

Duplicate

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane
NUMBER: 3383 of 2013

Applicants: **RAYMOND EDWARD BRUCE AND VICKI PATRICIA BRUCE**

AND

First Respondent: **LM INVESTMENT MANAGEMENT LIMITED (IN LIQUIDATION) ACN 077 208 461 IN ITS CAPACITY AS RESPONSIBLE ENTITY OF THE LM FIRST MORTGAGE INCOME FUND**

AND

Second Respondent: **THE MEMBERS OF THE LM FIRST MORTGAGE INCOME FUND ARSN 089 343 288**

AND

Third Respondent: **ROGER SHOTTON**

AND

Intervener: **AUSTRALIAN SECURITIES & INVESTMENTS COMMISSION**

ORDER

Before: P Lyons J

Date: 26 May 2014

Initiating document: Application filed 2 May 2014

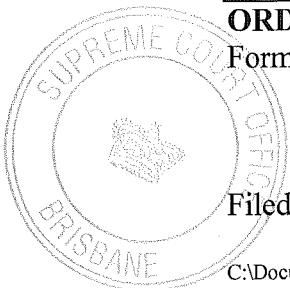
THE ORDER OF THE COURT IS THAT:

1. The Application is adjourned to 28 and 29 August 2014
2. A copy of these Orders are to be placed in a prominent place on the website "lmfmif.com" ("the website").

ORDER
Form 59 R.661

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

Filed on behalf of the Applicant, Mr David Whyte



3. The order of 5 May 2014 be varied as follows:
- (a) that in relation to the 31 members identified in exhibit SH-2 of the affidavit of Steve Hannan, save for NMS Nominees Pty Ltd, the estate of Donald Powell and LM Administration Pty Ltd (“LMA”), service be effected by:
 - (i) sending a copy of the notice which is Annexure A together with a copy of these orders to (“the notice”) to each of those members’ last known address recorded in the register of members records maintained by LMA; and
 - (ii) sending a copy of the notice to the financial advisors of each of those members whose details are maintained in the register of members records maintained by LMA identifying the relevant members to the financial advisors;
 - (b) that in relation to NMS Nominees Pty Ltd, service be effected by:
 - (i) sending a copy of the notice to its registered office;
 - (ii) sending a copy of the notice to the financial advisor for NMS recorded in the register of members records maintained by LMA;
 - (c) that in relation to the estate of Donald Powell, service is deemed to have been effected by service upon the beneficiaries of the estate of Donald Powell recorded in the register of members’ records maintained by LMA;
 - (d) 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 to the financial advisor, the notice by email and identifying in the email the member to whom the notice is directed;
 - (e) 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 it to the member “care of” the postal address of a financial advisor; unless, by 4pm on Wednesday 28 May 2014, an affidavit is filed on behalf of the applicant deposing to the effect that, in respect of such members, notices that were sent by post pursuant to the Order of 5 May 2014 were addressed to the member ‘care of’ the financial advisor or otherwise identified the member or members in respect of whom the notice was given;

- (f) that service on LMA be effected by service of the notice on the office of the Liquidator of LMA, David Clout.
4. Service upon the members referred to in paragraph 12 of the affidavit of Steve Hannan and paragraphs 3 and 5 of the Affidavit of Shauna Larkin be deemed to be effected upon each of those members by 9 June 2014.
 5. Save for the members referred to in paragraph 4 above, the remainder of members are deemed to have been served with the application claiming remuneration and the supporting affidavit of Mr Whyte in accordance with paragraph 2 of the Order of 5 May 2014 on 16 May 2014.
 6. A copy of this Order is to be sent to:
 - (a) the members identified in paragraph 3 with the notice, in the manner provided for in paragraph 3 above;
 - (b) the members otherwise identified in paragraph 12 of the affidavit of Steve Hannan and paragraphs 3 and 5 of the affidavit of Shauna Larkin in accordance with their preferred method of distribution recorded on the register of members records.
 7. Any person who wishes to be heard at the hearing of the Application of Mr Whyte claiming remuneration, will file and serve any Affidavit, including any expert evidence, upon which they intend to rely by 7 July 2014 with such material identifying any costs of Mr Whyte which are the subject of any objection and the basis of each objection.
 8. Any affidavit in reply to be relied upon by Mr Whyte at the Application will be filed and served (in accordance with paragraph 4 of the orders of A Lyons J dated 5 May 2014) by 28 July 2014.
 9. That the first respondent notify the applicant by its solicitors by the next business day after any decision by it not to provide expert evidence in response to the claim for remuneration by Mr Whyte.
 10. In the event that there is no expert evidence served by the first respondent pursuant to paragraph 7 above or the first respondent notifies the applicant in accordance with paragraph 9 above, the Application may be relisted for hearing in the applications list on the giving of seven days notice to each respondent and by giving seven days notice to members of the FIMF by placing the details of the date and time of hearing on the website.
 11. That the matter be set down for hearing on 28 and 29 August 2014.
 12. Liberty to apply.
 13. Costs reserved.

Signed:



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, the person appointed pursuant to section 601NF(1) of the *Corporations Act 2001 (Cth)* to take responsibility for ensuring that the FMIF is wound up in accordance with its constitution, has applied to the Supreme Court of Queensland for an order that the amount that Mr Whyte is entitled to claim as remuneration in respect of time spent by him and by any servants or agents of BDO who have performed work in the winding up of the FMIF for the period 8 August 2013 to 31 March 2014 be fixed in the amount of \$702,480.35 (inclusive of GST).

This application is set down to be heard by the Supreme Court at Brisbane on 28 August 2014 at 10 am.

Copies of the court documents in respect of this application will be available on the website www.lmfimf.com.

Any member who reasonably requires a hard copy of the application and supporting material should call Investor Relations on +61 7 5584 4500 or BDO on +61 7 3237 5999.