

Duplicate

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane
NUMBER: 3508 of 2015

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

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

AND

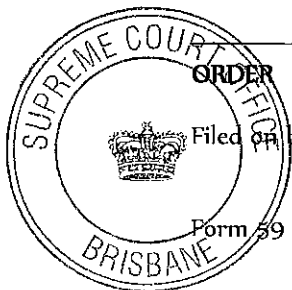
Respondent: DAVID WHYTE AS THE PERSON APPOINTED TO SUPERVISE THE WINDING UP OF THE LM FIRST MORTGAGE INCOME FUND ARSN 089 343 288 PURSUANT TO SECTION 601NF OF THE CORPORATIONS ACT 2001

ORDER

Before: Justice Jackson
Date: 7 May, 2015
Initiating document: Application filed 8 April, 2015

THE ORDER OF THE COURT IS THAT:-

1. The Originating Application filed 8 April, 2015 ("the Application") be placed on the Commercial List.
2. Exhibit JRP-2 to the affidavit of John Richard Park filed on 22 April 2015 be placed in an envelope marked "Not to be opened without the Order of a Judge".



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300 Queen Street
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Phone: 07 3004 8888
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Order 8-5-15

3. By 22 May 2015, the Applicants are to advise the Respondent in writing of any functions or duties which are set out in Schedule 2 to the Application in respect of which it is unnecessary for the Court to make any direction by reason of there being no need for any exercise of judicial power.

4. Notice is to be given to the members of the LM First Mortgage Income Fund ("the FMIF") of:

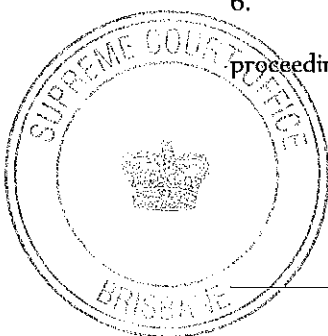
- (a) the Application;
- (b) the affidavit of Stephen Charles Russell, filed on 8 April, 2015;
- (c) the affidavit of John Richard Park, filed on 22 April, 2015 and exhibit JRP-1 thereto;
- (d) the affidavit of Sean Charles Russell, filed by leave on 7 May, 2015; and
- (e) this order,

by the Respondent:-

- (i) causing, on or before 15 May, 2015, each of the documents mentioned above and a copy of the notice in the form of Annexure A to this order ("the Notice") to be posted in a prominent place on the website www.lmfimf.com; and
- (ii) sending, on or before 15 May, 2015, a copy of the Notice to all members of the FMIF by each member's preferred method of receipt or distribution of notices as recorded in the FMIF register of members.

5. Notice will be deemed to have been given to the members of the FMIF of the documents mentioned in paragraph 4, ten days after the posting of those documents to the website in accordance with paragraph 4(i).

6. Notice is to be given to members of the FMIF of further documents filed in these proceedings by the Respondent causing such documents to be posted to the website www.lmfimf.com.



7. Any member of the FMIF who wishes to appear at the hearing of the Application shall, by 12 June 2015, file and serve, at the Applicants' address for service, a Notice of Appearance in Form 4.

8. By 12 June 2015, the Respondent is to file and serve on all other parties any affidavit material upon which he intends to rely at the hearing of the Application.

9. By 19 June 2015, any member of the FMIF who filed a Notice of Appearance in accordance with paragraph 7 of this order is to file and serve any affidavit material upon which he, she or it intends to rely at the hearing of the Application.

10. By 26 June 2015, the Applicants are to file and serve any affidavit in reply to any affidavit filed pursuant to paragraphs 8 or 9 of this order.

