

Court win for Timbercorp investors

Carrie LaFrenz

Timbercorp grower investors secured a victory yesterday when the Supreme Court of Victoria allowed liquidator KordaMentha to sell the failed management scheme's almond assets.

However, the court would not approve the offer from secured creditors to apportion the proceeds from the sale to the grower group.

Judge Ross Robson said he was happy with the \$128 million deal to sell Timbercorp's almond assets to Olam International, but proposed a further legal process to determine the rights of secured creditors and growers to the Olam sale proceeds.

The grower investor group and

KEY POINTS

- Timbercorp's almond assets can be sold to Olam for \$128 million.
- But the rights to the proceeds of secured creditors and growers has still to be decided.

the secured lenders have been in a stand-off over how to split the sale proceeds. The banks are offering the growers just \$6 million – a fraction of the \$50 million they want.

Justice Robson also approved the liquidator's application to terminate growers' interests in the managed investment schemes. This will allow the sale to be completed provided

the sale proceeds are held in trust until the court can determine the legal rights of the secured creditors and growers to those proceeds.

"I want to make it clear what the position is," Justice Robson said. "The ball is in the banks' court. If they agree the sale can go ahead, but if it does the proceeds must be held in trust until the growers' proprietary rights to those moneys are established or agreed."

The Supreme Court's Commercial Court will formulate its orders today.

Mark Korda, of KordaMentha, said he was satisfied with the judgement.

"It's a good outcome in that the assets can be sold and the crops

maintained," he said. "However, the secured creditors still have to decide about the agreement to the trust fund. The grower rights can be determined after the sale of the business when we have more time. The critical issue is the ongoing watering, fertilising and maintaining of these huge almond orchards."

Mr Korda said upon completion of the sale agreement, which was due to expire today if certain conditions were not met, Olam had committed to spend \$16 million until the end of December to maintain the orchards.

Timbercorp grower group chairman Chris Garnut said he was delighted with the outcome.

"I hope common sense will pre-

vail with the banks," he said. "If not, it will be a long, ugly court process. We will fight all the way."

Grower investors sank \$395 million into the almond managed investment scheme. Australia and New Zealand Banking Group has an exposure of about \$45 million to the almond assets and a banking syndicate that includes ANZ, Westpac Banking Corp and Royal Bank of Scotland has an exposure of about \$105 million.

An ANZ spokesman said it was reviewing the judgement.

The failure of the scheme operator in April has left more than 18,000 grower investors in limbo.

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Bank feels Great Southern pinch

Matthew Drummond

Pressure is mounting on Bendigo and Adelaide Bank to take a major provision against its \$550 million exposure to Great Southern after a subsidiary wrote off 75 per cent of its investment in the collapsed agribusiness's debt securities.

The bank's wholly owned funds manager, Adelaide Managed Funds, yesterday revealed a fourfold increase to its provision against its Great Southern exposure: \$22.3 million worth of notes whose performance depends on Great Southern investors continuing to repay their loans.

In May, after Great Southern collapsed, AMF booked a \$4.3 million provision against the notes. After coming out of a trading halt on its shares yesterday, AMF said "an increase in the proportion of borrowers who have sought legal advice in relation to their loan obligations and have chosen not to meet their loan repayments" had forced it to lift that impairment to \$16.7 million.

KEY POINTS

- In May, AMF booked a \$4.3 million provision against its exposure.
- That has risen to \$16.7 million.
- Bendigo Bank has taken only \$21.5 million in provisions.

The development is a bad sign for AMF's parent, Bendigo Bank, which has lent \$550 million to 8200 grower-investors. About 750 are preparing to join a class action and their lawyer, Macpherson + Kelley's Ron Willemsen, has advised them all to stop repaying their loans.

Yet to date Bendigo Bank has taken only \$21.5 million in provisions — less than 4 per cent of its total exposure.

The bank said there had been no change to its impairment charge, arguing that AMF's move reflected its subordinated position, meaning it carries all the first losses until its \$22.3 million investment is wiped out.

The bank's head of investor relations, Will Rayner, said: "[AMF] are an independent board. They have a junior subordinated note. It's their responsibility to make that judgement. We make ours based on all the known facts to us and we'll update the market as necessary. There are different tests applied and there are substantially different materiality measures involved."

Great Southern was Australia's largest agribusiness group with a business model reliant on a tax ruling that allowed investors to claim their full investment as an upfront deduction. Investor appetite for agribusiness schemes dropped in 2007 when the government changed the rules. Great Southern collapsed under a mountain of debt last April.

Liquidators are still assessing the viability of Great Southern's various managed investment schemes — and how much investors will lose. But many investors hope to show that irregularities in Great Southern's accounts, and apparent misleading

statements render their loans void.

While Great Southern provided the loans, the financing was done by Bendigo Bank. As a result, the bank will suffer any losses from defaults.

Mr Willemsen said he expected to launch a class action against Great Southern and the bank by the end of the month. Other investors have separate legal representation which has also advised they have grounds to back out of their loans.

The bank is taking an increasingly tough approach, warning defaulters through letters and telephone calls they potentially face legal action.

Bendigo shares gained 26¢ yesterday to close at \$9.70.

The Great Southern notes make up 12.3 per cent of the assets in one of AMF's managed funds, the Asset Backed Yield Trust. AMF said the fund's other assets continued to perform but the higher impairment would cut its 2009 net tangible asset backing by 13.1¢ per unit to \$1.78.

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CGI staff at risk in Storm aftermath

Duncan Hughes

Commonwealth Bank of Australia restructure following the collapse of Storm Financial is believed to be continuing, with another manager being placed on "extended leave

Kamal Arnaout, a service manager with Colonial Geared Investments, the margin-loan division of CBA, has been told by management to take leave until the end of the month, when his position is expected to be reviewed.

Mr Arnaout, who was not available for comment, worked in the division for about eight years and was closely involved with Storm Financial for three years leading to its collapse in January.

Another, unnamed senior manager closely involved with the Storm Financial account is also on leave and is expected to return next week.

A spokesman said: "Both men are still with the bank."