

SUPREME COURT OF QUEENSLAND

REGISTRY: BRISBANE

NUMBER: BS3508 of 2015

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

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**

I, **KELLY-ANNE LAVINA TRENFIELD** of care of Level 20, Central Plaza One 345 Queen Street, Brisbane in the State of Queensland, Chartered Accountant, state on oath:

1. I am a Senior Managing Director in the Corporate Finance and Restructuring Division of FTI Consulting (Australia) Pty Ltd ("FTI"). I have the day-to-day conduct of the liquidation of LM Investment Management Ltd (in liquidation) (receivers and managers appointed) under the overall supervision of Mr John Park, who is the liquidator and former voluntary administrator of LMIM.

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Deponent .....

Taken by .....

AFFIDAVIT  
Filed on behalf of the Applicants  
Form 46, Version 1  
Uniform Civil Procedure Rules 1999  
Rule 431

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Brisbane QLD 4000  
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Ref: JTW:20180543

2. I have sworn previous affidavits in this proceeding, including affidavits filed on 9 August 2018 and 2 October 2018 in support of the Application filed on 17 July 2018. In this affidavit capitalised terms have the same meanings as in my earlier affidavits and the application.
3. I also refer to the Affidavit of John Richard Park (“the Liquidator”) sworn and filed on 12 November 2018 in respect of this proceeding (“the Liquidator’s November Affidavit”).
4. Now produced and shown to me and marked “KAT-10” is an indexed and paginated bundle of documents to which I shall refer in this Affidavit. References to numbers in [ ] are references to page numbers of KAT-10.
5. I swear this affidavit in support of the application filed on 10 October 2018 for directions as to the future conduct of the winding up of the FMIF.
6. All amounts stated in this affidavit are exclusive of GST.

#### **EXPERIENCE WINDING UP THE FUNDS**

7. I have had extensive involvement in the voluntary administration and subsequent liquidation of LMIM and the winding up of the various LM Funds, including involvement in, and/or supervision of, most of the work carried out in respect of the winding up of LMIM and the Funds. I have had day-to-day conduct of the liquidation and the earlier voluntary administration of LMIM under the Liquidator’s supervision since 20 March 2013.
8. Since the commencement of the voluntary administration of LMIM, I have had to review time entries made by FTI staff and I have had to review invoices that have been received by LMIM prior to attending to payment of them.
9. The basis for my belief in the truth of the matters to which I depose to in paragraphs 9 to 40 of this affidavit arises from the accumulation of knowledge as a result of my work in respect of the winding up of LMIM and the Funds and my review of the FTI Consulting time recording records and expenses incurred in respect of the voluntary administration and liquidation of LMIM to date.
10. Preparation for the winding up of the Funds other than the FMIF (and the Feeder Funds) is well advanced. In this respect, I refer to paragraphs 26 to 39 of the Liquidator’s November Affidavit.

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Deponent .....

2560033 Affidavit of Kelly-Anne Lavina Trenfield

Taken by .....



11. Of all the Funds, I believe the winding up of the AIF is most analogous to what will be required to wind up the FMIF because:
- (a) the AIF had realised net assets of approximately \$9,053,509.00, more than any Fund other than the FMIF;
  - (b) the FMIF appears to have realised or realisable net assets of approximately \$66,884,414; and
  - (c) the AIF has 725 members and the FMIF has 2500 members.
12. The AIF paid an interim distribution on about 11 August 2016 of AUD15,992,786 to investors, net of transaction costs. My estimate of the Liquidator's costs, including remuneration and expenses, involved in calculating the AIF interim distribution, contacting members and arranging for payment to members is \$30,000.
13. Below is a table which summarises the Liquidator's estimates of the future (from 12 November 2018) remuneration and expenses of winding up the Funds other than the FMIF and the cost of the AIF or final distribution:

| Description                         | Remuneration | Expenses    |
|-------------------------------------|--------------|-------------|
| AIF Winding Up                      | \$100,000.00 | \$20,000.00 |
| ASPF Winding Up                     | \$65,000.00  | \$10,000.00 |
| Feeder Funds Winding Up (Solvent)   | \$50,000.00  | -           |
| Feeder Funds Winding Up (Insolvent) | \$10,000.00  | -           |
| CPF Winding Up                      | \$2,000.00   | -           |
| AIF Final Distribution              | \$30,000.00  | \$5,000.00  |

14. In addition to the amounts stated in paragraph 13 there is a monthly administration fee of \$5,000 in respect of AIF and \$3,000 in respect of ASPF for dealing with members, for dealing with Trust Company (PTAL), attending to payments and liaising with accountants in respect of, inter alia, the preparation of accounts and taxation lodgements.
15. The winding up of the FMIF will be more complex than the winding up of the AIF. I foresee the following potential complicating factors (if the Liquidator is directed to complete the winding up of the FMIF):
- (a) the ongoing litigation will require liaising with the Receiver to manage recoveries;

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Deponent .....

