

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: Peter Lyons J

Date: 1 June 2015

Initiating document: Application filed 29 May 2015

THE ORDER OF THE COURT IS THAT:

1. Order 6 of the Honourable Justice Ann Lyons made on 5 May 2014 be vacated.



ORDER
Form 59 R.661

Filed on behalf of the Applicant, Mr David Whyte

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

2. That service on the members of the LM First Mortgage Income Fund ARSN 089 343 288 (“**FMIF**”), the companies listed in order 2(b)(i) to 2(b)(vi) below and LM Administration Pty Ltd (In Liquidation) (“**LMA**”) of an application (including without limitation, the application filed on 29 May 2015) for approval of:-

- (a) remuneration of David Whyte, as the person responsible for ensuring that the FMIF is wound up in accordance with its constitution; and/or
- (b) remuneration of David Whyte and Andrew Fielding, as the persons appointed as agents of The Trust Company (PTAL) Ltd, in lieu of LMIM, in respect of the securities held by the following companies:-
 - (i) Cameo Estates Lifestyle Villages (Launceston) Pty Ltd (Receivers and Managers Appointed) (Controllers Appointed) ACN 098 955 296;
 - (ii) Bridgewater Lake Estate Pty Limited (In Liquidation) (Controllers Appointed) ACN 086 203 787;
 - (iii) OVST Pty Ltd (In Liquidation) (Controllers Appointed) ACN 103 216 771;
 - (iv) Redland Bay Leisure Life Pty Ltd (In Liquidation) (Controllers Appointed) ACN 109 932 916;
 - (v) Redland Bay Leisure Life Development Pty Ltd (In Liquidation) (Controllers Appointed) ACN 112 002 383; and
 - (vi) Pinevale Villas Morayfield Pty Ltd (In Liquidation) (Controllers Appointed) ACN 116 192 780.

together, “**a Remuneration Application**”, and any supporting affidavit of Mr Whyte (“**a Remuneration Affidavit**”) be effected by:-

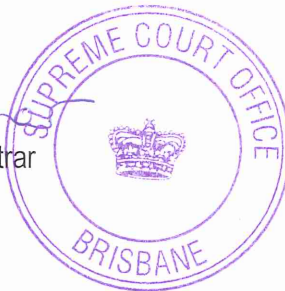
- (c) posting in a prominent place on the website “lmfmif.com” (“**the Website**”):-
 - (i) a notice substantially in the form of Annexure A to this Order (“**the Notice**”) adapted as necessary to the relevant Remuneration Application;

- (ii) the relevant Remuneration Application and Remuneration Affidavit;
and
 - (d) 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 FMIF's register of members maintained by BDO;
 - (e) 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;
 - (f) 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
 - (g) sending a copy of the Notice to the companies listed in order 2(b)(i) to 2(b)(vi) by forwarding it to the address of the company's Receiver and Manager or Liquidator (as the case may be) recorded in the company searches exhibited to the affidavit of David Schwarz sworn 1 June 2015;
 - (h) sending a copy of the Notice to LMA at the office of Mr David Clout, the Liquidator of LMA.
3. That service of a Remuneration Application and a Remuneration Affidavit be deemed to have been effected on each of the members of the FMIF ten (10) days after all of those documents are sent pursuant to orders 2(d) to 2(h) above.
4. That service on the members of the FMIF of any further documents filed in this proceeding in support of a Remuneration Application be effected by:
- (a) causing such documents to be posted to the website www.lmfimf.com;
and

- (b) sending a notice to each of the members and entities referred to in paragraph 2(d) to 2(h) above directing their attention to the further documents posted on the website www.lmfimf.com.
5. That service of any documents referred to in paragraph 4 above be deemed effected on each of the members of the FMIF ten (10) days after all of the notices are sent pursuant to order 4(b) above.
6. That Mr Whyte's costs of and incidental to this application be reserved.
7. That all further Remuneration Applications and Remuneration Affidavits be served on the members of the FMIF in accordance with these orders.

Signed:

Buravan
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, the person appointed:-

- a) 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; and
- b) pursuant to clause 2.1, 2.2 and 3 of Deeds of Appointment signed 24 September 2014, together with Mr Andrew Fielding, as agent of The Trust Company (PTAL) Ltd in respect of the securities it holds from Cameo Estates Lifestyle Villages (Launceston) Pty Ltd (Receivers and Managers Appointed) (Controllers Appointed) ACN 098 955 296, Bridgewater Lake Estate Pty Limited (In Liquidation) (Controllers Appointed) ACN 086 203 786, OVST Pty Ltd (In Liquidation) (Controllers Appointed) ACN 103 216 771, Redland Bay Leisure Life Pty Ltd (In Liquidation) (Controllers Appointed) ACN 109 932 916, Redland Bay Leisure Life Development Pty Ltd (In Liquidation) (Controllers Appointed) ACN 112 002 383, and Pinevale Villas Morayfield Pty Ltd (In Liquidation) (Controllers Appointed) ACN 116 192 780,

has applied to the Supreme Court of Queensland for orders that:-

8. the amount that Mr Whyte, as the person responsible for ensuring that the FMIF is wound up in accordance with its constitution, 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 [date] to [date], be fixed in the amount of \$[amount] (inclusive of GST); and
9. the amount that Mr Whyte and Mr Andrew Fielding, as agents of The Trust Company (PTAL) Ltd in respect of the securities held from the companies named at paragraph b) above, are entitled to claim as remuneration in respect of time spent by them and by any servants or agents of BDO who have performed work in connection with the appointment as agents for the period [date] to [date], be approved in the amount of \$[amount] (inclusive of GST).

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.

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