

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane  
NUMBER: BS3508/2015

IN THE MATTER OF LM INVESTMENT MANAGEMENT LIMITED (IN LIQUIDATION)  
(RECEIVERS APPOINTED)  
ACN 077 208 461

First Applicant: JOHN RICHARD PARK AND GINETTE DAWN MULLER AS  
LIQUIDATORS OF LM INVESTMENT MANAGEMENT LIMITED (IN  
LIQUIDATION) (RECEIVERS AND MANAGERS APPOINTED)  
ACN 077 208 461 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 MANAGER APPOINTED) ACN 077 208 461  
THE RESPONSIBLE ENTITY OF THE LM FIRST MORTGAGE  
INCOME FUND ARSN 089 343 288

AND

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

AFFIDAVIT OF JOHN SOMERVILLE

I, JOHN SOMERVILLE of C/- BDO, Level 10, 12 Creek Street, Brisbane in the State of  
Queensland, Senior Manager, state on oath:-

1. I am employed by BDO as a Senior Manager.
2. I refer to the Orders made by the Honourable Justice Jackson on 7 May 2015 (Orders).

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Signed:



Witnessed by:



AFFIDAVIT:  
Form 46, R.431

TUCKER & COWEN  
Solicitors  
Level 15  
15 Adelaide Street  
Brisbane, Qld, 4000.  
Tele: (07) 300 300 00  
Fax: (07) 300 300 33

Filed on behalf of the Respondent,  
Mr David Whyte

**Uploading to FMIF website**

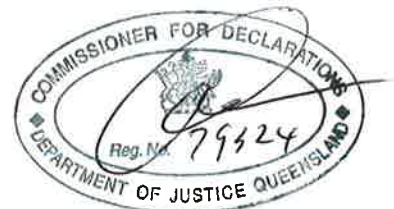
3. In accordance with paragraph 6 of the Orders, I instructed Thomas Sinclair, an employee at Cyberthread, a company engaged by BDO to set up the website "lmfmif.com" (**Website**), to upload:-
- (a) On 15 June 2015, the Affidavit of David Whyte and four volumes of exhibits;
  - (b) On 2 July 2015:-
    - (i) The Outline of Submissions of David Whyte, dated and filed on 7 May 2015;
    - (ii) The Affidavit of Sean Charles Russell sworn 26 June 2015 and filed on 29 June 2015;
    - (iii) A Notice of Appearance of David Whyte, dated and filed on 30 June 2015;
    - (iv) The Affidavit of David Heiner Schwarz sworn on 29 June 2015 and filed on 30 June 2015; and
  - (c) On 9 July 2015, the Applicants' Outline of Submissions dated 8 July 2015 and filed 15 July 2015.

together, the **Documents**, all of which I provided to Cyberthread, and instructed them to place in a prominent place on the Website.

4. The prominent place the Documents were posted to the Website was entitled "Important Notice to Members – Court Application by the Liquidators of the Responsible Entity of the LM First Mortgage income Fun ('LMIF') on residual powers and remuneration".

Signed: 

Witnessed by:



5. On 17 July 2015 I checked the Website and confirmed that all the Documents had been uploaded to the Website in a prominent place, and were available to be viewed. Exhibited hereto and marked "JS-1" is a copy of a screenshot of the Website taken on 17 July 2015 showing the placement of the Documents the Website by Cyberthread.
6. All the facts and circumstances above deposed to are within my own knowledge save such as are deposed to from information only and my means of knowledge and sources of information appear on the face of this my Affidavit.

Sworn by **JOHN SOMERVILLE** on the <sup>2<sup>nd</sup></sup> day of July 2015 at Brisbane in the presence of:



**Deponent**



**Solicitor/A Justice of the Peace**

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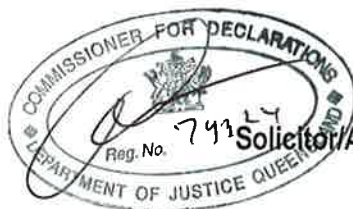
Respondent: DAVID WHYTE AS THE PERSON APPOINTED TO SUPERVISE  
THE WINDING UP OF THE LM FIRST MORTGAGE INCOME  
FUND ARSN 089 343 288 PURSUANT TO SECTION 601NF OF  
THE CORPORATIONS ACT 2001

CERTIFICATE OF EXHIBIT

Exhibit "JS-1" to the Affidavit of JOHN SOMERVILLE sworn this 20<sup>th</sup> day of July 2015



Deponent



Solicitor/A Justice of the Peace

CERTIFICATE OF EXHIBIT:  
Form 47, R.435

Filed on behalf of the Respondent,  
Mr David Whyte

TUCKER & COWEN  
Solicitors  
Level 15  
15 Adelaide Street  
Brisbane, Qld, 4000.  
Tele: (07) 300 300 00  
Fax: (07) 300 300 33

## Important Notice to Members

### FMIF Receiver's Court Application for remuneration Approval – Hearing date 23 June 2015

On 29 May 2015, the Court Appointed Receiver made an application for the approval of his remuneration for the period 1 October 2014 to 30 April 2015 together with his remuneration for work undertaken in respect of the Controllership appointments for the period 1 October 2014 to 30 April 2015. The Notice to the Members of the LM First Mortgage Income Fund (Receivers and Managers Appointed) (Receiver Appointed) with respect to that Application together with a copy of the application and supporting material can be found below.

