

SUPREME COURT OF QUEENSLAND

REGISTRY: BRISBANE

NUMBER: BS3508 of 2015

IN THE MATTER OF LM INVESTMENT MANAGEMENT LIMITED (IN  
LIQUIDATION) (RECEIVERS APPOINTED) ACN 077 208 461

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 APPOINTED)  
ACN 077 208 461 THE RESPONSIBLE ENTITY OF THE  
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

THIRD AFFIDAVIT OF MILLICENT KATHRYN RUSSELL



Page 1

Deponent .....

Taken by *Jophia Hard* .....

THIRD AFFIDAVIT OF MILLICENT  
KATHRYN RUSSELL

Filed on behalf of the Applicants

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:20190205

I, **MILLICENT KATHRYN 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 a Partner at Russells, solicitors for the applicants. I have the day to day conduct of this proceeding, with the assistance of Ms Sophia Herd, a solicitor employed by Russells.
2. Now produced and shown to me and marked **"MKR-03"** is an indexed, paginated bundle of copies of documents to which I shall refer to in more detail in my affidavit. References in square brackets are references to page numbers of the documents in the bundle **"MKR-03"**.
3. On 16 June 2020, I received a letter by email from Tucker & Cowen Solicitors in respect of a draft version of the application to be heard in this proceeding on 31 May 2021. True copies of that email and letter are at pages [1] to [5] of **"MKR-03"**.
4. On 5 March 2021, I sent a letter by email in response to Tucker & Cowen's letter of 16 June 2020. True copies of that email, letter and attachments are at pages [6] to [10] of **"MKR-03"**.
5. On 19 April 2021, I received a letter by email from Tucker & Cowen Solicitors in respect of the application to be heard in this proceeding on 31 May 2021. True copies of that email, letter and attachments are at pages [11] to [18] of **"MKR-03"**.
6. On 24 May 2021, I sent a letter by email in response to Tucker & Cowen's letter of 19 April 2021. True copies of that email, letter and attachments are at pages [19] to [24] of **"MKR-03"**.
7. 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 **MILLICENT KATHRYN RUSSELL** on 27 May 2021 at Brisbane in the presence of:

.....  
**MILLICENT KATHRYN RUSSELL**  
Deponent

.....  
Name: **SOPHIA ELIZABETH HERD**  
Lawyer/~~Commissioner for Declarations~~/JP

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**IN THE MATTER OF LM INVESTMENT MANAGEMENT LIMITED (IN LIQUIDATION) (RECEIVERS APPOINTED) ACN 077 208 461**

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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**

**CERTIFICATE OF EXHIBIT**

Exhibit "MKR-03" to the affidavit of **MILLICENT KATHRYN RUSSELL** sworn on 27 May 2021.

.....  
**MILLICENT KATHRYN RUSSELL**  
Deponent

.....  
*Jophie Dend*  
Lawyer

**CERTIFICATE OF EXHIBIT**

Filed on behalf of the Applicants  
Form 47, Version 2  
Uniform Civil Procedure Rules 1999  
Rule 435

**Russells**

Level 18 300 Queen Street  
BRISBANE, 4000  
Phone: 07 3004 8888  
Fax: 07 3004 8899  
Email: MRussell@RussellsLaw.com.au  
Ref: MKR:20190205

**SUPREME COURT OF QUEENSLAND**

REGISTRY: BRISBANE

NUMBER: BS3508 of 2015

**IN THE MATTER OF LM INVESTMENT MANAGEMENT LIMITED (IN LIQUIDATION) (RECEIVERS APPOINTED) ACN 077 208 461**

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**

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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**

**INDEX TO EXHIBIT "MKR-03"**

<b>Exhibit No.</b>	<b>Description</b>	<b>Date</b>	<b>Page No.</b>
1.	Letter sent by email from Tucker & Cowen to Russells	16.06.2020	1 – 5

