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12 August 2011

Mr. Michael Johns
Maddocks
140 William Street
MELBOURNE VIC 3000

By email: michael.johns@maddocks.com.au

Dear Michael

FEA Demand for Rent from Growers

We write on behalf of the FEA Growers Group Inc (**FEAGG**) and refer to letters dated 8 August 2011 to various Growers from FEA Limited (Subject to a Deed of Company Arrangement)(Receivers and Managers appointed) (**FEA**) and signed by Mr. Tim Norman in his capacity as Receiver and Manager of FEA. A sample of such a letter is attached.

The Letter of Demand

In summary, the letter:

(a) refers to invoices issued by FEA Plantations (Subject to a Deed of Company Arrangement) (Receivers appointed)(**FEAP**) in respect of rental payments;

(b) asserts that FEAP was not entitled to invoice or receive that rent;

(c) states that FEA first advised FEAP of its view in August 2010;

(d) asserts that Growers who have made rental payments to FEAP have not discharged their rental obligations;

(e) states that Growers are "required to remedy the breaches of the Lease by paying the Outstanding Rent within 21 days . . . failing which FEA will have no choice but to take action based on the default, which may include terminating or forfeiting the Lease.";

(f) states that "if you fail to comply with this notice within a reasonable time, then FEA will be entitled to re-enter and forfeit the Lease . . ."; and

(g) asserts that the relevant head lease is in default.

We note that the letter:

(h) makes no reference to the registered managed investment scheme in respect of which the Lease is held by the Grower;

(i) makes no acknowledgement that FEAP is the responsible entity of the relevant scheme;

(j) makes no reference of the dispute that exists in relation to whether FEA or FEAP is the sub-lessor of the Lease;

(k) makes no reference to the fact, which we believe to be true, that you have no document evidencing a head lease from Tasmanian Plantations Pty Ltd (Subject to a Deed of Company Arrangement)(Controllers Acting)(**Tasmanian Plantations**) in respect of the Tasmanian Forests Trusts No.1 to 7 and that you rely on a lease in equity;

(l) makes no acknowledgement that both the 2000 Head Lease and the 2000 Deed of Charge and Encumbrance (a document expressly acknowledged by the Commonwealth Bank of Australia) record Tasforestry Limited (now FEAP) as the sub-lessor for the Tasmanian Forests Trusts No.1 to 7; and

(m) gives no explanation as to why FEA has waited over a year before communicating with Growers when it has been on notice of FEAP invoicing Growers for rent and Growers paying FEAP during that time.

We also understand that Growers have not received an invoice from FEA in respect of the rental amount that FEA now demands and describes as "outstanding".

Non-payment of rent by FEA as Grower

We understand that from July 2010, FEA received regular Grower invoice reports from the Administrators / Deed Administrators. We also understand that the Deed Administrators have been pursuing FEA for over a year in respect of $9 million of outstanding rental payments owed in its capacity of Grower in various schemes. Notwithstanding this, since July 2010 FEA has acquiesced in Growers directing their rent payments to FEAP as responsible entity without complaint to the Growers.

FEAGG Response

It is the opinion of the FEAGG that, regardless of who is entitled to collect the rent, the rental payments are contributions to the scheme and so are "scheme property". As you will be aware, the Corporations Act requires that "scheme property" be held on trust for members by the responsible entity. Accordingly, even if FEA is entitled to collect the rental payment, it would do so as agent for the responsible entity. It follows that any payment to an agent's principal satisfies the obligations to the agent.

Furthermore, and by way of example, the Tasmanian Forests Trust No. 7 (1999 Scheme) Constitution clearly states: "Each Grower will lease from the Responsible Entity (or such other party it nominates)" (Cl 14.1(a)). The relationship between the Responsible Entity and its agent or nominee is clearly articulated in Clause 16.2. Clause 14.4 deals with rights of Termination of agreements (including the lease) and clause 14.4(b) expressly contemplates the Responsible Entity terminating the lease and re-entering the land. In light of these clauses, FEA's assertion of a right under a lease that is independent of the scheme is misleading and mischievous.

