sixth affidavit of DH Woodhouse affirmed on 21 August 2024, par 20; Receivers' outline of submissions filed on 4 October 2024, par 29.

collateral sublease) (that is, in two separate instruments, being a head lease and collateral lease).

110 Mr Woodhouse further explained that Sandalwood Properties Ltd entered into the collateral sublease as bare trustee for Scheme Investors as a requirement of its Australian Financial Services Licence, or alternatively, in Western Australia, Sandalwood Properties Ltd lodged a caveat against the relevant land title for the same purpose.⁹⁸ That is, to protect the Grower's interests under the lease and management agreements.⁹⁹

111 Scheme Investors were granted a sublease by Quintis Leasing Pty Ltd in respect of their individual plantation lots under their respective lease and management agreement.

112 In his sixth affidavit, Mr Woodhouse described the remaining lease, sublease and caveat interests recorded on the titles of the Relevant Land Assets (that had been created for the purposes of the schemes).¹⁰⁰ They are summarised below.

Lot 73 of Crown Plan GS422 (known as 'Mugica')

113 Recorded on the title for Lot 73 of Crown Plan GS422 is Lease No. 716363792 dated on or about 23 February 2015 between Sandalwood Properties Ltd (as lessor) and Quintis Leasing Pty Ltd (as lessee in its own right and Sandalwood Properties Ltd as sublessee and bare trustee for Scheme Investors) (that is, structured as a combined head lease and collateral sublease as described above at [109(a)]).¹⁰¹ Lease No. 716363792 expires on 30 June 2030.

Lot 13 of Survey Plan 195138 & Lot 2 of Survey Plan 262859 (both known as 'Woods Farm')

114 Two leases and two subleases are recorded on the title for Lot 13 of Crown Plan GS422 and Lot 2 of Survey Plan 262859. They are:¹⁰²

(a) Lease No. 717117727 dated on or about 19 February 2016 between Sandalwood Properties Ltd (as lessor) and Quintis Leasing Pty Ltd (as lessee) (structured as a separate head lease

⁹⁸ Sixth affidavit of DH Woodhouse affirmed on 21 August 2024, par 21.

⁹⁹ ts 147 (14 October 2024).

¹⁰⁰ Sixth affidavit of DH Woodhouse affirmed on 21 August 2024, par 28.

¹⁰¹ Sixth affidavit of DH Woodhouse affirmed on 21 August 2024, par 28(a), DHW-58.

¹⁰² Sixth affidavit of DH Woodhouse affirmed on 21 August 2024, par 28(b), DHW-59(a) (pages 797 - 816), DHW-59(b), DHW-59(c), DHW-59(d).

as described above at [109(b)]), which lease expired on 30 June 2024;

- (b) Lease No. 717117755 dated on or about 19 February 2016 between Sandalwood Properties Ltd (as lessor) and Quintis Leasing Pty Ltd (as lessee) (structured as a separate head lease as described above at [109(b)]), which lease expires on 30 June 2032;
- (c) Sublease No. 717176952 dated on or about 21 March 2016 between Quintis Leasing Pty Ltd (as sublessor) and Sandalwood Properties Ltd (as sublessee and bare trustee for Scheme Investors) (structured as a separate collateral sublease as described above at [109(b)]), which sublease expired on 29 June 2024; and
- (d) Sublease No. 717176953 dated on or about 21 March 2016 between Quintis Leasing Pty Ltd (as sublessor) and Sandalwood Properties Ltd (as sublessee and bare trustee for Scheme Investors) (structured as a separate collateral sublease as described above at [109(b)]), which sublease expires on 29 June 2032.

Lot 6 on Plan 15631 (known as 'Chapmans')

115 Two leases and one caveat are recorded on the title for Lot 6 on Plan 15631. They are:¹⁰³

- (a) Lease No. L470429 dated on or about 22 October 2010, between Sandalwood Properties Ltd (as lessor) and Quintis Leasing Pty Ltd (as lessee and Sandalwood Properties Ltd as bare trustee for Scheme Investors) (structured as a combined head lease and collateral sublease as described above at [109(a)]);
- (b) Caveat No. L555342 dated on or about 14 February 2011, by Sandalwood Properties Ltd (which is referable to Scheme Investors' leasehold interest in their relevant parcel of land via the lease and management agreements and the collateral sublease arrangements);

¹⁰³ Sixth affidavit of DH Woodhouse affirmed on 21 August 2024, par 28(d), DHW-60(a), DWH-60(b), DHW-60(c).

- (c) Lease No. L732170 dated on or about 2 September 2011, between Sandalwood Properties Ltd (as lessor) and Quintis Leasing Pty Ltd (as lessee and Sandalwood Properties Ltd as sublessee and bare trustee for Scheme Investors) (structured as a combined head lease and collateral sublease as described above at [109(a)]).

Lot 52 on Deposited Plan 32046 (known as 'Rogers')

116 Two leases, a surrender of lease and one caveat are recorded on the title for Lot 52 on Deposited Plan 32046. They are:¹⁰⁴

- (a) Lease No. L470430 dated on or about 22 October 2010, between Sandalwood Properties Ltd (as lessor) and Quintis Leasing Pty Ltd (as lessee and Sandalwood Properties Ltd as sublessee and bare trustee for Scheme Investors) (structured as a combined head lease and collateral sublease as described above at [109(a)]);
- (b) Surrender of Lease L470430 (Dealing No. M634812) dated on or about 31 March 2014 (surrendering part of Lease No. L470430);
- (c) Caveat No. L555346 dated on or about 11 February 2011, by Sandalwood Properties Ltd (which is referable to Scheme Investors' leasehold interest in their relevant parcel of land via the lease and management agreements and the collateral sublease arrangements); and
- (d) Lease No. M663181 dated on or about 5 May 2014, between Sandalwood Properties Ltd (as lessor) and Quintis Leasing Pty Ltd (as lessee and Sandalwood Properties Ltd as sublessee and bare trustee for Scheme Investors) (structured as a combined head lease and collateral sublease as described above at [109(a)]).

117 As to the status of each of the leases and subleases recorded on the titles to the Relevant Land Assets, Mr Woodhouse further deposed that they were not, to the best of his knowledge and as at the date of his sixth affidavit, in default; if they had expired, to the best of his knowledge had not been extended; and contained terms to the effect that they would terminate on the date that the relevant scheme(s) to

¹⁰⁴ Sixth affidavit of DH Woodhouse affirmed on 21 August 2024, par 28(e), DHW-61(a), DWH-61(b), DHW-61(c), DHW-61(d).

which they relate are terminated. Further, as noted below, he deposed that while the process of winding up the relevant schemes had commenced, that process was not complete.¹⁰⁵

Investment in the Quintis Managed Investment Schemes

118 As was recorded in *Re Quintis (Australia) Pty Ltd (receivers and managers appointed) (administrators appointed) [No 2]* at [31], from the documents attached to Mr Woodhouse's fourth affidavit, I understood that, in summary, in order to invest in a Quintis Managed Investment Scheme, a potential investor would be required to complete an application by which the potential investor would offer to subscribe and take an interest in the scheme by entering into a lease and management agreement in respect of one or more sandalwood lots. As is noted above, by the same application, a potential investor would agree to be bound by the constitution and the lease and management agreement.

119 As was noted by counsel for the Receivers, potential investors also agreed to appoint the responsible entity to manage the allotted sandalwood lots for the term of the lease, and to harvest and process the trees;¹⁰⁶ each sandalwood lot comprised one twelfth of a hectare forming part of the plantation, which was subleased to a Grower; and the Grower's application was accepted by virtue of the responsible entity executing the lease and management agreement / sublease.¹⁰⁷

Lease and management agreements

120 In this regard, the lease and management agreements provided that Quintis Leasing Pty Ltd (as 'Lessor', but having itself leased the land from the registered proprietor) granted to the relevant Grower and the

¹⁰⁵ Sixth affidavit of DH Woodhouse affirmed on 21 August 2024, par 29.

¹⁰⁶ Receivers' outline of submissions filed on 4 October 2024, par 14(b). See fourth affidavit of DH Woodhouse affirmed on 5 July 2024, DHW-33 (cl 10 and 14 of the 2007 Quintis Managed Investment Scheme lease and management agreement, pages 772 - 773), DHW-34 (cl 10 and 14 of the 2008 Quintis Managed Investment Scheme lease and management agreement, pages 979 - 980), DHW-35 (cl 10 and 14 of the 2009 Quintis Managed Investment Scheme lease and management agreement, pages 1209 and 1211); and sixth affidavit of DH Woodhouse affirmed on 21 August 2024, DHW-56(a) (cl 10 and 14 of the 2012 Quintis Managed Investment Scheme lease and management agreement, pages 377, 379), DHW-57(a) (cl 10 and 14 of the 2014 Quintis Managed Investment Scheme lease and management agreement, pages 601, 603).

¹⁰⁷ Receivers' outline of submissions filed on 4 October 2024, par 14(b). See fourth affidavit of DH Woodhouse affirmed on 5 July 2024, DHW-33(c) (2007 Quintis Managed Investment Scheme product disclosure statement, page 953), DHW-35(b) (2009 Quintis Managed Investment Scheme product disclosure statement, page 1412), DHW-34(b) (2008 Quintis Managed Investment Scheme, Grower Application Form, page 1179); and sixth affidavit of DH Woodhouse affirmed on 21 August 2024, DHW-56(c) (2012 Quintis Managed Investment Scheme product disclosure statement, application form, page 550), DHW-57(c) (2014 Quintis Managed Investment Scheme product disclosure statement, Grower Application Form, page 769).

relevant Grower took from the 'Lessor' a sublease of the 'Leased Area' together with all improvements on it and the 'Fixtures' for the 'Term' upon and subject to the 'Encumbrances' and the covenants and provisions set out in the lease and management agreement.¹⁰⁸

121 In the lease and management agreements, 'Leased Area' is defined to mean, in relation to a Grower, that specified part of the plantation as identified in the annexure to that agreement (comprising one or more 'Sandalwood Lots') to be subleased by the Grower from the 'Lessor' pursuant to the terms of the lease and management agreement.¹⁰⁹

122 The term 'Fixtures' in the lease and management agreements is defined to mean 'all fences, pipes, conduits, drains, water courses, wires and equipment, leading through, over, into or situated upon the Leased Area as required from time to time for the purpose of conducting proper and efficient silviculture', and does not include Scheme Trees.¹¹⁰

123 The 'Term' under the lease and management agreements means the period commencing on the 'Commencement Date' (the date the Grower's application is accepted by the responsible entity), and ending on the 'Termination Date' (which relevantly includes the date on which the scheme is terminated pursuant to the provisions of the relevant constitution).¹¹¹

124 To become Growers and obtain an interest in the scheme, applicants made an upfront payment.¹¹² The total establishment fee payable was dependant on the number of sandalwood lots allotted to each Grower.¹¹³ Growers could elect to pay the 'Annual Management

¹⁰⁸ Sixth affidavit of DH Woodhouse affirmed on 21 August 2024, DHW-56(a) (cl 2.1 of 2012 Quintis Managed Investment Scheme lease and management agreement, page 371).

¹⁰⁹ Sixth affidavit of DH Woodhouse affirmed on 21 August 2024, DHW-56(a) (cl 1.1 of 2012 Quintis Managed Investment Scheme lease and management agreement, page 368).

¹¹⁰ Sixth affidavit of DH Woodhouse affirmed on 21 August 2024, DHW-56(a) (cl 1.1 of 2012 Quintis Managed Investment Scheme lease and management agreement, pages 366, 370 (where the term 'Trees' is defined)).

¹¹¹ Sixth affidavit of DH Woodhouse affirmed on 21 August 2024, DHW-56(a) (cl 1.1 and schedule items 4 and 5 of the 2012 Quintis Managed Investment Scheme lease and management agreement, pages 370, 395, 396).

¹¹² Receivers' outline of submissions filed on 4 October 2024, par 14(c); sixth affidavit of DH Woodhouse affirmed on 21 August 2024, DHW-56(b) (2012 Quintis Managed Investment Scheme constitution, page 427).

¹¹³ Receivers' outline of submissions filed on 4 October 2024, par 14(c); sixth affidavit of DH Woodhouse affirmed on 21 August 2024, DHW-56(c) (2012 Quintis Managed Investment Scheme product disclosure statement, application form, page 549).

Fee' and 'Rent' each year or defer payment of any further 'Annual Management Fee' and 'Rent' so that they might be paid out of the 'Gross Proceeds of Sale'.¹¹⁴

125 Clause 19 of the lease and management agreements concerns the remuneration of the responsible entity. Clause 19 of the lease and management agreement for the 2012 Quintis Managed Investment Scheme is reproduced below:¹¹⁵

19. RESPONSIBLE ENTITY'S REMUNERATION

19.1 Establishment Fee

- (a) In consideration of the Responsible Entity agreeing to undertake all of the Establishment Services during the Establishment Period, the Responsible Entity is to be paid the Establishment Fee.
- (b) The Establishment Fee is to be taken from the Grower's Proportional Share of the Application Fund and the Subsequent Establishment Payment Fund. The Establishment Fee together with any interest accrued on that money in the Application Fund and the Subsequent Establishment Payment Fund are to be paid to the Responsible Entity in accordance with the requirements of the Constitution, particularly clause 14 and 15.

19.2 Upfront Rent and Upfront Annual Fee

- (a) In consideration of the performance by the Responsible Entity of the Ongoing Services and the sub-lease of the Leased Area for one Project year, the Responsible Entity is to be paid the Upfront Annual Fee and the Upfront Rent.
- (b) The Upfront Annual Fee and the Upfront Rent together with any interest accrued on that money in the Upfront Payment Fund are to be paid to either the Responsible

¹¹⁴ Receivers' outline of submissions filed on 4 October 2024, par 14(c); sixth affidavit of DH Woodhouse affirmed on 21 August 2024, DHW-56(c) (2012 Quintis Managed Investment Scheme product disclosure statement, application form, pages 487, 489 - 494), DHW-56(a) (cl 19.2 of 2012 Quintis Managed Investment Scheme lease and management agreement, pages 383 - 384).

¹¹⁵ Sixth affidavit of DH Woodhouse affirmed on 21 August 2024, DHW-56(a) (cl 19 of the 2012 Quintis Managed Investment Scheme lease and management agreement, pages 382 - 384). Clause 19 of the 2014 Quintis Managed Investment Scheme lease and management agreement is in very similar terms to those reproduced at [125]. Clause 19 of the 2007, 2008 and 2009 Quintis Managed Investment Schemes lease and management agreements differ in that there is no provision for a 'Subsequent Establishment Payment Fund'; there is no provision for 'Upfront Rent' or 'Upfront Annual Fee' (as such, there is no equivalent of 19.2 as is reproduced at [125]); and there is no equivalent cl 19.7 limiting deferral of 'Annual Fee and Rent' if the responsible entity is replaced.

Entity or, as applicable, the Manager or the Head Lessor, in accordance with the requirements of the Constitution, particularly clause 14.2.

19.3 Account Fee and Rent

- (a) In each Financial Year following the expiry of the Establishment Fee Period until the Termination Date (other than Year 12 unless approved by the Responsible Entity), Growers may elect the Annual Investment Option or the Annual Deferred Investment Option.
- (b) For Growers who elect the Annual Investment Option:
 - (i) the Grower elects to pay the Responsible Entity the Annual Fee and the Rent in consideration of the performance by the Responsible Entity of the Ongoing Services and the sub-lease of the Leased Area for the corresponding Financial Year (or part thereof); and
 - (ii) the Responsible Entity will deliver an invoice dated 1 January to the Grower for the Annual Fee and the Rent within the first 14 days of January of each year following the end of the Establishment Period. The invoice will represent payment for the Ongoing Services and the Rent 6 months in arrears and 6 months in advance. The Grower must pay to the Responsible Entity the Annual Fee and the Rent within 14 days of invoice.
- (c) For Growers who elect the Annual Deferred Investment Option:
 - (i) the Annual Fee and Rent is payable in accordance with clause 19.3(b) in those years for which payment is not deferred; and
 - (ii) for the years in which the Grower elects to defer the payment of the Annual Fee and the Rent by returning the completed invoice to the Responsible Entity in accordance with the instructions in Item 8(b) of the Schedule, the obligation to pay the Annual Fee and Rent for the deferred years will be satisfied by the retention by the Responsible Entity of the applicable percentage of Gross Proceeds of Sale (per Sandalwood Lot) as set out in

Item 9D of the Schedule (payable as a fee to the Responsible Entity in accordance with clause 18.3(a)).

19.4 Adjustment to Annual Fee and Rent in final year

If a payment is made under clause 19.3 and this Agreement is current only for part of the Financial Year to which the payment relates, then the Responsible Entity must refund to the Grower a proportion of the amount paid which represents the unexpired part of the year for which the payment was made, unless the Grower has failed to pay the Annual Fee, Rent or interest in previous years.

19.5 Incentive Fee

Each Grower (which means both an Electing Grower and a Non-Electing Grower) agrees to pay the Incentive Fee (if any). Each Non-Electing Grower will have the Incentive Fee deducted from the Net Proceeds of Sale in accordance with clause 18.3. Each Electing Grower must pay the Incentive Fee at the time that it collects the Collectable Produce in accordance with clause 15. If the actual amount of the Incentive Fee has not been determined at the time the Grower is required to pay this Fee, the Responsible Entity may provide an estimate of the Incentive Fee which the Grower is required to pay and the balance of the Incentive Fee shall be paid or credited within 14 days of its determination.

19.6 Selling and Marketing Fee

Each Non-Electing Grower agrees to pay the Selling and Marketing Fee to the Responsible Entity. Each Non-Electing Grower will have the Selling and Marketing Fee deducted from the Gross Proceeds of Sale in accordance with clause 18.2.

19.7 No Deferral of Annual Fee and Rent

If the responsible entity of the Project is replaced because it is insolvent, each Grower may be required to pay the Replacement Responsible Entity (unless the Replacement Responsible Entity indicates otherwise in writing) the Annual Fee and the Annual Rent Fee. In this instance the Annual Deferred Investment Option as described in clause 19.3(c) will no longer be available.

Categories of Growers under the lease and management agreements

126 When completing the application, the potential investor was presented with the opportunity to become an 'Electing Grower' for the

purposes of the lease and management agreement by marking the relevant section of the application.¹¹⁶ Investors who did not so elect were 'Non-Electing Growers' under the lease and management agreements.

127 As was emphasised by counsel, the lease and management agreements afforded to Electing Growers and to Non-Electing Growers certain rights and obligations; the main difference between the two classes concerned their respective rights and obligations in relation to 'Forest Produce';¹¹⁷ and each scheme was expected to be completed in 15 years, with the trees generally to be harvested in years 14 or 15 of the investment (subject to variation).¹¹⁸

128 In summary, under the lease and management agreements, an Electing Grower was obliged to collect the 'Collectable Produce',¹¹⁹ and pay certain costs. Provision was also made for what would occur if the Electing Grower failed to collect and pay as required. In summary, upon such failure, the Electing Grower would be deemed for all purposes of the lease and management agreements to be a Non-Electing Grower.¹²⁰

129 Clause 16.1 of the lease and management agreements defined the rights of Growers to 'Forest Produce'. As was observed by counsel for the Receivers, the scheme contemplated a pooling arrangement.¹²¹ In the case of a Non-Electing Grower, the Grower had full right, title and interest in the 'Forest Produce' and the right to have the 'Forest Produce'

¹¹⁶ As was recorded in cl 15.1 of the lease and management agreements, see the fourth affidavit of DH Woodhouse affirmed on 5 July 2024, DHW-33 (2007 Quintis Managed Investment Scheme lease and management agreement, page 773), DHW-34 (2008 Quintis Managed Investment Scheme lease and management agreement, page 980), DHW-35 (2009 Quintis Managed Investment Scheme lease and management agreement, page 1211); and sixth affidavit of DH Woodhouse affirmed on 21 August 2024, DHW-56(a) (2012 Quintis Managed Investment Scheme lease and management agreement, page 379), DHW-57(a) (2014 Quintis Managed Investment Scheme lease and management agreement, page 603).

¹¹⁷ 'Forest Produce' was a term defined in the lease and management agreements, see the fourth affidavit of DH Woodhouse affirmed on 5 July 2024, DHW-33 (2007 Quintis Managed Investment Scheme lease and management agreement, page 761), DHW-34 (2008 Quintis Managed Investment Scheme lease and management agreement, page 968), DHW-35 (2009 Quintis Managed Investment Scheme lease and management agreement, page 1198); and sixth affidavit of DH Woodhouse affirmed on 21 August 2024, DHW-56(a) (2012 Quintis Managed Investment Scheme lease and management agreement, page 367), DHW-57(a) (2014 Quintis Managed Investment Scheme lease and management agreement, page 590). See also the Receivers' outline of submissions filed on 4 October 2024, par 14(d) and (e).

¹¹⁸ Receivers' outline of submissions filed on 4 October 2024, par 14(f); ts 131 - 132 (14 October 2024).

¹¹⁹ 'Collectable Produce' was a term defined in the lease and management agreements, which definition is reproduced at *Re Quintis (Australia) Pty Ltd (receivers and managers appointed) (administrators appointed) [No 2]* sch C.

¹²⁰ As was recorded in cl 15.1 to cl 15.5 of the lease and management agreements, which sections are reproduced at *Re Quintis (Australia) Pty Ltd (receivers and managers appointed) (administrators appointed) [No 2]* sch C.

¹²¹ ts 138 (14 October 2024).

sold for the benefit of the Grower; whereas an Electing Grower had full right, title and interest in the 'Collectable Produce' (which was to be collected by the Grower rather than sold for the benefit of the Grower).¹²²

130 A Non-Electing Grower was obliged to accept the payment referred to in cl 18.3(c) of the lease and management agreements in full satisfaction and discharge of their rights in relation to the 'Forest Produce'; whereas an Electing Grower was obliged to take 'Collectable Produce' in full satisfaction and discharge of the rights of the Electing Grower in relation to 'Collectable Produce'. Further, Non-Electing Growers were deemed to have irrevocably appointed the responsible entity as their exclusive agent to negotiate and make 'at the maximum practicable price available', sales of the 'Forest Produce'.¹²³

Obligations of the Grower & the ownership of Scheme Trees

131 Part 5 of the lease and management agreements concern the obligations of the Grower. The obligations include an obligation to peaceably surrender and yield up to Quintis Leasing Pty Ltd the 'Leased Area' and 'Fixtures' at the expiry or sooner determination of the sublease granted to the Grower under that agreement.¹²⁴

132 While under a part titled 'Grower's obligations', cl 5.14 concerns the ownership of Scheme Trees and provides as follows:¹²⁵

¹²² Clause 16.1 of the lease and management agreements is reproduced at *Re Quintis (Australia) Pty Ltd (receivers and managers appointed) (administrators appointed) [No 2]* sch C.