**INDEX TO EXHIBIT**

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

<b>Exhibit No.</b>	<b>Description</b>	<b>Date</b>	<b>Page No.</b>
2.	Letter sent by email from Russells to Tucker & Cowen with attachments	05.03.2021	6 – 10
3.	Letter sent by email from Tucker & Cowen to Russells with attachments	19.04.2021	11 – 18
4.	Letter sent by email from Russells to Tucker & Cowen with attachments	24.05.2021	19 – 24

**Sarsha McKendrick**

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**From:** Jessica Roberts <JRoberts@tuckercowen.com.au> on behalf of David Schwarz <dschwarz@tuckercowen.com.au>  
**Sent:** Tuesday, 16 June 2020 11:05 AM  
**To:** Stephen Russell; Millie Russell  
**Cc:** David Schwarz; Alex Nase  
**Subject:** Re: LM Investment Management Limited (In Liquidation) (Receivers & Managers Appointed) ("LMIM"); Park & Muller and LMIM as Responsible Entity of the LM First Mortgage Income Fund ("FMIF") v David Whyte Supreme Court of Queensland Proceeding No. 3508/2015  
**Attachments:** Letter to Russells Lawyers (TCS01850656).pdf

Dear Colleagues

Please find **attached** correspondence for your attention.

Yours faithfully,

Sent on behalf of **David Schwarz**, Principal  
E: [dschwarz@tuckercowen.com.au](mailto:dschwarz@tuckercowen.com.au) D: 07 3210 0506 M: 0438 400 343

b7/

**Jessica Roberts**  
Personal Assistant

E: [jroberts@tuckercowen.com.au](mailto:jroberts@tuckercowen.com.au)  
D: 07 3210 0517 F: 07 300 300 00 M: 07 300 300 00  
Level 15, 15 Adelaide Street, Brisbane GPO Box 345, Brisbane, Qld 4001  
TCS Solicitors Pty Ltd. ABN 610 321 509

**Tucker&CowenSolicitors.**

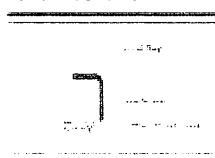
Leading Litigation & Dispute Resolution and Insolvency & Reconstruction Lawyers (Qld)  
2012 to 2019, First Tier for Insolvency (Qld) again in 2019 - Doyle's Guide

Best Lawyers® International 2013 -2020 - Justin Marschke for Litigation, Regulatory and  
Alternative Dispute Resolution 2020

Member of MSI Global Alliance and Local Buy pre-approved



*Independent legal & accounting firms*



Individuals and/or limited liability scheme approved under Professional Standards Legislation

"MKR-03"

Our reference: Mr Schwarz / Mr Nase

16 June 2020

Your reference: SCR: MKR: 20180543

Principals.  
Richard Cowen.  
David Schwarz.  
Justin Marschke.  
Daniel Davey.

Russells Lawyers  
GPO Box 1402  
Brisbane Qld 4001

Email: [srussell@russellslaw.com.au](mailto:srussell@russellslaw.com.au)  
[mrussell@russellslaw.com.au](mailto:mrussell@russellslaw.com.au)

Consultant.  
David Tucker.

Special Counsel.  
Alex Nase.  
Ben Shaw.

Dear Colleagues

Senior Associates.  
Emily Anderson.

Re: LM Investment Management Limited (In Liquidation) (Receivers & Managers Appointed) ("*LMIM*");  
Park & Muller and LMIM as Responsible Entity of the LM First Mortgage Income Fund ("*FMIF*") v David Whyte  
Supreme Court of Queensland Proceeding No. 3508/2015

Associates.  
Scott Hornsey.  
Paul Armit.

We refer to your letter dated 5 May 2020, attaching an Application by your client for approval of remuneration dated 5 May 2020, and the supporting affidavit of Ms Trenfield sworn on 28 April 2020.

