

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane
NUMBER: BS3508/2015

IN THE MATTER OF LM INVESTMENT MANAGEMENT LIMITED (IN LIQUIDATION) (RECEIVERS AND MANAGERS APPOINTED)

First Applicant: JOHN RICHARD PARK AS LIQUIDATOR OF LM INVESTMENT MANAGEMENT LIMITED (IN LIQUIDATION) (RECEIVERS AND MANAGERS APPOINTED) ACN 007 208 461 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 MANAGERS APPOINTED) ACN 077 208 461 THE RESPONSIBLE ENTITY OF 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, UNDERTAKING, 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

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



APPLICATION
Filed on behalf of the First Applicant
Form 9, Version 1
Uniform Civil Procedure Rules 1999
Rule 31

Russells
Level 18, 300 Queen Street
Brisbane QLD 4000
Tel: (07) 3004 8888
Fax: (07) 3004 8899
Ref: SCR:MKR:20190205

On the first return date of the Application

1. Service of this Application, the Twelfth Affidavit of Kelly-Anne Lavina Trenfield sworn 23 December 2020 and the Third Affidavit of Renee Lobb sworn 23 December 2020 be effected on the members of the LM Australian Income Fund ARSN 133 497 917 (**AIF**), the LM Australian Structured Products Fund ARSN 149 875 669 (**ASPF**), the LM Institutional Currency Protected Australian Income Fund ARSN 122 052 868 (**ICPAIF**) and the LM Currency Protected Australian Income Fund ARSN 110 247 875 (**CPAIF**), as follows:
 - (a) by the First Applicant uploading to the website www.lminvestmentadministration.com (**the Website**): copies of this Application, a Notice to Members in the form of Schedule 1 to this Application (**the Notice**), any order made as to service and the said Affidavit of Ms Trenfield (including all exhibits) and the said Affidavit of Ms Lobb (including all exhibits);
 - (b) by the First Applicant sending an email to those members of the AIF, the ASPF, the ICPAIF and the CPAIF, for whom an email address is recorded:
 - (i) attaching the Notice; and
 - (ii) stating that they may view all substantive Court documents upon which the First Applicant intends to rely in support of the relief sought by paragraphs 10 to 17 herein on the Website; and
 - (c) where the First Applicant receives a response to an email that indicates the email was not received, or if the First Applicant does not hold an email address for any member, and the First Applicant has a postal address for those members, the First Applicant is to post the Notice to the postal address of those members.
2. Service of this Application, the said Affidavit of Ms Trenfield and the said Affidavit of Ms Lobb be effected on the creditors of the Second Applicant as follows:
 - (a) by the First Applicant uploading to the Website:
 - (b) a Notice to Creditors in the form of Schedule 2 to this Application (**the Creditors' Notice**), any order made as to service, the said Affidavit of Ms Trenfield (including all exhibits) and said Affidavit of Ms Lobb (including all exhibits);
 - (c) by sending an email to those creditors of the Second Applicant, for whom an email address is recorded:
 - (i) attaching the Creditors' Notice; and

- (ii) stating that they may view all substantive Court documents upon which the First Applicant intends to rely in support of the relief sought by paragraphs 10 to 16 herein on the Website; and
 - (d) where the First Applicant receives a response to an email that indicates the email was not received, or if the First Applicant does not hold an email address for any creditor, and the First Applicant has a postal address for those creditors, the First Applicant is to post the Creditors' Notice to the postal address of those creditors.
- 3. Service of this Application, the said Affidavit of Ms Trenfield and the said Affidavit of Ms Lobb in accordance with any orders so made shall be deemed to be effective service on each of the members of the AIF, the ASPF, the ICPAIF and the CPAIF and the creditors of the Second Applicant.
- 4. Service of this Application, the said Affidavit of Ms Trenfield and the said Affidavit of Ms Lobb on the members of the LM First Mortgage Income Fund ARSN 089 343 288 (**FMIF**) shall be deemed to be effective 10 days after the last of the following steps have been taken in respect thereof, as applicable:
 - (a) service by the First Applicant of such documents on the First Respondent;
 - (b) the First Respondent sending the Notice by email to those members of the FMIF for whom an email address is recorded in the register of members maintained by the First Respondent (**the Register**);
 - (c) where the First Respondent receives a response to an email that indicates the email was not received, or if the First Respondent does not hold an email address for any member, and the First Respondent has a postal address for those members, the First Respondent posting the Notice to the postal address of those members recorded in the Register, if any; and
 - (d) the First Respondent uploading to the website <http://www.lmfimif.com/> a copy of this Application, the Notice, and a link to the location on the First Applicant's website where the material uploaded pursuant to paragraph 1(a) of this Application has been placed.
- 5. The First Respondent shall take the steps in subparagraph 4(b) above within three business days after being served with the Application, the said Affidavit of Ms Trenfield and the said Affidavit of Ms Lobb.
- 6. If the First Applicant intends to rely on further material, service of that material will be deemed effective:

- (a) on the AIF, ASPF, ICPAIF, CPAIF and creditors of the Second Applicant, by the First Applicant uploading the further material to the Website and sending an email (or, where the First Applicant does not hold a valid email address, a notice by post) to the members and creditors informing them that further material in relation to the Application has been uploaded to the Website;
 - (b) on the members of the FMIF by:
 - (i) in respect of any further material, the Applicants taking the steps set out in subparagraph 1(a) of this Application;
 - (ii) the First Respondent uploading to the website <http://www.lmfimif.com/> such material, and a link to the location on the First Applicant's website where the material uploaded pursuant to paragraph 1(a) of this Application has been placed.
7. The First Applicant shall not be required to take further steps to serve the members of the Funds or creditors of the Second Applicant whose email addresses return permanent undeliverable receipts and for whom the Applicants do not have a postal address.
8. Service of any future Applications and supporting material by the Applicants be effected on the members and creditors of the AIF, the ASPF, the ICPAIF, the CPAIF and the FMIF by taking the steps set out in paragraphs 1 to 5 above.
9. Directions for the future conduct of the Application.

On the further hearing of the Application, on a date to be fixed

10. Pursuant to section 511(1) of the *Corporations Act 2001* as in force immediately before 1 March 2017 (**the Old Act**) or, alternatively, subdivisions 90-15(1) and 90-15(3)(f) of Schedule 2 to the *Corporations Act 2001* currently in force (**Insolvency Schedule**):
- (a) the First Applicant's corporate remuneration (within the meaning of that expression used in *LM Investment Management Limited & Anor v Whyte* [2019] QSC 245 (**the Second Remuneration Decision**)) as liquidator of the Second Applicant, for the period 1 July 2018 to 31 October 2020 be fixed, alternatively determined, in the sum of \$30,784.60 (including GST);
 - (b) the First Applicant's Category 1 remuneration (within the meaning of that expression used in *LM Investment Management Limited & Anor v Whyte No 2* [2017] QSC 229 (**the First Remuneration Decision**)) as liquidator of the Second Applicant, in respect of the AIF, the FMIF and the ASPF, for the period 1 July

2018 to 31 October 2020, be fixed, or alternatively determined in the sum of \$302,107.85 (including GST);

- (c) the First Applicant's Category 1 remuneration as liquidator of the Second Applicant, in respect of the ICPAIF and the CPAIF for the period 1 October 2015 to 31 October 2020, be fixed, or alternatively determined in the sum of \$297,069.30 (including GST);
 - (d) the First Applicant's Category 2 remuneration (within the meaning of the Remuneration Decision) as liquidator of the Second Applicant, in respect of the AIF, the FMIF and the ASPF for the period 1 July 2018 to 31 October 2020, be fixed, alternatively determined, in the sum of \$233,914.56 (including GST).
11. The First Applicant be paid the sum of \$143,884.62 (including GST) from the scheme property of the AIF for his remuneration as liquidator of the Second Applicant, such sum to include:
- (a) \$65,913.10 (including GST) for Category 1 remuneration for the period 1 July 2018 to 31 October 2020; and
 - (b) \$77,971.52 (including GST) for Category 2 remuneration for the period 1 July 2018 to 31 October 2020.
12. The First Applicant be paid the sum of \$260,633.12 (including GST) from the scheme property of the FMIF for his remuneration as liquidator of the Second Applicant, such sum to include:
- (a) \$182,661.60 (including GST) for Category 1 remuneration for the period 1 July 2018 to 31 October 2020; and
 - (b) \$77,971.52 (including GST) for Category 2 remuneration for the period 1 July 2018 to 31 October 2020.
13. The First Applicant be paid the sum of \$131,504.67 (including GST) from the scheme property of the ASPF for his remuneration as liquidator of the Second Applicant, such sum to include:
- (a) \$53,533.15 (including GST) for Category 1 remuneration for the period 1 July 2018 to 31 October 2020; and
 - (b) \$77,971.52 (including GST) for Category 2 remuneration for the period 1 July 2018 to 31 October 2020.