¹²³ Fourth affidavit of DH Woodhouse affirmed on 5 July 2024, DHW-33 (cl 17.1 of the 2007 Quintis Managed Investment Scheme lease and management agreement, page 775), DHW-34 (cl 17.1 of the 2008 Quintis Managed Investment Scheme lease and management agreement, page 982), DHW-35 (cl 17.1 of the 2009 Quintis Managed Investment Scheme lease and management agreement, page 1212).

¹²⁴ Sixth affidavit of DH Woodhouse affirmed on 21 August 2024, DHW-56(a) (cl 5.13 of the 2012 Quintis Managed Investment Scheme lease and management agreement, pages 374 - 375).

¹²⁵ Clause 5.14 is identical in the 2009 Quintis Managed Investment Scheme lease and management agreement. Clause 5.14 of the 2014 Quintis Managed Investment Scheme lease and management agreement reads: 'The Parties acknowledge and agree that, subject to clause 5.15 the Trees are and will remain the property of the relevant Grower until the end of the Term or otherwise for so long as their Lease has not been terminated in accordance with its terms and that the rights and interests granted to the relevant Grower under this Lease are an independent and severable grant of a proprietary interest in the relevant Sandalwood Lots by the Lessor to the Grower.' Clause 5.14 of the 2007 and 2008 Quintis Managed Investment Schemes lease and management agreements read: 'The Parties acknowledge and agree that the Trees are and will remain the property of the relevant Grower until the end of the Term or otherwise for so long as their Lease has not been terminated in accordance with its terms and that the rights and interests granted to the relevant Grower under this Lease are an independent and severable grant of a proprietary interest in the relevant Sandalwood Lots by the Lessor to the Grower.'

5.14 Trees are owned by Grower

The Parties acknowledge and agree that, subject to clause 5.15 [which concerns the prevention of fire] and 19.2 [which concerns the payment to the responsible entity of fees and rent] the Trees are and will remain the property of the relevant Grower until the end of the Term or otherwise for so long as their Lease has not been terminated in accordance with its terms and that the rights and interests granted to the relevant Grower under this Lease are an independent and severable grant of a proprietary interest in the relevant Sandalwood Lots by the Lessor to the Grower.

Background to the appointment of the Receivers - the winding up of the Quintis Managed Investment Schemes

133 On 19 December 2023 Sandalwood Properties Ltd as responsible entity made an application to this court for orders that all of its managed investment schemes then on foot be wound up.¹²⁶

134 The power to wind up a scheme was summarised in *Re Quintis (Australia) Pty Ltd (receivers and managers appointed) (administrators appointed) [No 2]* at [42] to [46]. As there noted, cl 6.2 of the constitution for each of the Quintis Managed Investment Schemes prescribed events which would cause a winding up of the 'Scheme' or the 'Project', and relevantly, cl 6.2(c) of each constitution provided that the responsible entity must wind up the scheme if a court orders that the scheme be wound up pursuant to s 601ND of the *Corporations Act*. Further, s 601ND of the *Corporations Act* provides that on the application of a responsible entity, among others, the court has the power, by order, to direct the responsible entity of a registered scheme to wind up the scheme if, among other things, the court thinks it is just and equitable to make the order.

135 On 20 December 2023 Messrs Tucker and Kershaw of KordaMentha were appointed as joint and several administrators of Quintis Leasing Pty Ltd,¹²⁷ which subsequently entered liquidation at the second meeting of its creditors.¹²⁸

¹²⁶ First affidavit of DH Woodhouse affirmed on 15 April 2024, par 16.

¹²⁷ First affidavit of DH Woodhouse affirmed on 15 April 2024, par 17, DHW-4.

¹²⁸ First affidavit of DH Woodhouse affirmed on 15 April 2024, par 19, DHW-5.

136 On 21 December 2023 Hill J ordered that any Grower who wished to be heard with respect to the winding up application file an appearance by 29 January 2024.¹²⁹ No Grower sought to be heard.¹³⁰

137 After hearing the application of Sandalwood Properties Ltd on 12 March 2024, pursuant to s 601ND(1)(a) of the *Corporations Act* Cobby J ordered that Sandalwood Properties Ltd wind up ten Quintis Managed Investment Schemes on just and equitable grounds, the court having found (among other things) each of the schemes unprofitable and that the continuation of each could well expose the investors to additional costs, which would not be met by the proceeds of sale of sandalwood.¹³¹ The ten schemes ordered to be wound up (with a date range of 2007 to 2016), were all of the managed investment schemes of the Quintis Group entities that were on foot at that time,¹³² and included the 2007, 2008, 2009, 2012 and 2014 Quintis Managed Investment Schemes the subject of this application. As counsel for the Receivers observed, the order made pursuant to s 601ND(1)(a) of the *Corporations Act* that Sandalwood Properties Ltd wind up ten Quintis Managed Investment Schemes on just and equitable grounds was not appealed.¹³³

138 On or about 15 March 2024 Sandalwood Properties Ltd commenced winding up the Quintis Managed Investment Schemes.¹³⁴

Receivership and liquidation

139 On 2 April 2024 Messrs Woodhouse, White and Park were appointed as joint and several receivers and managers of the Quintis Group entities.¹³⁵ By a deed of appointment the Receivers were appointed to the entire assets and undertakings (subject to some exceptions) of the Quintis Group entities pursuant to a fixed and floating charge dated 21 June 2011, as amended from time to time.¹³⁶

¹²⁹ First affidavit of DH Woodhouse affirmed on 15 April 2024, par 18.

¹³⁰ Fourth affidavit of DH Woodhouse affirmed on 5 July 2024, DHW-25(a); ts 37 (12 March 2024).

¹³¹ The *extempore* reasons of Cobby J: ts 36 - 50 (12 March 2024), and the orders made on 12 and 14 March 2024, attached to the fourth affidavit of DH Woodhouse affirmed on 5 July 2024, DHW-25. See also the sixth affidavit of DH Woodhouse affirmed on 21 August 2024, pars 11(a), 31(a) - (c).

¹³² First affidavit of DH Woodhouse affirmed on 15 April 2024, par 20, DHW-6; sixth affidavit of DH Woodhouse affirmed on 21 August 2024, par 11(a).

¹³³ Receivers' outline of submissions filed on 4 October 2024, par 19.

¹³⁴ Sixth affidavit of DH Woodhouse affirmed on 21 August 2024, par 31(d), DHW-62.

¹³⁵ First affidavit of DH Woodhouse affirmed on 15 April 2024, par 2; sixth affidavit of DH Woodhouse affirmed on 21 August 2024, par 11(c).

¹³⁶ First affidavit of DH Woodhouse affirmed on 15 April 2024, par 23, DHW-7.

140 The appointment of the Receivers was made following the occurrence of an event of default under the indentures governing the Quintis Group entities' secured first and second lien notes. On the instructions of the requisite majority of holders of those notes, the 'Collateral Trustee' enforced the security held by the holders of those notes by appointing the Receivers.¹³⁷

141 Receivers accepted an appointment to act as receivers and managers in relation to the 'Secured Property' on the terms of the deed of appointment. In the deed of appointment, 'Secured Property' was defined to mean 'property and assets that are the subject of the Security under the Security Document,... but excluding... the Excluded Property'.¹³⁸

142 The Receivers' deed of appointment referred to and defined the 'Security Document' as meaning 'the fixed and floating charge originally dated 21 June 2011 entered into by, amongst others, the 'Security Providers' in favour of the 'Collateral Trustee' (directly or indirectly) as amended by the amendment deed dated 27 July 2016 and the scheme and as acceded to by each of Fieldpark Pty Ltd and Quintis (Australia) Pty Ltd, respectively, via the accession deeds each dated 11 October 2018.'¹³⁹ To his eighth affidavit, Mr Woodhouse annexed the documents which comprised the 'Security Document'.¹⁴⁰

143 Mr Woodhouse also deposed in his eighth affidavit that he understood that in or about 2018, a deed of release had been executed by the security trustee and Sandalwood Properties Ltd which released certain assets of Sandalwood Properties Ltd from the scope of the security under the fixed and floating charge. To his eighth affidavit Mr Woodhouse annexed a document that he identified as a true copy of a release dated 2018.¹⁴¹

144 As to the ambit of the charge, counsel for the Receivers summarised the position as follows:¹⁴²

¹³⁷ First affidavit of DH Woodhouse affirmed on 15 April 2024, par 22.

¹³⁸ First affidavit of DH Woodhouse affirmed on 15 April 2024, par 23, DHW-7 (cl 1.2 of deed of appointment, page 301).

¹³⁹ First affidavit of DH Woodhouse affirmed on 15 April 2024, par 23, DHW-7 (deed of appointment, page 301).

¹⁴⁰ Eighth affidavit of DH Woodhouse affirmed on 3 October 2024, par 11, DHW-63, DHW-64, DHW-65.

¹⁴¹ Eighth affidavit of DH Woodhouse affirmed on 3 October 2024, par 12, DHW-66. See also ts 133 - 134 (14 October 2024).

¹⁴² Receivers' outline of submissions filed on 4 October 2024, pars 21 - 23.

- (a) the property and assets the subject of the fixed and floating charge include all present and future property, assets and undertaking of each Quintis Group entity wherever situated other than (subject to certain provisions not relevant to this proceeding) the 'Excluded Property';
- (b) in particular, the fixed and floating charge specifically includes:
 - (i) within the fixed charge element, all 'Real Property' (defined as all land and real property leased, occupied, used or owned by a [Quintis Group entity] at any time) and any fixture, improvement or structure on or fixed to such Real Property (other than any trees) (cl 4.1(a)); and
 - (ii) within the floating charge element, any interest of a Quintis Group entity in any trees not subject to the provisions of cl 4.1(a) (by operation of cl 4.2(a));
- (c) excluded from the security comprised in the fixed and floating charge is:
 - (i) the 'Excluded Property', being in respect of each Quintis Group entity, among other things, any property the subject of a trust or managed investment scheme, certain assets requiring counterparty consent to the grant of security, and certain specific water rights and units in water trusts; and
 - (ii) by virtue of the deed of partial release referred to above, in respect of Sandalwood Properties Ltd only, all assets other than land and buildings owned or leased by Sandalwood Properties Ltd.

145 On 3 April 2024 the Receivers were also appointed over the various real property interests owned by the Quintis Group entities under various mortgages, pursuant to three supplemental appointment deeds.¹⁴³

146 The Receivers' supplemental deeds of appointment referred to and defined the 'Mortgaged Property' in each of Queensland, Western Australia and the Northern Territory. To his eighth affidavit

¹⁴³ First affidavit of DH Woodhouse affirmed on 15 April 2024, pars 23 - 24, DHW-8.

Mr Woodhouse annexed the documents which comprised the real property mortgages for each of the Relevant Land Assets.¹⁴⁴

147 As to the ambit of the mortgages, counsel for the Receivers summarised the position as follows:¹⁴⁵

The mortgages specifically include within the 'Mortgaged Property' in each case the relevant mortgagor's estate or interest from time to time in the relevant property described in the mortgage, together with (among other things) trees and timber on or used with the relevant property.

148 The companies over which the Receivers were appointed were made subject to voluntary administration by resolution of the directors pursuant to s 436A of the *Corporations Act* (together with two additional subsidiary companies) on 3 April 2024, save for Quintis Leasing Pty Ltd, which was placed into voluntary administration on 20 December 2023 and into liquidation on 6 March 2024 (before the hearing of the winding up application).¹⁴⁶

149 On or about 19 July 2024 the second meetings of the creditors of the Quintis Group entities (save for Quintis Leasing Pty Ltd) took place. At those meetings, the creditors of each of the Quintis Group entities resolved to place them into liquidation.¹⁴⁷

The process of winding up

150 As noted above, the court on 12 and 14 March 2024 ordered that all remaining managed investment schemes of the Quintis Group entities be wound up. The constitution of each Quintis Managed Investment Scheme sets out the process that Sandalwood Properties Ltd, as responsible entity, must follow in the winding up. Clause 6.3 of the constitution of each Quintis Managed Investment Scheme concerns the process of winding up, and is reproduced at [88] above.

151 After the court ordered that the remaining managed investment schemes of the Quintis Group entities be wound up, on 26 and 28 March 2024, notices were issued by the Chair of Sandalwood

¹⁴⁴ Eighth affidavit of DH Woodhouse affirmed on 3 October 2024, par 13, DHW-67 (for Lot 73 of Crown Plan GS422 (known as 'Mugica')), DHW-68 (for Lot 13 of Survey Plan 195138 & Lot 2 of Survey Plan 262859 (both known as 'Woods Farm')), DHW-69 (for Lot 6 on Plan 15631 (known as 'Chapmans'), and Lot 52 on Deposited Plan 32046 (known as 'Rogers'))).

¹⁴⁵ Receivers' outline of submissions filed on 4 October 2024, par 24. See also ts 134 - 135 (14 October 2024).

¹⁴⁶ First affidavit of DH Woodhouse affirmed on 15 April 2024, par 25, DHW-9; fourth affidavit of DH Woodhouse affirmed on 5 July 2024, par 2; sixth affidavit of DH Woodhouse affirmed on 21 August 2024, par 11(c).

¹⁴⁷ Sixth affidavit of DH Woodhouse affirmed on 21 August 2024, par 11(d), DHW-54.

Properties Ltd, as the responsible entity, to investors in each of the Quintis Managed Investment Schemes in similar terms. The Scheme Investors of each scheme were put on notice that:¹⁴⁸

- (a) the court had directed Sandalwood Properties Ltd, as the responsible entity, to wind up the scheme;
- (b) Sandalwood Properties Ltd had commenced the winding up and had lodged the required notices with the Australian Securities and Investments Commission (ASIC);
- (c) the constitution sets out the process which Sandalwood Properties Ltd as the responsible entity must follow during the winding up process. In particular, the constitution records that:
 - (i) Sandalwood Properties Ltd must convert to money all 'Project Property', deduct all fees, expenses, costs and any other money in accordance with the constitution and the Corporations Act, and then divide the balance amongst the Growers according to each Grower's 'Proportional Interest'; and
 - (ii) Sandalwood Properties Ltd must proceed with the winding up efficiently, diligently and without undue delay;
- (d) the 'Project Property' of the 2007 Quintis Managed Investment Scheme included forest produce that was harvested before the winding up orders were made by the court, and Sandalwood Properties Ltd would shortly conduct a public tender process for the sale of that forest produce;
- (e) each respective scheme uses land owned by a third party, leased to Quintis Leasing Pty Ltd;
- (f) Quintis Leasing Pty Ltd went into liquidation on 6 March 2024 and the liquidators will shortly issue notices under s 568 of the *Corporations Act* disclaiming those head-leases (to the extent that they have not already done so);
- (g) in effect, the disclaimer of a lease will mean that the lease is taken to be terminated, and when the head-leases are terminated, in effect, the sub-leases (including any sub-lease under the respective lease and management agreements) will also terminate and all of the right, title and interest in the trees on the land will pass to the land owner; and

¹⁴⁸ Fourth affidavit of DH Woodhouse affirmed on 5 July 2024, par 17, DHW-26. See also the first affidavit of DH Woodhouse affirmed on 15 April 2024, par 21, DHW-6.

- (h) the constitution provides that during the winding up of the scheme, Sandalwood Properties Ltd may terminate any other agreements or arrangements it has entered into with the Growers which relate to the scheme, and Sandalwood Properties Ltd must give notice to the Growers of the termination of those agreements or arrangements.

152 On 26 and 28 March 2024 Sandalwood Properties Ltd as the responsible entity of each of the Quintis Managed Investment Schemes also issued to the Growers termination notices, giving them notice that.¹⁴⁹

Pursuant to Clause 6.5 of the Constitution, the Responsible Entity hereby provides notice to the Grower that the LMA is terminated effective immediately.

153 As was recorded at [55] in *Re Quintis (Australia) Pty Ltd (receivers and managers appointed) (administrators appointed) [No 2]*, I understood the reference to 'LMA' in each termination notice to be a reference to the lease and management agreements entered into by Quintis Leasing Pty Ltd, Sandalwood Properties Ltd, and the Growers for each of the Quintis Managed Investment Schemes. By 28 March 2024 Sandalwood Properties Ltd as the responsible entity had purported to terminate all of the lease and management agreements for the Quintis Managed Investment Schemes.

154 The process of winding up the ten managed investment schemes of the Quintis Group entities was being managed by Messrs Tucker and Kershaw in their capacity as the joint and several voluntary administrators of Sandalwood Properties Ltd, and continues to be managed by them in their capacity as joint and several liquidators.¹⁵⁰ The process is not complete.¹⁵¹

155 It was Mr Woodhouse's evidence that as the lease and management agreements for each scheme had been terminated pursuant to cl 6.5 of each constitution,¹⁵² the Receivers had taken the view that any Scheme Trees had vested in the relevant landowner (that is, in the case of land owned by a Quintis Group entity, that entity, and in the case of land owned by a third party, that third party if there was no

¹⁴⁹ Fourth affidavit of DH Woodhouse affirmed on 5 July 2024, par 17, DHW-26; sixth affidavit of DH Woodhouse affirmed on 21 August 2024, pars 11(b), 31(e).

¹⁵⁰ First affidavit of DH Woodhouse affirmed on 15 April 2024, par 21; sixth affidavit of DH Woodhouse affirmed on 21 August 2024, DHW-54 (pages 210 - 211).

¹⁵¹ Sixth affidavit of DH Woodhouse affirmed on 21 August 2024, par 29.

¹⁵² Clause 6.5 is reproduced at [90] above.

longer a lease between the third party landowner and a Quintis Group entity).¹⁵³

Disclaimer

156 In *Re Quintis (Australia) Pty Ltd (receivers and managers appointed) (administrators appointed) [No 2]* at [56] to [61], I described the purported disclaimer by the Liquidators of the 'head-leases' of the Voyager Land. As there noted, on 20 March 2024 Messrs Tucker and Kershaw in their capacity as the joint and several liquidators of Quintis Leasing Pty Ltd disclaimed the subleases of the Voyager Land granted to Quintis Leasing Pty Ltd by Quintis Forestry Pty Ltd;¹⁵⁴ and on 20 March 2024, Messrs Tucker and Kershaw in their capacity as the joint and several liquidators of Quintis Leasing Pty Ltd also purported to disclaim the lease granted by Prime Grain Pty Ltd to Quintis Forestry Pty Ltd with respect to Lot 240 of the Voyager Land.¹⁵⁵

157 As to the purported disclaimers, I noted in my earlier reasons that, first, the leases were granted by Prime Grain Pty Ltd (as lessor) to Quintis Forestry Pty Ltd (as lessee), and not to Quintis Leasing Pty Ltd (as lessee); and secondly, on 20 March 2024, Messrs Tucker and Kershaw were then the joint and several administrators, not liquidators, of Quintis Forestry Pty Ltd. In the circumstances, despite their assertions otherwise, it would appear that Messrs Tucker and Kershaw did not have the power to disclaim the head lease for Lot 240 of the Voyager Land granted by Prime Grain Pty Ltd (as lessor) to Quintis Forestry Pty Ltd (as lessee), pursuant to s 568 of the *Corporations Act*, as was recorded in the notice of disclaimer issued to Prime Grain Pty Ltd on 20 March 2024, and represented to the Scheme Investors in the notices issued to them from 26 to 28 March 2024.

Actions taken and intended to be taken by the Receivers

158 In his first affidavit, Mr Woodhouse deposed to the steps undertaken by the Receivers following their appointment, including but not limited to the Receivers conducting an expression of interest campaign to drive interest in a potential sale or recapitalisation process

¹⁵³ Sixth affidavit of DH Woodhouse affirmed on 21 August 2024, par 31(f).

¹⁵⁴ Fourth affidavit of DH Woodhouse affirmed on 5 July 2024, par 23, DHW-31.

¹⁵⁵ Fourth affidavit of DH Woodhouse affirmed on 5 July 2024, DHW-31 (pages 752 - 753).

aimed at selling the Quintis Group entities and/or their business as a going concern.¹⁵⁶

159 In his sixth affidavit, Mr Woodhouse deposed that since taking the steps outlined in his first affidavit:

- (a) the expression of interest and sale campaign had ended on or about 13 May 2024, with no viable proposals or offers being received to purchase or recapitalise the Quintis Group entities and/or their business as a going concern;¹⁵⁷
- (b) as part of the expression of interest and sale campaign, the Receivers had obtained indicative proposals from third parties for the purchase of certain land assets of the Quintis Group entities, including the Relevant Land Assets;¹⁵⁸
- (c) on or about 13 May 2024 the Receivers had commenced marketing for sale the assets of the Quintis Group entities, including the Relevant Land Assets;¹⁵⁹
- (d) the first round of expressions of interest for the purchase of land assets owned by the Quintis Group entities situated in Queensland, and in Kununurra and Albany, Western Australia (including the Relevant Land Assets) closed on 9 August 2024;¹⁶⁰
- (e) as at 13 August 2024 a total of thirty five responses to the request for expressions of interest had been received by the Receivers, for either various aggregated lots in their entirety, or for individual land titles;¹⁶¹
- (f) confidential offers were received in respect of the Relevant Land Assets;¹⁶² and

¹⁵⁶ First affidavit of DH Woodhouse affirmed on 15 April 2024, pars 26 - 27; as was noted in the sixth affidavit of DH Woodhouse affirmed on 21 August 2024, par 12.

¹⁵⁷ Sixth affidavit of DH Woodhouse affirmed on 21 August 2024, par 13(a); eighth affidavit of DH Woodhouse affirmed on 3 October 2024, par 7(a).

¹⁵⁸ Sixth affidavit of DH Woodhouse affirmed on 21 August 2024, par 13(b); eighth affidavit of DH Woodhouse affirmed on 3 October 2024, par 7(b).

¹⁵⁹ Sixth affidavit of DH Woodhouse affirmed on 21 August 2024, par 13(c); eighth affidavit of DH Woodhouse affirmed on 3 October 2024, par 7(c).

¹⁶⁰ Sixth affidavit of DH Woodhouse affirmed on 21 August 2024, par 13(d); eighth affidavit of DH Woodhouse affirmed on 3 October 2024, par 7(d).

¹⁶¹ Sixth affidavit of DH Woodhouse affirmed on 21 August 2024, par 13(e).

¹⁶² Sixth affidavit of DH Woodhouse affirmed on 21 August 2024, par 13(f).