We note that the Application seeks a total of approximately \$723,801. This includes remuneration of \$194,180.25 sought from the FMIF for the period 1 July 2018 to 29 February 2020, made up of Category 1 remuneration of \$126,462, and Category 2 remuneration of \$67,717.65.

We are instructed to write to you to identify certain issues relating to the Application, and to invite your client's response. It may be that our client's queries can be clarified or a satisfactory response provided, which may enable our client to consent to (or, at least, not make any submissions in opposition to) the application, as you have requested in your letter.

### Proportionality of remuneration

At the outset, we note that reasonableness and proportionality of your client's FMIF remuneration will be assessed by the Court, in light of the following matters:

1. The substantial amounts of remuneration and expenses that have been paid to your clients to date, including \$1,827,205.23 on your client's first application for approval of remuneration and \$393,043.89 on your client's second application for approval of remuneration and expenses of approximately \$1.35 million;
2. our client has since his appointment performed most of the substantive tasks in the winding-up of the FMIF, including asset realisations, representing the FMIF in litigation that is on foot, financial reporting, communicating with members and responding to member queries and maintaining the Register of Members. This is not a criticism of your client; we merely make the point that the extent of the work performed by your client is relevant to assessing the reasonableness of the remuneration claimed.

We note that Ms Trenfield's Affidavit:

1. does not contain details of any receipts or payments in relation to the FMIF or, for that matter, in the winding up of LMIM, or identify any benefits received from the FMIF as a result of the work undertaken by your client;
2. does not explain the major tasks performed and why performance of such tasks is in the interests of FMIF members or advanced the winding up for the benefit of FMIF members;



3. concedes at paragraph 82 that the largest part of the category 1 is remuneration work; that is, your client's remuneration for seeking remuneration from the FMIF.

We invite your clients to briefly identify the benefits received by the FMIF as a result of the work undertaken by your clients, and briefly explain how the element of proportionality is satisfied.

#### **Costs going forward**

We are instructed to inquire as to whether your client has formed any view as to his further remuneration, and whether he expects that his remuneration will reduce going forward?

#### **Specific Issues relating to remuneration claim**

We are instructed to raise the following specific issues in relation to the remuneration sought and to invite your client's response:

1. Based on the level of detail in the narrations and the information provided, it is very difficult to determine whether the remuneration has been allocated to the correct category or to scrutinise what is said by Ms Trenfield in her affidavit in that regard. We note that the amount of remuneration allocated into the corporate category of \$20,622.05 seems very low compared to the amount of remuneration allocated to category 2 of \$203,152.95. We are instructed to ask whether your client would provide an explanation?
2. Between 20 and 27 August 2018, Ms Trenfield charged over \$12,000 at \$625 per hour (19.2 hours) trying to reconcile the remuneration paid and applied for and charged to the FMIF for the purposes of your client's second remuneration Application. Our client suggests this is unreasonably high, given that your client should presumably have kept proper records and have been readily able to explain these matters. These costs should be taken out, with your client's costs of taking out these costs not borne by FMIF members;
3. whilst Ms Trenfield deposes to having reviewed relevant entries, there is no mention as to whether or not any amount of time has been written off based on her review. Has any time been written off? Our client has concerns about the quality of the review that has been undertaken. By way of example:
  - (a) In Category 2 there are charges in relation to a funding agreement with LMA with respect to an unfair preference claim. This was (on its face) to facilitate a recovery by LMA and it is not a cost relating to the FMIF or any of the other funds. These costs should, plainly, be taken out, and your client's costs of taking these costs should not be borne by the FMIF;
  - (b) Remuneration has been sought against the FMIF in relation to your client's failure to include an invoice from Mr Peden with respect to the amount claimed by your client for his costs of his first application for approval of expenses. The quantum of costs was agreed between the parties and a Consent Order was made on 27 June 2018 fixing the quantum of these costs. Shortly thereafter, you then wrote to us to inform us of the omission of an invoice from Mr Peden's from the amount of costs claimed. Our client and your client subsequently entered into a Deed on 13 March 2019 to facilitate the payment of that invoice and pursuant to clause 1.3(d) of that Deed, your client agreed not to claim or seek from the FMIF any remuneration, costs or expenses, of or incidental to the Deed or the carrying out of the steps required by the Deed. Your client appears, though, to be claiming remuneration relating to the invoice in question from Mr Peden QC and the supplementary deed. These costs should, plainly, be taken out, and your client's costs of taking these costs should not be borne by the FMIF;

