

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane
NUMBER: BS3508/2015

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

APPLICATION

TAKE NOTICE that the Respondent, David Whyte, is applying to the Court for the following orders:-

1. Directions in accordance with paragraph 10 of the Order of Jackson J made 17 December 2015 and paragraph 7 of the Order of Jackson J made 16 February 2017 as to:-
 - (a) whether Mr Whyte is justified in raising the "clear accounts" rule in response to the claim by the Applicants for orders for payment in accordance with paragraph 2 of the application filed on 20 May 2016; and
 - (b) whether, if he is so justified, it is appropriate that Mr Whyte raise as grounds of objection to the claim by reason of the clear accounts rule:-
 - (i) allegations of loss caused to, or amounts which LMIM is alleged to be liable to restore to, the FMIF as a result of conduct of the second Applicant occurring before the appointment of the first Applicants as administrators of LMIM; and/or
 - (ii) allegations of loss caused to, or amounts which LMIM is alleged to be liable to restore to, the FMIF as a result of conduct of the first or second

APPLICATION:
Form 9 r.31

Filed on behalf of the Applicant

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

Applicants occurring after the appointment of the first Applicants as administrators of LMIM,

as identified in the Affidavit of Mr Whyte to be filed in support of this application.

2. Directions to Mr Whyte as to whether he is justified, in responding to the application filed 20 May 2016, in advancing submissions to the effect that some or all of the expenses claimed by paragraph 1 of the application filed on 20 May 2016 were not properly incurred in the execution of the FMIF.
3. That the affidavits filed by Mr Whyte for this application be placed in a sealed envelope and marked "Not to be opened save on the order of a Judge of this Court".
4. Such further or other order as this Honourable Court deems appropriate.

This application will be heard by the Court at Brisbane

on: at 10 am.

Filed in the Brisbane Registry on March 2017:

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 applicant intends to rely on the following affidavits:

1. Affidavit of David Whyte sworn and filed on 12 June 2015 (CD 11, 12, 13 and 14);
2. Affidavit of David Whyte sworn and filed on 19 February 2016 (CD 41 and 42);
3. Affidavit of David Whyte sworn and filed on 11 March 2016 (CD53);
4. Affidavit of David Heiner Schwarz sworn and filed on 16 February 2017 (CD 65);
5. Affidavit of David Whyte to be sworn.

THE APPLICANT ESTIMATES THE HEARING SHOULD BE ALLOCATED: 2 Hours

Signed:



Description:

Tucker & Cowen
Solicitor for the Applicant

Dated:

9 March 2017

This application is not intended to be served on any other party.

Notice of this application is to be given to:

The 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 TO:

The 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