- (g) best and final offers were to be sought by 23 August 2024, with the Receivers and preferred bidders moving towards due diligence and documenting the sale process.¹⁶³

The Voyager Land

¹⁶⁰ In his sixth affidavit Mr Woodhouse deposed that on or about 1 August 2024, the Receivers executed a sale contract for the sale of the Scheme Trees on the Voyager Land with AAG Investment Management Pty Ltd and Sandalista Pty Ltd; and that the harvest of the Scheme Trees was expected to be completed by 31 October 2024.¹⁶⁴

The Relevant Land Assets

¹⁶¹ In his eighth affidavit Mr Woodhouse described the status of the Receivers' sale process in respect of the Relevant Land Assets and deposed that each had been the subject of various offers from multiple counterparties.¹⁶⁵ Further, he deposed that it was intended that the Receivers would sell the seller's interests in the Relevant Land Assets free from encumbrances and otherwise on the terms of the sale contract; and that it would be the seller's obligation to deliver such releases of any encumbrances as necessary, so that at completion the assets could be delivered free of all encumbrances (if any).¹⁶⁶

Claims raised

¹⁶² In his sixth affidavit, Mr Woodhouse noted that claims had been made by Scheme Investors in the Scheme Trees.¹⁶⁷ On behalf of the Receivers it was also observed that some 215 registrations had been made by Scheme Investors in the PPSR against one or more the Quintis Group entities, claiming an interest in Scheme Trees, or in the proceeds of sale of the Scheme Trees.¹⁶⁸

The position of the Represented Defendants - overview

¹⁶³ The Represented Defendants maintained that the orders sought by the Receivers relating to the sale of the Scheme Trees and the Relevant Land Assets should not be made.

¹⁶³ Sixth affidavit of DH Woodhouse affirmed on 21 August 2024, par 13(g); eighth affidavit of DH Woodhouse affirmed on 3 October 2024, par 7(e).

¹⁶⁴ Sixth affidavit of DH Woodhouse affirmed on 21 August 2024, par 15.

¹⁶⁵ Eighth affidavit of DH Woodhouse affirmed on 3 October 2024, par 9.

¹⁶⁶ Eighth affidavit of DH Woodhouse affirmed on 3 October 2024, par 10.

¹⁶⁷ Sixth affidavit of DH Woodhouse affirmed on 21 August 2024, pars 14, 17 and 18.

¹⁶⁸ Receivers' outline of submissions filed on 4 October 2024, par 37; fourth affidavit of DH Woodhouse affirmed on 5 July 2024, pars 46 - 61, DHW-40 to DHW-48.

164 As a threshold matter, it was the Represented Defendants' position that a proceeding under s 424 of the *Corporations Act* is not an appropriate vehicle to determine finally the rights of the Represented Defendants and, by extension, the Scheme Investors in the relevant Quintis Managed Investment Schemes.¹⁶⁹

165 The Represented Defendants did not assert that the freehold in the land on which the Scheme Trees are situated and the freehold over the Relevant Land Assets constitute 'Project Property', and so are held on trust. It was accepted that there was evidence that money contributed by Growers to the schemes was not used to purchase land.¹⁷⁰ Rather, the Represented Defendants' submission was that the Scheme Trees and the leases and subleases which cover the entirety of the ground on which the Scheme Trees and Relevant Land Assets are situated, are trust assets.¹⁷¹ Further, the Represented Defendants maintain that if the Scheme Trees and lease and subleases are not trust assets held for the Growers, then they are subject to an equitable lien in favour of the Growers.¹⁷²

The position of the Liquidators - overview

166 Noting that there is a dispute between the Receivers and some of the Scheme Investors as to whether the Scheme Investors have an interest in the Relevant Land Assets and Scheme Trees (ventilated in this proceeding), the Liquidators informed the court that (to the extent necessary), they will abide by the decision of the court and would not take an active role in the dispute.¹⁷³

167 As is noted above, among other things the Receivers moved for a direction for the purpose of securing clear title to the five land titles (which will involve the surrender of leases and subleases and the withdrawal of caveats).¹⁷⁴ That is, the Receivers sought a direction pursuant to s 424 of the *Corporations Act* that they would be justified and acting properly in executing, and/or causing the execution by (as appropriate) Sandalwood Properties Ltd and Quintis Leasing Pty Ltd (in each case in their own right and not as trustees of any trust), the deeds of surrender in substantially the form of annexure A and

¹⁶⁹ Represented Defendants' outline of submissions filed on 11 October 2024, par 3; ts 194 (14 October 2024). See also ts 192 - 197 (14 October 2024).

¹⁷⁰ Represented Defendants' supplementary outline of submissions filed on 21 October 2024, par 3.

¹⁷¹ Represented Defendants' supplementary outline of submissions filed on 21 October 2024, pars 3 - 4.

¹⁷² Represented Defendants' outline of submissions filed on 11 October 2024, par 41.

¹⁷³ Liquidators' outline of submissions filed on 14 October 2024, par 8(a) - (b), (e). See also ts 126, 198 - 199 (14 October 2024).

¹⁷⁴ Interlocutory process filed on 21 August 2025, pt A (substantive orders) par 5.

annexure B to the interlocutory process and the withdrawal of caveats substantially in the form of annexure C to the interlocutory process (as appropriate in the circumstances). As to that direction, the court was informed that the Liquidators did not take issue with the form of those annexed documents (in the form provided to them on 3 October 2024) and intended, should the court make a direction in the terms sought, to assist the Receivers with the execution and lodgement of those documents at the relevant land titles offices where necessary.¹⁷⁵ Counsel for the Liquidators noted, as to the utility of the requested directions, that if the relief granted was limited to the declarations sought, then the Liquidators may need to revisit their position as summarised above.¹⁷⁶

The position of the Receivers and the need for the court orders - overview

168 The Receivers noted that the Relevant Land Assets and the Scheme Trees on the same are affected by claims asserted by Scheme Investors, as the Relevant Land Assets are owned by Quintis Group entities and contain plantations of Scheme Trees; and that the Scheme Trees on the Voyager Land were also affected by the claims asserted by Scheme Investors, as the Voyager Land contains (or contained in the case of Lot 257) plantations of Scheme Trees.¹⁷⁷

169 As is noted above, in summary, the Receivers maintained that the Scheme Investors did not have any continuing interest in the Scheme Trees, or if they did, that interest was valueless given the findings made by Cobby J when his Honour ordered that Sandalwood Properties Ltd (as the responsible entity) wind up all of the managed investment schemes of the Quintis Group entities that were on foot at that time;¹⁷⁸ and given the terms of the documents which govern the Quintis Managed Investment Schemes, which require any proceeds of sale of Scheme Trees to be used in payment of the outstanding fees and expenses owed by the Scheme Investors to the Quintis Group entities.¹⁷⁹ Further, the Receivers maintained that the noteholders on whose behalf the Receivers were appointed had security over the five land titles (and the Scheme Trees that were sold on the Voyager Land), which are otherwise realisable and available for sale in order to reduce

¹⁷⁵ Liquidators' outline of submissions filed on 14 October 2024, par 8(d).

¹⁷⁶ ts 198 - 201 (14 October 2024).

¹⁷⁷ Receivers' outline of submissions filed on 4 October 2024, pars 38 - 39.

¹⁷⁸ The *extempore* reasons of Cobby J: ts 36 - 50 (12 March 2024), and the orders made on 12 and 14 March 2024; first affidavit of DH Woodhouse affirmed on 15 April 2024, par 20, DHW-6; sixth affidavit of DH Woodhouse affirmed on 21 August 2024, par 11(a).

¹⁷⁹ Receivers' outline of submissions filed on 4 October 2024, par 11.

the outstanding secured debt which is owed to those noteholders by the Quintis Group entities.¹⁸⁰

170 The Receivers maintained that the Scheme Investors did not have any continuing interest in the Relevant Land Assets, or in the Scheme Trees on the Relevant Land Assets, as:¹⁸¹

- (a) the Scheme Investors' primary interest in land derived from the lease granted to them under the lease and management agreements;
- (b) the collateral lease structures were entered into by Sandalwood Properties Ltd as bare trustee for the Scheme Investors as a requirement of its Australian Financial Services Licence, or alternatively, in Western Australia, Sandalwood Properties Ltd lodged a caveat against the relevant land title for the same purpose; and
- (c) the termination of the lease and management agreements for (relevantly) the 2007, 2008, 2009, 2012 and 2014 Quintis Managed Investment Schemes pursuant to cl 6.5 of each constitution terminated each Scheme Investors' interest in the Relevant Land Assets, and therefore resulted in the Scheme Trees vesting in the landowner (which in the case of the Relevant Land Assets is a Quintis Group entity).

171 The Receivers further dispute that if the Scheme Trees and lease and subleases are not trust assets held for the Growers, then they are subject to an equitable lien in favour of the Growers (as was the position of the Represented Defendants).¹⁸²

172 The issues that the Receivers suggested that the court need determine by this application were as follows:¹⁸³

- (a) whether following the termination of the lease and management agreements, the Scheme Investors have any right, title or interest to the Scheme Trees or Relevant Land Assets;

¹⁸⁰ Receivers' outline of submissions filed on 4 October 2024, par 11.

¹⁸¹ Receivers' outline of submissions filed on 4 October 2024, par 30.

¹⁸² Receivers' outline of submissions filed on 4 October 2024, pars 85 - 89.

¹⁸³ Receivers' outline of submissions filed on 4 October 2024, par 10.

- (b) whether to direct that certain steps be taken to remove leases, subleases and caveats from the titles to the Relevant Land Assets;
- (c) whether the Receivers may sell the Scheme Trees and Relevant Land Assets and distribute the proceeds of sale from them in accordance with their appointment deeds; and
- (d) whether the Scheme Investors have any entitlement to share in the proceeds of sale from the Scheme Trees or the Relevant Land Assets.

173 In his sixth affidavit, Mr Woodhouse deposed to his belief that without the declaratory relief and the directions sought in this application, the Receivers would not be able to enter into any binding sale agreement with any prospective purchaser(s) in respect of the Relevant Land Assets, principally due to concerns that the Receivers may be exposed to claims from Scheme Investors to the effect that Scheme Investors have a valid and enforceable interest in the Scheme Trees and/or the Relevant Land Assets (even if those claims ultimately lack merit). Further, he deposed that based on his experience, he was concerned that without the requested declarations and directions, prospective purchasers would likely be deterred from bidding, and sale would be more difficult.¹⁸⁴

Applicable principles

Application for directions under s 424

174 Section 424 of the *Corporations Act* provides as follows:

- (1) A controller of property of a corporation may apply to the Court for directions in relation to any matter arising in connection with the performance or exercise of any of the controller's functions and powers as controller.
- (2) In the case of a receiver of property of a corporation, subsection (1) applies only if the receiver was appointed under a power contained in an instrument.

¹⁸⁴ Sixth affidavit of DH Woodhouse affirmed on 21 August 2024, pars 34 - 35.

175 The purpose of s 424 is to provide a procedure for a controller to obtain guidance from the court in the conduct of his or her controllership, and thereby obtain protection against a claim for breach of duty or an allegation that he or she has acted improperly or unreasonably.¹⁸⁵ Subject to the controller making full and fair disclosure of the material facts, the order sanctions a proposed course of conduct.¹⁸⁶

176 The power to give directions under s 424 is broad - reflected in the words 'in relation to *any matter arising in connection with* the performance or exercise of any of the controller's functions and powers as controller.' (Emphasis added.) It is well established that the power is intended to facilitate the work of controllers and should be interpreted liberally so as to give effect to that intention.¹⁸⁷

177 As was observed by Colvin J in *Preston, in the matter of Sandalwood Properties Ltd* [2018] FCA 547 at [42]:

... it is difficult to conceive of any action by a controller that would not have a connection with the performance or exercise of his or functions or powers. It follows that the relevant matter is described in quite general terms. Directions can be sought 'in relation to' any such matter. *Such terms are of the widest import, and in the absence of compelling reasons should not be read down.* (emphasis added, citations omitted)

178 It is accepted that the nature and scope of available directions under s 424 is as follows:¹⁸⁸

- (1) The directions that may be provided are a form of personal guidance or advice; they articulate the approach the controller is

¹⁸⁵ *Mark Anthony Korda and David John Winterbottom As Receivers and Managers of Westpoint Corporation Pty Ltd (In Liq) (Receivers and Managers Appointed) and the companies listed in Schedule 1 v Silkchime Pty Ltd (Receivers and Managers Appointed) atf Silkchime Unit Trust* [2010] WASC 155; (2010) 243 FLR 269 [32]; citing *Sanderson v Classic Car Insurances Pty Ltd* (1985) 10 ACLR 115; (1985) 4 ACLC 114; *Re Southern Cross Airlines Holdings Ltd (in liq)* [2000] 1 Qd R 84; (1998) 145 FLR 386; *Re Mirabela Nickel Ltd (receivers and managers appointed) (in liq); ex parte Madden* [2018] WASC 335 [85].

¹⁸⁶ *Re GB Nathan & Co Pty Ltd (in liq)* (1991) 24 NSWLR 674, 679 - 680; *Anglican Insurance Ltd* [2008] NSWSC 41; (2008) 26 ACLC 147 [38] - [39]; *Handberg (in his capacity as liquidator of S & D International Pty Ltd (ACN 075 030 447) (in liq) v MIG Property Services Pty Ltd (ACN 006 657 174)* [2010] VSC 336; (2010) 79 ACSR 373 [7] - [8]; *Saraceni v Jones* [2012] WASC 59; (2012) 42 WAR 518 [159]; *Re Mirabela Nickel Ltd (receivers and managers appointed) (in liq); ex parte Madden* [85].

¹⁸⁷ *Re Mirabela Nickel Ltd (receivers and managers appointed) (in liq); ex parte Madden* [86]; *In the matter of i-Prosperity Waterside Rhodes Pty Ltd in its own capacity and as trustee for the i-Prosperity Waterside Rhodes Unit Trust* [2021] NSWSC 1065 [6]; *Revroof Pty Ltd (receivers and managers appointed) v Taminga Street Investments Pty Ltd* [2023] FCA 543 [12].

¹⁸⁸ *Re Mirabela Nickel Ltd (receivers and managers appointed) (in liq); ex parte Madden* [89], where the court summarised the principles that emerged from *Preston, in the matter of Sandalwood Properties Ltd* [2018] FCA 547.

justified in taking having regard to the known circumstances and relevant legal principles.

- (2) The power is to give 'directions' in relation to the matters identified in s 424(1). The relevant matters are described in broad and general terms, especially given the words 'in connection with'. So too the words 'in relation to' are of 'the widest import'. Thus the permissible subject matter of a direction will include the actions of the controller but is not confined to such actions. It will include where:

... the controller has to consider the appropriate action to take in undertaking functions or exercising powers and a third party is claiming that a right, interest or entitlement of the third party must be acknowledged or respected in exercising those functions or powers ...

- (3) The circumstance that the controller is a privately appointed receiver and manager is not relevant to the question whether to make directions. That said, receivers should not be unduly nervous and come to court where advice is not needed.
- (4) There must be an issue calling for the exercise of legal judgment, ie a legal issue of substance or procedure or an issue of power, propriety or reasonableness. It must be more than a business or commercial decision. However, the fact that a legal question may have significant commercial consequences does not make the giving of directions inappropriate. The court does not give advice as to how the controller should act but rather whether there is legal justification to so act.
- (5) Once the jurisdictional requirement is satisfied the court has discretion whether to provide advice of the kind contemplated by the statutory provision.
- (6) The making of directions is not an adjudication. It will not be determinative of parties' rights. The court is not determining the rights of persons and has no power to provide directions that would have that consequence.
- (7) The fact that directions are sought in the context of an adversarial dispute does not mean that it is inappropriate to provide directions. There is a need to consider the nature of any underlying dispute. Nevertheless, the existence of such a dispute, and the circumstance that the subject matter for advice is an issue in adversarial proceedings, may be relevant to whether the court is willing to give directions and in what terms.
- (8) A direction is given in the context of the circumstances presented to the court at the time it is made; it will not extend to

materially different circumstances that arise in the future. The form in which a direction is expressed should be consistent with it being provided by way of judicial advice. (footnotes omitted)

Application for declaratory relief

179 As to the declarations sought, in *Macks v Viscariello* [2017] SASCFC 172; (2017) 328 FLR 115, the Full Court of the South Australian Supreme Court discussed in detail the power of a state Supreme Court to grant declaratory relief when exercising federal jurisdiction under the *Corporations Act*.

180 As Hill J did in *Litigation Capital Partners LLP Pte Ltd (Registration No 200922518M) v ACN 117 641 004 Pty Ltd (in liquidation) (formerly known as Vale Cash Management Fund Pty Ltd)* [2021] WASC 161 at [211], I respectfully adopt the reasons of the Court of Appeal and agree that, as a general proposition, this court has power to grant declaratory relief pursuant to s 25(6) of the *Supreme Court Act* (which is in materially the same terms to the South Australian provision) in relation to matters arising under the *Corporations Act*.

181 Six factors must be present before there can be a declaratory order, which are present when these following conditions are met:¹⁸⁹

1. There must exist controversy between the parties ...;
2. The proceedings must involve a 'right' ...;
3. The proceedings must be brought by a person who has a proper or tangible interest in obtaining the order, which is usually referred to as 'standing' or 'locus standi' ...;
4. The controversy must be subject to the court's jurisdiction both within the court's own charter and also within the jurisdiction so far as private international law rules are concerned ...;
5. The defendant must be a person having a proper or tangible interest in opposing the plaintiff's claim ...;
6. The issue must be ripe ... It must not be merely of academic interest, hypothetical or one whose resolution would be of no practical utility.

¹⁸⁹ *Aussie Airlines Pty Ltd v Australian Airlines Ltd* (1996) 68 FCR 406, cited in *Macks v Viscariello* [677]. See also *JN Taylor Holdings Ltd (in liq) v Bond* (1993) 59 SASR 432, 436 - 437; *Johnco Nominees Pty Ltd v Albury-Wodonga (New South Wales) Corporation* [1977] 1 NSWLR 43, 61.

Disposition**Part A - What right, title or interest do the Scheme Investors have, if any, to the Scheme Trees or the Relevant Land Assets?*****Relevant Land Assets***

182 The Relevant Land Assets were used for the purposes of the 2007, 2008, 2009, 2012 and 2014 Quintis Managed Investment Schemes. The Receivers say that the Relevant Land Assets are not Project Property (as that term is defined in the constitutions).

183 The Represented Defendants do not assert that the freehold on which Scheme Trees are situated, or the freehold over the Relevant Land Assets, are trust assets. That there was evidence that money contributed by Scheme Investors to the schemes was not used to purchase that land was acknowledged by counsel for the Represented Defendants.¹⁹⁰

184 There is no evidence to support a finding that the freehold falls within the meaning of 'scheme property' as defined at s 9 of the *Corporations Act*. It was not asserted to be the case, and for completeness I note that I am satisfied that Scheme Investors have no right, title or interest in the freehold on land where the Scheme Trees are situated or the freehold of Relevant Land Assets.

Scheme Trees and various leases and subleases that cover the land on which the Relevant Land Assets are situated

185 As is noted above, it is the Represented Defendants' position that the Scheme Trees and the various leases and subleases that cover the land that comprise the Relevant Land Assets are trust assets.

Project Property - position of the Represented Defendants

186 The affidavits filed in the application were extensive, and the submissions made raised matters of some complexity, in the context of scheme structures which are complex. The controversy as between the Receivers and the Represented Defendants in this matter first turns on whether the Scheme Trees and the various leases and subleases are 'Project Property' as that term is defined in the constitutions. The answer to that question is not straightforward.

¹⁹⁰ Represented Defendants' supplementary outline of submissions filed on 21 October 2024, par 3.

187 The contentions raised on behalf of the Represented Defendants in opposition to the making of the directions and declarations pressed on behalf of the Receivers are largely grounded on the premise that the Scheme Trees and the various leases and subleases are Project Property, which must be held by the responsible entity for the Scheme Investors for the term of the relevant schemes by operation of cl 3.1 of the constitutions (and also s 601FC(2) of the *Corporations Act*).

188 It is the Represented Defendants' position that the Scheme Trees are trust assets as they fall within the definition of Project Property because under the structure of the schemes created by the constitutions and the lease and management agreements, the Scheme Trees (and the related seeds and seedlings) were acquired and planted by Sandalwood Properties Ltd using funds paid by the Scheme Investors for the purposes of the schemes. The Represented Defendants contend that the Scheme Trees and the leases and subleases were (and are) Project Property, as that defined term in the constitutions picks up the definition of scheme property in s 9 of the *Corporations Act*, particularly subparagraph (d). That is, the Scheme Trees and leases and subleases are property acquired, directly or indirectly, with, or with the proceeds of, contributions or money referred to in subparagraphs (a), (b) or (c) of the definition of scheme property at s 9, which subparagraphs are as follows:

- (a) contributions of money or money's worth to the scheme; and
- (b) money that forms part of the scheme property under provisions of [the *Corporations Act*] or the [*Australian Securities and Investments Commission Act 2001* (Cth)]; and
- (c) money borrowed or raised by the responsible entity for the purposes of the scheme; ...

189 Clause 3.1(a) of the constitutions provides that all Project Property will be held by the responsible entity for the Growers for the term of the scheme. The Represented Defendants note that the expression 'term of the Scheme' in cl 3.1 of the constitutions is not defined, but contend that it is evident from the text and structure of the constitutions and the related statutory context that a scheme will continue until the process of winding it up is finished.¹⁹¹ In support of the same, counsel for the Represented Defendants referred to s 601NE of the *Corporations Act*, and cl 6.3 of the constitutions (which clause is reproduced above at [88] and prescribes the process of winding up).

¹⁹¹ Represented Defendants' outline of submissions filed on 11 October 2024, par 8.

190 It was acknowledged on behalf of the Represented Defendants that by 28 March 2024, Sandalwood Properties Ltd as the responsible entity had purported to terminate all of the lease and management agreements for the Quintis Managed Investment Schemes. The operation of cl 5.14 of the lease and management agreements, which clause concerns the ownership of Scheme Trees, was also acknowledged (which clause is reproduced above at [132]).

191 It was however emphasised on behalf of the Represented Defendants that even if the lease and management agreements were determined on 28 March 2024, the constitutions remain on foot. That is, as the process of winding up the schemes has not finished, all Project Property continues to be held by the responsible entity for the Growers.

192 Further to the above, the Represented Defendants:¹⁹²

- (a) acknowledge that the lease and management agreements provide at cl 5.14 that the Scheme Trees are and will remain the property of the relevant Grower until the end of the 'Term' (as defined) or otherwise for as long as their lease has not been terminated in accordance with its terms;
- (b) note that the term of the scheme is determined by its constitution, referring to item 5 of the schedule to the lease and management agreements;
- (c) say that one effect of cl 5.14 of the lease and management agreements is that events can give rise to cessation of the Growers' specific proprietary rights in the Scheme Trees of their respective sandalwood lot (or lots), but if this occurs, each Grower nonetheless continues to hold their undifferentiated proportionate interest in Project Property by reason of cl 3.4 of the constitutions; and
- (d) say that cl 5.14 does not provide that a Grower's entitlement to anything ceases if the specific proprietary interest of the Grower in the Scheme Trees of their respective sandalwood lot comes to an end.

193 The Represented Defendants complain that the analysis promoted by the Receivers overlooks that the Growers will continue to have rights over the Scheme Trees and the leases and subleases by reason of

¹⁹² Represented Defendants' outline of submissions filed on 11 October 2024, pars 14 - 16.

cl 3.4 of the constitutions, as required by s 601FC of the *Corporations Act*. That is of course premised on the Scheme Trees and the leases and subleases being Project Property.