- (c) time is charged against the FMIF in Category 1 in relation to the application by your client for directions in relation to the dual appointments of your client and our client in relation to the FMIF, which was dismissed by His Honour: *LM Investment Management Limited v Anor v Whyte* [2019] QSC 233. Our client suggests, assuming the Court is satisfied that the remuneration is properly claimable, the remuneration relating to this application should on the face of it at least, be spread across all the funds because directions were sought in relation to the winding-up of each of the funds.

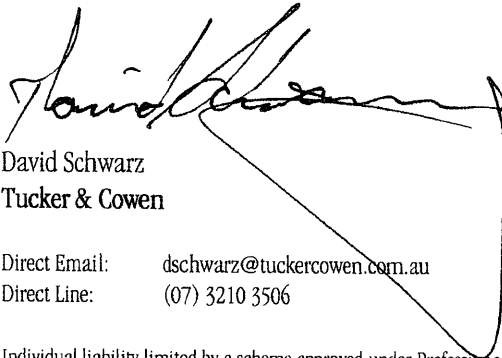
We will await your response to the above queries. We will then seek our client's instructions as to whether he consents to the application, as your client has requested.

Whilst writing, we note that your letter dated 5 May 2020 informed us that you are preparing an application for approval of your client's costs and expenses and that a copy of that application and supporting material will be provided shortly. We have not yet received a copy of that application or the supporting material.

We are instructed to request details of the expenses to be claimed from the FMIF and an update as to when that application will be filed?

If you have any queries or wish to discuss, please do not hesitate to contact us.

Yours faithfully



David Schwarz  
Tucker & Cowen

Direct Email: dschwarz@tuckercowen.com.au  
Direct Line: (07) 3210 3506

Individual liability limited by a scheme approved under Professional Standards Legislation.

**Sarsha McKendrick**

---

**From:** Sophia Herd  
**Sent:** Friday, 5 March 2021 2:13 PM  
**To:** Alex Nase; David Schwarz  
**Cc:** Millie Russell  
**Subject:** LM Investment Management Limited & Anor v Whyte & Anor - Supreme Court of Queensland Proceeding No. 3508/2015  
**Attachments:** 2835827 Letter to Tucker & Cowen - 05.03.2021.pdf; LMIM Receipts & Payments 1.07.2018 to 31.10.2020.pdf

Dear Colleagues

Please see attached correspondence.

Yours faithfully

**Sophia Herd**  
Lawyer

RUSSELLS

100 Market Street, Level 10, Brisbane, QLD 4000  
D: 07 3221 1111 M: 07 3221 1111 E: [SHerd@RussellsLaw.com.au](mailto:SHerd@RussellsLaw.com.au)



Liability limited by a scheme approved under professional standards legislation



QR LINK BUSINESS CARD

5 March 2021

Our Ref: SCR:MKR:20190205

Tucker & Cowen  
Level 15, 15 Adelaide Street  
BRISBANE QLD 4001

By Email: dschwarz@tuckercowen.com.au  
anase@tuckercowen.com.au

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Dear Colleagues

**LM Investment Management Limited & Anor v Whyte & Anor**  
**Supreme Court of Queensland Proceeding No. 3508/2015 ("the Proceeding")**

We refer to your letters dated 16 June 2020, 22 July 2020, 20 January 2021, 1 February 2021, your email dated 22 February 2021 and our letters dated 23 December 2020 and 28 January 2021.