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- (b) there will be a need to arrange for the member registry to be brought within the Liquidator's control, likely by way of engaging Advanced Share Registry Services who already manage the member registries for the AIF and ASPF.
- (c) the audit is potentially more complex than the AIF because it will involve a single, final audit, instead of a year-on-year analysis.

16. I deal with each of these factors as follows:

**Ongoing Litigation Recoveries**

- (a) as for ongoing litigation, the most efficient structure moving forward would be for the Receiver to continue to have the conduct of the litigation on behalf of the FMIF in respect of:
  - (i) the claims where there is a conflict between LMIM and the FMIF (the Feeder Fund Litigation and the Clear Accounts Proceeding);
  - (ii) the proceeding on behalf of FMIF against third parties (the EY Proceeding); and
  - (iii) the proceedings where the FMIF has a tangential interest in relation to third parties, such as the Bellpac claim against Wollongong Coal.
- (b) in respect of each of such proceedings the Receiver should be in a position to estimate his remuneration and legal expenses through to the conclusion of each proceeding and, once that figure is approved by the Court as a budget, retain that sum for his future conduct of the litigation, without having recourse to the remaining funds of the FMIF; and
- (c) the Liquidator would need to maintain some liaison with the Receiver in relation to the litigation and I estimate that the Liquidator's remuneration for doing so would be no more than \$500 per month and the Liquidator is prepared to cap his remuneration and expenses for liaising with the Receiver about the litigation at the sum of \$6,000 per annum;

**Member Registry brought under Liquidator's control**

- (d) regarding the registry issues, in respect of the Funds other than the FMIF, FTI Consulting has engaged the services of Advance Share Registry to manage the register of members. This service is provided at a fixed monthly fee. For example, the AIF costs in this regard are \$150 per month. Based upon my dealings with

Advance Share Registry, I am aware that the fee that would be charged for a register of between 2,000 and 4,000 members would be approximately \$200 per month based on the costings previously advised. I am unaware of the fees for registries in excess of 4,000 members;

- (e) if the Liquidator was appointed to continue the winding up of the FMIF, I would engage Advance Share Registry to manage the register of the FMIF in accordance with the above rates. There would also be an initial set up cost in addition to the applicable monthly fees. On the basis that the Receiver has been in control of the FMIF for the past five years, I assume that the register is in good order and so the initial set up costs ought to be minimal (I estimate less than \$10,000);
- (f) the Liquidator is prepared to cap his remuneration for dealing with registry issues at \$5,000 per month (including the ongoing daily correspondence as unit holders change address, change marital status and have other relevant life events requiring an adjustment to be made to the register);

**Audit of the FMIF**

- (g) The other Funds have had audits conducted on an annual basis. For the AIF, the audits for the years in which there were continuing asset realisations were more complex than usual. Since all the assets were converted into cash in 2017, the audits for subsequent years will be much simpler. The Liquidator has engaged auditors who are currently in the process of completing the 2015 audit;
- (h) the expenses of all the audits for the AIF have been approximately \$19,500 per annum, although the initial audit was slightly more (\$23,500) because of complications with auditing of the opening balances. The Liquidator's remuneration for dealing with those audits, including the preparation of the accounts, has been in the region of (as a rough estimate) \$10,000 to \$20,000 per annum;
- (i) So far as the FMIF is concerned, annual audits have not been required, with a single audit to occur at the conclusion of the winding up. I am unaware of whether the Receiver has commenced any audit engagement or work. From my dealings with BDO, I am aware that the Receiver has kept detailed financial records and produced annual financial statements and that the annual accounts for the FMIF have been prepared in conjunction with the BDO audit team;

- (j) Accordingly, I would not anticipate that the final audit will be extensive, however, if the Liquidator was appointed to complete the winding up, I would obtain quotes for that final audit from three audit service providers (including the firm already engaged in respect of the AIF and the ASPF) and select the most appropriate;
- (k) I cannot currently estimate what that audit fee might be. However, given the AIF audit fee is in the region of \$19,500 per annum and given the apparently good state of the FMIF's financial records, I would not anticipate that the audit would cost more than \$100,000 to be completed; and
- (l) In those circumstances, the Liquidator is prepared to cap his remuneration in respect of the final audit of the FMIF in the sum of no more than \$30,000.