194 As to cl 3.4 of the constitutions (which provision concerns the interests of Growers in 'Project Property' and is reproduced above at [80]), counsel for the Represented Defendants contend that:

- (a) cl 3.4 means that a Grower has an undifferentiated proportionate interest in all of the Project Property, the 'exception' to this being each Grower's interest in their respective sandalwood lot, in respect of which their interest is specific; and
- (b) the undifferentiated proportionate interest in all of the 'Project Property' (which includes the Scheme Trees, leases and subleases), is held by Growers, even if each Grower's specific interest in their sandalwood lot has determined, and that the undifferentiated proportionate interest is that of an interest of a beneficiary in a trust over a mixed fund.

195 The Represented Defendants maintain that all the requirements for a valid trust over the entirety of the Project Property are established.¹⁹³

196 It was submitted that s 601FC(2) of the *Corporations Act*, read with cl 3.1, cl 3.2, cl 3.3, and cl 3.4 of the constitutions, show that Sandalwood Properties Ltd and its agents intended to hold various funds and the Project Property on trust; that the trust was to be for the benefit of the Growers who were defined sufficiently as a class of beneficiaries; and that the subject matter of the trust is certain.¹⁹⁴ It was also noted that a trust over an entire fund or class of assets which is held in proportion for the benefit of beneficiaries has sufficiently

¹⁹³ Represented Defendants' outline of submissions filed on 11 October 2024, par 32, citing *Knight v Knight* (1840) 3 Beav 148, 173; 49 ER 58, 68; *Kauter v Hilton* (1953) 90 CLR 86, 97.

¹⁹⁴ Represented Defendants' outline of submissions filed on 11 October 2024, par 32.

certain subject matter,¹⁹⁵ and that subject matter of the trust is the entire fund and not merely a particular or specific part of that fund.¹⁹⁶

197 Further to the above, it was noted that s 601FC(2) of the *Corporations Act* provides that the 'responsible entity holds scheme property on trust for scheme members', which (it was submitted on behalf of the Represented Defendants) means here that Sandalwood Properties Ltd, a party to the constitutions, held and continues to hold the Project Property for the benefit of Growers (the defendants to this proceeding), which obligation extends to any agents (by actual or ostensible authority) holding Project Property on behalf of Sandalwood Properties Ltd.¹⁹⁷

198 The Represented Defendants say this means as follows.¹⁹⁸

The interest of a Quintis entity that acquired land with scheme funds holds that land on trust for the Growers. The land is scheme property in terms of s 9 of the *Corporations Act* and (d) in the definition. Any lease of that land to a Quintis entity is also held on trust for the Growers. Prior to being cut down, whether the trees are fixtures or not is irrelevant. They are the property either of, the owner of the land, the lessee or the growers; and all property of the owner and lessee are held for the Growers. If the trees, prior to being cut down are property of the Grower, then they are not secured property under the charges.

If land was not acquired with scheme funds but is leased to a Quintis entity, the lease is held on trust for the Growers ... An issue may then arise in this scenario as to whether the trees are trust assets (ie Project Property). This is best illustrated by an example (which may or may not be real) of land owned by a third party wholly unrelated to Quintis (call them X) where Quintis simply leases the land from X. Although the trees were planted and cultivated with scheme funds, X may contend that the trees are fixtures and although the rights and interests of the Quintis entity lessee are held on trust for the Growers, the land (and its affixed trees) are not assets of the Quintis entity lessee.

¹⁹⁵ Represented Defendants' outline of submissions filed on 11 October 2024, par 32, citing *Hunter v Moss* [1994] 1 WLR 452. See also *Re CA Pacific Finance Ltd (in liq)* [2000] 1 BCLC 494; *Pearson v Lehman Brothers Finance SA* [2011] EWCA Civ 1544; [2012] 2 BCLC 151 [69] - [77]; *White v Shortall* [2006] NSWSC 1379; (2006) 68 NSWLR 650 [212]; *Federal Commissioner of Taxation v ElecNet (Aust) Pty Ltd* [2015] FCAFC 178; (2015) 239 FCR 359 [73] - [93]; *Ellison v Sandini Pty Ltd* (2018) 263 FCR 460 [146]. For academic support counsel for the Represented Defendants referred to Goode R, 'Are Intangible Assets Fungible?' [2003] *Lloyd's Maritime and Commercial Law Quarterly* 379, 382; McFarlane B and Stevens R, 'Interests in Securities: Practical Problems and Conceptual Solutions' in Gullifer et al (eds), *Intermediated Securities: Legal Problems and Practical Issues* (2010) 33.

¹⁹⁶ Represented Defendants' outline of submissions filed on 11 October 2024, par 32.

¹⁹⁷ Represented Defendants' outline of submissions filed on 11 October 2024, par 33, referring to the *Corporations Act* s 601FB.

¹⁹⁸ Represented Defendants' outline of submissions filed on 11 October 2024, par 35 - 40.

A nice question arises as to whether trees, planted as a crop, prior to being harvested are fixtures. At Common Law, the distinction is drawn between matters *fructus industiales* and *fructus naturalis*. The former are an exception to the general rule that things growing on land are part of the land and only become chattels when severed. Even within matters *fructus industiales* the distinction between matters strictly *fructus industiales* and emblements is unclear. Related is the Common Law notion of a freehold in trees separate from the land.

It is submitted that the trees subject to the Quintis schemes are properly characterised as *fructus industiales* and are therefore either the property of Growers or trust assets held on trust for Growers. The notion of an annual crop overlooks modern tree cultivation for profit. It also overlooks the authorities that allow for a freehold in trees separate from land.

It emerges from the scheme documents that the relevant Quintis entities intended to treat the sandalwood trees (being the ex-Scheme Trees and Relevant Land Assets) as separate from the realty on which they are located. This is also supported by the obligation in cl 3.1 of the Constitution and s 601FC(i) of the *Corporations Act* that obliged Sandalwood Properties to keep trust property separate from other property.

Here Sandalwood Properties (as trustee) cannot seek a declaration that requires this court to accept that it breached the terms of the trust by impermissibly mixing the trust property to defeat the interest of the beneficiary/Growers claims to that property. Nor should Sandalwood Properties (as trustee) seek orders that would allow it to benefit from that breach by taking the relevant mixture of the trust property. (footnotes omitted)

199 As to the security of the noteholders, the Represented Defendants contend that because of cl 3.4 of the constitutions, one of two things now exist. First, if the Scheme Trees are fixtures, the various leases and subleases on which the Scheme Trees exist are trust property, and as such, the leases and subleases (and Scheme Trees) are not 'Secured Property' under the fixed and floating charge. Alternatively, if the Scheme Trees are not fixtures affixed to the land covered by the leases and subleases, the Scheme Trees are, in the terms of cl 3.4 of the constitutions, Project Property in which Growers have an undifferentiated but proportionate beneficial interest. That is, they are impressed with a trust, and as such, are not 'Secured Property' under the fixed and floating charge.¹⁹⁹

¹⁹⁹ Represented Defendants' outline of submissions filed on 11 October 2024, pars 30 - 31.

200 The Represented Defendants also maintain that even if the Quintis Managed Investment Schemes are not commercially viable, it does not follow that the Scheme Trees are not of any value.²⁰⁰

Equitable lien - position of the Represented Defendants

201 The Represented Defendants also say that if the relevant rights to the Scheme Trees and leases and subleases are not trust assets held for the Growers, then they are subject to an equitable lien in favour of the Growers (which will be imposed where it would be unconscionable for one party to retain the benefit of improvement without compensating the other).²⁰¹ It is submitted that such lien is required to prevent Sandalwood Properties Ltd and/or Quintis Leasing Pty Ltd (as the case may be) from unconscionably retaining the benefit of the trust corpus that was used to improve the relevant leases and subleases, and the underlying land owned by Sandalwood Properties Ltd.²⁰²

202 The Represented Defendants say that the lien exists because:²⁰³

- (a) under cl 5.14 of the lease and management agreements the Growers were intended to have a legal property right to the Scheme Trees and the leases and subleases;
- (b) it is the Receivers' position that on or about 28 March 2024 the lease and management agreements reached the end of their respective 'Terms' as they were terminated by Sandalwood Properties Ltd under cl 6.5 of the constitutions. As a result of Sandalwood Properties Ltd exercising the power of termination, and as it is said that the Scheme Trees and the leases and subleases are part of the land on which they are situated, Quintis Leasing Pty Ltd and Sandalwood Properties Ltd (and through them the secured creditors under the fixed and floating charge and mortgages) can now utilise the trees for their own benefit. The corollary of this position is that the Scheme Trees and the leases and subleases are beyond the reach of the Growers due to the termination of the lease and management agreements; and
- (c) the retention of the benefit of the Scheme Trees and the leases and subleases by Quintis Leasing Pty Ltd and Sandalwood

²⁰⁰ Represented Defendants' supplementary outline of submissions filed on 21 October 2024, par 21.

²⁰¹ Represented Defendants' outline of submissions filed on 11 October 2024, par 41, citing *Hewett v Court* (1983) 149 CLR 639, 668; *Morris v Morris* [1982] 1 NSWLR 61; *Jackson v Crosby (No 2)* (1979) 21 SASR 280; *Cadorange Pty Ltd (in liq) v Tanga Holdings Pty Ltd* (1990) 20 NSWLR 26, 35 - 40.

²⁰² Represented Defendants' outline of submissions filed on 11 October 2024, par 41.

²⁰³ Represented Defendants' outline of submissions filed on 11 October 2024, pars 42 - 44.

Properties Ltd (or any other Quintis Group entity) would be unconscionable in the circumstances, because such retention would involve the free acceptance of improvements to land where it was known that those improvements were not a gift and were derived from trust property (in the case of Quintis Leasing Pty Ltd or any other Quintis Group entity).²⁰⁴

203 Further, it was submitted on behalf of the Represented Defendants that in the case of Sandalwood Properties Ltd, what has occurred has involved the use (by a trustee) of trust property to improve the trustee's own land.²⁰⁵ It was submitted that this is because the Scheme Trees and leases and subleases were the product of trust assets, being the seeds and fees used to care for those trees. The Scheme Trees were never intended as a gift to Quintis Leasing Pty Ltd or Sandalwood Properties Ltd (or any other Quintis Group entity), but were planted for the purpose of the relevant Quintis Managed Investment Scheme. Quintis Leasing Pty Ltd was at all times, through its common directors with Sandalwood Properties Ltd, aware that trust assets were being used to improve its real property by the plantation and tending of the Scheme Trees and the land the subject of the leases and subleases, and that Quintis Leasing Pty Ltd only acquired the leases and subleases as a means to facilitate the schemes which were given effect to as a trust (as mandated by legislation and in accordance with the constitutions).²⁰⁶

204 While it was the Receivers' view that the termination of the lease and management agreements by Sandalwood Properties Ltd removed the protections that the Growers had by operation of cl 5.14 of those agreements, the Represented Defendants say that this overlooks the constitutions and that Sandalwood Properties Ltd was a trustee.²⁰⁷

205 The Represented Defendants also noted that on the Receivers' view, the termination of the lease and management agreements by Sandalwood Properties Ltd (a trustee) was permissible, even though it prejudiced the beneficiary/Growers and preferred the interests of Sandalwood Properties Ltd and Quintis Leasing Pty Ltd. However, it was submitted on behalf of the Represented Defendants that in the circumstances, to allow Sandalwood Properties Ltd and Quintis Leasing Pty Ltd to benefit from the trust corpus and the purported exercise of

²⁰⁴ Citing *Angelopoulos v Sabatino* (1995) 65 SASR 1, 13; *Fensom v Cootamundra Racecourse Reserve Trust* [2000] NSWSC 1072 [97].

²⁰⁵ Represented Defendants' outline of submissions filed on 11 October 2024, par 45, citing *Forsket v McKeown* [2001] 1 AC 102, 125.

²⁰⁶ Represented Defendants' outline of submissions filed on 11 October 2024, par 45.

²⁰⁷ Represented Defendants' outline of submissions filed on 11 October 2024, par 46.

power of termination by Sandalwood Properties Ltd (particularly in circumstances where the termination occurred without fault on the part of the Growers), would be unconscionable.²⁰⁸

206 Finally, it was noted on behalf of the Represented Defendants that the relevant fixed and floating charge contains an exception whereby a security arising by operation of law still takes effect and can rank in priority,²⁰⁹ and that the mortgages contain equivalent terms.²¹⁰

Are the Scheme Trees and the leases and subleases Project Property?

207 As is noted above, the term 'Project Property' is defined in the constitutions to mean the scheme property of any 'Scheme' or the 'Project' (as the case may be) as determined in accordance with the definition of scheme property contained in s 9 of the *Corporations Act*. The duties imposed on the responsible entity with respect to dealing with Project Property are described in the constitutions, as required by s 601GA(1)(b) of the *Corporations Act*. They include the obligation to ensure that the Project Property is clearly identified as such and held separately from property of the responsible entity and property of any other scheme.²¹¹

208 The *Explanatory Memorandum to the Managed Investments Bill 1997* said that the duties imposed on a responsible entity are imposed so as to ensure that the scheme assets are not applied either unintentionally or fraudulently to the responsible entity's own purposes rather than those of the scheme and, therefore, in the event of the failure of the responsible entity, there will be a clear distinction between the scheme assets and the responsible entity's own assets, ensuring that the scheme assets are not applied to meeting the debts of the responsible entity but are returned to the scheme members.²¹² It is only scheme property that is available to the person attending to the winding up of a scheme.²¹³ Further, in this case, any property the subject of a trust or

²⁰⁸ Represented Defendants' outline of submissions filed on 11 October 2024, pars 47 - 48; Represented Defendants' supplementary submissions filed on 21 October 2024, par 25.

²⁰⁹ Represented Defendants' outline of submissions filed on 11 October 2024, par 49; eighth affidavit of DH Woodhouse affirmed on 3 October 2024, DHW-63 (Fixed and floating charge dated 21 June 2011, the definition of 'Permitted Security Interest' in clause 1.2 at page 30 read with clause 3.2 'Ranking' at page 32).

²¹⁰ Represented Defendants' submissions filed on 11 October 2024, par 49; eighth affidavit of DH Woodhouse affirmed on 3 October 2024, DHW-67 (Real property mortgage, the definition of 'Permitted Security Interest' in clause 1.2 at page 166 read with clause 3.2 'Ranking' at page 167).

²¹¹ *Corporations Act* s 601FC(1)(i).

²¹² *Explanatory Memorandum to the Managed Investments Bill 1997*, par 8.10, as noted in Jessup A, *Managed Investment Schemes* (2012) 75.

²¹³ *Mier & Jonsson v FN Management Pty Ltd* [2006] 1 Qd R 339, as noted in Jessup A, *Managed Investment Schemes* (2012) 76.

managed investment scheme is excluded from the ambit of the fixed and floating charge, so that scheme property is not available to the Receivers as they attend to the enforcement of that security (see [144(c)(i)] above).

209 Not all property held by a responsible entity or used in the operation of a scheme is necessarily scheme property as defined in s 9 of the *Corporations Act*.²¹⁴ The obligation to clearly identify and hold separately scheme property from property of the responsible entity and property of any other scheme makes that plain,²¹⁵ as did the *Explanatory Memorandum to the Managed Investments Bill 1997*.

210 It is necessary to work out in relation to a particular managed investment scheme what are the 'contributions of money or money's worth to the scheme'. To do so, it is necessary to have regard to what is it that people 'contribute' for the purposes of (a)(i) of the definition of 'managed investment scheme' in s 9 of the *Corporations Act*, and what are the 'contributions' which are pooled or used in a common enterprise in the second limb of that definition.²¹⁶

211 I approach the task of determining what is scheme property of the Quintis Managed Investment Schemes (and therefore Project Property under the constitutions), cognisant that the definition of scheme property is not to be narrowed by whether or not, in the case of a particular scheme, it is difficult to give effect to the requirement of the responsible entity to hold the scheme property on trust for its members.²¹⁷

212 I also approach the task of determining what is scheme property of the Quintis Managed Investment Schemes (and therefore Project Property under the constitutions), by carefully considering the constituent documents of the Quintis Managed Investment Schemes, which include the constitutions. In doing so I note that it is of primary importance to consider closely the legal incidents of the association between persons and property created by the Quintis Managed Investment Schemes in order to determine whether the Scheme Trees

²¹⁴ *Hance v Federal Commissioner of Taxation* [2008] FCAFC 196 [96], citing *Mier v FN Management Pty Ltd*.

²¹⁵ *Corporations Act* s 601FC(1)(i), as discussed in Jessup A, *Managed Investment Schemes* (2012) 75.

²¹⁶ As was noted in advice provided to Sandalwood Properties Ltd dated 12 April 2019, which advice was shared with ASIC, see third affidavit of M De Grys affirmed on 14 October 2024, MDG-18 (page 30), referencing *Mier & Johnson v FN Management* (footnote 3).

²¹⁷ Jessup A, *Managed Investment Schemes* (2012) 80, referring to *Brookfield Multiplex Limited v International Litigation Funding Partners Pte Ltd* [2009] FCAFC 147 [64].

and the leases and subleases are scheme property, held on trust for the Growers.²¹⁸

213 In this case, I do not consider that the analysis begins and ends with the constitutions. In this case, the legal incidents of the association between persons and property created by the Quintis Managed Investment Schemes are sourced from the constitution and the relevant contracts. Indeed, the term 'Scheme' in the constitutions refers to 'all those Interests for which the Establishment Period ends of the same date',²¹⁹ the term 'Interests' having been defined to mean:²²⁰

an interest in the Project comprising the rights, liabilities and obligations of a Grower contained in a Lease and Management Agreement, this Constitution and any other relevant documents as they relate to one or more Sandalwood Lots.

214 Read as a whole, the constituent documents do not support the conclusion that Scheme Trees and the leases and subleases are Project Property (that is, scheme property as that term is defined in s 9 of the *Corporations Act*).

215 First, in some scheme structures it is clear that contributions of money made by the members to the scheme have been used to acquire the underlying assets held in that trust structure, so that the assets acquired clearly fall within the definition of scheme property under the *Corporations Act*.

216 The structure of the Quintis Managed Investment Schemes utilises a bundle of contractual rights, the constitution having been prepared so as to comply with the requirements of the *Corporations Act*.

217 The purpose of the projects developed under the Quintis Managed Investment Schemes was to plant and raise Indian Sandalwood trees for harvest and sale as cleaned logs,²²¹ that is, for the management, cultivation and harvesting of sandalwood. Once an applicant's application was accepted, the applicant would become a 'Grower' in their own right, conducting their own business and acquiring an interest in scheme property.

²¹⁸ Approaching the question in a manner consistent with the approach applied by Keane JA in *Mier v FN Management Pty Ltd* [23].

²¹⁹ Sixth affidavit of DH Woodhouse affirmed on 21 August 2024, DHW-56(b) (2012 Quintis Managed Investment Scheme constitution, page 425).

²²⁰ Sixth affidavit of DH Woodhouse affirmed on 21 August 2024, DHW-56(b) (2012 Quintis Managed Investment Scheme constitution, page 423).

²²¹ Sixth affidavit of DH Woodhouse affirmed on 21 August 2024, DHW-56(c) (2012 Quintis Managed Investment Scheme product disclosure statement, page 457).

218 Growers would grow their own sandalwood by subleasing one or more parcels of land; and by engaging the responsible entity to establish and maintain a plantation on the Grower's sandalwood lot. The responsible entity would in turn appoint another Quintis Group entity (Quintis Forestry Pty Ltd) to manage the sandalwood lot together with all other Growers' lots, for the project as one commercially viable plantation, which arrangement was to continue until the sandalwood was harvested. Harvesting would be supervised by Quintis Forestry Pty Ltd, and Quintis Forestry Pty Ltd would also be engaged to market and sell the Grower's interest in the sandalwood for the maximum price obtainable, unless the Grower had elected to collect their sandalwood.²²²

219 As is noted above, cl 11 of the constitutions concern applications for interests in a scheme, which prescribes the form in which applications were to be made, the payment of certain money (described in the 2012 and 2014 Quintis Managed Investment Schemes constitutions as the 'Application Money' and 'Upfront Payment Money').²²³ I accept that money paid in accordance with cl 11 of the constitutions so as to be allocated a sandalwood lot in a project and become a Grower, were contributions of money to the relevant scheme, within the ambit of subparagraph (a) of the definition of scheme property in s 9 of the *Corporations Act*.

220 Until such money was 'released' in accordance with the terms of the constitutions and the lease and management agreements, that money was and remained scheme property.

221 The lease and management agreements provide that the Grower is obliged to pay to the responsible entity certain remuneration (see cl 19, reproduced above at [125]), and the constitutions make plain the circumstances where moneys paid by Growers (that is scheme property) are to be 'released' to meet certain individual payment obligations of the Growers under the lease and management agreements.

222 The constitution of a scheme may have provisions which enable the responsible entity to be paid fees out of scheme property or to be indemnified out of the scheme property for liabilities and expenses incurred in relation to the performance of its duties.²²⁴ In this case, the

²²² Sixth affidavit of DH Woodhouse affirmed on 21 August 2024, DHW-56(c) (2012 Quintis Managed Investment Scheme product disclosure statement, pages 468 - 469).

²²³ Sixth affidavit of DH Woodhouse affirmed on 21 August 2024, DHW-56(b) (2012 Quintis Managed Investment Scheme constitution, pages 435 - 438).

²²⁴ *Corporations Act* s 601GA(2).

constitutions provide at cl 7 that the responsible entity is entitled to be paid in respect of any scheme, from Project Property (for that scheme), those fees provided for in the constitution and any lease and management agreement by way of remuneration for carrying out its duties and obligations under the constitution and any lease and management agreement.

223 In this case, the parties to the constitutions and the lease and management agreements agreed that money that was scheme property would be 'released' to meet the Grower's payment obligations. That is, the release of money from certain funds (by the responsible entity or at the responsible entity's direction and with the agreement of the Grower) to the responsible entity discharges certain obligations of the Grower to make payment to the responsible entity. This is facilitated by the power in cl 14 of the constitutions, and the mechanism for the application of moneys in satisfaction of the payment obligations in cl 19 of the lease and management agreements.

224 Clause 14 of the constitutions of the 2012 and 2014 Quintis Managed Investment Schemes include provision for the responsible entity to direct the Independent Custodian to release funds (that is, release money that was scheme property) to the responsible entity to meet a Grower's individual obligations to the responsible entity under the lease and management agreement to which the Grower is bound. The constitutions prescribed the use to which the released moneys may be applied (see cl 14.1(a), cl 14.1(d), cl 14.2(a), cl 14.2(b), and cl 14.2(c)).

