

SUPREME COURT OF QUEENSLAND

REGISTRY: BRISBANE

NUMBER: BS3508/2015

IN THE MATTER OF LM INVESTMENT MANAGEMENT LIMITED (IN LIQUIDATION) (RECEIVERS AND MANAGERS APPOINTED)

First Applicant: **JOHN RICHARD PARK AS LIQUIDATOR OF LM INVESTMENT MANAGEMENT LIMITED (IN LIQUIDATION) (RECEIVERS AND MANAGERS APPOINTED) ACN 007 208 461 THE RESPONSIBLE ENTITY OF THE LM FIRST MORTGAGE INCOME FUND ARSN 089 343 288**

AND

Second Applicant: **LM INVESTMENT MANAGEMENT LIMITED (IN LIQUIDATION) (RECEIVERS AND MANAGERS APPOINTED) ACN 077 208 461 THE RESPONSIBLE ENTITY OF LM FIRST MORTGAGE INCOME FUND ARSN 089 343 288**

AND

First Respondent: **DAVID WHYTE AS THE PERSON APPOINTED TO SUPERVISE THE WINDING UP OF THE LM FIRST MORTGAGE INCOME FUND ARSN 089 343 288 PURSUANT TO SECTION 601NF OF THE CORPORATIONS ACT 2001**

AND

Second Respondent: **SAID JAHANI IN HIS CAPACITY AS RECEIVER AND MANAGER OF THE ASSETS, UNDERTAKING, RIGHTS AND INTERESTS OF LM INVESTMENT MANAGEMENT LIMITED (IN LIQUIDATION) (RECEIVERS AND MANAGERS APPOINTED) ACN 077 208 461 AS THE RESPONSIBLE ENTITY OF THE LM CURRENCY PROTECTED AUSTRALIAN INCOME FUND ARSN 110 247 875 AND THE LM INSTITUTIONAL CURRENCY PROTECTED AUSTRALIAN INCOME FUND ARSN 122 052 868**



AMENDED APPLICATION

AMENDED APPLICATION
Filed on behalf of the Applicants
Form 9, Version 1
Uniform Civil Procedure Rules 1999
Rule 31

Russells
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Brisbane QLD 4000
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Ref: MKR:20190205

TAKE NOTICE that the applicants are applying to the Court for the following orders and relief:

At this first return date on 18 March 2024:

1. That the parties are excused from complying with paragraphs 16, 17 and 18 of the Order of the Honourable Justice Callaghan made on 23 March 2021 for this application.
2. That, by no later than 14 days prior to the second return date of this application, any party who wishes to be heard, including Mr Whyte, file and serve any affidavit material on which they intend to rely, as well as a short statement summarising the grounds, if any, on which they oppose the relief sought by the first applicant.
3. That, by no later than seven days before the second return date of this application, the first applicant file and serve a written outline of submissions in support of the relief sought at the second return date.

At the second return date on 27 May 2024:

4. That, pursuant to section 511(1) of the *Corporations Act 2001* as in force immediately before 1 March 2017 (**the Old Act**) or, alternatively, subdivisions 90-15(1) and 90-15(3)(f) of Schedule 2 to the *Corporations Act 2001* currently in force (**Insolvency Schedule**):
 - (a) the first applicant's corporate remuneration (within the meaning of that expression used in *LM Investment Management Limited & Anor v Whyte* [2019] QSC 245) as liquidator of the second applicant, for the period 1 December 2021 to 31 January 2024, be fixed, or alternatively determined in the sum of \$15,954.40 (including GST);
 - (b) the first applicant's Category 1 remuneration (within the meaning of that expression used in *LM Investment Management Limited & Anor v Whyte No 2* [2017] QSC 229 (**the First Remuneration Decision**)) as liquidator of the second applicant, in respect of the LM First Mortgage Income Fund ARSN 089 343 288 (**FMIF**) for the period 1 December 2021 to 31 January 2024, be fixed, or alternatively determined in the sum of \$82,065.50 (including GST);
 - (c) the first applicant is entitled to Category 1 remuneration as liquidator of the second application in respect of the FMIF for the period 1 February 2024 to the date of the finalisation of the winding up of the FMIF, ~~in an amount up to~~ fixed in the sum of \$55,000 (including GST);
 - (d) the first applicant's Category 2 remuneration (within the meaning of that expression used in the First Remuneration Decision) as liquidator of the second

applicant, in respect of the FMIF, be fixed or alternatively determined, in the sum of \$50,417.40 (including GST).

5. From the scheme property of the FMIF, for the first applicant's remuneration as liquidator of the second applicant:
 - (a) the first applicant be paid the sum of \$132,482.90 (including GST), such sum to include:
 - (i) \$82,065.50 for Category 1 remuneration for the period 1 December 2021 to 31 January 2024;
 - (ii) \$50,417.40 for Category 2 remuneration for the period 1 December 2021 to 31 January 2024;
 - (b) the first applicant be paid the fixed sum of ~~may draw a sum or sums up to the amount of~~ \$55,000 (including GST) for Category 1 remuneration for the period 1 February 2024 to the date for finalisation of the winding up of the FMIF.
6. That, pursuant to the orders of Justice Jackson made herein on 17 December 2015, as varied on 18 July 2018, the Court approve the claim by the first applicant for payment of:
 - (a) the sum of \$450,423.15 (including GST) from the scheme property of the FMIF, being the legal costs and interest charges on outstanding legal costs the liquidator of the second applicant has incurred in connection with the second applicant acting as Responsible Entity for the FMIF; and
 - (b) the sum of \$919.05 (including GST) from the scheme property of the FMIF, being expenses the liquidator of the second applicant has incurred in connection with the second applicant acting as Responsible Entity for the FMIF.
7. An order that the first respondent shall pay the said sum of \$451,342.18 from the property of the FMIF to the applicants (or as they may direct in writing).
8. An order that the parties' costs of this Application, to be fixed in such sum as the Court thinks fit, agreed by the applicants and the first respondent or assessed, be paid on the indemnity basis from the property of the FMIF.
9. Such further or other orders as this Honourable Court deems fit.

This application will be heard by the Court at QEII Courts of Law Complex, 415 George Street, Brisbane on 27 May 2024 at 10:00 am /pm.

Filed in the Brisbane Registry on: ~~20 May~~ 17 April 2024



Registrar:

If you wish to oppose this application or to argue that any different order should be made, you must appear before the Court in person or by your lawyer and you shall be heard. If you do not appear at the hearing the orders sought may be made without further notice to you.

On the hearing of the application the applicants intend to rely on the following affidavits:

1. Affidavit of Kelly-Anne Lavina Trenfield ~~to be sworn~~ filed 18 April 2024 [CFI-337];
2. Affidavit of John Richard Park ~~to be sworn~~ filed 18 April 2024 [CFI-339];
3. Affidavit of Millicent Kathryn Russell ~~filed 18 April 2024 [CFI-338] Stephen Charles Russell to be sworn;~~
4. Affidavit of Kelly-Anne Lavinia Trenfield filed 20 May 2024.

THE PLAINTIFF ESTIMATES THE HEARING SHOULD BE ALLOCATED 1 HOUR

Signed:

Description: Millicent Kathryn Russell, Russells, solicitors for the applicants

Dated: 20 May 2024

This application is to be served on:

First Respondent Name: **DAVID WHYTE**
 Address: c/- Cowen Schwarz Marschke Solicitors
 Level 8, 300 George Street
 Brisbane City QLD 4000