14. The First Applicant be paid the sum of \$64,370.35 (including GST) from the scheme property of the ICPAIF for Category 1 remuneration for the period 1 October 2015 to 31 October 2020.
15. The First Applicant be paid the sum of \$232,698.95 (including GST) from the scheme property of the CPAIF for Category 1 remuneration for the period 1 October 2015 to 31 October 2020.
16. Such further or other Order as the Court deems meet.
17. The parties' costs of the Application be payable, and paid, on the indemnity basis from the respective scheme property of the AIF, FMIF, ASPF, ICPAIF and CPAIF in such proportions as may be just and, in the case of the costs of the Applicants, in equal one-fifth shares from each such Fund.

This Application will be heard by the Court at QEII Courts of Law Complex, 415 George Street, Brisbane on ~~a date to be fixed~~ 23 March 2021 at 10:00am.

Filed in the Brisbane Registry on ~~January 2021~~:

12 FEB 2021



Registrar:

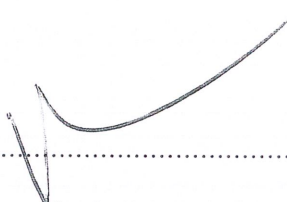
If you wish to oppose this application or to argue that any different order should be made, you must appear before the Court in person or by your lawyer and you shall be heard. If you do not appear at the hearing the orders sought may be made without further notice to you.

On the hearing of the Application the Applicants intend to rely on the following affidavits:

1. Third Affidavit of Renee Lobb sworn 23 December 2020.
2. Twelfth Affidavit of Kelly-Anne Lavina Trenfield sworn 23 December 2020.

THE FIRST APPLICANT ESTIMATES THE FIRST HEARING SHOULD BE ALLOCATED 30 MINUTES

Signed:


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Description:

Russells, Solicitor for the Applicant

Dated:

23 December 2020

This application is to be served on:

First Respondent Name: **DAVID WHYTE**

Address: c/- Tucker & Cowen Solicitors
15/15 Adelaide St,
Brisbane City QLD 4000

SCHEDULE 1

NOTICE TO MEMBERS

TO: The Members of [INSERT NAME OF RELEVANT FUND]

John Richard Park is the liquidator of LM Investment Management Limited (in liquidation) (receivers and managers appointed) ACN 077 208 461 ("LMIM"), which remains the responsible entity of the [SELECT RELEVANT FUND, VIZ:

LM First Mortgage Income Fund ARSN 089 343 288 ("FMIF");

LM Australian Income Fund ARSN 133 497 917 ("AIF");

LM Australian Structured Products Fund ARSN 149 875 669 ("ASPF");

LM Currency Protected Australian Income Fund ARSN 110 247 875 ("CPAIF"); or

LM Institutional Currency Protected Australian Income Fund ARSN 122 052 868 ("ICPAIF").

TAKE NOTICE that John Richard Park, the liquidator of LMIM, has applied to the Supreme Court of Queensland for:

- (a) the determination of his remuneration as liquidator of the Second Applicant, for the period [SELECT RELEVANT PERIOD, VIZ:

1 October 2015 to 31 October 2020, in the sum of \$863,876.31 (including GST);

- (b) an order permitting him to be paid that remuneration of \$833,091.71 (including GST) from the scheme property of the [SELECT RELEVANT FUND, VIZ:

AIF (\$143,884.62) (including GST));

FMIF (\$260,633.12) (including GST));

ASPF (\$131,504.67) (including GST));

ICPAIF (\$64,370.35) (including GST)); or

CPAIF (\$232,698.95) (including GST)].

