

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: Justice Callaghan

Date: 15 October 2020

Initiating document: Application filed 11 May 2020; Cross-Application filed 24 June 2020; Judgment of Callaghan J dated 15 October 2020

THE ORDER OF THE COURT IS THAT:

1. The remuneration of David Whyte ("**Mr Whyte**"), as the person appointed pursuant to section 601NF(1) of the *Corporations Act* 2001 (Cth) 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, for the period of 1 November 2019 to 30 April 2020 be fixed in the amount of \$989,373.55 (inclusive of GST) pursuant to paragraph 3(c) of the Orders of Justice Dalton on 21 August 2013.
2. The Cross-Application filed by the First Respondent on 24 June 2020 ("**Cross Application**") is dismissed.



ORDER

Form 59 R.661

Filed on behalf of the first respondent

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3. Unless the Court orders otherwise, the orders in the following paragraphs 4 to 9 (inclusive) and paragraph 12 of this Order shall apply to all future applications by Mr Whyte for approval of remuneration pursuant to paragraph 3(c) of the Orders of Justice Dalton on 21 August 2013 (“**Remuneration Application**”).
4. Within fourteen days after the Remuneration Application (“**the Application**”) and supporting affidavit/s are served on the first respondent, LM Investment Management Limited (in liquidation) (on its own account and/or as responsible entity for the LM First Mortgage Income Fund and as responsible entity for the LM Currency Protected Australian Income Fund and as responsible entity for the LM Institutional Currency Protected Australian Income Fund) (referred to below as “**LMIM**”), LMIM shall file and serve on Mr Whyte:
 - (a) A short statement summarising the grounds, if any, on which LMIM opposes the relief sought in the Application (“**Short Statement**”);
 - (b) Any affidavits relied upon in response to the Application (“**LMIM’s Affidavits**”).
5. Within seven days after service of any Short Statement and/or LMIM’s Affidavits, Mr Whyte shall file and serve on LMIM and any other party or member who has notified Mr Whyte that they intend to appear on the hearing of the Application, any further Affidavits relied upon by Mr Whyte, in response to the Short Statement or LMIM’s Affidavits.
6. At least four business days prior to the hearing of the Application Mr Whyte shall file and serve on LMIM and any other party or member who has notified Mr Whyte that that they intend to appear on the hearing of the Application, written submissions in support of the Application.
7. At least two business days prior to the hearing of the Application, LMIM shall file and serve on Mr Whyte, any written submissions in response to the Application.
8. In the event that the timeframes in these orders are not appropriate to the particular Remuneration Application, Mr Whyte and LMIM shall confer with a view to agreeing upon consent orders varying the timeframes.
9. Liberty to apply.
10. Mr Whyte’s costs of and incidental to the application filed 11 May 2020 and the Cross-Application filed 24 June 2020, be costs in the winding up of the FMIF, to be paid out of assets of the FMIF.
11. The First Respondent’s, LMIM’s, costs of the Applications filed 11 May 2020 and 24 June 2020 be paid from the assets of the FMIF on the indemnity basis.
12. Any future Remuneration Application be conducted as if the application is brought pursuant to section 425 *Corporations Act 2001*.

Signed: _____

Deputy Registrar

