

SUPREME COURT OF QUEENSLAND

REGISTRY: BRISBANE

NUMBER: BS3383/13

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**

AFFIDAVIT

I, **STEPHEN CHARLES RUSSELL** of Level 18, 300 Queen Street, Brisbane in the State of Queensland, solicitor, state on oath:

1. I am a solicitor of this Honourable Court and the Managing Partner of Russells, solicitors for the First Respondent ("LMIM") instructed by Mr John Park, the liquidator of LMIM ("**the Liquidator**"). I supervise other solicitors at my firm who undertake work on this matter.

Page 1

Deponent

Taken by

AFFIDAVIT OF STEPHEN CHARLES RUSSELL

Filed on behalf of the First Respondent, LM Investment Management Ltd (in liq) on its own account and as responsible entity of two members of the LM First Mortgage Income Fund

Form 46, Version 1

Uniform Civil Procedure Rules 1999

Rule 431

Russells

Level 18, 300 Queen Street

Brisbane QLD 4000

Tel: (07) 3004 8888

Fax: (07) 3004 8899

Ref: MKR:20141556

Prior appearances on the instructions of the liquidator

2. I have been managing partner of my firm since Mr Whyte has been appointed and have maintained supervision of all of the various retainers by LMIM on the instructions of the liquidator since that time.
3. I am informed by Mr Park (and have been so informed many times over the years) and I believe that:-
 - (a) the liquidator and the First Respondent have not had funds to appear on any previous applications Mr Whyte has filed for orders approving his remuneration;
 - (b) based on Mr Whyte's various reports to the members of the FMIF, it appeared to Mr Park that, if proceeding number BS13534 of 2016 (commonly referred to as the Feeder Fund claim) succeeded, the Institutional Currency Protected Australian Fund ("the ICPAIF") and the Currency Protected Australian Fund ("the CPAIF") may not receive any distribution from the FMIF as beneficiaries;
 - (c) (as appears from several judgments of this Honourable Court) a secured creditor (Custom House Currency Exchange (Australia) Pty Ltd) appointed Mr Said Jahani as a receiver of the property of the Feeder Funds and he had conduct of the Feeder Fund claim for LMIM;
 - (d) the Feeder Fund claim has settled;
 - (e) following this settlement, Mr Whyte procured LMIM to pay an interim distribution to the ICPAIF and the CPAIF (and other members of the FMIF) in late October 2019, although the distributions to the ICPAIF and the CPAIF were substantially reduced as a result of the settlement;
 - (f) Mr Jahani did not pay the surplus in his hands to the liquidator for another eight months - until last Friday 19 June 2020;
 - (g) nor has LMIM had any surplus funds on its own account available for this purpose;
 - (h) in those circumstances, it was only very recently that LMIM has, as responsible entity of the ICPAIF and CPAIF, had access to funds to enable them to fund any detailed examination of or challenge to Mr Whyte's applications for remuneration;

(i) for those reasons, LMIM has not previously retained solicitors to advise and appear on any such application.

4. All the facts and circumstances herein deposed to are within my own knowledge, save such as are deposed to from information only, and my means of knowledge and sources of information appear in this my affidavit.

Sworn by the **STEPHEN CHARLES RUSSELL** on 24 June 2020 at Brisbane in the presence of:


.....
STEPHEN CHARLES RUSSELL
Deponent


.....
Name:
Lawyer/Commissioner for Declarations/JP
MILLICENT KATHRYN RUSSELL
SOLICITOR