

SUPREME COURT OF QUEENSLAND

REGISTRY: BRISBANE

NUMBER: 13534/16

Amended with the leave of the Court pursuant to the Orders of Justice Jackson dated 13 June 2018 registered pursuant to Rule 377(1)(b) of the Uniform Civil Procedure Rules 1999 (Qld).

Dated: 27 July 2017/21 June 2018

Signed: 

Plaintiff:

LM INVESTMENT MANAGEMENT LIMITED (RECEIVERS AND MANAGERS APPOINTED) (IN LIQUIDATION) ACN 077 208 461 AS RESPONSIBLE ENTITY OF THE LM FIRST MORTGAGE INCOME FUND ARSN 089 343 288 (RECEIVER APPOINTED)

AND

First Defendant :

LM INVESTMENTS MANAGEMENT LIMITED (RECEIVERS AND MANAGERS APPOINTED) (IN LIQUIDATION) ACN 077 208 461 AS RESPONSIBLE ENTITY OF THE LM CURRENCY PROTECTED AUSTRALIAN INCOME FUND ARSN 110 247 875 (RECEIVER APPOINTED)

AND

Second Defendant:

TRILOGY FUNDS MANAGEMENT LIMITED ACN 080 383 679 AS RESPONSIBLE ENTITY OF THE LM WHOLESALE FIRST MORTGAGE INCOME FUND ARSN 099 857 511

AND

Third Defendant:

LM INVESTMENT MANAGEMENT LIMITED (RECEIVERS AND MANAGERS APPOINTED) (IN LIQUIDATION) ACN 077 208 461 AS RESPONSIBLE ENTITY OF THE LM INSTITUTIONAL CURRENCY PROTECTED AUSTRALIAN INCOME FUND ARSN 122 052 868 (RECEIVER APPOINTED)

AND

Fourth Defendant:

LM INVESTMENT MANAGEMENT LIMITED (RECEIVERS AND MANAGERS APPOINTED) (IN LIQUIDATION) ACN 077 208 461

AND

Fifth Defendant:

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

FURTHER AMENDED CLAIM

Further Amended Claim  
Filed on behalf of the Plaintiff  
Form 2 R. 22

GADENS LAWYERS  
Level 11, 111 Eagle Street  
BRISBANE QLD 4000  
Tel No.: 07 3231 1666  
Fax No: 07 3229 5850  
SCZ:JSO:201413563

The plaintiff claims:

1. A declaration that the Plaintiff is entitled to withhold from distributions or payments otherwise payable to LM Investment Management Limited (Receivers and Managers Appointed (In Liquidation) ACN 077 208 461 ("LMIM") in relation to the Class B units in the ~~to~~ LM First Mortgage Income Fund ARSN 089 343 288 (formerly the LM Mortgage Income Fund) (FMIF) held for the LM Currency Protected Australian Income Fund ARSN 110 247 875 ("CPAIF", "CPAIF Units") and for the LM Institutional Currency Protected Australian Income Fund ARSN 122 052 868 ("ICPAIF", "ICPAIF Units"):
  - (a) the sum of \$55,059,318.12 plus interest, being the aggregate amount of the loss and damage referred to in paragraph 564 of the Statement of Claim; and
  - (b) as adjusted for the difference between the sum paid in the First and Second Capital Distributions (as defined in paragraphs 846 and 856 of the Statement of Claim), and the amount which ~~LMIM as RE of the CPAIF and ICPAIF would otherwise have been entitled as referred to in paragraph 877~~ of the Statement of Claim.
  
2. A declaration that the Plaintiff is entitled to withhold from distributions or payments otherwise payable in relation to the Class B units in the FMIF held for the LM Wholesale First Mortgage Income Fund ARSN 099 857 511 ("WFMIF", "WFMIF Units"); ~~to the Second Defendant as a Class B unitholder in the FMIF~~:
  - (a) the sum of \$55,034,487.71, being the aggregate amount of the loss and damage set out in paragraph 564 of the Statement of Claim accruing before 16 November 2012, plus interest; and
  - (b) as adjusted for the difference between the sum paid in the First and Second Capital Distributions, and the amount which ~~the Second Defendant would otherwise have been entitled as referred to in paragraph 877~~ of the Statement of Claim.
  
3. In the alternative to paragraphs 1 and 2, declarations that the Plaintiff:
  - (a) is entitled to withhold from distributions or payments otherwise payable in relation to the CPAIF Units; ~~to the First Defendant as a Class B unitholder in the FMIF~~:
    - (i) the sum of \$40,583,109.06, plus interest;
    - (ii) as adjusted for the difference between the sum paid in the First and Second Capital Distributions in relation to the CPAIF Units, and the amount which ~~the First Defendant would otherwise have been entitled as referred to in paragraph 877~~ of the Statement of Claim in relation thereto;
  - (b) is entitled to withhold from distributions or payments in relation to the WFMIF Units; ~~otherwise payable to the Second Defendant as a Class B unitholder in the FMIF~~:
    - (i) the sum of \$9,432,090.76, plus interest;
    - (ii) as adjusted for the difference between the sum paid in the First and Second Capital Distributions in relation to the WFMIF Units, and the

amount which the Second Defendant would otherwise have been entitled as referred to in paragraph ~~8773~~ of the Statement of Claim in relation thereto; and

- (c) is entitled to withhold from distributions or payments otherwise payable in relation to the ICPAIF Units; ~~to the Third Defendant as a Class B unitholder in the FMIF~~:
- (i) the sum of \$5,044,118.30, plus interest;
  - (ii) as adjusted for the difference between the sum paid in the First and Second Capital Distributions in relation to the ICPAIF Units, and the amount which the Third Defendant would otherwise have been entitled as referred to in paragraph ~~8773~~ of the Statement of Claim in relation thereto.

