

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane  
NUMBER: BS3508/2015

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

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 MANAGER APPOINTED) ACN 077 208 461 THE RESPONSIBLE ENTITY OF THE LM FIRST MORTGAGE INCOME FUND ARSN 089 343 288

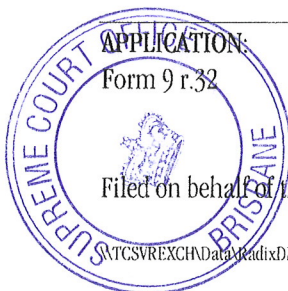
AND

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

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

APPLICATION



Filed on behalf of the First Respondent

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

TAKE NOTICE that the First Respondent is applying to the Court for the following orders:-

1. Pursuant to section 601NF(2) of the *Corporations Act* 2001 (Cth) (“the Act”), orders that:
  - (a) the First Respondent is authorised and empowered to exercise the powers of, and is responsible for the functions of, the Second Applicant as the responsible entity of the LM First Mortgage Income Fund (“FMIF”) as set out in clause 16.7(c) of the constitution of the FMIF, to make an interim distribution from the property of the FMIF of up to \$40 million among the members of the FMIF;
  - (b) in the event that any of the conditions precedent to the Deed of Settlement and Release resolving Supreme Court proceedings 13534/15 have not been satisfied or will not be satisfied by the making of the interim distribution, the First Respondent is authorised to withhold payment of the interim distribution to:
    - (i) LM Investment Management Limited (In Liquidation) ACN 077 208 461 (LMIM) as responsible entity of the LM Currency Protected Australian Income Fund ARSN 110 247 875;
    - (ii) LMIM as responsible entity of the LM Institutional Currency Protected Australian Income Fund ARSN 122 052 868; and
    - (iii) The Trust Company Limited ACN 004 027 749 as custodian of the property of the LM Wholesale First Mortgage Income Fund ARSN 099 857 511.
2. A declaration that each member holding “Class C” Units in the FMIF (having invested in one of the “Non-Australian Dollar Currency Hedged Fixed Term Investment Options”) is entitled to be paid in the winding up of the FMIF amounts calculated by reference to that member’s “Unit Balance” recorded in the “Investor Master Register”, as adjusted for the foreign exchange spot rate between the “Investment Currency” recorded in the “Investor Master Register” and the Australian Dollar prevailing:
  - (a) as at the time of each distribution in the winding up; or
  - (b) in the alternative, as at the date of the commencement of the winding up of the FMIF, namely 8 August 2013; or
  - (c) in the further alternative, 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.
3. Under rule 116 of the *Uniform Civil Procedure Rules* 1999 (Qld) (“UCPR”), orders that 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.
4. Under rule 116(3) of the UCPR, an order that service of this application be deemed to have been effected on each of the members of the FMIF five (5) days after orders 3(a) to 3(d) above have been complied with.
5. Under rule 116 of the UCPR, an order that 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.
6. Under rule 116(3) of the UCPR, an order that service of any documents referred to in paragraph 5 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 5 above.
7. An order that the First Respondent's costs of and incidental to this application be costs in the winding up of the FMIF, to be paid out of the assets of the FMIF.
8. Such further or other order as the Court sees fit.

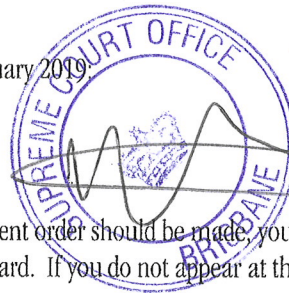
Orders 3 to 6 of the orders sought by this application will be heard by the Court at Brisbane on: \_\_\_\_\_ at

Orders 1 and 2 of the orders sought by this application will be heard by the Court at Brisbane on a date to be fixed.

Filed in the Brisbane Registry on

1 February 2019

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 to be sworn

THE APPLICANT ESTIMATES THE HEARING OF ORDERS 3 TO 6 SHOULD BE ALLOCATED 20 MINUTES

THE APPLICANT ESTIMATES THE HEARING OF ORDERS 1 AND 2 SHOULD BE ALLOCATED UP TO 1 DAY

Signed:

Description: Tucker & Cowen  
Solicitors for the First Respondent

Dated: 1 February 2019

Other than as to orders 3 to 6, this application is to be served on:

1. The Members of the LM First Mortgage Income Fund ARSN 089 343 288
2. John Richard Park as Liquidator of LM Investment Management Limited (In Liquidation) (Receivers and Managers Appointed) ACN 077 208 461 ("LMIM") as the responsible entity of the LM First Mortgage Income Fund ARSN 089 343 288 ("FMIF")  
AND  
LMIM as responsible entity of the FMIF

C/- Russells Lawyers  
Level 18  
300 Queen Street  
Brisbane Qld 4000

3. Mr Said Jahani in his capacity as the receiver and manager of the assets, undertaking, rights and interests of LMIM as the responsible entity of the LM Currency Protected Australian Income Fund ARSN 110 247 875 ("CPAIF") and the LM Institutional Currency Protected Australian Income Fund ARSN 122 052 868 ("ICPAIF")

C/- HWL Ebsworth  
Level 19, 480 Queen Street  
Brisbane QLD 4000

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.

**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.lmfimf.com](http://www.lmfimf.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