

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**

APPLICATION

TAKE NOTICE that Mr David Whyte, the person appointed:

- (a) pursuant to section 601NF(1) of the *Corporations Act* 2001 (Cth) (“**the Act**”) to take responsibility for ensuring that the LM First Mortgage Income Fund ARSN 089 343 288 (“**FMIF**”) is wound up in accordance with its constitution; and
- (b) pursuant to clause 2.1, 2.2 and 3 of the Deeds of Appointment signed 24 September 2014, together with Mr Andrew Fielding, as agent of



Filed on behalf of the Applicant, Mr David Whyte

TUCKER & COWEN
Solicitors
Level 15
15 Adelaide Street
Brisbane, Qld, 4000.
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The Trust Company (PTAL) Ltd, in lieu of LM Investment Management Ltd (receivers and managers appointed) (in liquidation) (LMIM), in respect of the securities held from 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,

is applying to the Court for the following orders:-

1. That the remuneration of David Whyte, as the person responsible for ensuring that the FMIF is wound up in accordance with its constitution, for the period 1 November 2017 to 30 April 2018, be fixed in the amount of \$1,041,907.90 (inclusive of GST) pursuant to paragraph 3(c) of the Orders of Justice Dalton on 21 August 2013.
2. That the 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 from the companies named at paragraph (b)(i) to (vi) of this application, for the period 1 November 2017 to 30 April 2018, be approved in the amount of \$22,306.90 (inclusive of GST).

3. That David Whyte'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.
4. Such further or other order as the Court sees fit.

This application will be heard by the Court at Brisbane

on: 21 June 2018 at 10 am.

Filed in the Brisbane Registry on 1 June 2018.

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 affidavit:

1. Affidavit of David Whyte sworn 31 May 2018;
2. Affidavit of David Whyte sworn and filed on 7 November 2014;
3. Affidavit of David Whyte sworn and filed on 8 June 2016;
4. Affidavit of David Whyte sworn and filed on 17 November 2016;
5. Affidavit of David Whyte sworn and filed on 13 June 2017; and
6. Affidavit of David Whyte sworn 9 November 2017 and filed 10 November 2017.

THE APPLICANT ESTIMATES THE HEARING SHOULD BE ALLOCATED
1 HOUR

Signed:


Tucker & Cowen

Description: Solicitors for the Applicant, Mr David Whyte

Dated: 1 June 2018

This application is to be served on:

The members of the LM First Mortgage Income Fund (in the manner prescribed by the Order of P Lyons J dated 1 June 2015)

The companies at paragraph (b)(i) to (vi) of this Application (in the manner prescribed by the Order of P Lyons J dated 1 June 2015)

LM Administration Pty Ltd (In Liquidation) ACN 055 691 426
C/- Mr David Clout
David Clout & Associates
105A Bowen Street Spring Hill
GPO Box 7870
Brisbane QLD 4001

LM Investment Management Limited (In Liquidation) as responsible entity of the
LM First Mortgage Income Fund ARSN 089 343 288
C/- Russells Lawyers
Level 18, 300 Queen St
Brisbane QLD 4000

Australian Securities and Investments Commission
Level 20
240 Queen Street
Brisbane QLD 4000

Deutsche Bank AG
C/- Clayton Utz, Lawyers
333 Collins Street
Melbourne VIC 3000
Attention: Mr Peter Bowden

Mr Joseph David Hayes and Mr Anthony Norman Connelly
C/- Clayton Utz, Lawyers
333 Collins Street
Melbourne VIC 3000
Attention: Mr Peter Bowden

Trilogy Funds Management Limited as Responsible Entity of the LM Wholesale
First Mortgage Income Fund
Level 23
10 Eagle Street
Brisbane QLD 4000