- Notice to Members of the Receiver's Court Application for Remuneration Approval dated 2 June 2015 (72.0 kB)
- Amended Application for approval of remuneration filed on 3 June 2015 (1.5 MB)
- Sealed copy order of Justice Lyons 1 June 2015 regarding the substituted service application filed 29 May 2015. (1.2 MB)
- Affidavit of David Whyte sworn and filed on 29 May 2015 (5.0 MB)
- Annexure to Affidavit of David Whyte filed on 29 May 2015 – volume 1 of 7 (83.4 MB)
- Annexure to Affidavit of David Whyte filed on 29 May 2015 – volume 2 of 7 (79.9 MB)
- Annexure to Affidavit of David Whyte filed on 29 May 2015 – volume 3 of 7 (101.6 MB)
- Annexure to Affidavit of David Whyte filed on 29 May 2015 – volume 4 of 7 (64.4 MB)
- Annexure to Affidavit of David Whyte filed on 29 May 2015 – volume 5 of 7 (64.2 MB)
- Annexure to Affidavit of David Whyte filed on 29 May 2015 – volume 6 of 7 (71.6 MB)
- Annexure to Affidavit of David Whyte filed on 29 May 2015 – volume 7 of 7 (66.2 MB)

As indicated above, the hearing for the remuneration application of the Court Appointed Receiver took place on 23 June 2015. The court approved the remuneration sought of \$1,761,911.25 (inclusive of GST) in respect of work undertaken in dealing with FMIF during the period from 1 October 2014 to 30 April 2015. In addition, the court approved the remuneration sought of \$442,214.30 in respect of the work undertaken on the controllerships during the period 1 October 2014 to 30 April 2015. A copy of the order made on 23 June 2015 is available below:

- Order of the Supreme Court of Queensland dated 23 June 2015 (Sealed) (1.0 MB)

**Court Application by the Liquidators of the Responsible Entity of the LM First Mortgage Income Fund ('LMIF') on residual powers and remuneration**

"JS-1"

**TAKE NOTICE** that John Richard Park and Ginette Dawn Muller, the liquidators of LM Investment Management Limited (in liquidation) (receivers and managers appointed) (LMIM) ACN 077 208 461, the responsible entity of the FMIF, and LMIM have applied to the Supreme Court of Queensland in proceeding no. 3508 of 2015 for directions and orders in relation to the extent of their powers and responsibilities as such liquidators and in respect of their remuneration as such liquidators, in relation to the winding up of the FMIF and LMIM.

The Notice to the Members of the LM First Mortgage Income Fund (Receivers and Managers Appointed) (Receiver Appointed) with respect to that Application together with a copy of the application and supporting material can be found below.

- Notice to Members of Application by J Park & G Muller (per Annexure A to Order 7 May 2015) (117 kB)
- The Original Application filed 8 April, 2015 (170 kB)
  - Interlocutory Application dated 29 April 2015 and Accompanying Statement (252 kB)
  - Sealed copy order of Justice Jackson 8 May 2015 regarding the Originating Application filed 8 April 2015. (125 kB)
- Affidavit of Stephen Charles Russell, filed on 8 April, 2015 (1.6 MB)
- Affidavit of John Richard Park, filed on 22 April, 2015 (332 kB)
  - Exhibit JRP-1 to Affidavit, filed on 22 April 2015 (9.4 MB)
- Affidavit of Sean Charles Russell, filed by leave on 7 May, 2015 (3.7 MB)
- Order dated 8 May 2015 regarding the original application filed 8 April, 2015 (115 kB)
  - Annexure A to Order dated 8 May, 2015. (117 kB)
- Affidavit of John Park, filed on 11 June 2015 (36 kB)
- Affidavit of David Whyte, filed on 12 June 2015 (3.4 MB)
  - Exhibit 'DW1' pages 1 – 192 to Affidavit filed 12 June 2015 (50.2 MB)
  - Exhibit 'DW1' pages 193 – 344 to Affidavit filed 12 June 2015 (25.0 MB)
  - Exhibit 'DW1' pages 345 – 479 to Affidavit filed 12 June 2015 (31.6 MB)
  - Exhibit 'DW1' pages 480 – 602 to Affidavit filed 12 June 2015 (25.9 MB)
- The Outline of the Submissions of David Whyte, Respondent, filed on 7 May 2015 (0.9 MB)
- Affidavit of Sean Charles Russell sworn 26 June 2015 and filed on 29 June 2015 (6.5 MB)
- Notice of Appearance of David Whyte, Respondent, filed on 30 June 2015 (0.3 MB)
- Affidavit of David Heiner Schwarz sworn on 29 June 2015 and filed on 30 June 2015 (1.4 MB)
- Applicants' outline of submissions 8 July 2015, filed 15 July 2015 (0.4 MB)
- Respondent's outline of submissions dated and filed 16 July 2015 (0.3 MB)

The court order sets out the timetable for parties to file and serve documents with the Application to be heard by the Supreme Court of Queensland at Brisbane on 20 July 2015 and 21 July 2015 at 10.00am. Any member of FMIF who wishes to appear at the hearing of the Application shall by 17 June 2015 file and serve at the Applicants address for service a Notice of Attendance in Form 4