At the outset, we note that your client has opposed each of our client's applications for remuneration to date for no, or only minor, reductions to our client's remuneration. One can only expect that such opposition has been at a significant cost to the members of the FMIF.

Our client does not wish to litigate these matters by correspondence. In our client's experience, corresponding about matters such as these has not previously facilitated any resolution.

We write this letter because, in Mr Nase's email dated 22 February 2021, your client indicated that he will consider whether to consent to our client's application for approval and payment of his remuneration filed 12 February 2021 ("**the application**"). This letter is written solely for the purposes of attempting to reduce the parties' time before the Court and to decrease costs to the members of the FMIF. If this correspondence does not address your client's concerns, he may oppose the application.

The application and affidavit of Ms Trenfield sworn 23 December 2020, filed 12 February 2021 ("**Ms Trenfield's affidavit**") are framed in the same terms as our client's previous applications for approval and payment of his remuneration (filed 16 December 2015 and 17 July 2018) and supporting affidavit material.

His Honour Justice Jackson has previously found our client's material was sufficient to allow him to assess the reasonableness and proportionality of remuneration sought in our client's applications. It is trite for your client to again raise issues which were the subject of previous unsuccessful opposition: the members of the FMIF ought not be put to the expense of such (previously unsuccessful) investigation or complaint.

As far as necessary, we respond to the issues raised by your correspondence by reference to the date of your letter and the heading used.

**Proportionality of remuneration (your letter dated 16 June 2020)**

As your client is well aware, this has been a long and complex winding up. Our client, as liquidator, has obligations that he must fulfil, regardless of what work is being performed by your client.

Our client seeks remuneration from the FMIF in the sum of approximately \$237,000 for a period of 28 months: meaning the liquidator's remuneration is less than \$8,500 per month. It is difficult to understand how your client sees that as "substantial" or otherwise not proportional.

We pause to note that, in respect of work attributable to the FMIF, a large proportion of the costs are associated with the way in which your client has conducted his receivership. For example, because of the institution and maintenance of legal proceedings, his opposition to our client's applications for remuneration and expenses, and unnecessary contests over GST.

The work our client has undertaken in the past two and a half years and the reason that particular, identified work is Category 1 work attributable to the FMIF is clearly set out in Ms Trenfield's affidavit. It has been described and categorised in the same way as in previous applications, which the Court found satisfactory. We and our client do not propose to provide any further information.

Despite the Court having not previously required such information, we attach LMIM's receipts and payments for the period 1 July 2018 to 31 October 2020. We are instructed that there are no FMIF receipts or payments.

**Costs going forward (your letter dated 16 June 2020)**

As would be expected, the liquidator's costs continue to decrease as the Funds are being wound up.

It is difficult for our client to provide any realistic estimate of his costs going forward – much of his costs are associated with or impacted by the conduct of the receivership of the FMIF.

**Specific issues relating to remuneration claim (your letter dated 16 June 2020)**

We respond using your numbering:

1. Our client has recorded and allocated time charges in accordance with the ARITA Code, and in the same way that the Court has previously found acceptable. There is more than sufficient detail in the narrations to identify the appropriate allocation between categories. The reason that the Corporate remuneration is low is that there is very limited corporate work not associated with any Fund to be undertaken. The Corporate work is limited to steps required to fulfil statutory obligations and general file maintenance. That work has, naturally, reduced over time.
2. The remuneration reconciliation that your client criticises was undertaken in response to allegations made by your client that our client had double-claimed or been paid twice for work. Your client did not accept our client's explanation that such an error was prohibited by FTT's system. As such, and solely in response to your client's complaints, a detailed and thorough, line by line reconciliation was conducted across all time periods. As you will no doubt appreciate, that is a significant amount of work, which accounts for the amount charged.
3. The seemingly baseless comments about the "quality" of Ms Trenfield's review of time entries are unbecoming. Ms Trenfield has deposed she reviewed the time entries and your client's suggestion she has not done so properly lacks comity.