The application is set down for hearing on [DATE].

Copies of the application and other court documents filed in the proceeding will be available on the website www.lminvestmentadministration.com. Any member who reasonably requires a hardcopy of the application and other court documents should call Russells Lawyers on +61 7 3004 8888.

The members of **[INSERT FUND]** are not respondents to the application but any member is entitled to be heard in the application if they wish. Any member who wishes to appear and to make submissions at the hearing of the application must file a Notice of Appearance in Form 4 to the Rules for Proceedings under the *Corporations Act 2001* which are in Chapter 23 of the *Uniform Civil Procedure Rules 1999*; and serve a copy of that notice on Russells, the solicitors for John Richard Park as liquidator of LM Investment Management Limited (In Liquidation) (Receivers and Managers Appointed) ACN 007 208 461 the Responsible Entity of the LM First Mortgage Income Fund ARSN 089 343 288, at their office at Level 18, 300 Queen Street, Brisbane, QLD 4000. Tel. +61 7 3004 8888 Fax +61 1 3004 8899 E-mail: Service@RussellsLaw.com.au.

This notice is given pursuant to an order of the Supreme Court of Queensland made on **[DATE]**. A copy of the order may be seen on the website www.lminvestmentadministration.com.

Dated: ## January 2021

SCHEDULE 2

NOTICE TO CREDITORS

TO: The Creditors of LM Investment Management Limited (in liquidation) (receivers appointed)

John Richard Park is the liquidator of LM Investment Management Limited (in liquidation) (receivers appointed) (“LMIM”), which remains the responsible entity of the LM First Mortgage Income Fund ARSN 089 343 288 (“FMIF”), LM Australian Income Fund ARSN 133 497 917 (“AIF”), LM Australian Structured Products Fund ARSN 149 875 669 (“ASPF”), LM Cash Performance Fund ARSN 087 304 032 (“CPF”), LM Currency Protected Australian Income Fund ARSN 110 247 875 (“CPAIF”) and LM Institutional Currency Protected Australian Income Fund ARSN 122 052 868 (“ICPAIF”).

TAKE NOTICE that John Richard Park, the liquidator of LMIM, has applied to the Supreme Court of Queensland for:

- (c) the determination of his remuneration as liquidator of the Second Applicant, for the period 1 October 2015 to 31 October 2020, in the sum of \$863,876.31 (including GST);
- (d) an order permitting him to be paid that remuneration of \$833,091.71 (including GST) as follows:
 - (i) from the scheme property of the AIF, \$143,884.62 (including GST);
 - (ii) from the scheme property of the FMIF, \$260,633.12 (including GST);
 - (iii) from the scheme property of the ASPF, \$131,504.67.44 (including GST);
 - (iv) from the scheme property of the ICPAIF, \$64,370.35 (including GST);
and
 - (v) from the scheme property of the CPAIF, \$232,698.95.00 (including GST).

The application is set down for hearing on [DATE].

Copies of the application and other court documents filed in the proceeding will be available on the website www.lminvestmentadministration.com. Any creditor who reasonably requires a hardcopy of the application and other court documents should call Russells Lawyers on +61 7 3004 8888.

The creditors of LMIM are not respondents to the application but any creditor is entitled to be heard in the application if they wish. Any creditor who wishes to appear and to make submissions at the hearing of the application must file a Notice of Appearance in Form 4 to the Rules for Proceedings under the *Corporations Act 2001* which are in Chapter 23 of the *Uniform Civil Procedure Rules 1999*; and serve a copy of that notice on Russells, the solicitors for John Richard Park as liquidator of LM Investment Management Limited (In Liquidation) (Receivers and Managers Appointed) ACN 007 208 461 the Responsible Entity of the LM First Mortgage Income Fund ARSN 089 343 288, at its office at Level 18, 300 Queen Street, Brisbane, QLD 4000. Tel. +61 7 3004 8888 Fax +61 1 3004 8899 E-mail: Service@RussellsLaw.com.au.

This notice is given pursuant to an order of the Supreme Court of Queensland made on [DATE]. A copy of the order may be seen on the website www.lminvestments.com.au/portal/01012021.

Dated: ## January 2021