**ESTIMATED BUDGETS FOR WINDING UP LMIM AND THE FUNDS OTHER THAN THE FMIF**

17. I have prepared a spreadsheet setting out the:
- (a) the administrative costs to date of conducting the windings up of LMIM, AIF, ASPF and FMIF (subject to paragraph 18 below) ("**Administration To Date**"), at [1]; and
  - (b) a rough estimate for the future of ongoing administrative costs on a monthly basis for LMIM and each of the Funds (excluding the FMIF and the Feeder Funds), at [2].
18. In respect of the FMIF, the costs in the Administration To Date spreadsheet include the liquidator's costs of dealing with issues concerning the FMIF. In the event that there is no change to the current regime, the Liquidator will incur ongoing remuneration and expenses referable to the FMIF, being primarily the costs of liaising with the Receiver (for example, dealing with the ongoing remuneration approval applications for all parties). If the regime changes and the Liquidator resumes responsibility for winding up the FMIF, then those liaison costs will be significantly reduced moving forward. I have dealt with this potential situation separately below.

**ESTIMATED BUDGETS FOR WINDING UP THE FMIF**

19. In addition to the matters set out in paragraphs 17 to 18 above, I estimate that if the Liquidator was to complete the winding up of the FMIF, then the remuneration and expenses of doing so will be as set out below. I have divided tasks into recurring work and 'one off' sums.

20. The 'one off' sums are estimated as follows:

| Description                                   | Remuneration | Expenses (estimated) |
|---|--------------|----------------------|
| Audit   | \$30,000.00  | \$100,000.00         |
| Transition from the Receiver                  | \$20,000.00  | N/A                  |
| Remuneration and expenses claim at Conclusion | \$50,000.00  | \$150,000.00         |
| Winding up checklist                          | \$100,000.00 | \$2,500.00           |
| Initial registry set up                       | N/A          | \$10,000.00          |

21. The 'one off' amount in respect of the remuneration and expenses application at the Conclusion is on the basis that the application is uncontested. If the application is contested then that estimate will most likely increase.

22. The recurring monthly remuneration and expenses are estimated as follows:

| Description                                 | Remuneration | Expenses (estimated)                 |
|---|--------------|--------------------------------------|
| Liaising with the Receiver                  | \$500.00     | N/A                                  |
| Registry issues                             | \$5,000.00   | \$200.00                             |
| General Administration                      | \$7,500.00   | N/A                                  |
| Reporting to members (on a quarterly basis) | \$2,000.00   | \$2,000.00<br>(Printing and postage) |

23. Consistent with the relief sought in the application, the Liquidator seeks an order that he be paid:

- (a) 50% of the recurring amounts on a monthly basis;
- (b) 50% of the expenses as and when they are incurred; and
- (c) 50% of the 'one off' remuneration as and when it is incurred,

with any balance of the remuneration and expenses to be paid as approved by order of the court at the conclusion of the winding up of the FMIF.

24. Further, based on the assumptions set out in paragraph 18 the Liquidator is prepared to cap his remuneration for completing the winding up of the FMIF in the above sums.

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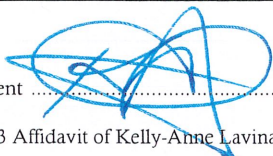
Deponent  .....

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25. The above figures do not include the following:
- (a) remuneration and expenses in relation to litigation (dealt with in paragraphs 27 to 31 below);
  - (b) the costs of winding up LMIM, which might be claimed against the assets of the Funds (including the FMIF);
  - (c) current outstanding expenses (primarily legal expenses);
  - (d) costs, expenses and remuneration of the currently reserved remuneration approval; and
  - (e) remuneration and expenses since 1 July 2018.
26. I am authorised to say that if the Liquidator is directed to complete the winding up of the FMIF, he will not seek any payment from the FMIF other than as set out in paragraph 23 above or as ordered by the Court (and subject to the excluded remuneration and expenses).

