

Duplicate

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane  
NUMBER: 3508/2015

**IN THE MATTER OF LM INVESTMENT MANAGEMENT LIMITED (IN LIQUIDATION)  
(RECEIVERS AND MANAGERS 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 MANAGERS 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: Burns J

Date: 30 May 2017

Initiating document: Amended Application filed by leave 30 May 2017

**THE ORDER OF THE COURT IS THAT:**

1. It is directed that the Respondent, Mr David Whyte is justified in:
  - (a) 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



**ORDER**  
Form 59 R.661

Filed on behalf of the Respondent

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(b) raising as grounds of objection to payment of 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 Applicants occurring after the appointment of the first Applicants as administrators of LMIM,

as pleaded in paragraph 19 of the Amended Points of Claim and otherwise identified in the Affidavit of Mr Whyte filed 29 May 2017.

2. The confidential affidavit filed by Mr Whyte on 30 May 2017 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".
3. The transcript of any part of the hearing conducted in closed session be treated as confidential and not to be released to any person except to David Whyte or his duly authorised representatives, save on the order of a Judge of this Court.
4. Mr Whyte's costs of and incidental to the Application filed 15 March 2017 and the Amended Application filed 30 May 2017 be costs for which he is entitled to be indemnified and paid from the assets of the LM First Mortgage Income Fund ARSN 089 343 288.

Signed:

  
Deputy Registrar