225 In the lease and management agreements for the 2012 and 2014 Quintis Managed Investment Schemes at cl 19, there is prescribed an obligation on the Grower to pay to the responsible entity certain fees. Clause 19.1(b) provides that the 'Establishment Fee' is to be taken from the Grower's 'Proportional Share' of the 'Application Fund' and the 'Subsequent Establishment Payment Fund'; and the 'Establishment Fee' together with any interest accrued on that money in the 'Application Fund' and the 'Subsequent Establishment Payment Fund' are to be paid to the responsible entity in accordance with the requirements of the constitution, particularly cl 14 and cl 15. Clause 19.2(b) provides that the 'Upfront Annual Fee' and the 'Upfront Rent' together with any interest accrued on that money in the 'Upfront Payment Fund' are to be paid to either the responsible entity or, as applicable, the 'Manager' or the 'Head Lessor', in accordance with the requirements of the constitution, particularly cl 14.2.

226 The Establishment Fee was payable in consideration for the responsible entity agreeing to undertake all of the Establishment Services in respect of a Grower's particular 'Leased Area', which included the acquisition of appropriate seed and seedlings.²²⁵ The constituent documents make plain that the Establishment Fee paid by a Grower from the Grower's 'Proportional Share' of the 'Application Fund' is not a contribution to a scheme.

227 Equivalent provisions are found in the 2007, 2008 and 2009 constitutions and lease and management agreement. Once the moneys are 'released', that is, transferred to the responsible entity by or at the direction of the responsible entity with the agreement of the Grower, those moneys no longer formed part of the Project Property (that is scheme property as defined in s 9 of the *Corporations Act*). Nor did anything acquired by that 'released' money by the responsible entity on behalf of the Grower form part of the Project Property. That is because the moneys were 'released' and then the responsible entity (compensated by the Grower) supervised and managed all commercial silvicultural activities to be carried on *by the Grower on the Grower's sandalwood lot or lots*. The released funds were used to advance the individual Grower's own individual business conducted on the Grower's allocated sandalwood lot or lots. Scheme Trees growing on each Grower's 'Leased Area' are not scheme property because the fees paid were not contributions by the Growers to the scheme, but rather the fees were paid for the acquisition and maintenance of the Grower's own property.

228 Further, a Grower has full right, title and interest in the 'Forest Produce' (being the Grower's Proportional Share of the forest produce) and the right to have that Forest Produce sold for the benefit of the Grower if the Grower is a Non-Electing Grower, and in the 'Collectable Produce' (again, being the Grower's Proportional Share of the forest produce) if the Grower is an Electing Grower. As was submitted to ASIC by the Quintis Group entities in July 2022, while there is an element of pooling to arrive at the Forest Produce (in which the Grower has full right, title and interest) this does not detract from the fact that ultimately full right, title and interest in that Forest Produce means it is

²²⁵ Sixth affidavit of DH Woodhouse affirmed on 21 August 2024, DHW-56(a) (sch item 7A of the 2012 Quintis Managed Investment Scheme lease and management agreement, pages 396 - 397).

property held by an individual Grower, and not the members of the scheme as a whole.²²⁶

229 The Quintis Managed Investment Schemes did not result in scheme 'equity' that could be divided equally across a number of individual lots to reflect the Grower's proportionate interest. Each Grower had an interest in the Scheme Trees on their sandalwood lot. They were entitled to elect to collect Forest Produce. Further, the expenses of each Grower would vary depending on the decisions made by each Grower, including whether to annually pay or defer fees payable under the lease and management agreements. If they deferred, they would forfeit a percentage of gross proceeds at harvest. The Growers did not receive an equal share of the net income in their respective scheme based on their proportionate share of the initial investment.

230 As was emphasised by counsel for the Represented Defendants, cl 32.8 of the lease and management agreements provide that in the event of any inconsistency between it and the relevant constitution, the constitution shall prevail.²²⁷ I consider the analysis and findings made here be consistent with the terms of the constitutions.

231 If property is to be considered 'scheme property', the property in question must have been contributed to the scheme or must have been obtained in connection with such contributions. The absence of any such connection would make it doubtful that the property was really part of, or subject to, the scheme.²²⁸

232 Further I accept that property that does not derive from moneys contributed to the schemes does not become scheme property (as defined in the *Corporations Act*) merely because it is held or is registered in the name of the responsible entity. I accept the submission of the Receivers that it is only if property is scheme property as defined

²²⁶ Third affidavit of M De Grys affirmed on 14 October 2024, MDG-18 (page 33) (recorded in the legal advice given to Sandalwood Properties Ltd on 12 April 2019 by A Jessup of Piper Alderman which was shared with ASIC).

²²⁷ Sixth affidavit of DH Woodhouse affirmed on 21 August 2024, DHW-56(a) (cl 32.8 of 2012 Quintis Managed Investment Scheme lease and management agreement, page 393); Represented Defendants' supplementary outline of submissions filed on 21 October 2024, par 16.

²²⁸ *Mier v FN Management Pty Ltd* [27].

in s 9 that a statutory trust can arise under s 601FC of the *Corporations Act*.²²⁹

233 In this case, the seed and seedlings from which the Scheme Trees were grown were not property contributed to the scheme, obtained in connection with such contributions. Nor did they constitute property derived from such contributions. They were not scheme property as defined, and there appears to be no basis to find that the Scheme Trees (grown from those seeds and seedlings) became scheme property as defined in s 9 after the termination of the lease and management agreements.

234 Secondly, I note that the Quintis Group entities in a communication to ASIC had sought to explain why they maintained that the right of the responsible entity under the lease and management agreements to deal with the Forest Produce (in which the Grower has full right title and interest under the terms of the lease and management agreements) was not scheme property.²³⁰ Having considered the constituent agreements, I found the explanation of the same shared with ASIC to be persuasive. I accept that the right of the responsible entity under the lease and management agreements to deal with the Forest Produce is not scheme property as defined in s 9 of the *Corporations Act* because that right:

- (a) is the provision of a service which the responsible entity is contractually obliged to perform for the Grower for which the responsible entity will be paid a fee by the Grower and which may be properly discharged by pooling and therefore is not a contribution of money or moneys worth to the scheme within the meaning of paragraph (a) of the definition;
- (b) is not money and therefore is not within the meaning of paragraphs (b) or (c) of the definition; and
- (c) is purely contractual and not in any sense derived from contributions or scheme assets for the purposes of paragraphs (d) and (e) of the definition.

235 Further, I am satisfied that the pooling of produce for marketing would not have created a 'contribution' to the scheme. Although the

²²⁹ Receivers' supplementary outline of submissions filed on 28 October 2024, par 28, citing *Re Willmott Forest Ltd (receivers and managers appointed) (in liquidation) (ACN 063 263 650) & Ors (No 2)* [2012] VSC 125; (2012) 88 ACSR 18; *Mier v FN Management Pty Ltd* [37] - [41], [51] - [54].

²³⁰ Third affidavit of M De Grys affirmed on 14 October 2024, MDG-18 (page 33).

gross proceeds of sale of the forest produce (which includes the Forest Produce of the Grower) were to be paid into the 'Proceeds Fund', after payment of all expenses and fees, any resulting balance would be the property of the Grower. Having regard to the arrangements, it appears that in such circumstances those proceeds would be held in trust for the Growers in accordance with their respective entitlements in those proceeds but would not be scheme property. While superficially it might be argued that the fees payable by the Grower to the responsible entity were contributed by the Grower to acquire an interest in the trust over the proceeds of sale of the Forest Produce, I accept the position is as was submitted by the Quintis Group entities to ASIC in July 2022, that is, on closer examination the trust over the proceeds of sale of the Forest Produce is simply a mechanism to protect the Grower's interests to which a Grower is entitled under the constitutions and the lease and management agreements.²³¹

236 In any event, I understand it to be the case that when the lease and management agreements were terminated in March 2024, Forest Produce had not been harvested, so that there was no pooled forest produce. In the case of Non-Electing Growers, there was no net proceeds of sale of 'Forest Produce'; and in the case of Electing Growers, there was no 'Collectable Produce' available for collection.²³²

237 Thirdly, I also accept the Receivers' submission that the leasehold interests were not contributed to the scheme. Rent was payable under the lease and management agreement by the Grower to the 'Lessor' for the 'Leased Area' per sandalwood lot.²³³ Rent was to be paid in accordance with certain items of the schedule to the lease and management agreements and cl 19 of the lease and management agreements,²³⁴ from moneys again 'released' to the responsible entity pursuant to cl 14 of the constitutions. Again, I consider the analysis and findings made here to be entirely consistent with the terms of the constitutions.

238 Fourthly, the right to the leasehold interest subsisted for as long as the lease and management agreements were on foot. Termination of the lease and management agreements was permitted by the constitutions (at cl 6.5), and once terminated, those rights were extinguished.

²³¹ Third M De Grys affidavit affirmed on 14 October 2024, MDG-18 (page 33).

²³² Receivers' outline of submissions filed 4 October 2024, par 72.

²³³ Sixth affidavit of DH Woodhouse affirmed on 21 August 2024, DHW-56(a) (cl 3.1 of 2012 Quintis Managed Investment Scheme lease and management agreement, page 372).

²³⁴ Sixth affidavit of DH Woodhouse affirmed on 21 August 2024, DHW-56(a) (cl 3.1 of 2012 Quintis Managed Investment Scheme lease and management agreement, page 372).

239 As the parties to the lease and management agreements acknowledged and agreed at cl 5.14, the rights and interests granted to each Grower under that agreement was an independent and severable grant of a proprietary interest in the relevant sandalwood lots by the 'Lessor' to the Grower; and the Scheme Trees were and would remain the property of the relevant Grower until the end of the 'Term' or otherwise for so long as their lease had not been terminated in accordance with its terms.

240 Upon the termination of the lease and management agreements, the proprietary interest in the relevant 'Sandalwood Lots' granted to the Growers by the 'Lessor' came to an end, and the Scheme Trees ceased to be the property of the Grower.²³⁵ The Grower was obliged to peaceably surrender and yield up to the 'Lessor' the 'Leased Area' and 'Fixtures' (as defined).²³⁶

241 The interests granted to the Growers under the contractual arrangements to the 'Leased Area' and the Scheme Trees for the purposes of the schemes did not contemplate there being any continued interest in either the 'Leased Area' nor the 'Scheme Trees' after termination of the lease and management agreements.

242 The legal status of the Scheme Trees was the subject of extensive submissions, particularly whether the Scheme Trees were properly characterised as *fructus naturales* or *fructus industriales*. The characterisation would be relevant if I were to have accepted that the Project Property includes the Scheme Trees, so that despite the termination of the lease and management agreements, the Growers nonetheless continue to hold their undifferentiated proportionate interest in the Scheme Trees as Project Property by reason of cl 3.4 of the constitutions. I do not consider that to be the case, which finding is consistent with the obligation of the Growers to peaceably surrender and yield up to the 'Lessor' the 'Leased Area' and 'Fixtures' at the expiration or sooner determination of the lease under cl 5.13 of the lease and management agreements. On termination of the lease and management agreements, the ownership of the Scheme Trees reverted where the structure comprised a head lease/collateral sublease, directly to the head lessor (that is, the landowner); and where the structure comprised a separate head lease and collateral sublease, to the

²³⁵ Sixth affidavit of DH Woodhouse affirmed on 21 August 2024, DHW-56(b) (cl 5.14 of 2012 Quintis Managed Investment Scheme lease and management agreement, page 375).

²³⁶ Sixth affidavit of DH Woodhouse affirmed on 21 August 2024, DHW-56(b) (cl 5.13 of 2012 Quintis Managed Investment Scheme lease and management agreement, page 375).

head lessee until the head lease is surrendered, and after surrender, ownership will revert to the head lessor (that is, the landowner).²³⁷

243 I also accept the submission made on behalf of the Receivers that the collateral subleases did not constitute an independent or greater source of rights than those conferred on the Growers under the lease and management agreements. The sole purpose of the collateral subleases was to protect the underlying leases by ensuring that Growers' lease and management agreements were in registrable form.²³⁸ I accept that once the underlying leases they served to protect were terminated, the sole purpose of the collateral subleases was exhausted.

244 Fifthly, I accept the analysis promoted by the Represented Defendants that the Scheme Trees are scheme property via tracing of scheme funds to seeds used to grow the Scheme Trees is (in light of the findings above) inconsistent with the structure of the schemes.²³⁹ As was submitted by the Quintis Group entities to ASIC, it is the scheme itself, not a forensic tracing of the funds, which provides the relevant connection between the 'contribution' of funds made by investors to the scheme and any property 'acquired' or 'derived' from those 'contributions'.²⁴⁰

245 Sixthly, counsel for the Receivers submitted that it was crucial to the structure of the Quintis Managed Investment Schemes and to the consequential taxation benefits that each Grower ran their own business in respect of its allocated sandalwood lot(s), as per the ATO Product Ruling PR2008/10-Income Tax: TFS Sandalwood Project 2007 (Post 30 June 2007 Growers) (ATO Product Ruling).²⁴¹ It was noted that it was this structure that entitled each Grower to tax deductions in respect of its establishment fees and lease management fees (when paid), as operating expenses incurred by each Grower in the course of carrying on their own individual business; and that this was the commercial rationale for the schemes, as is evident in the product disclosure statements and the ATO Product Ruling. It was also submitted on

²³⁷ As was submitted on behalf of the Receivers, see Receivers' supplementary outline of submissions filed on 28 October 2024, par 36(c).

²³⁸ Receivers' supplementary outline of submissions filed 28 October 2024, par 7; sixth affidavit of DH Woodhouse affirmed on 21 August 2024, DHW-56(c) (2012 Quintis Managed Investment Scheme product disclosure statement, page 480).

²³⁹ Receivers' supplementary outline of submissions filed 28 October 2024, par 5.

²⁴⁰ Third affidavit of M De Grys affirmed on 14 October 2024, MDG-18 (page 30), referencing *Mier & Johnson v FN Management* (footnote 3); *Treecorp Australia Ltd (in liquidation) v Dwyer* [2009] FCA 278; (2009) 175 FCR 373 (footnote 4).

²⁴¹ Receivers' supplementary outline of submissions filed 28 October 2024, par 5; third affidavit of M De Grys affirmed on 14 October 2024, MDG-24.

behalf of the Receivers that even if the Growers were to have an 'undifferentiated proportional interest' in scheme property which survived termination of the lease and management agreements, that interest does not extend to the Scheme Trees or the leases and subleases, as they were not at any time (and are not now) scheme property.

246 The legal incidents of the association between persons and property created by the schemes allowed the Electing Growers to avail themselves of various tax benefits. As was noted on behalf of the Represented Defendants, carrying on a business where rights are acquired in scheme property will not necessarily be a disqualification to entitlement to those benefits.²⁴² In this case, the association between persons or property created by the schemes provided for moneys to be released from scheme property to meet the operating expenses incurred by each Grower in the course of carrying on their own individual business. At the time of release of moneys from scheme property, those moneys ceased to be scheme property.

247 Finally, while not determinative of what in fact constitutes scheme property in this case, I note that the findings above are consistent with the position adopted by the Quintis Group entities in their communications with ASIC regarding the financial reports for the Quintis Managed Investment Schemes,²⁴³ and the accounting treatment adopted.

248 The above analysis is also consistent with the analysis of Gordon J in *Treecorp Australia Ltd (in liquidation) v Dwyer*, when called to consider scheme documents in terms similar to the constituent documents of the Quintis Managed Investment Schemes, helpfully revealed in the schedule to the submissions filed on behalf of the Receivers.²⁴⁴

249 While I took some comfort from the same, I also noted that the Court of Appeal in *Capelli v Shepard* [2010] VSCA 2 came to a different conclusion in the context of considering whether trees were part of the property to be wound up. In that case, the Court of Appeal held that the rights acquired with respect of trees and the rights with respect to the lease were scheme property because those rights were

²⁴² ts 160 - 162 (14 October 2024).

²⁴³ Third affidavit of M De Grys affirmed on 14 October 2024, MDG-18, MDG-20.

²⁴⁴ Receivers' supplementary outline of submissions filed on 28 October 2024, schedule A.

acquired by virtue of the contributions made by the members.²⁴⁵ The Court of Appeal found that the rights in respect of the trees of the investors as lessees of the land were dependent on the terms of the lease being one of the scheme documents which created the right to cultivate and harvest and the right to require the landlord to purchase the investors' rights in the trees. These rights were held to be part of the scheme property available to the scheme liquidator upon a winding up of the scheme.²⁴⁶

250 Within the parameters of the *Corporations Act*, individual schemes may have different legal structures which will affect what is scheme property. Therefore, I approached the analysis in this case by giving careful consideration to the constituent documents of the Quintis Managed Investment Schemes, so as to form a view as to whether or not the Scheme Trees and the leases and subleases fell within the definition of scheme property, which required a consideration of the legal incidents of the association between persons and property created by the Quintis Managed Investment Schemes. I did not approach the task by simply adopting the approach taken in *Treecorp Australia Ltd (in liquidation) v Dwyer*, or in any of the other decisions referenced by counsel.²⁴⁷

Equitable lien

251 In addition to the above, the Represented Defendants maintain that the Scheme Trees and leases and subleases are subject to an equitable lien in favour of the Growers, arising by implication of law. That is, an equitable right, conferred by law upon one person, to a charge upon the real or personal property of another until certain specific claims have been satisfied.²⁴⁸

252 Relief in the form of the equitable lien may be available to remedy what can broadly be described as unconscionable conduct.²⁴⁹ Such a right arises 'as part of a scheme of equitable adjustment of mutual rights and obligations',²⁵⁰ and its creation and subsistence do not depend upon

²⁴⁵ *Capelli v Shepard* [137] - [143].

²⁴⁶ *Capelli v Shepard* [148], summarised in Jessup A, *Managed Investment Schemes* (2012) 84 - 85.

²⁴⁷ Which included *Hance v Federal Commissioner of Taxation*, where the right of access by the responsible entity to Almondlots and the right of the responsible entity to scheme property to deal with and dispose of the crop and the product were not scheme property as defined in s 9 of the *Corporations Act* but rather contractual obligations: at [106] - [107].

²⁴⁸ *Hewett v Court* (663).

²⁴⁹ *Morris v Morris* (63 - 64).

²⁵⁰ *Davies v Littlejohn* (1923) 34 CLR 174, 185; *Hewett v Court* (645). See also *Bridgewater v Leahy* (1998) 194 CLR 457 [110]; *Coad v Wellness Pursuit Pty Ltd (in liq)* (2009) 40 WAR 53 [42].

possession. As an equitable lien is a pure security right, the lienee's interest in the encumbered asset is limited to the value necessary to discharge the debt it secures. Unlike the trust, a lienee is not entitled to the appreciated value of the property.²⁵¹

253 The security right protected by an equitable lien attaches to the affected asset at the time of the events that support its award, not from the time of the court order.²⁵² Where a lien is found to have attached, it may be enforced by an order for sale made by the court or, in the case of a lien over a fund, by a court order for payment from the fund.

254 There is the potential for competition between securities created over assets and a court imposed lien. As is recorded above, the Represented Defendants note that the relevant fixed and floating charge contains an exception whereby a security arising by operation of law still takes effect and can rank in priority,²⁵³ and that the mortgages contain equivalent terms.²⁵⁴

255 The implication of an equitable lien may, in a particular case, be precluded or qualified by the agreement (express or implied) of the parties.²⁵⁵ The Receivers maintain that given the comprehensive contractual framework between the Scheme Investors and the responsible entity/ Quintis Group entities, there is no room for any equitable lien to arise.²⁵⁶ It was submitted that the law on the topic is settled, in that Deane J in *Muschinski v Dodds* (1985) 160 CLR 583 at 618 had found that:²⁵⁷

[w]here there are express or implied contractual provisions specially dealing with the consequences of failure of the joint relationship or endeavour, they will ordinarily apply in law and equity to regulate the rights and duties of the parties between themselves and the prima facie legal position will accordingly prevail. Where, however, there are no applicable contractual provisions or the only applicable provisions were not framed to meet the contingency of premature failure of the enterprise or relationship, other rules or principles will commonly be called into play. (emphasis added)

²⁵¹ *Hewett v Court*.

²⁵² *Hewett v Court* (663), cited in *Coad v Wellness Pursuit Pty Ltd (in liq)* [43].

²⁵³ Represented Defendants' outline of submissions filed on 11 October 2024, par 49; eighth affidavit of DH Woodhouse affirmed on 3 October 2024, DHW-63 (Fixed and floating charge dated 21 June 2011, the definition of 'Permitted Security Interest' in clause 1.2 at page 30 read with clause 3.2 'Ranking' at page 32).

²⁵⁴ Represented Defendants' outline of submissions filed on 11 October 2024, par 49; eighth affidavit of DH Woodhouse affirmed on 3 October 2024, DHW-67 (Real property mortgage, the definition of 'Permitted Security Interest' in clause 1.2 at page 166 read with clause 3.2 'Ranking' at page 167).

²⁵⁵ *Hewett v Court* (663).

²⁵⁶ Receivers' responsive outline of submissions filed 14 October 2025, par 85.

²⁵⁷ Receivers' responsive outline of submissions filed 14 October 2025, par 86.

256 In the circumstances of this case, it was submitted that no equitable lien or charge could arise as the Scheme Investors had expressly agreed to the subordination of their own interests under the scheme documents, by virtue of the following:²⁵⁸

- (a) clause 6.3(b) of the Constitution, that upon winding up of the Scheme, the Responsible Entity would be obliged to convert all Scheme Property to money, to deduct all fees, expenses and costs, and to then distribute any balance to the ex-Scheme Investors, who would receive their proportional share of the balance (if any);
- (b) clause 6.4 of the Constitution, that the Responsible Entity can deduct from the proceeds of sale of the Scheme Property monies to meet future payment obligations, and could and to pay its own remuneration and expenses for work to be undertaken following realisation of the Scheme Property;
- (c) clause 7.2 of the Constitution, that the Responsible Entity can be paid from Scheme Property for all costs, charges, expenses and outgoing in establishing, administering and/ or winding up the Scheme; and
- (d) clause 8 of the Constitution, that the Responsible Entity can be indemnified from Scheme Property for any liability incurred in performing his/her duties under the Scheme, and for all fees payable to and costs recoverable by the Responsible Entity under either the Constitution or the [lease and management agreements].

257 As it is unlikely to be any return to the Scheme Investors in the winding up of any of the schemes, counsel for the Receivers noted that no moneys would likely to be owing to Scheme Investors on winding up of the schemes, and in the circumstances, no equitable lien arises.²⁵⁹

258 I approach the issue of whether an equitable lien has arisen noting that Deane J in *Hewett v Court* had observed that it was difficult, if not impossible, to formulate any satisfactory statement of the necessary or sufficient circumstances for the implication of an equitable lien which is applicable to any relationship at all.²⁶⁰ His Honour did however identify what he considered to be the circumstances sufficient (not

²⁵⁸ Receivers' outline of submissions filed 4 October 2024, par 87.

²⁵⁹ Receivers' outline of submissions filed 4 October 2024, pars 88 - 89.