#### LITIGATION

27. I understand that the mediation of the Feeder Funds Proceeding may have resulted in a resolution of that dispute. At the time of swearing this affidavit, I have not been informed of the terms of that resolution. I have had confidential conversation with Said Jahani in respect of the resolution of that dispute although I have not been provided with any open correspondence or confidential documents in respect of the resolution of the dispute.
28. The only piece of litigation that might delay the winding up of the FMIF and the Other Funds is the Clear Accounts Proceeding. If that claim is to be pursued by the Receiver, then it should be done promptly and on the basis of the Liquidator being funded to respond to the claim.
29. I am informed by Mr Ashley Tiplady of Russells and verily believe that the estimated legal costs of running the Clear Accounts Proceeding to trial (including solicitor and counsel costs) would be \$300,000.00 (excluding GST).
30. Part of my and the Liquidator's purpose in bringing this application is to ensure that the costs of regular remuneration applications are efficiently incurred. We would prefer to put in place a framework that permits a flow of funds to allow work to be done, while deferring what have turned out to be contested remuneration approval applications to a single hearing to deal with all outstanding issues.





31. The Receiver has brought several applications for approval of his remuneration and I understand that further applications for approval of his remuneration and for judicial advice are to be brought by him. The Liquidator will have to consider each of those applications when they are served and consider whether there are grounds to oppose those applications.
32. If work is to be carried out in respect of applications to be brought by the Receiver or in respect of any other proceedings in respect of LMIM, budgets will be provided to this Honourable Court.
33. In my professional opinion that would be the most efficient way, and in the best interests of the members of the various Funds, for remuneration being drawn from the Funds to be approved by the Court.

#### PROOFS OF DEBT


34. The Liquidator has called for proofs of debt in the liquidation of LMIM and has received 148 proofs of debt. The proofs of debt received fall into the following categories:
- (a) investors (18 proofs);
  - (b) advisors who claim commission (58 proofs);
  - (c) claims in respect of the Funds, for example, by the MPF (24 proofs across all Funds);
  - (d) trade and other creditors (39 proofs); and
  - (e) unknown parties to whom requests for further information have been given (9 proofs).
35. At the request of the Receiver, the Liquidator has considered each of the proofs of debt received to determine whether they constitute a claim that might be made against the assets of the FMIF. That process has resulted in the below analysis. The Liquidator intends to claim his remuneration and expenses of doing so in accordance with paragraph 18 of the December 2015 Order.
36. Responses to requests for information referred to in paragraph 28(e) above are due by 14 December 2018. There is currently unknown information in respect of some of the proofs of debts particularly as to whether proofs of debt are in respect of the FMIF. When I have those responses I will know which claims are in respect of the FMIF.

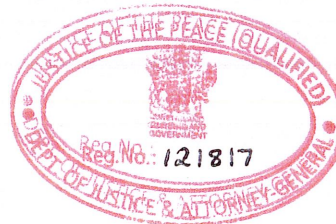


37. KordaMentha Pty Ltd, the trustee of the MPF, has indicated that none of the proofs of debt which it has lodged are sought to be indemnified from the assets of the FMIF.
38. Of the 24 claims against the Funds, nine concern the FMIF (seven of which are the MPF claims), leaving two claims against the FMIF. Those two claims are for the sum of \$442,621.29.
39. There are fourteen unknown claims which might potentially give rise to a claim against the FMIF but I cannot say anything further about those proofs until the Liquidator receives the requested further information.
40. Accordingly, the costs of dealing with proofs of debt moving forward, after 14 December 2018, will fall into the following three categories:
- (a) proofs of debt against LMIM in its own right, in respect of which I anticipate the costs of adjudication will be minimal because LMIM does not have available assets to pay any dividend to accepted creditors;
  - (b) proofs of debt against a Fund other than the FMIF, the remuneration and expenses of which the Liquidator will seek at the conclusion of the winding up if the orders are made in this application; and
  - (c) the proofs of debt against the FMIF (of which there are currently two) and further proofs of debt against the FMIF possibly being identified when further information is provided in respect of existing proofs of debt which shows them to be a claim against the FMIF.
41. All the facts and circumstances herein 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 in this my affidavit.

