

Timbercorp case thrown out

By Ben Butler for The Sydney Morning Herald *September 2, 2011*

THOUSANDS of investors who borrowed more than \$450 million to invest in schemes run by collapsed agribusiness group Timbercorp are likely to be pursued over their debts after the comprehensive failure of a class action against the company.

The Victorian Supreme Court yesterday threw out a claim in which more than 2000 investors sought to set aside loans from the group that financed their investments.

Justice James Judd said the investors had failed to make their argument that they were not properly informed of the risks threatening their investments in Timbercorp's managed investment schemes.

In a judgment of more than 300 pages, Justice Judd criticised the "scatter-gun" way the case had been run by lawyers for the investors, saying they had constructed an "elaborate and sometimes illusive web of allegations".

He said some of the evidence given by the two investors leading the case was "implausible" because it "strained to diminish the importance of the tax benefit derived by them in favour of more laudable long-term investment objectives". Investors have been given a stay of execution until at least October 6, when Justice Judd will make further orders in the case and give directions in collection actions brought against investors by Timbercorp liquidator KordaMentha, which have been on hold during the class action.

Timbercorp, which ran schemes investing in olives, timber, almonds, avocados and other agricultural products, collapsed in June 2009. At that time its subsidiary, Timbercorp Finance, had lent more than 14,500 investors about \$478 million.

The investors argued that they were not properly informed of two important events that would have put them off subscribing to Timbercorp's schemes: a decision by the Tax Office, announced in February 2007, to end the tax deductibility of upfront fees paid by investors and the onset of the global financial crisis in late 2007.

They also argued they were not properly informed of the structural risk that Timbercorp might run out of cash.

But Justice Judd found Timbercorp's directors only needed to make disclosure when they "realised that an event may not be capable of successful management".

Speaking outside the court, a lawyer for the investors, Macpherson + Kelley principal Ron Willemsen, said the judgment would be examined for possible grounds to appeal.

The costs of the proceedings, which took 21 days and involved five senior counsel representing the investors, Timbercorp, Timbercorp Finance and the group's directors, are likely to exceed \$10 million.

Mr Willemsen said the costs would be borne equally by investors who had signed up to the class action.

Read more: <http://www.smh.com.au/business/timbercorp-case-thrown-out-20110901-1jo5n.html#ixzz1X2NDPLrg>