4. Further and in the alternative, declarations that:

- (a) LMIM is liable to the FMIF for loss and damage in the amount of \$55,059,318.12 plus interest, being the aggregate amount of the loss and damage referred to in paragraph ~~5641~~ of the Statement of Claim; and
- (b) the Plaintiff LMIM is entitled to exercise its ~~or be subrogated to LMIM's~~ right to an indemnity from the assets of the respective Feeder Funds ~~each of the LM Currency Protected Australian Income Fund ARSN 110 247 875 (CPAIF), the LM Wholesale First Mortgage Income Fund ARSN 099 857 511 (WFMIF) and the LM Institutional Currency Protected Australian Income Fund ARSN 122 052 868 (ICPAIF)~~ in satisfaction of that liability, in the following proportions:
  - (i) from the assets of the CPAIF, \$40,583,109.06 plus interest;
  - (ii) from the assets of the WFMIF, \$9,432,090.76 plus interest; and
  - (iii) from the assets of the ICPAIF, \$5,044,118.30 plus interest.

5. A declaration that each cancellation of Class B units referred to in paragraph ~~50(d)35(d)~~ of the Statement of Claim is void ab initio and of no effect, or alternatively voidable.

6. A declaration that the purported issue of each additional unit in the FMIF referred to in paragraph ~~70(b)54(b)~~ of the Statement of Claim is void and of no effect, or alternatively voidable.

7. Further to paragraphs 5 and 6, consequential orders under section 175(1) of the Corporations Act 2001 (Cth), or alternatively in the Court's equitable jurisdiction, for the correction or rectification of the register of members of the FMIF, as now maintained by Mr David Whyte pursuant to order 13(c) of the orders of this Honourable Court made on 17 December 2015.

~~7.8.~~ In the alternative to paragraph 6, a declaration that the additional units in the FMIF referred to in paragraph ~~70(b)54(b)~~ of the Statement of Claim are held on constructive trust for LMIM as responsible entity of the FMIF.

~~8.9.~~ Interest.

9.10. Costs.

~~10.11.~~ Such further or other order as this Honourable Court sees fit.

The plaintiff makes this claim in reliance on the facts alleged in the attached Statement of Claim.

ISSUED WITH THE AUTHORITY OF THE SUPREME COURT OF QUEENSLAND

And filed in the Brisbane Registry ~~on 27 July 2017;~~ on 21 June 2018

Registrar:

To the defendants: TAKE NOTICE that you are being sued by the plaintiff in the Court. If you intend to dispute this claim or wish to raise any counterclaim against the plaintiff, you must within 28 days of the service upon you of this claim file a Notice of Intention to Defend in this Registry. If you do not comply with this requirement judgment may be given against you for the relief claimed and costs without further notice to you. The Notice should be in Form 6 to the Uniform Civil Procedure Rules. You must serve a sealed copy of it at the plaintiff's address for service shown in this claim as soon as possible.

Address of Registry: 415 George Street, Brisbane Qld 4000

If you assert that this Court does not have jurisdiction in this matter or assert any irregularity you must file a Conditional Notice of Intention to Defend in Form 7 under Rule 144, and apply for an order under Rule 16 within 14 days of filing that Notice.

If you object that these proceedings have not been commenced in the correct district of the Court, that objection must be included in your Notice of Intention to Defend.

PARTICULARS OF THE PLAINTIFF:

Name: LM INVESTMENT MANAGEMENT LIMITED  
(RECEIVERS & MANAGERS APPOINTED) (IN  
LIQUIDATION) ACN 077 208 461 AS RESPONSIBLE  
ENTITY OF THE LM FIRST MORTGAGE INCOME  
FUND ARSN 089 343 288

Plaintiff's residential  
or business address: c/- David Whyte, BDO  
Level 10  
12 Creek Street  
BRISBANE QLD 4000

Plaintiff's solicitors name:  
and firm name: Scott Couper  
Gadens Lawyers

Solicitor's business address: Level 11  
111 Eagle Street  
BRISBANE QLD 4000

Address for service:

Level 11  
111 Eagle Street  
BRISBANE QLD 4000

Telephone: 07 3231 1666  
Fax: 07 3229 5850

Signed:



Description:

Solicitor for the plaintiff

Dated:

~~27 July 2017~~ 21 June 2018

Claim is to be served on:

The First Defendant, Second Defendant, Third  
Defendant, Fourth Defendant, and Fifth Defendant