²⁶⁰ *Hewett v Court* (668).

essential) for the implication, independently of agreement, of an equitable lien between parties in a contractual relationship. They are:²⁶¹

(i) that there be an actual or potential indebtedness on the part of the party who is the owner of the property to the other party arising from a payment or promise of payment either of consideration in relation to the acquisition of the property or of an expense incurred in relation to it (see *Middleton v Magnay*; *Whitbread & Co Ltd v Watt*; *Combe v Lord Swaythling*); (ii) that that property (or arguably property including that property: see Pollock, loco cit.) be specifically identified and appropriated to the performance of the contract (see per Lord Hanworth M.R., *In re Wait*); and (iii) that the relationship between the actual or potential indebtedness and the identified and appropriated property be such that the owner would be acting unconscientiously or unfairly if he were to dispose of the property (or, if it be appropriate, more than a particular portion thereof) to a stranger without the consent of the other party or without the actual or potential liability having been discharged. (footnotes omitted)

259 Deane J further noted that whether or not these circumstances exist or are satisfied in a particular case should, like most questions involved in the application of equitable doctrines, be determined by reference to the substance of the transaction rather than its form.²⁶²

260 The contractual relationship described by Deane J did not have the complexity of the constituent documents of the Quintis Managed Investment Schemes, nor the legal incidents of the association between persons and property created by the schemes. In this case, as was recorded in the product disclosure statements, Sandalwood Properties Ltd had invited potential investors to invest in a 'Project', which would give investors the opportunity to grow their own sandalwood. The constituent documents provided for released funds to be used to advance the individual Grower's own individual business conducted on the Grower's allocated sandalwood lot or lots. The sandalwood lots were on leased land, and the fees paid to the responsible entity under the lease and management agreements were for the acquisition and maintenance of the Grower's own property, and included seed, seedlings and rent. The bargain struck included that the Grower was to hold a full right, title and interest in the Forest Produce (that is, that Grower's Proportional Share of the Forest Yield) and the right to have the Forest Produce sold for the benefit of the Growers if the Grower was a Non-Electing Grower; or in the 'Collectable Produce' (again, that Grower's Proportional Share of the Forest Yield) if the Grower was an

²⁶¹ *Hewett v Court* (668).

²⁶² *Hewett v Court* (668).

Electing Grower. These are circumstances that are akin to the first of the circumstances identified by Deane J.

261 The Growers were each allocated their own sandalwood lot or lots. One or more land parcels was leased from the lessor (Quintis Leasing Pty Ltd), each land parcel being one twelfth of a hectare. Each sandalwood lot was identifiable by reference numbers on a plan of the plantation, to be forwarded to the Grower once their sandalwood lots had been planted. The lots had been specifically identified and appropriated to the performance of the contract arrangements. These are circumstances that are akin to the second of the circumstances identified by Deane J.

262 As to the third of the circumstances, I note that the Scheme Trees (and the related seeds and seedlings) were acquired and planted by Sandalwood Properties Ltd using funds paid by the Growers for the purposes of the schemes. The schemes are now being wound up and on or about 28 March 2024 the lease and management agreements reached the end of their respective 'Terms' as they were terminated by Sandalwood Properties Ltd under cl 6.5 of the constitutions.

263 When the lease and management agreements were terminated in March 2024, Forest Produce had not been harvested, so that there was no pooled forest produce. In the case of Non-Electing Growers, there was no net proceeds of sale of 'Forest Produce'; and in the case of Electing Growers, there was no 'Collectable Produce' available for collection.²⁶³

264 The Represented Defendants complain that as a result of Sandalwood Properties Ltd exercising the power of termination, Quintis Leasing Pty Ltd and Sandalwood Properties Ltd (and through them the secured creditors under the fixed and floating charge and mortgages) can now utilise the Scheme Trees for their own benefit, in circumstances where the Scheme Trees were not a gift and there will be no net proceeds of sale of Forest Produce; and in the case of Electing Growers, there will be no 'Collectable Produce' available for collection. The Scheme Trees and the leases and subleases will be beyond the reach of the Growers due to the termination of the lease and management agreements.

265 I accept that an equitable lien might be conferred by law in the context of a managed investment scheme. However, I do not consider

²⁶³ Receivers' outline of submissions filed 4 October 2024, par 72.

the third of the circumstances identified by Deane J to have been met when careful regard is given to the circumstances of this case.

266 First, there was a bargain struck as between the parties to the constituent documents of the Quintis Managed Investment Schemes, which parties included the Growers and the responsible entity. There was no contractual lacuna. The constituent documents were framed to meet the contingency of the premature failure of the schemes. Unfortunately those terms do not favour the Scheme Investors if failure occurs after the 'release' of scheme property and before harvest.

267 Clause 6.2 of the constitution for each Quintis Managed Investment Scheme prescribed events which would cause a winding up of that scheme, and relevantly, cl 6.2(c) of each constitution provided that the responsible entity must wind up the scheme if a court orders that the scheme be wound up pursuant to s 601ND of the *Corporations Act*.

268 On 19 December 2023 Sandalwood Properties Ltd as responsible entity made an application to this court for orders that all of its managed investment schemes then on foot be wound up.²⁶⁴ On 21 December 2023 Hill J ordered that any Grower who wished to be heard with respect to the winding up application file an appearance by 29 January 2024.²⁶⁵ After hearing the application of Sandalwood Properties Ltd on 12 March 2024, pursuant to s 601ND(l)(a) of the *Corporations Act* Cobby J ordered that Sandalwood Properties Ltd wind up ten Quintis Managed Investment Schemes on just and equitable grounds, the court having found each of the schemes unprofitable and that the continuation of each could well expose the investors to additional costs, which would not be met by the proceeds of sale of sandalwood.²⁶⁶ His Honour also recorded as a further reason to make the winding up order was that on 6 March 2024 Quintis Leasing Pty Ltd (which provided the land on which some of the schemes were being conducted) went into liquidation and the responsible entity had had difficulty accessing some of the land in the month or so prior.²⁶⁷

²⁶⁴ First affidavit of DH Woodhouse affirmed on 15 April 2024, par 16.

²⁶⁵ First affidavit of DH Woodhouse affirmed on 15 April 2024, par 18.

²⁶⁶ The *extempore* reasons of Cobby J: ts 36 - 50 (12 March 2024), and the orders made on 12 and 14 March 2024, attached to the fourth affidavit of DH Woodhouse affirmed on 5 July 2024, DHW-25. See also the sixth affidavit of DH Woodhouse affirmed on 21 August 2024, pars 11(a) and 31(a) - (c).

²⁶⁷ Fourth affidavit of DH Woodhouse affirmed on 5 July 2024, DHW-25(a) (page 384).

269 In his *ex tempore* reasons, Cobby J recorded that he was satisfied that sufficient notice had been given to the investors in the various schemes.²⁶⁸ No Grower sought to be heard.²⁶⁹ As counsel for the Receivers observed, the order made pursuant to s 601ND(1)(a) of the *Corporations Act* that Sandalwood Properties Ltd wind up the remaining ten Quintis Managed Investment Schemes on just and equitable grounds was not appealed.²⁷⁰

270 The right to the leasehold interest subsisted for as long as the lease and management agreements were on foot. Termination of the lease and management agreements was permitted by the constitutions (at cl 6.5), after the court ordered that the schemes be wound up, and once terminated, those rights were extinguished.

271 The rights were terminated following the court having found that each of the schemes to be unprofitable and that the continuation of each could well expose the investors to additional costs, which would not be met by the proceeds of sale of sandalwood.²⁷¹

272 As the parties to the lease and management agreement acknowledged and agreed at cl 5.14, the rights and interests granted to each Grower under the agreement was an independent and severable grant of a proprietary interest in the relevant sandalwood lots by the 'Lessor' to the Grower; and the Scheme Trees are and will remain the property of the relevant Grower until the end of the 'Term' or otherwise for so long as their lease has not been terminated in accordance with its terms.

273 The bargain struck did not include the right of a Grower with respect to the Scheme Trees beyond the right to have the Forest Produce sold for the benefit of the Growers if the Grower was a Non-Electing Grower; or in the 'Collectable Produce' if the Grower was an Electing Grower.

274 Upon the termination of the lease and management agreements, the proprietary interest in the relevant sandalwood lots granted to the Growers by the 'Lessor' came to an end, and the Scheme Trees ceased

²⁶⁸ Fourth affidavit of DH Woodhouse affirmed on 5 July 2024, DHW-25(a) (pages 383 - 384).

²⁶⁹ Fourth affidavit of DH Woodhouse affirmed on 5 July 2024, DHW-25(a) (page 373); ts 37 (12 March 2024).

²⁷⁰ Receivers' outline of submissions filed on 4 October 2024, par 19.

²⁷¹ The *extempore* reasons of Cobby J: ts 36 - 50 (12 March 2024), and the orders made on 12 and 14 March 2024, attached to the fourth affidavit of DH Woodhouse affirmed on 5 July 2024, DHW-25. See also the sixth affidavit of DH Woodhouse affirmed on 21 August 2024, pars 11(a), 31(a) - (c).

to be the property of the Growers.²⁷² Although the termination occurred without fault on the part of the Growers, the Growers were obliged to peaceably surrender and yield up to the 'Lessor' their respective 'Leased Area' and 'Fixtures' (as defined).²⁷³

275 The interests granted to the Growers under the contractual arrangements to the 'Leased Area' and the Scheme Trees for the purposes of the schemes did not contemplate there being any continued interest in either the 'Leased Area' nor the Scheme Trees after termination of the lease and management agreements. Further, the rights of Growers when a scheme is wound up, including their rights to Project Property, were provided for and recorded in the constitution.

276 I accept that the position of the Growers is grim. They are unlikely to recover any return on their investment. That said, the legal incidents of the association between persons and property created by the schemes allowed the Electing Growers to avail themselves of various tax benefits. That association provided for moneys to be released (as was agreed by the Growers) from scheme property to the responsible entity to meet the operating expenses incurred by each Grower in the course of carrying on their own individual business. It further had the Scheme Trees, leases and subleases held outside of the bounds of scheme property as defined in s 9 of the *Corporations Act*. While the outcome is a very poor one for Scheme Investors, it is not unfair that the Scheme Trees, leases and subleases are now not scheme property for winding up purposes.

277 Further, there was no suggestion made on behalf of the Represented Defendants that there was a lack of disclosure in the product disclosure statements. I note that the product disclosure statements (with the exception of the 2007 Quintis Managed Investment Scheme product disclosure statement) made reference to various insolvency scenarios, and that it was disclosed that there was no certainty that the 'Project' would continue if certain Quintis Group entities were to become insolvent.²⁷⁴

278 In all of the circumstances, I do not consider that it would be unconscionable or unfair for the 'Lessor' or owner of the Relevant Land

²⁷² Sixth affidavit of DH Woodhouse affirmed on 21 August 2024, DHW-56(b) (cl 5.14 of 2012 Quintis Managed Investment Scheme lease and management agreement, page 375).

²⁷³ Sixth affidavit of DH Woodhouse affirmed on 21 August 2024, DHW-56(b) (cl 5.13 of 2012 Quintis Managed Investment Scheme lease and management agreement, pages 374 - 375).

²⁷⁴ Sixth affidavit of DH Woodhouse affirmed on 21 August 2024, DHW-56(c) (2012 Quintis Managed Investment Scheme product disclosure statement, page 487).

Assets to retain the benefit of the 'improvement' (that is the Scheme Trees) without compensating the Growers.

Part B - Relief concerning the right, title or interest in the Relevant Land Assets and the Scheme Trees on the Relevant Land Assets or on the Voyager Land

279 The first four substantive orders pressed by the Receivers concerned the right, title or interest in the Relevant Land Assets and the Scheme Trees on the Relevant Land Assets or on the Voyager Land.

280 First, the Receivers sought a direction pursuant to s 424 of the *Corporations Act* that having regard to:

- (a) the orders of Cobby J made in Supreme Court of Western Australia Proceeding COR 200 of 2023 dated 12 March 2024 and 14 March 2024;
- (b) the notices of termination issued by Sandalwood Properties Ltd in respect of the lease and management agreements (defined in par (c) below) dated on or about 26 March 2024 to 28 March 2024;
- (c) the proper construction of cl 5.14, cl 15 and cl 16 of:
 - (i) the lease and management agreement between Sandalwood Properties Ltd, Quintis Leasing Pty Ltd and the Scheme Investors of the 2007 Quintis Managed Investment Scheme dated 14 May 2007 in respect of Lot 52 on Deposited Plan 32046 (known as 'Rogers') in Western Australia, and Lot 257 of Deposited Plan 209747 and Lot 240 of Deposited Plan 209468 (together known as the 'Voyager Land') in Western Australia;
 - (ii) the lease and management agreement between Sandalwood Properties Ltd, Quintis Leasing Pty Ltd and the Scheme Investors of the 2008 Quintis Managed Investment Scheme dated 2008 in respect of Lot 6 on Plan 15631 (known as 'Chapmans') in Western Australia, and Lot 240 of Deposited Plan 209468 (one of the Lots known as the 'Voyager Land') in Western Australia;

- (iii) the lease and management agreement between Sandalwood Properties Ltd, Quintis Leasing Pty Ltd and the Scheme Investors of the 2009 Quintis Managed Investment Scheme dated 6 May 2009 in respect of Lot 6 on Plan 15631 (known as 'Chapmans') in Western Australia, and Lot 240 of Deposited Plan 209468 (one of the Lots known as the 'Voyager Land') in Western Australia;
- (iv) the lease and management agreement between Sandalwood Properties Ltd, Quintis Leasing Pty Ltd and the Scheme Investors of the 2012 Quintis Managed Investment Scheme dated 26 June 2012 in respect of Lot 73 of Crown Plan GS442 (known as 'Mugica') in Queensland and Lot 52 on Deposited Plan 32046 (known as 'Rogers') in Western Australia; and
- (v) the lease and management agreement between Sandalwood Properties Ltd, Quintis Leasing Pty Ltd and the Scheme Investors of the 2014 Quintis Managed Investment Scheme dated 29 May 2014 in respect of Lot 13 of Survey Plan 195138 and Lot 2 of Survey Plan 262859 (both known as 'Woods Farm') in Queensland,

(together, the lease and management agreements),

the Receivers would be justified and acting properly in proceeding on the basis that the Scheme Investors under the 2007, 2008, 2009, 2012, 2014 Scheme have no right, title or interest in any Scheme Trees on the Relevant Land Assets.

281 Secondly, and further to the relief outlined above, the Receivers moved for a declaration that the Scheme Investors under the 2007, 2008, 2009, 2012 and 2014 Scheme have no right, title or interest in any Scheme Trees on the Relevant Land Assets or on the Voyager Land.

282 Thirdly, the Receivers sought a direction pursuant to s 424 of the *Corporations Act* that they would be justified in proceeding on the basis that the Scheme Investors under the 2007, 2008, 2009, 2012 and 2014 Quintis Managed Investment Scheme have no right, title or interest in the Relevant Land Assets.

283 Fourthly, and further to the relief outlined above, a declaration that the Scheme Investors under the 2007, 2008, 2009, 2012 and/or 2014 Quintis Managed Investment Scheme have no right, title or interest in the Relevant Land Assets, or to share in the proceeds of sale of the Relevant Land Assets.

Standing to seek the directions sought

284 As suggested by s 424(2) of the *Corporations Act*, a privately appointed receiver or receiver and manager of property of a company is a 'controller' for the purposes of s 424(1).²⁷⁵ In this case, the Receivers were appointed privately on the instructions of the requisite majority of the noteholders pursuant to security held. Accordingly, the Receivers are 'controllers' and had standing to apply to the court for directions as to the performance of their functions and powers under s 424(1).

Standing to seek the declarations sought

285 I did not understand it to have been in dispute at the hearing before me that the Receivers had the requisite standing to seek declaratory relief in the form promoted. The application for declaratory relief was in this case brought by the Receivers, who have a proper or tangible interest in obtaining the order, having been appointed to the entire assets and undertakings (subject to some exceptions) of the Quintis Group entities pursuant to a fixed and floating charge dated 21 June 2011, as amended from time to time; and having been appointed over the various real property interests owned by the Quintis Group entities under various mortgages, pursuant to three supplemental appointment deeds.

Power to give the directions sought

286 The Receivers sought directions as to whether they would be justified and acting properly in proceeding on the basis that the Scheme Investors under the Quintis Managed Investment Schemes have no right, title or interest in any Scheme Trees on the Relevant Land Assets, or in the Relevant Land Assets. I was satisfied that the court had the power to give those directions. I did not understand power or jurisdiction to be in issue.²⁷⁶

287 First, I was satisfied that the directions sought were in relation to the matters identified in s 424(1) of the *Corporations Act*, that is, the

²⁷⁵ See *Corporations Act* s 9 (par (a) of the definition of 'controller').

²⁷⁶ ts 195 - 196 (14 October 2024).

treatment of Scheme Investors under the Quintis Managed Investment Schemes in the context of the proposed sale process. Whether Scheme Investors hold any right, title or interest in any Scheme Trees on the Relevant Land Assets, or in the Relevant Land Assets, were matters arising in connection with the performance or exercise of the controllers' functions and powers as controller.

288 Secondly, I was satisfied that the Receivers were not by the application seeking guidance of the court in respect of a commercial decision, and this was not a case where there was no jurisdiction to give the directions sought because the guidance sought concerned a commercial issue. The Receivers' proposed sale of Scheme Trees and the Relevant Land Assets called for the exercise of legal judgment with respect to a legal issue of substance.

289 Thirdly, I did not consider the fact that the directions were sought in circumstances where some Scheme Investors had claimed a right, title or interest in the Scheme Trees, or the Relevant Land Assets, to be a matter determinative of power. I considered the application for directions to have fallen within the bounds of jurisdictional power, with circumstances comparable to those described by Colvin J in *In Preston, in the matter of Sandalwood Properties Ltd* at [43].

290 Fourthly, I noted that the Receivers also sought relief in the form of declarations, by which the rights of the defendants were sought to be finally adjudicated and determined. While relief under s 424 of the *Corporations Act* was sought concurrently, I did not consider that the Receivers had sought to use s 424 of the *Corporations Act* to determine finally the rights of the Represented Defendants and, by extension, the Scheme Investors in the relevant Quintis Managed Investment Schemes. When so understood, I did not consider the Receivers' use or a commencement of a proceeding under s 424 of the *Corporations Act* to have been inappropriate. I proceeded on the basis that it was not a question of power, rather it was a question of appropriateness, which informed the court's discretion.

Power to make the declaratory orders sought

291 I did not understand the court's power to grant declaratory relief, or whether the prerequisites for making a declaratory order had been met, to be contentious matters in this proceeding.

292 In this case there exists between the Receivers and the Represented Defendants a real controversy as to the right, title or

interest in the Relevant Land Assets and the Scheme Trees on the Relevant Land Assets and Voyager Land. The proceeding involves a 'right', and the adjudication of whether Scheme Investors (who were joined as defendants to the proceeding and who include the Represented Defendants) hold any right, title or interest to the Scheme Trees or the Relevant Land Assets.

293 The application for relief was brought by Receivers with a proper and tangible interest in obtaining the declaratory relief sought (as discussed above); the controversy is subject to the court's jurisdiction; and the Represented Defendants, as Scheme Investors, have a proper interest in opposing the application.

294 Further, the issue is ripe, as the Relevant Land Assets and the Scheme Trees on the same and on the Voyager Land are affected by claims asserted by Scheme Investors, as the Relevant Land Assets are owned by Quintis Group entities and contain plantations of Scheme Trees. Receivers seek to enter into binding sale agreements with prospective purchaser(s) in respect of the Relevant Land Assets, so as to reduce the outstanding secured debt owed to the noteholders by the Quintis Group entities.

Discretion

295 The controversy remains a real one, was agitated in this proceeding, remains ripe and must be determined so that the sale process (which contemplates sale free from encumbrances) may proceed. The Scheme Investors were joined as defendants to the proceeding and were given an opportunity to be heard. There was a contradictor, and the interests of the Scheme Investors were ably represented (and those interests were sought to be protected and advanced) by counsel for the Represented Defendants.

296 I am satisfied that the directions and declarations sought concerning the right, title or interest in the Relevant Land Assets and the Scheme Trees on the Relevant Land Assets and on the Voyager Land ought be given.

297 The opposition to the making of the directions and declarations pressed on behalf of the Receivers was largely grounded on the premise that the Scheme Trees and the various leases and subleases are 'Project Property', which must be held by the responsible entity for the Scheme Investors for the 'Term' of the relevant schemes by operation of cl 3.1 of the constitutions. Among the arguments put on behalf of the

Represented Defendants, it was said that in all of the circumstances, Sandalwood Properties Ltd (as trustee) cannot seek (and ought not be granted) a declaration that requires this court to accept that it breached the terms of the trust by impermissibly mixing the trust property to defeat the interest of the beneficiary/Growers' claims to that property. Further, it was submitted that Sandalwood Properties Ltd (as trustee) should not seek (and ought not be granted) orders that would allow it to benefit from that breach by taking the relevant mixture of the trust property.²⁷⁷

298 For the reasons set out in pt A of these reasons, read as a whole, I find that the constituent documents of the schemes do not support the conclusion that Scheme Trees and the leases and subleases are Project Property (that is, scheme property as that term is defined in s 9 of the *Corporations Act*). Further, the asserted equitable lien in the circumstances of this case does not arise by implication of law.

299 The Receivers move for declarations and directions. There is obvious overlap in the form of relief sought. While there was real complexity in the issues agitated, I do not consider that it would be appropriate to exercise discretion so as to refuse to grant relief in all of the circumstances by reason of the form by which the controversy came before the court. Declarations and directions were sought from the outset. Considerable effort went into service of all joined defendants. Accommodations were made for the filing of supplementary submissions after the hearing of the application, and the Represented Defendants were given a proper opportunity to be heard. The Represented Defendants were not in any way curtailed in putting on evidence because of the circumstances in which the application came before the court.²⁷⁸ Further, there was some indication of the utility in the making of the directions on the part of the Liquidators.²⁷⁹ Having given careful consideration to the scope and purpose of the power invoked, I was satisfied that discretion ought be exercised to grant the relief in the form of directions and declarations sought.

Part C - Relief concerning the surrender of lease, sublease/withdrawal of caveat instruments in respect to the Relevant Land Assets

300 The fifth substantive order pressed concerned securing clear title to the Relevant Land Assets.

²⁷⁷ Represented Defendants' outline of submissions filed 11 October 2024, par 40.

²⁷⁸ ts 197 (14 October 2024).

²⁷⁹ ts 198 - 199, 201 (14 October 2024).

