

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:

1. Pursuant to section 511(1) of the *Corporations Act 2001* as in force immediately before

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

**Russells**  
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Brisbane QLD 4000  
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Ref: SCR:MKR:20190205

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) as liquidator of the Second Applicant, for the period 1 November 2020 to 31 November 2021 be fixed, alternatively determined, in the sum of \$5,550.05 (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 LM Australian Income Fund ARSN 133 497 917 (**AIF**), the LM First Mortgage Income Fund ARSN 089 33 288 (**FMIF**), the LM Australian Structured Products Fund ARSN 149 875 669 (**ASPF**), the LM Institutional Currency Protected Fund ARSN 122 052 868 (**ICPAIF**) and the LM Currency Protected Australian Income Fund ARSN 110 247 875 (**CPAIF**), for the period 1 November 2020 to 31 November 2021, be fixed, alternatively determined in the sum of \$92,112.90 (including GST);
  - (c) the First Applicant is entitled to Category 1 remuneration as liquidator of the Second Applicant, in respect of the AIF, for the period 1 December 2021 to the date of the finalisation of the winding up of the AIF, in an amount up to the sum of \$66,000.00 (including GST);
  - (d) the First Applicant is entitled to Category 1 remuneration as liquidator of the Second Applicant, in respect of the ASPF, for the period 1 December 2021 to the date of the finalisation of the winding up of the ASPF, in an amount up to the sum of \$66,000.00 (including GST);
  - (e) the First Applicant's Category 2 remuneration (within the meaning of that expression used in the First Remuneration Decision) as liquidator of the Second Applicant, in respect of the AIF, the FMIF and the ASPF for the period 1 November 2020 to 31 November 2021, be fixed, alternatively determined, in the sum of \$44,268.95 (including GST).
2. From the scheme property of the AIF, for the First Applicant's remuneration as liquidator of the Second Applicant:
- (a) the First Applicant be paid the sum of \$37,293.12 (including GST), such sum to include:

- (i) \$22,536.80 (including GST) for Category 1 remuneration for the period 1 November 2020 to 31 November 2021;
    - (ii) \$14,756.32 (including GST) for Category 2 remuneration for the period 1 November 2020 to 31 November 2021;
  - (b) the First Applicant may draw a sum or sums up to the amount of \$66,000.00 (including GST) for Category 1 remuneration for the period 1 December 2021 to the date for finalisation of the winding up of the AIF.
3. The First Applicant be paid the sum of \$33,071.31 (including GST) from the scheme property of the FMIF for his remuneration as liquidator of the Second Applicant, such sum to include:
- (a) \$18,315.00 (including GST) for Category 1 remuneration for the period 1 November 2020 to 31 November 2021; and
  - (b) \$14,756.31 (including GST) for Category 2 remuneration for the period 1 November 2020 to 31 November 2021.
4. From the scheme property of the ASPF, for the First Applicant's remuneration as liquidator of the Second Applicant:
- (a) the First Applicant be paid the sum of \$32,732.52 (including GST), such sum to include:
    - (i) \$17,976.20 (including GST) for Category 1 remuneration for the period 1 November 2020 to 31 November 2021;
    - (ii) \$14,756.32 (including GST) for Category 2 remuneration for the period 1 November 2020 to 31 November 2021.
  - (b) the First Applicant may draw a sum or sums up to the amount of \$66,000.00 (including GST) for Category 1 remuneration for the period 1 December 2021 to the date for finalisation of the winding up of the ASPF.
5. The First Applicant be paid the sum of \$7,266.60 (including GST) from the scheme property of the ICPAIF for Category 1 remuneration for the period 1 November 2020 to 31 November 2021.
6. The First Applicant be paid the sum of \$26,018.30 (including GST) from the scheme property of the CPAIF for Category 1 remuneration for the period 1 November 2020 to 31 November 2021.

7. Such further or other Order as the Court deems fit.
8. 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 6 May 2022.

Filed in the Brisbane Registry on 15 February 2022:

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. Affidavit of Kelly-Anne Lavinia Trenfield sworn 14 February 2022.
2. Affidavit of Renee Lobb to be sworn.

**THE FIRST APPLICANT ESTIMATES THE HEARING SHOULD BE ALLOCATED 2 HOURS**

Signed: \_\_\_\_\_

Description:

Russells, Solicitor for the Applicant

Dated:

15 February 2022

This application is to be served on:

First Respondent Name: **DAVID WHYTE**

Address: c/- Cowen Schwarz Marschke Lawyers  
8/300 George Street,  
Brisbane City QLD 4000