11. By 7 July 2015, the Applicants are to file and serve a written outline of their submissions.

12. By 14 July 2015, the Respondent is to file and serve on all other parties a written outline of submissions.

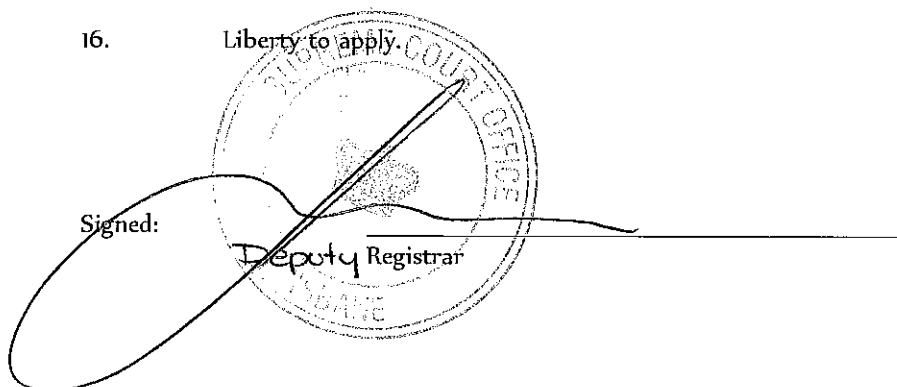
13. By 14 July 2015, any member of the FMIF who files a Notice of Appearance in accordance with paragraph 7 of this order is to file and serve on all other parties a written outline of submissions.

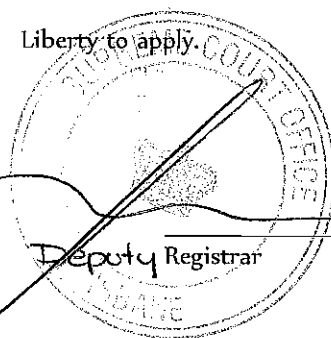
14. The Application is set down for hearing on 20 July, 2015 and 21 July, 2015.

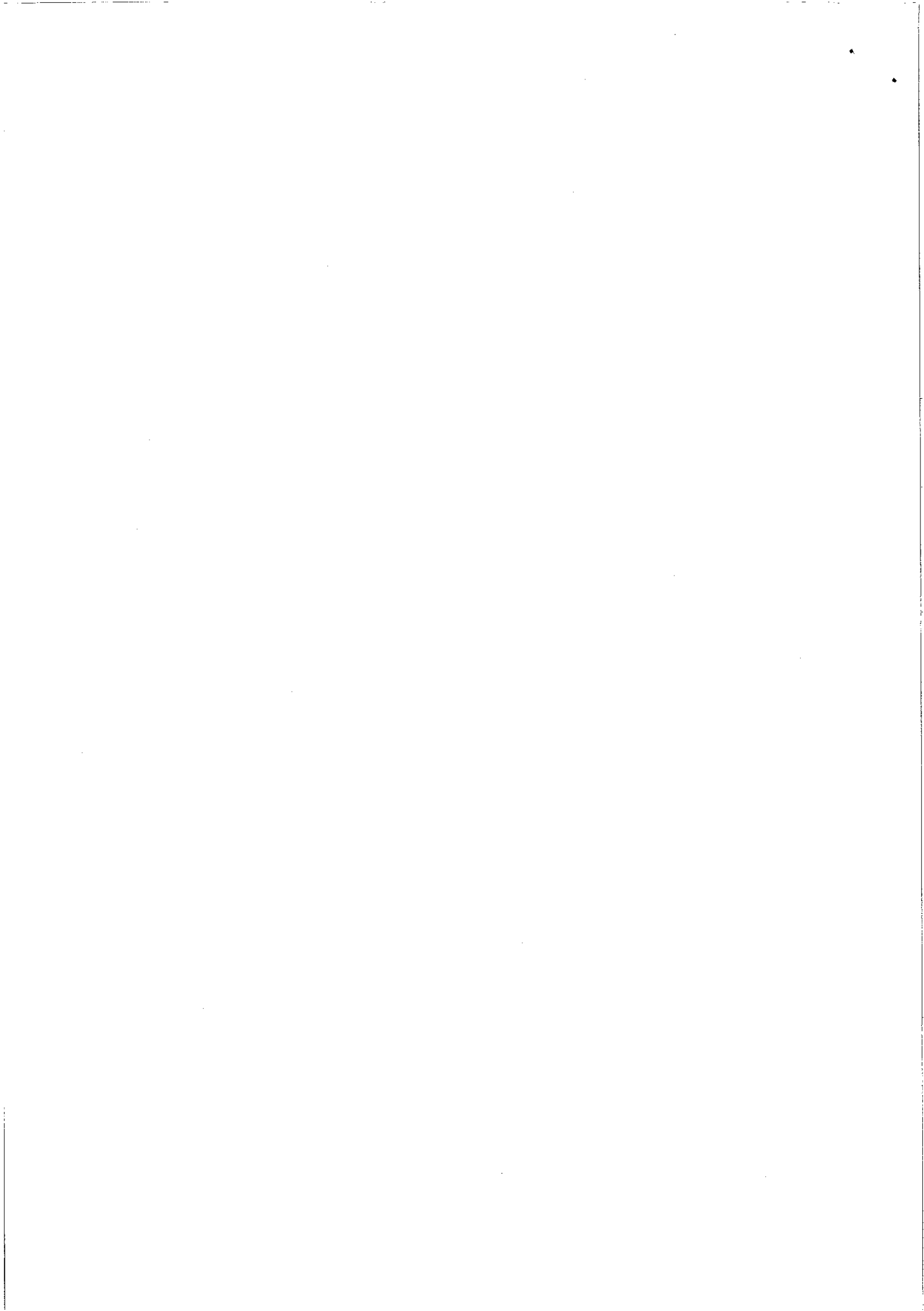
15. Costs reserved.

