

Duplicate

SUPREME COURT OF QUEENSLAND

REGISTRY:

Brisbane

NUMBER:

BS3508/15

First Applicant: JOHN RICHARD PARK AS LIQUIDATOR 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

First Respondent: DAVID WHYTE AS THE PERSON APPOINTED
TO SUPERVISE THE WINDING UP OF THE LM
FIRST MORTGAGE INCOME FUND ARSN 089 343
288

AND

Second Respondent: SAID JAHANI IN HIS CAPACITY AS
RECEIVER AND MANAGER OF THE ASSETS,
UNDERTAKINGS, RIGHTS AND INTERESTS OF LM
INVESTMENT MANAGEMENT LIMITED (IN
LIQUIDATION) (RECEIVERS AND MANAGERS
APPOINTED) ACN 077 208 461 AS THE
RESPONSIBLE ENTITY OF THE LM CURRENCY
PROTECTED AUSTRALIAN INCOME FUND
ARSN 110 247 875 AND THE LM INSTITUTIONAL
CURRENCY PROTECTED AUSTRALIAN INCOME FUND
ARSN 122 052 868

ORDER

Before: Jackson J

ORDER

Form 59 R.661

Street

Filed on behalf of the First Respondent Tel: (07) 300

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Draft Orders (TCS01636279-006).docx

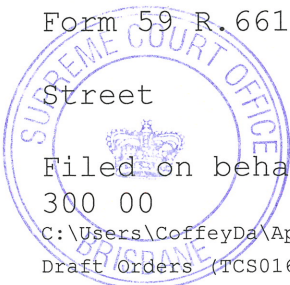
TUCKER & COWEN

Solicitors

Level 15, 15 Adelaide

Brisbane, Qld, 4000.

Fax: (07) 300 300 33



Date: 7 February 2019

Initiating document: Application filed 1 February 2019


THE ORDER OF THE COURT IS THAT:

1. Under rule 116 of the *Uniform Civil Procedure Rules* 1999 (Qld) ("**UCPR**"), service of this application on the members of the FMIF be effected by:
 - (a) posting a notice substantially in the form of Annexure A to this Order (the **Notice**) to the website "lmfmif.com" (the **Website**);
 - (b) sending a copy of the Notice to all members of the FMIF by each member's preferred method for distribution of notices recorded on the Register;
 - (c) in relation to any member of the FMIF whose preferred method of distribution is by forwarding it to the email address of a financial advisor, service is to be effected by sending the Notice to the financial advisor by email and identifying in the email the member to whom the Notice is directed;
 - (d) in relation to any member of the FMIF whose preferred method of distribution is by forwarding it to the postal address of a financial advisor, service is to be effected by sending the Notice by post addressed to the member "care of" the postal address of the financial advisor.
2. Under rule 116(3) of the UCPR, service of this application be deemed to have been effected on each of the members of the FMIF ten (10) days after orders 1(a) to 1(d) above have been complied with.
3. Under rule 116 of the UCPR, except for paragraph 1 of this order, service by the First Respondent of documents to be served on the members of the FMIF in relation to this application (including any affidavits or submissions) be effected by the First Respondent causing such documents to be posted to the Website.
4. Under rule 116(3) of the UCPR, service of any documents referred to in paragraph 3 above be deemed effected on each of the members of the FMIF

five (5) days after all the documents are posted to the Website pursuant to order 3 above.

5. The First Respondent file and serve on the Applicants and the Second Respondent and the members of the FMIF any Affidavits to be relied upon in support of the application by 18 February 2019.
6. The application be listed for hearing on 13 March 2019 at 10:00am.
7. Any party or member of the FMIF has liberty to apply on two days' notice in writing.
8. Costs reserved.

Signed:

A handwritten signature in black ink is written over a blue circular stamp. The stamp contains the text "SUPREME COURT OF QUEENSLAND" around the top and "BRISBANE" around the bottom. In the center of the stamp is a small crest or emblem. The signature is a cursive-style name that is partially obscured by the stamp.

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")**

TAKE NOTICE that David Whyte, as the person appointed pursuant to section 601NF of the *Corporations Act 2001* (Cth) to take responsibility for ensuring that the FMIF is wound up in accordance with its constitution and as receiver of the property of the FMIF (**Mr Whyte**), has applied to the Supreme Court of Queensland:-

1. for authority to make an interim distribution from the property of the FMIF of up to \$40 million among the members of the FMIF;
2. to determine the proper entitlements of members holding "Class C" Units in the FMIF, having invested in one of the "Non-Australian Dollar Currency Hedged Fixed Term Investment Options".

The Class C Unitholders invested in the FMIF in foreign currencies and are recorded in the "Investor Master Register" (the **Register**) as holding units in the "Investment Currency" listed in the Register. In order to pay those unitholders their proper entitlements in the interim distribution, and in subsequent distributions in the winding up of the FMIF, it is necessary to determine the foreign exchange spot rate at which to convert their units into Australian Dollars. The different possible rates are as follows:

- (a) the rate as at the time of the interim distribution; or
- (b) in the alternative, the rate as at the date of the commencement of the winding up of the FMIF, namely 8 August 2013; or
- (c) in the further alternative, the rate as at the date or dates of that member's investment or investments, renewal of investment or investments and/or re-investment or re-investments immediately prior to commencement of the winding up of the FMIF, as applicable.

On 7 February 2019, the Supreme Court of Queensland ordered that service of the application may be made by giving the members of the FMIF this notice in accordance with the requirements of the order.

The court also ordered that service of other documents may be made by causing them to be posted to the website.

This application is set down to be heard by the Supreme Court of Queensland at Brisbane on [date] at [time].

Copies of the court documents in respect of the application will be available on the website www.lmfimif.com. Court documents will be made available progressively, as and when they are filed with the Court.

Any member who reasonably requires a hard copy of the application and supporting material should call BDO on +61 7 3237 5999.

Dated: [date]

David Whyte

Court Appointed Receiver