301 Fifthly, the Receivers sought a direction pursuant to s 424 of the *Corporations Act* that they would be justified and acting properly in executing, and/or causing the execution by (as appropriate) Sandalwood Properties Ltd and Quintis Leasing Pty Ltd (in each case in their own right and not as trustees of any trust), the deeds of surrender in substantially the form of annexure A to the interlocutory process in respect of leases in Western Australia, annexure B to the interlocutory process in respect of leases and subleases in Queensland, and the withdrawal of caveats substantially in the form of annexure C to the interlocutory process (as appropriate) in respect of the following leases, subleases and caveats:

- (a) as to Lot 73 of Crown Plan GS422 (known as 'Mugica' and owned by Sandalwood Properties Ltd in Queensland), Lease No. 716363792 dated on or about 23 February 2015 between Sandalwood Properties Ltd (as lessor) and Quintis Leasing Pty Ltd (as lessee in its own right and Sandalwood Properties Ltd as sublessee and bare trustee for Scheme Investors);
- (b) as to Lot 13 of Survey Plan 195138 and Lot 2 of Survey Plan 262859 (both known as 'Woods Farm' and owned by Sandalwood Properties Ltd in Queensland):
 - (i) Lease No. 717117755 dated on or about 19 February 2016 between Sandalwood Properties Ltd (as lessor) and Quintis Leasing Pty Ltd (as lessee); and
 - (ii) Sublease No. 717176953 dated on or about 21 March 2016 between Quintis Leasing Pty Ltd (as sub-lessor) and Sandalwood Properties Ltd (as sub-lessee);
- (c) Lot 6 on Plan 15631 (known as 'Chapmans' and owned by Sandalwood Properties Ltd in Western Australia):
 - (i) Lease No. L470429 dated on or about 22 October 2010 between Sandalwood Properties Ltd (as lessor) and Quintis Leasing Pty Ltd (as lessee);
 - (ii) Caveat No. L555342 dated on or about 14 February 2011 by Sandalwood Properties Ltd; and

- (iii) Lease No. L732170 dated on or about 2 September 2011 between Sandalwood Properties Ltd (as lessor) and Quintis Leasing Pty Ltd (as lessee);
- (d) Lot 52 on Deposited Plan 32046 (known as 'Rogers' owned by Sandalwood Properties Ltd in Western Australia):
 - (i) Lease No. L470430 dated on or about 22 October 2010 between Sandalwood Properties Ltd (as lessor) and Quintis Leasing Pty Ltd (as lessee);
 - (ii) Caveat No. L555346 dated on or about 11 February 2011 by Sandalwood Properties Ltd; and
 - (iii) Lease No. M663181 dated on or about 5 May 2014 between Sandalwood Properties Ltd (as lessor) and Quintis Leasing Pty Ltd (as lessee).

Standing & power

302 For the reasons set out at [284] above, the Receivers have the standing to seek the direction sought. I am also satisfied that the court has the power to give the direction.

303 First, I was satisfied that the directions sought were in relation to the matters identified in s 424(1) of the *Corporations Act*, that is, the treatment of Scheme Investors under the Quintis Managed Investment Schemes in the context of the proposed sale process, particularly whether the Scheme Investors hold any right, title or interest in the leases or subleases (protected by caveat) on the Relevant Land Assets, were matters arising in connection with the performance or exercise of the controller's functions and powers as controller.

304 Secondly, I again was satisfied that the Receivers were not by the application seeking guidance of the court in respect of a commercial decision, and this was not a case where there was no jurisdiction to give the directions sought because the guidance sought concerned a commercial issue. The Receivers' proposed sale of the Relevant Land Assets (with clear title and unencumbered) required the surrender of the leases and subleases and withdrawal of caveats, which called for the exercise of legal judgment with respect to a legal issue of substance.

305 Thirdly, for the reasons set out above at [289], I considered the application for directions to have fallen within the bounds of jurisdictional power.

Discretion

306 I am satisfied that the Receivers have been appointed over and have the power to deal with and dispose of the Relevant Land Assets.²⁸⁰

307 Again, the controversy concerning the status of the leases and subleases remains a real one, was agitated in this proceeding, remains ripe and must be determined so that the sale process concerning the Relevant Land Assets may proceed. The Scheme Investors were joined as defendants to the proceeding and were given an opportunity to be heard. There was a contradictor, and the interests of the Scheme Investors were represented and advanced by counsel.

308 I am satisfied that the directions sought concerning the surrender of the leases and subleases, and the withdrawal over the caveats over the Relevant Land Assets ought be given.

309 The opposition to the making of the fifth substantive order pressed was grounded on the same arguments as the first to fourth substantive orders. For the reasons set out in pt A of these reasons, read as a whole, I find that the constituent documents of the schemes do not support the conclusion that the leases and subleases are Project Property (that is, scheme property as that term is defined in s 9 of the *Corporations Act*), and the asserted equitable lien over the leases and subleases do not in all of the circumstances arise by implication of law.

310 The purpose of the collateral subleases was to protect Grower's interests in the lease and management agreements. As the lease and management agreements are terminated, I accept that their purpose is spent.²⁸¹ Further, the potential involvement of the Liquidators in securing unencumbered Relevant Land Assets also favoured the making of the fifth substantive order (in addition to the declarations sought).²⁸² I repeat [299] above.

Part D - Relief concerning the sale of the Relevant Land Assets and the Scheme Trees on the Relevant Land Assets

311 The sixth order pressed concerned the sale of the Relevant Land Assets and the Scheme Trees on that land.

²⁸⁰ First affidavit of DH Woodhouse affirmed on 15 April 2024, pars 23, 25; sixth affidavit of DH Woodhouse affirmed on 21 August 2024, par 24.

²⁸¹ ts 147 (14 October 2024).

²⁸² ts 198 - 199, 201 (14 October 2024).

312 Sixthly, the Receivers pressed for a direction pursuant to s 424 of
the *Corporations Act* that they would be justified and would be acting
properly in selling the Relevant Land Assets and/or any Scheme Trees
on the Relevant Land Assets notwithstanding any claims asserted by
Scheme Investors (or persons purporting to act on their behalf) in
respect of any Scheme Trees and/or the Relevant Land Assets.

Standing & power

313 For the reasons set out at [284] above, the Receivers have the
standing to seek the direction sought. I am also satisfied that the court
has the power to give the direction.

314 First, I was satisfied that the direction sought was in relation to the
matters identified in s 424(1) of the *Corporations Act*, that is, whether
the Receivers might proceed to sell the Relevant Land Assets and/or
any Scheme Trees on the Relevant Land Assets notwithstanding the
claims asserted by Scheme Investors, and whether the Scheme
Investors hold any right, title or interest in the Relevant Land Assets
and/or any Scheme Trees on the Relevant Land Assets, were matters
arising in connection with the performance or exercise of the
controllers' functions and powers as controller.

315 Secondly, I again was satisfied that the Receivers were not by the
application seeking guidance of the court in respect of a commercial
decision, and this was not a case where there was no jurisdiction to give
the directions sought because the guidance sought concerned a
commercial issue. The Receivers' proposed sale of the Relevant Land
Assets, and the Scheme Trees on the Relevant Land Assets called for
the exercise of legal judgment with respect to a legal issue of substance.

316 Thirdly, for the reasons set out above at [289], I again considered
the application for directions to have fallen within the bounds of
jurisdictional power.

Discretion

317 I am satisfied that the Receivers have been appointed over and
have the power to deal with and dispose of the Relevant Land Assets
and the Scheme Trees on the Relevant Land Assets.²⁸³

²⁸³ First affidavit of DH Woodhouse affirmed on 15 April 2024, pars 23, 25; sixth affidavit of
DH Woodhouse affirmed on 21 August 2024, par 24.

318 Again, the controversy concerning the status of the Scheme Trees and the leases and subleases (on the Relevant Land Assets) remains a real one, was agitated in this proceeding, remains ripe and must be determined so that the sale process concerning the Relevant Land Assets and the Scheme Trees on the Relevant Land Assets may proceed. The Scheme Investors were joined as defendants to the proceeding and were given an opportunity to be heard. There was a contradictor, and the interests of the Scheme Investors were represented and advanced by counsel for the Represented Defendants.

319 I am satisfied that the directions sought concerning the sale of the Relevant Land Assets and/or any Scheme Trees on the Relevant Land Assets (given the claims that have been asserted by Scheme Investors, or persons purporting to act on their behalf, in respect of any Scheme Trees and/or the Relevant Land Assets) ought be given.

320 The opposition to the making of the sixth substantive order pressed was grounded on the same arguments as the first to fourth substantive orders. For the reasons set out in pt A of these reasons, read as a whole, I find that the constituent documents of the schemes do not support the conclusion that the Relevant Land Assets or the Scheme Trees on the Relevant Land Assets (or the leases and subleases on the Relevant Land Assets) are Project Property (that is, scheme property as that term is defined in s 9 of the *Corporations Act*), and the asserted equitable lien over the Scheme Trees and the leases and subleases do not arise by implication of law. Again, the circumstances and form in which the relief is pressed do not tip the balance against the exercise of discretion and I repeat [299] above.

Part E - Relief concerning the application of proceeds of sale of the Relevant Land Assets

321 The seventh order pressed by the Receivers concerned the application of proceeds of sale of the Relevant Land Assets.

322 Seventhly, the Receivers moved for a direction pursuant to s 424 of the *Corporations Act* that they would be justified and acting properly in immediately applying any proceeds of sale from selling the Relevant Land Assets in accordance with the appointment deeds annexed at DHW-7 and DHW-8 of the affidavit of Daniel Woodhouse dated 15 April 2024 (First Woodhouse Affidavit) notwithstanding any claims asserted by Scheme Investors (or persons purporting to act on their behalf) in respect of any Scheme Trees and/or the Relevant Land Assets.

Standing & power

323 For the reasons set out at [284] above, the Receivers have the standing to seek the direction sought. I am also satisfied that the court has the power to give the direction.

324 First, I was satisfied that the direction sought was in relation to the matters identified in s 424(1) of the *Corporations Act*, that is, whether the Receivers might proceed to immediately applying any proceeds of sale from selling the Relevant Land Assets in accordance with the appointment deeds notwithstanding the claims asserted by Scheme Investors. Whether the Scheme Investors hold any right, title or interest in the proceeds of sale of the Relevant Land Assets is matters arising in connection with the performance or exercise of any of the controllers' functions and powers as controller.

325 Secondly, I again was satisfied that the Receivers were not by the application seeking guidance of the court in respect of a commercial decision, and this was not a case where there was no jurisdiction to give the direction sought because the guidance sought concerned a commercial issue. The Receivers' proposed sale of the Relevant Land Assets and allocation of the proceeds of sale called for the exercise of legal judgment with respect to a legal issue of substance.

326 Thirdly, for the reasons set out above at [289], I considered the application for directions to have fallen within the bounds of jurisdictional power.

Discretion

327 I am satisfied that the Receivers have been appointed over and have the power to deal with and dispose of the Relevant Land Assets,²⁸⁴ and then the power (and obligation) apply those proceeds of sale in accordance with the appointment deeds annexed at DHW-7 and DHW-8 of the first affidavit of Daniel Woodhouse dated 15 April 2024.

328 Again, the controversy concerning the status of the proceeds of any sale of the Relevant Land Assets remains a real one and must be determined so that the Receivers may proceed to perform their function. Again, I note that the Scheme Investors were joined as defendants to the proceeding and were given an opportunity to be heard. There was a contradictor, and the interests of the Scheme Investors were represented

²⁸⁴ First affidavit of DH Woodhouse affirmed on 15 April 2024, pars 23, 25; sixth affidavit of DH Woodhouse affirmed on 21 August 2024, par 24.

(and those interests were sought to be protected and advanced) by counsel for the Represented Defendants.

329 I am satisfied that the directions sought concerning the application of proceeds of sale of the Relevant Land Assets (given the claims that have been asserted by Scheme Investors (or persons purporting to act on their behalf) in respect of any Scheme Trees and/or the Relevant Land Assets and leases and subleases) ought be given.

330 The opposition to the making of the sixth substantive order pressed was grounded on the same arguments as the other substantive orders. For the reasons set out in pt A of these reasons, read as a whole, I find that the constituent documents of the schemes do not support the conclusion that the Scheme Trees on the Relevant Land Assets and the leases and subleases on the Relevant Land Assets are Project Property (that is, scheme property as that term is defined in s 9 of the *Corporations Act*), and the asserted equitable lien over the Scheme Trees and the leases and subleases do not arise by implication of law. Therefore, there is no right, title or interest held by the Scheme Investors in the proceeds of sale of the Relevant Land Assets. Again, the circumstances and form in which the relief is pressed do not tip the balance against the exercise of discretion, and again I repeat [299] above.

Part F - Relief concerning the application of proceeds of sale of the Scheme Trees

331 The final two order pressed by the Receivers concerned the application of proceeds of sale of the Scheme Trees.

332 Eighthly, the Receivers moved for a declaration that the Scheme Investors under the 2007, 2008, 2009, 2012 and 2014 Quintis Managed Investment Schemes have no entitlement to share in the proceeds of sale of the Scheme Trees on the Relevant Land Assets or the Voyager Land.

333 Ninthly, the Receivers moved for a declaration that the Receivers are entitled to apply any sale proceeds from the sale of the Scheme Trees on the Relevant Land Assets and the Voyager Land in accordance with their appointment deeds, and without having regard to any claims asserted by Scheme Investors (or persons purporting to act on their behalf) in respect of any Scheme Trees on the Relevant Land Assets or the Voyager Land or the net proceeds of sale of those trees.

Standing & power

334 Again, I did not understand it to have been in dispute that the
Receivers have the requisite standing to seek declaratory relief in the
forms promoted. The application for declaratory relief was in this case
brought by the Receivers, who have a proper or tangible interest in
obtaining the orders, having been appointed to the entire assets and
undertakings (subject to some exceptions) of the Quintis Group entities;
and having been appointed over the various real property interests
owned by the Quintis Group entities under various mortgages, pursuant
to three supplemental appointment deeds.

335 Further, I did not understand the court's power to grant declaratory
relief, or whether the prerequisites for making the declaratory orders
ought had been met to be contentious matters in this proceeding, and I
repeat and adopt the matters set out at [292] to [294] above.

Discretion

336 The controversy concerning the Scheme Trees remains a real one,
was agitated in this proceeding, remains ripe and must be determined so
that the receivership may proceed. The Scheme Investors were joined
as defendants to the proceeding and were given an opportunity to be
heard. There was a contradictor, and the interests of the Scheme
Investors were represented (and those interests were sought to be
protected and advanced) by counsel for the Represented Defendants.

337 I am satisfied that the declarations sought concerning any proceeds
of sale for the Scheme Trees on the Relevant Land Assets or on the
Voyager Land ought be given.

338 Again, I note that the opposition to the making of the directions
and declarations pressed on behalf of the Receivers were largely
grounded on the premise that the Scheme Trees are 'Project Property',
which must be held by the responsible entity for the Scheme Investors
for the term of the relevant schemes by operation of cl 3.1 of the
constitutions.

339 For the reasons set out in pt A of these reasons, read as a whole, I
find that the constituent documents of the schemes do not support the
conclusion that Scheme Trees are Project Property (that is, scheme
property as that term is defined in s 9 of the *Corporations Act*). Further,
the asserted equitable lien does not arise by implication of law. In all of
the circumstances, I again find that the circumstances and form in

which the relief was pressed do not tip the balance against the exercise of discretion to make the declarations sought, and I repeat [299] above.

Conclusion and orders

340 For these reasons, subject to any party seeking to be heard as to their form, I propose to make orders in the following terms.

1. Pursuant to s 424 of the *Corporations Act 2001* (Cth), the Court directs that the Receivers would be justified and acting properly in proceeding on the basis that the Scheme Investors under the 2007, 2008, 2009, 2012, 2014 Quintis Managed Investment Schemes have no right, title or interest in any sandalwood trees previously the subject of those Quintis Managed Investment Schemes (Scheme Trees) on the Relevant Land Assets.
2. It is declared that the Scheme Investors under the 2007, 2008, 2009, 2012 and 2014 Quintis Managed Investment Schemes have no right, title or interest in any Scheme Trees on the Relevant Land Assets or on the Voyager Land.
3. Pursuant to s 424 of the *Corporations Act*, the Court directs that the Receivers would be justified in proceeding on the basis that the Scheme Investors under the 2007, 2008, 2009, 2012 and 2014 Quintis Managed Investment Schemes have no right, title or interest in the Relevant Land Assets.
4. It is declared that the Scheme Investors under the 2007, 2008, 2009, 2012 and/or the 2014 Quintis Managed Investment Schemes have no right, title or interest in the Relevant Land Assets, or to share in the proceeds of sale of the Relevant Land Assets.
5. Pursuant to s 424 of the *Corporations Act*, the Court directs that the Receivers would be justified and acting properly in executing, and/or causing the execution by (as appropriate) Sandalwood Properties Ltd and Quintis Leasing Pty Ltd (in each case in their own right and not as trustees of any trust), the deeds of surrender in substantially the form of annexure A to the interlocutory process in respect of leases in Western Australia, annexure B to the interlocutory process in respect of leases and subleases in Queensland, and the withdrawal of caveats substantially in the form of annexure C to the

interlocutory process (as appropriate) in respect of the following leases, subleases and caveats:

- (a) Lot 73 of Crown Plan GS422 (known as 'Mugica' and owned by Sandalwood Properties Ltd in Queensland), Lease No. 716363792 dated on or about 23 February 2015 between Sandalwood Properties Ltd (as lessor) and Quintis Leasing Pty Ltd (as lessee in its own right and Sandalwood Properties Ltd as sublessee and bare trustee for Scheme Investors);
- (b) Lot 13 of Survey Plan 195138 and Lot 2 of Survey Plan 262859 (both known as 'Woods Farm' and owned by Sandalwood Properties Ltd in Queensland):
 - (i) Lease No. 717117755 dated on or about 19 February 2016 between Sandalwood Properties Ltd (as lessor) and Quintis Leasing Pty Ltd (as lessee); and
 - (ii) Sublease No. 717176953 dated on or about 21 March 2016 between Quintis Leasing Pty Ltd (as sub-lessor) and Sandalwood Properties Ltd (as sub-lessee);
- (c) Lot 6 on Plan 15631 (known as 'Chapmans' and owned by Sandalwood Properties Ltd in Western Australia):
 - (i) Lease No. L470429 dated on or about 22 October 2010 between Sandalwood Properties Ltd (as lessor) and Quintis Leasing Pty Ltd (as lessee);
 - (ii) Caveat No. L555342 dated on or about 14 February 2011 by Sandalwood Properties Ltd; and
 - (iii) Lease No. L732170 dated on or about 2 September 2011 between Sandalwood Properties Ltd (as lessor) and Quintis Leasing Pty Ltd (as lessee);

- (d) Lot 52 on Deposited Plan 32046 (known as 'Rogers' owned by Sandalwood Properties Ltd in Western Australia):
 - (i) Lease No. L470430 dated on or about 22 October 2010 between Sandalwood Properties Ltd (as lessor) and Quintis Leasing Pty Ltd (as lessee);
 - (ii) Caveat No. L555346 dated on or about 11 February 2011 by Sandalwood Properties Ltd; and
 - (iii) Lease No. M663181 dated on or about 5 May 2014 between Sandalwood Properties Ltd (as lessor) and Quintis Leasing Pty Ltd (as lessee).
- 6. Pursuant to s 424 of the *Corporations Act*, the Court directs that the Receivers would be justified and acting properly in selling the Relevant Land Assets and/or any Scheme Trees on the Relevant Land Assets notwithstanding any claims asserted by Scheme Investors (or persons purporting to act on their behalf) in respect of any Scheme Trees and/or the Relevant Land Assets.
- 7. Pursuant to s 424 of the *Corporations Act*, the Court directs that the Receivers would be justified and acting properly in immediately applying any proceeds of sale from selling the Relevant Land Assets in accordance with the appointment deeds annexed at DHW-7 and DHW-8 of the affidavit of Daniel Woodhouse dated 15 April 2024 (First Woodhouse Affidavit) notwithstanding any claims asserted by Scheme Investors (or persons purporting to act on their behalf) in respect of any Scheme Trees and/or the Relevant Land Assets.
- 8. It is declared that the Scheme Investors under the 2007, 2008, 2009, 2012 and 2014 Quintis Managed Investment Schemes have no entitlement to share in the proceeds of sale of the Scheme Trees on the Relevant Land Assets or the Voyager Land.
- 9. It is declared that the Receivers are entitled to apply any sale proceeds from the sale of the Scheme Trees on the Relevant Land Assets and the Voyager Land in accordance with their

appointment deeds, and without having regard to any claims asserted by Scheme Investors (or persons purporting to act on their behalf) in respect of any Scheme Trees on the Relevant Land Assets or the Voyager Land or the net proceeds of sale of those trees.

341 As to costs, in the interlocutory process the Receivers moved for an order that their costs of, and incidental to, the application be costs and expenses in the receivership of Sandalwood Properties Ltd, Quintis Leasing Pty Ltd and Quintis Forestry Pty Ltd. Subject to any party now seeking to be heard with respect to costs, it is my preliminary view that in the circumstances, such an order would be appropriate. While the application was pressed by the Receivers of all Quintis Group entities, there is no basis to conclude that the costs ought to be borne by the other Quintis Group entities.