The FEAGG considers that FEA has engaged in misleading or deceptive conduct by:

(i) presenting matters subject to legal dispute as fact (see (b),(d),(e),(f) above);

(ii) implying that the Receivers have no choice but to take the action threatened in the letter where, clearly, FEA's dispute is and has been, until now, with FEAP;

(iii) wrongly citing legal provisions in support of assertions of law (for example, s15(7) of the *Conveyancing and Law Property Act* 1884 (Tas) expressly states that the section does not apply in relation to re-entry or forfeiture for non-payment of rent);

(iv) omitting material information that would enable a Growers to seek advice on their rights;

(v) representing to Growers by its prior conduct and omissions in communications that it did not assert a right to collect rent from Growers.

The FEAGG also considers that FEA has acted unconscionably by demanding rental payments from Growers in circumstances where:

(vi) it is in possession of knowledge that undermines the assertions made in the letter;

(vii) the Growers are not in possession of that knowledge;

(viii) it purports to have rights independent of and unaffected by the scheme in which its rights (if any) exist;

(ix) it is seeking to extract money from the a Grower who has made rental payments in good faith to the responsible entity of the scheme through which their lease is held; and

(x) a Grower meeting to effect a restructure and continuation of the 1999 Scheme, which contains the greatest value of all of the Schemes, is to be reconvened in just over two weeks time (it appears that such letters were only issued to Growers in the 1999 Scheme).

The FEAGG considers that Growers are entitled to dispute the default notices and any termination notice on the basis of:

(xi) lack of power, as FEA is not the sub-lessor and accordingly does not have the legal right to terminate the Lease;

(xii) lack of power, as if FEA were the sub-lessor, it did so as agent of FEAP and FEAP is deemed to have terminated the agency;

or, if FEA does have the legal right to terminate the Lease:

(xiii) by acquiescence, FEA has affirmed or accepted the breach;

(xiv) equitable estoppel, under which principle if FEA did have the legal right, it would be prevented from relying on that right because of the representation arising from its conduct[1] upon which the Grower relied in paying rent to FEAP; and

(xv) proprietary estoppel, under which principle by standing by and not asserting its purported legal rights, it would be unconscionable for FEA to now assert them;[2]

Notwithstanding this, individual Growers should not be in the position of having to defend themselves and incur the necessary legal costs of doing so against your well funded client, particularly when it conducts itself in the manner it has done in sending this letter.

We also understand that Growers who have pre-paid the entirety of their rental obligation in accordance with one of the options under the original prospectus have also been invoiced amounts.

Request for response

Our client requests that FEA:

- provide us with a copy of the head leases which FEA asserts are in default, or alternatively advise us of the basis upon which it asserts the right to demand rent from Growers;
- provide us with a sample of a lease it purports to have with a Grower in relation to the 1999 Scheme;
- advise us what FEA proposes to do in relation Growers who have pre-paid their rent; and
- specify the schemes in respect of FEA has sent letters of demand to Growers.

FEA should retract its letters to Growers, make corrective disclosure in respect of misleading representations identified in this letter, desist from telephoning Growers with these representations and repay to Growers any amounts recovered by FEA under its letter.

FEAGG has instructed us to advise you that it proposes to make a copy of this letter available to Growers on its website.

We request your urgent consideration to matters raised in this letter and a response by Tuesday 16 August 2011.

Yours sincerely

Mark Bland
Director

Direct Tel: 03 8681 4415
Email: mark.bland@clarendonlawyers.com.au

cc: Paul Eastment, Australian Securities & Investments Commission

Stephen Sawer, DLA Piper, solicitor to the Deed Administrator

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[1] *Sayers v Collyer* (1884) 28 Ch. D 103; *Archbold v Scully* (1861) 9 H.L.C 360 at p 383
[2] *Crabb v Arun District Council* [1976] Ch. 179