16. Liberty to apply.

Signed:


Deputy Registrar





ANNEXURE "A"

TO: The members of the LM First Mortgage Income Fund ARSN 089 343 288 (Receivers and Managers Appointed) (Receiver Appointed) ("FMIF")

John Richard Park and Ginette Dawn Muller are the liquidators of LM Investment Management Limited (in liquidation)(receivers and managers appointed) ("LMIM"), which remains the responsible entity of the LM First Mortgage Income Fund ("FMIF").

On 21 August, 2013, the Supreme Court of Queensland appointed David Whyte of the firm BDO to take responsibility for ensuring that the FMIF is wound up in accordance with its Constitution and to be the receiver of the property of the FMIF ("the Order").

A question has arisen between the liquidators and Mr Whyte as to the extent of Mr Whyte's powers and whether the liquidators are still required to carry out their statutory and corporate functions, despite the Order.

TAKE NOTICE that John Richard Park and Ginette Dawn Muller, the liquidators of LM Investment Management Limited (in liquidation) (receivers and managers appointed) 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 respondent to the application is David Whyte as the person appointed to take responsibility for ensuring that the FMIF is wound up in accordance with its Constitution.

The directions and orders sought in the application include (among others) orders to the following effect:

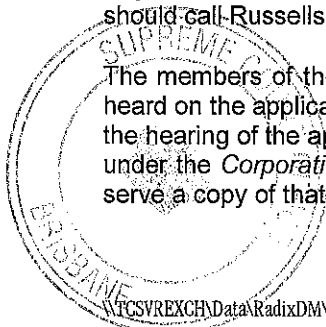
1. Directions as to whether the liquidators are responsible for the discharge of certain functions, duties and responsibilities (as set out in the application) under the *Corporations Act* in the winding up of the FMIF and of LMIM;
2. Directions as to whether LMIM is responsible for the discharge of certain functions, duties and responsibilities (as set out in the application) under the Constitution of the FMIF in the winding up of the FMIF; and
3. An order that the liquidators' remuneration, costs and expenses of discharging the functions, duties and responsibilities mentioned above shall be paid from the Scheme Property of the FMIF.

This application is set down to be heard by the Supreme Court at Brisbane on 20 July 2015 and 21 July 2015 at 10.00am.

Copies of the application and other court documents filed in the proceeding will be available on the website www.lmfmif.com.

Any member who reasonably requires a hardcopy of the application and other court documents should call Russells Lawyers on +61 7 3004 8888.

The members of the FMIF are not respondents to the application but any member is entitled to be heard on the application if they wish. Any member who wishes to appear and to make submissions at the hearing of the application must file a Notice of Appearance in Form 4 to the Rules for Proceedings under the *Corporations Act* which are in Chapter 23 of the *Uniform Civil Procedure Rules 1999*; and serve a copy of that notice on Russells, the solicitors for John Richard Park and Ginette Dawn Muller,



at their office at Level 18, 300 Queen Street, Brisbane, Q. 4000. Tel. +61 7 3004888 Fax +61 7 30048899 E-mail: Mail@RussellsLaw.com.au

This notice is given pursuant to an order of the Supreme Court of Queensland made on 7 May, 2015. A copy of the order may be seen on the website www.lmfmf.com.

Dated: 7 May, 2015