Sch A - The Quintis Group entities

Quintis (Australia) Pty Ltd (receivers and managers appointed)
(in liquidation)

Sandalwood Properties Ltd (receivers and managers appointed)
(in liquidation) (formerly known as T.F.S. Properties Ltd)

Quintis Forestry Pty Ltd (receivers and managers appointed) (in liquidation)
(formerly known as Tropical Forestry Services Ltd)

Arwon Finance Pty Ltd (receivers and managers appointed) (in liquidation)

Quintis Leasing Pty Ltd (in liquidation) (receivers and managers appointed)
(formerly known as T.F.S. Leasing Pty Ltd)

Fieldpark Pty Ltd (receivers and managers appointed) (in liquidation)

Mt Romance Holdings Pty Ltd (receivers and managers appointed)
(in liquidation)

Quintis Sandalwood Pty Ltd (receivers and managers appointed)
(in liquidation) (formerly known as Mt Romance Australia Pty Ltd)

About Time We Met Pty Ltd (receivers and managers appointed)
(in liquidation) (formerly known as Australia Sandalwood Oil Co. Pty Ltd)

Sch B - Orders made on 18 July 2024



IN THE SUPREME COURT OF WESTERN AUSTRALIA

COR/62/2024

**DANIEL WOODHOUSE, HAYDEN
WHITE and JOHN PARK in their
capacity as joint and several receivers and
managers of Quintis (Australia) Pty Ltd
(Receivers and Managers Appointed)
(Administrators Appointed)
(ACN 626 970 821)**

First Plaintiff

-and-

**DANIEL WOODHOUSE, HAYDEN
WHITE and JOHN PARK in their
capacity as joint and several receivers and
managers of Sandalwood Properties Ltd
(formerly known as T.F.S. Properties Ltd)
(Receivers and Managers Appointed)
(Administrators Appointed)
(ACN 093 330 977)**

Second Plaintiff

-and-

**DANIEL WOODHOUSE, HAYDEN
WHITE and JOHN PARK in their
capacity as joint and several receivers and
managers of Quintis Forestry Pty Ltd
(formerly known as Tropical Forestry
Services Ltd) (Receivers and Managers
Appointed) (Administrators Appointed)
(ACN 080 139 966)**

Third Plaintiff

-and-

**DANIEL WOODHOUSE, HAYDEN
WHITE and JOHN PARK in their
capacity as joint and several receivers and
managers of Arwon Finance Pty Ltd
(Receivers and Managers Appointed)
(Administrators Appointed)
(ACN 072 486 643)**

Fourth Plaintiff

-and-

DANIEL WOODHOUSE, HAYDEN WHITE and JOHN PARK in their capacity as joint and several receivers and managers of Quintis Leasing Pty Ltd (formerly known as T.F.S. Leasing Pty Ltd) (Receivers and Managers Appointed) (In Liquidation) (ACN 080 978 721)

Fifth Plaintiff

-and-

DANIEL WOODHOUSE, HAYDEN WHITE and JOHN PARK in their capacity as joint and several receivers and managers of Fieldpark Pty Ltd (Receivers and Managers Appointed) (Administrators Appointed) (ACN 113 440 841)

Sixth Plaintiff

-and-

DANIEL WOODHOUSE, HAYDEN WHITE and JOHN PARK in their capacity as joint and several receivers and managers of Mt Romance Holdings Pty Ltd (Receivers and Managers Appointed) (Administrators Appointed) (ACN 115 659 606)

Seventh Plaintiff

-and-

DANIEL WOODHOUSE, HAYDEN WHITE and JOHN PARK in their capacity as joint and several receivers and managers of Quintis Sandalwood Pty Ltd (formerly known as Mt Romance Australia Pty Ltd) (Receivers and Managers Appointed) (Administrators Appointed) (ACN 060 122 698)

Eighth Plaintiff

-and-

DANIEL WOODHOUSE, HAYDEN WHITE and JOHN PARK in their capacity as joint and several receivers and managers of About Time We Met Pty Ltd (formerly known as Australia Sandalwood Oil Co. Pty Ltd) (Receivers and Managers Appointed) (Administrators Appointed) (ACN 088 257 498)

Ninth Plaintiff

**ORDERS OF THE HONOURABLE JUSTICE STRK
MADE ON 18 JULY 2024**

UPON THE EX PARTE APPLICATION made by the plaintiffs by an interlocutory process filed on 8 July 2024, AND AFTER HEARING Mr WCJ Zappia on behalf of the plaintiffs moving for the following directions on behalf of the third plaintiff, IT IS ORDERED THAT:

**DIRECTIONS REGARDING SALE AND HOLDING PROCEEDS OF SALE OF
EX-SCHEME TREES ON VOYAGER LAND**

1. Pursuant to s 424 *Corporations Act 2001* (Cth), the Court directs that the third plaintiff would be acting properly and justified in treating the sandalwood trees located on Lot 240 on Deposited Plan 209468 and Lot 257 on Deposited Plan 209747 in Western Australia (known as the **Voyager Land**) as being trees previously the subject of the Quintis Managed Investment Schemes (**ex-Scheme Trees**) to which neither non-electing ex-Scheme Investors nor electing ex-Scheme Investors have any interest, right or title under the 2007, 2008 and 2009 Quintis Managed Investment Schemes (the **Quintis Managed Investment Schemes**) in light of clauses 5.14, 15 and 16 of the Quintis Lease and Management Agreements (**LMAs**).
2. Pursuant to s 424 *Corporations Act 2001* (Cth) that the third plaintiff would be acting properly and justified in entering into a sale agreement and paying the net proceeds of sale of the ex-Scheme Trees on the Voyager Land (after deduction of marketing and selling costs) into an interest bearing escrow account on an interim basis pending determination by this Honourable Court, or agreement, as to the distribution of the proceeds of sale.

LIBERTY TO APPLY

3. The plaintiffs have liberty to apply on two (2) business days' notice.
4. Any third party who can show a sufficient interest to vary or discharge these orders has liberty to apply on two (2) business days' notice to the plaintiffs.
5. By 4:00pm on Friday 19 July 2024, the plaintiffs must give notice of these orders, and notice of the timeframe within which they propose to enter into a sale agreement for the ex-Scheme Trees and when it is anticipated the ex-Scheme Trees will be harvested, by:
 - a) causing a copy of these orders to be posted on the website maintained by Sandalwood Properties Ltd at www.sandalwoodproperties.com.au; and
 - b) sending by email (or absent email address, by post) a copy of these orders to the ex-scheme investors of the managed investment schemes the subject of the

winding-up orders made by the Court on 12 and 14 March 2024 (to the extent the identity of such ex-Scheme Investors and their email or postage address is known) which are investors in ex-Scheme Trees on the Voyager Land (ex-Scheme Investors).

COSTS

6. The costs of, and incidental to, this application and the costs reserved from the hearing on 11 July 2024 be costs and expenses in the receivership of Sandalwood Properties Limited and Quintis Forestry Pty Ltd.



BY THE COURT

A handwritten signature in blue ink, appearing to be "J. J. J.", is written over the text "BY THE COURT".

Sch C - Orders made on 27 August 2024



IN THE SUPREME COURT OF WESTERN AUSTRALIA

COR/62/2024

EX PARTE:

**DANIEL WOODHOUSE, HAYDEN
WHITE and JOHN PARK in their
capacity as joint and several receivers and
managers of Quintis (Australia) Pty Ltd
(Receivers and Managers Appointed)
(Administrators Appointed)
(ACN 626 970 821)**

First Plaintiff

-and-

**DANIEL WOODHOUSE, HAYDEN
WHITE and JOHN PARK in their
capacity as joint and several receivers and
managers of Sandalwood Properties Ltd
(formerly known as T.F.S. Properties Ltd)
(Receivers and Managers Appointed)
(Administrators Appointed)
(ACN 093 330 977)**

Second Plaintiff

-and-

**DANIEL WOODHOUSE, HAYDEN
WHITE and JOHN PARK in their
capacity as joint and several receivers and
managers of Quintis Forestry Pty Ltd
(formerly known as Tropical Forestry
Services Ltd) (Receivers and Managers
Appointed) (Administrators Appointed)
(ACN 080 139 966)**

Third Plaintiff

-and-

**DANIEL WOODHOUSE, HAYDEN
WHITE and JOHN PARK in their
capacity as joint and several receivers and
managers of Arwon Finance Pty Ltd
(Receivers and Managers Appointed)
(Administrators Appointed)
(ACN 072 486 643)**

Fourth Plaintiff

-and-

DANIEL WOODHOUSE, HAYDEN WHITE and JOHN PARK in their capacity as joint and several receivers and managers of Quintis Leasing Pty Ltd (formerly known as T.F.S. Leasing Pty Ltd) (Receivers and Managers Appointed) (In Liquidation) (ACN 080 978 721)

Fifth Plaintiff

-and-

DANIEL WOODHOUSE, HAYDEN WHITE and JOHN PARK in their capacity as joint and several receivers and managers of Fieldpark Pty Ltd (Receivers and Managers Appointed) (Administrators Appointed) (ACN 113 440 841)

Sixth Plaintiff

-and-

DANIEL WOODHOUSE, HAYDEN WHITE and JOHN PARK in their capacity as joint and several receivers and managers of Mt Romance Holdings Pty Ltd (Receivers and Managers Appointed) (Administrators Appointed) (ACN 115 659 606)

Seventh Plaintiff

-and-

DANIEL WOODHOUSE, HAYDEN WHITE and JOHN PARK in their capacity as joint and several receivers and managers of Quintis Sandalwood Pty Ltd (formerly known as Mt Romance Australia Pty Ltd) (Receivers and Managers Appointed) (Administrators Appointed) (ACN 060 122 698)

Eight Plaintiff

-and-

DANIEL WOODHOUSE, HAYDEN WHITE and JOHN PARK in their capacity as joint and several receivers and managers of About Time We Met Pty Ltd (formerly known as Australia Sandalwood Oil Co. Pty Ltd) (Receivers and Managers Appointed) (Administrators Appointed) (ACN 088 257 498)

Ninth Plaintiff

**ORDERS OF THE HONOURABLE JUSTICE STRK
MADE ON 27 AUGUST 2024**

UPON THE APPLICATION made by the plaintiffs by interlocutory process filed on 21 August 2024, AND AFTER HEARING Mr WCJ Zappia on behalf of the plaintiffs, IT IS ORDERED THAT:

For the purpose of these orders:

‘Quintis Group Companies’ means:

- (a) Quintis (Australia) Pty Ltd (receivers and managers appointed) (administrators appointed);
- (b) Sandalwood Properties Ltd (formerly known as T.F.S. Properties Ltd) (receivers and managers appointed) (administrators appointed);
- (c) Quintis Forestry Pty Ltd (formerly known as Tropical Forestry Services Ltd) (receivers and managers appointed) (administrators appointed);
- (d) Arwon Finance Pty Ltd (receivers and managers appointed) (administrators appointed);
- (e) Quintis Leasing Pty Ltd (formerly known as T.F.S. Leasing Pty Ltd) (receivers and managers appointed) (in liquidation);
- (f) Fieldpark Pty Ltd (Receivers and Managers Appointed) (administrators appointed);
- (g) Mt Romance Holdings Pty Ltd (receivers and managers appointed) (administrators appointed);
- (h) Quintis Sandalwood Pty Ltd (formerly known as Mt Romance Australia Pty Ltd) (receivers and managers appointed) (administrators appointed); and
- (i) About Time We Met Pty Ltd (formerly known as Australia Sandalwood Oil Co. Pty Ltd) (receivers and managers appointed) (administrators appointed).

Service Provisions

1. An order that the plaintiffs have leave *nunc pro tunc* to effect service in the following manner:

- (a) In accordance with the Supreme Court (Corporations) (WA) Rules 2004 (WA) rule 2.7, the plaintiffs have leave to serve a copy of the interlocutory process filed on 21 August 2024 (the Interlocutory Process) and the affidavits made by Daniel Woodhouse on 15 April 2024, 5 July 2024, 21 August 2024 and a further affidavit to be made by Mr Woodhouse by 4:00pm on Wednesday, 28 August 2024 (the Supporting Affidavits, respectively) on each defendant, on the Quintis Group Companies, on the Sandalwood Growers' Co-op and on Indian Sandalwood Farming (being organisations which purport to represent one or more of the defendants) by 4:00pm (AWST) Friday, 30 August 2024.
- (b) Service of the Interlocutory Process and the Supporting Affidavits be effected by:
 - (i) sending by email (or absent an email address, by post) a copy of the Interlocutory Process and the Supporting Affidavits to the defendants and to the Sandalwood Growers' Co-op and to Indian Sandalwood Farming;
 - (ii) sending by email a copy of the Interlocutory Process and the Supporting Affidavits to the administrators and liquidators appointed to each of the Quintis Group Companies; and
 - (iii) causing a notice of the Interlocutory Process to be posted on the website maintained by Sandalwood Properties Ltd (SPL) at www.sandalwoodproperties.com.au, and on any website maintained by FTI Consulting (Australia) relating to the Quintis Group Companies, which notice is to be maintained on the website (or websites) until the determination of the application for substantive orders (see pt A of the Interlocutory Process).
- 2. By 4:00pm (AWST) on Friday, 30 August 2024, the plaintiffs are to give notice of these programming orders by causing a copy of these orders to be served on each defendant, on the Quintis Group Companies, on the Sandalwood Growers' Co-op and on Indian Sandalwood Farming in the manner prescribed by order 1(b)(i) and (ii) of these orders, and notice of these orders is to be maintained on the websites described in order 1(b)(iii) of these orders until the determination of the application for substantive orders (see pt A of the Interlocutory Process).

Programming Orders

- 3. Any defendant or person with an interest in the application for substantive orders (see pt A of the Interlocutory Process) who wishes to be heard in this application must file an appearance by 4:00pm (AWST) on Friday, 20 September 2024.

4. Any defendant or person with an interest in the application for substantive orders (see pt A of the Interlocutory Process) who has filed an appearance shall file and serve any affidavit evidence upon which they intend to rely by 4:00pm (AWST) on Friday, 27 September 2024.
5. The plaintiffs have leave to file and serve any further responsive affidavit evidence, and must file written submissions upon which they intend to rely by 4:00pm (AWST) on Friday, 4 October 2024.
6. Any defendant or person with an interest in the application for substantive orders (see pt A of the Interlocutory Process) who has filed an appearance must file written submissions upon which they intend to rely by 4:00pm (AWST) on Friday, 11 October 2024.
7. The application be listed for directions only on Tuesday, 1 October 2024, commencing at 9:30am (AWST).
8. The application for substantive orders (see pt A of the Interlocutory Process) be listed for trial for one (1) day on Monday, 14 October 2024, commencing at 10:30am (AWST).
9. The parties have liberty to apply on two (2) business days' notice.
10. The costs of the hearing today be costs in the cause of the application.

BY THE COURT



Sch D - Orders made on 20 September 2024



IN THE SUPREME COURT OF WESTERN AUSTRALIA

COR/62/2024

EX PARTE:

**DANIEL WOODHOUSE, HAYDEN
WHITE and JOHN PARK in their
capacity as joint and several receivers and
managers of Quintis (Australia) Pty Ltd
(Receivers and Managers Appointed)
(Administrators Appointed)
(ACN 626 970 821)**

First Plaintiff

-and-

**DANIEL WOODHOUSE, HAYDEN
WHITE and JOHN PARK in their
capacity as joint and several receivers and
managers of Sandalwood Properties Ltd
(formerly known as T.F.S. Properties Ltd)
(Receivers and Managers Appointed)
(Administrators Appointed)
(ACN 093 330 977)**

Second Plaintiff

-and-

**DANIEL WOODHOUSE, HAYDEN
WHITE and JOHN PARK in their
capacity as joint and several receivers and
managers of Quintis Forestry Pty Ltd
(formerly known as Tropical Forestry
Services Ltd) (Receivers and Managers
Appointed) (Administrators Appointed)
(ACN 080 139 966)**

Third Plaintiff

-and-

**DANIEL WOODHOUSE, HAYDEN
WHITE and JOHN PARK in their
capacity as joint and several receivers and
managers of Arwon Finance Pty Ltd
(Receivers and Managers Appointed)
(Administrators Appointed)
(ACN 072 486 643)**

Fourth Plaintiff

-and-

DANIEL WOODHOUSE, HAYDEN WHITE and JOHN PARK in their capacity as joint and several receivers and managers of Quintis Leasing Pty Ltd (formerly known as T.F.S. Leasing Pty Ltd) (Receivers and Managers Appointed) (In Liquidation) (ACN 080 978 721)

Fifth Plaintiff

-and-

DANIEL WOODHOUSE, HAYDEN WHITE and JOHN PARK in their capacity as joint and several receivers and managers of Fieldpark Pty Ltd (Receivers and Managers Appointed) (Administrators Appointed) (ACN 113 440 841)

Sixth Plaintiff

-and-

DANIEL WOODHOUSE, HAYDEN WHITE and JOHN PARK in their capacity as joint and several receivers and managers of Mt Romance Holdings Pty Ltd (Receivers and Managers Appointed) (Administrators Appointed) (ACN 115 659 606)

Seventh Plaintiff

-and-

DANIEL WOODHOUSE, HAYDEN WHITE and JOHN PARK in their capacity as joint and several receivers and managers of Quintis Sandalwood Pty Ltd (formerly known as Mt Romance Australia Pty Ltd) (Receivers and Managers Appointed) (Administrators Appointed) (ACN 060 122 698)

Eight Plaintiff

-and-

DANIEL WOODHOUSE, HAYDEN WHITE and JOHN PARK in their capacity as joint and several receivers and managers of About Time We Met Pty Ltd (formerly known as Australia Sandalwood Oil Co. Pty Ltd) (Receivers and Managers Appointed) (Administrators Appointed) (ACN 088 257 498)

Ninth Plaintiff

**ORDERS OF THE HONOURABLE JUSTICE STRK
MADE ON 20 SEPTEMBER 2024**

UPON THE APPLICATION made by the plaintiffs by interlocutory process filed on 21 August 2024, AND UPON the minute of proposed draft orders received in a communication on 20 September 2024, AND AFTER HEARING Mr WCJ Zappia on behalf of the plaintiffs on 19 September 2024, IT IS ORDERED THAT:

1. For the purpose of these orders:
 - (a) 'Interlocutory Process' means the interlocutory process filed on 21 August 2024 in the proceeding known as COR 62 of 2024;
 - (b) 'Programming Orders' means the orders made by this Court on 27 August 2024; and
 - (c) 'Quintis Group Companies' has the same meaning as given in the orders made on 27 August 2024.
2. To the extent required, any irregularity in the issue of the Interlocutory Process for service outside of Australia by operation of O 5 r 9 of the *Rules of the Supreme Court 1971* (WA) (RSC), is hereby cured nunc pro tunc pursuant to O 2 r 1(2) of the RSC.
3. Pursuant to O 18 r 6 of the RSC, each person described as a defendant in the Interlocutory Process (that is, Paul Begley, Shirley Spencer as executor of the deceased estate of Colin Spencer, Gregory Brudenell and each person and entity listed in the schedule to the Interlocutory Process titled 'MIS Investors'), be joined defendants to this proceeding.
4. The Programming Orders be amended as follows:
 - (a) Order 1(a) be amended so as to include the words underlined below:

'In accordance with the Supreme Court (Corporations) (WA) Rules 2004 (WA) rule 2.7, the plaintiffs have leave to serve a copy of the interlocutory process filed on 21 August 2024 (the Interlocutory Process) and the affidavits made by Daniel Woodhouse on 15 April 2024, 5 July 2024, 21 August 2024 and a further affidavit to be made by Mr Woodhouse by 4:00pm on Wednesday, 28 August 2024 (collectively the Supporting Affidavits, respectively) and the Programming Orders

(collectively the Court Papers) on each defendant based in Western Australia or interstate, on the Quintis Group Companies, on the Sandalwood Growers' Co-op and on Indian Sandalwood Farming (being organisations which purport to represent one or more of the defendants) by 4:00pm (AWST) Friday, 30 August 2024.'

- (b) Order 1(b)(i) be amended so as to include the words underlined below:

'Service of the Interlocutory Process and the Supporting Affidavits be effected by:

- (i) sending by email (or absent an email address, by post) a copy of the Interlocutory Process and the Supporting Affidavits to the defendants based in Western Australia or interstate, and to the Sandalwood Growers' Co-op and to Indian Sandalwood Farming;'

- (c) Order 3 be amended so as to include the words underlined below:

'Any defendant based interstate or in Western Australia or any person with an interest in the application for substantive orders (see pt A of the Interlocutory Process) who wishes to be heard in this application must file an appearance by 4:00pm (AWST) on Friday, 20 September 2024.'

- (d) Order 4 be amended so as to include the words underlined below:

'Any defendant based in Western Australia or interstate or any person with an interest in the application for substantive orders (see pt A of the Interlocutory Process) who has filed an appearance shall file and serve any affidavit evidence upon which they intend to rely by 4:00pm (AWST) on Friday, 27 September 2024.'

- (e) Order 6 be amended so as to include the words underlined below:

'Any defendant based in Western Australia or interstate or any person with an interest in the application for substantive orders (see pt A of the Interlocutory Process) who has filed an appearance must file written submissions upon which they intend to rely by 4:00pm (AWST) on Friday, 11 October 2024.'

5. Pursuant to O 10 r 11 of the RSC the plaintiffs have leave nunc pro tunc to serve the Court Papers on each defendant who is outside of Australia.

6. Pursuant to O 72 r 4 of the RSC the plaintiffs have leave to effect substituted service of the Court Papers on each defendant who is outside of Australia by effecting service by email (or absent an effective email address, by post).
7. Order 6 of these orders has effect nunc pro tunc, so that service of the Court Papers on any defendant outside of Australia by email before the making of these orders is effective service.
8. Any defendant outside of Australia who wishes to be heard in this application for substantive orders (see pt A of the Interlocutory Process) must file and serve an appearance, any affidavit evidence and the written submissions upon which they intend to rely by 4:00pm (AWST) on Friday, 11 October 2024.
9. By 4:00pm (AWST) on Monday, 23 September 2024, the plaintiffs are to give notice of these orders and the Programming Orders to all defendants, to the administrators and liquidators appointed to each of the Quintis Group Companies, to the Sandalwood Growers' Co-op and to Indian Sandalwood Farming by:
 - (a) email or post (where email addresses are not available); and
 - (b) posting them (if they have not already been posted) on the website maintained by Sandalwood Properties Ltd at www.sandalwoodproperties.com.au, and on any website maintained by FTI Consulting (Australia) relating to the Quintis Group Companies, which post is to be maintained on the website (or websites) until the determination of the application for substantive orders (see pt A of the Interlocutory Process).

Liberty to Apply

10. The parties and any other interested parties have liberty to apply on two (2) business days' notice.

Costs

11. The costs of the hearing today be costs in the cause of the application.



Sch E - Clauses 14.1 - 14.3 of the constitutions for the 2007, 2008 and 2009 Quintis Managed Investment Schemes

Clauses 14.1, 14.2 and 14.3 of the 2007, 2008 and 2009 Quintis Managed Investment Schemes read as follows.

14. RELEASE OF APPLICATION MONEY

14.1 Release of Application Money

Within 5 Business Days of being reasonably satisfied with the matters specified in clause 13, the Responsible Entity must release (or, if applicable, direct the Custodian to release) the Application Money. The released Application Money must be used to pay the relevant fees that are payable under the Lease and Management Agreement. Where a deposit has been paid as provided for in clause 11.3, the balance of the Application Money must be paid out by the Responsible Entity as soon as practicable after receipt.

14.2 Refund

Within 20 Business Days of:²⁸⁵

- (a) where the relevant Application was made on or before 30 June 2007 - 30 June 2007; or
- (b) where the relevant Application was made after 30 June 2007 but on or before 30 June 2008 - 30 June 2008,

the Responsible Entity must refund to any Applicant, the whole of any Application Money that has not been released pursuant to clause 14.1. This obligation does not apply to Application Money that has not been released because of a default by the Applicant.

14.3 Extinguishment of Lease and Management Agreement

Upon the refund of the money referred to in clause 14.2, any relevant Contract or Lease and Management Agreement must be extinguished. The Responsible Entity must make an appropriate entry in the Register.

²⁸⁵ In the 2008 Quintis Managed Investment Scheme constitution, it is within 20 Business Days of: (a) where the relevant Application was made on or before 30 June 2008 - 30 June 2008; or (b) where the relevant Application was made after 30 June 2008 but on or before 30 June 2009 - 30 June 2009. In the 2009 Quintis Managed Investment Scheme constitution, it is within 20 Business Days of: (a) where the relevant Application was made on or before 30 June 2009 - 30 June 2009; or (b) where the relevant Application was made after 30 June 2009 but on or before 30 June 2010 - 30 June 2010.

STRK J

I certify that the preceding paragraph(s) comprise the reasons for decision of the Supreme Court of Western Australia.

KO

Associate to the Honourable Justice Strk

23 JUNE 2025