Sworn by the Deponent on 28 November 2018 at Brisbane in the presence of:

  
 .....  
 KELLY-ANNE LAVINA TRENFIELD  
 Deponent

  
 Name: Ashleigh Ubank  
~~Lawyer~~ / Commissioner for Declarations / JP (Qual)



SUPREME COURT OF QUEENSLAND

REGISTRY: BRISBANE

NUMBER: BS3508 of 15

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

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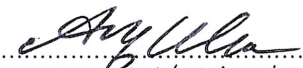
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Respondent: DAVID WHYTE AS THE PERSON APPOINTED TO SUPERVISE THE WINDING UP OF THE LM FIRST MORTGAGE INCOME FUND ARSN 089 343 288 PURSUANT TO SECTION 601NF OF THE CORPORATIONS ACT 2001

CERTIFICATE OF EXHIBIT

Exhibit "KAT-10" to the affidavit of KELLY-ANNE LAVINA TRENFIELD sworn on 28 November 2018

  
KELLY-ANNE LAVINA TRENFIELD  
Deponent

  
Name: Ashleigh Ubank  
~~Lawyer/Commissioner for Declarations/JP (Qual)~~



CERTIFICATE OF EXHIBIT  
Filed on behalf of the Applicants  
Form 47, Version 2  
Uniform Civil Procedure Rules 1999  
Rule 435

Russells  
Level 18, 300 Queen Street  
Brisbane QLD 4000  
Tel: (07) 3004 8888  
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**SUPREME COURT OF QUEENSLAND**

REGISTRY: BRISBANE

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**INDEX OF EXHIBIT**

| <b>Description</b>   | <b>Date</b> | <b>Page No.</b> |
|--|-------------|-----------------|
| LMIM – Liquidator’s Remuneration from 1 October 2015 to 30 June 2018 | Undated     | 1               |
| LMIM – Liquidator’s Remuneration Future Estimates                    | Undated     | 2               |

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**INDEX OF EXHIBIT**

Filed on behalf of the Applicants

Russells  
Level 18, 300 Queen Street  
Brisbane QLD 4000  
Tel: (07) 3004 8888  
Fax: (07) 3004 8899  
Ref: JTW:20180543

**LM Investment Limited (In Liquidation)  
Liquidator's Remuneration from 1 October 2015 to 30 June 2018**

| Fund/Entity                           | Remuneration               |                     | Administration to Date |           |             |                |              |
|---------------------------------------|----------------------------|---------------------|------------------------|-----------|-------------|----------------|--------------|
|                                       | 1 Oct 2015 to 30 June 2018 | Average (2015/2018) | Jan - June 2018        | July 2018 | August 2018 | September 2018 | October 2018 |
| LM Investments Limited                | 70,732.00                  | 2,143.39            | 1,946.50               |           |             |                |              |
| - Corporate                           | 345,474.50                 | 10,468.92           | 12,912.92              | 19,559.00 | 25,630.41   | 24,279.25      | 15,613.95    |
| - Category 2                          |                            |                     |                        |           |             |                |              |
| LM Australian Income Fund             | 490,012.50                 | 14,848.86           | 4,964.92               | 1,499.50  | 2,970.60    | 2,916.56       | 2,046.33     |
| LM Australian Structured Product Fund | 212,472.00                 | 6,438.55            | 3,468.50               | 1,499.50  | 899.79      | 2,302.72       | 1,089.55     |
| LM First Mortgage Income Fund         | 287,587.00                 | 8,714.76            | 4,167.17               | 1,265.50  | 12,101.49   | 29,205.97      | 7,960.14     |

**LM Investment Limited (In Liquidation)**  
**Liquidator's Remuneration Future Estimate**

**General Ongoing Administrative Costs**

| <b>Fund/Entity</b>                    | <b>Monthly Estimate</b> | <b>Weekly Estimate</b> |
|---------------------------------------|-------------------------|------------------------|
| LM Investments Limited                |                         |                        |
| - Corporate                           |                         |                        |
| - Category 2                          | 20,000.00               | 4,615.38               |
| LM Australian Income Fund             | 5,000.00                | 1,153.85               |
| LM Australian Structured Product Fund | 3,000.00                | 692.31                 |