As to your client's specific enquiries:

- (a) the LMA agreement was funded by LMIM. As such, the settlement of the proceedings allowed for the return of funds to LMIM and therefore benefitted all of the Funds;

- (b) our client does not agree with your client's point about the GST issue with Mr Peden QC's fee note. However, given the sum objected to is \$375.00, it will cost both parties more than that to debate the matter (and probably has already). Our client will reduce the amount of his claim by \$375.00.

**Application for approval of remuneration (your letter dated 22 July 2020)**

The matters in your letter dated 22 July 2020 pre-empted judgment by his Honour Justice Callaghan in your client's application for remuneration and take this matter no further. That correspondence was an unnecessary cost to the FMIF.

Leaving that aside, we note that the matters referred to in your letter raised in argument relate to the receiver's, as distinct from the liquidator's, remuneration. Given his Honour Justice Callaghan has given judgment, there is nothing further to say about those matters.

**Conclusion**

We trust that the matters set out above satisfy your client's concerns.

Please let us know your client's attitude to our client's application for approval and payment of remuneration.

Yours faithfully



**Millie Russell**

*Partner*

Direct 07 3004 8832

Mobile 0409 153 692

*MRussell@RussellsLaw.com.au*

20190205/2833043

## "MKR-03"

### Receipts and Payments Summary By Account: 435602.0001 - LM Investment Management Limited CVL, Bank, Cash and Cash Investment Accounts: From: 1/07/2018 To: 31/10/2020 (Gross Method)

Type	Account	GST	Total
<b>TRADING RECEIPTS</b>			
	Contribution from FMIF for Russells	23,250.46	909,303.47
	Contribution received from fund	200,058.64	2,250,645.06
	Other Income	110.00	1,210.00
		223,419.10	3,161,158.53
<b>TRADING PAYMENTS</b>			
	Contribution received from fund	(5,542.94)	(60,972.44)
	IT Costs	(13,900.32)	(152,903.52)
	Storage Costs	(868.38)	(9,551.77)
		(20,311.64)	(223,427.73)
	<b>Net Trading Receipts and Payments</b>	203,107.46	2,937,730.80
<b>NON-TRADING RECEIPTS</b>			
	Accounting Fees		20,000.00
	Controllership Invoices	14,242.35	156,665.85
	GST Control: GST Paid (Received)		285,003.93
	Interest Income		173.53
	Legal Fees	739.66	43,865.77
	Other Current Assets		126.73
		14,982.01	505,835.81
<b>NON-TRADING PAYMENTS</b>			
	Accounting Fees	(35,578.79)	(391,366.68)
	Appointee Disbursements	(513.75)	(5,651.30)
	Bank Charges		(153.15)
	Fees: Appointee Fees	(168,446.21)	(1,852,908.27)
	GST Control: GST Paid (Received)		(31,837.00)
	Interest Paid		(452.06)
	Legal Fees	(119,925.09)	(1,327,879.98)
		(324,463.84)	(3,610,248.44)
	<b>Net Non-Trading Receipts and Payments</b>	(309,481.83)	(3,104,412.63)
	<b>Net Receipts (Payments)</b>	(106,374.37)	(166,681.83)

**Sarsha McKendrick**

---

**From:** Alex Nase <anase@tuckercowen.com.au>  
**Sent:** Monday, 19 April 2021 8:36 AM  
**To:** Stephen Russell; Millie Russell; Sophia Herd  
**Cc:** David Schwarz  
**Subject:** RE: BS 3508/15; LM INVESTMENT MANAGEMENT LIMITED & another -V- WHYTE & another  
**Attachments:** Letter to Russells Lawyers (TCS01969738).pdf; Dual Appointment Narrations (TCS01966094).pdf

Dear Colleagues,

Please see attached letter.

Regards

**Alex Nase**  
Special Counsel

E: [anase@tuckercowen.com.au](mailto:anase@tuckercowen.com.au)  
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Level 8, 300 George Street, Brisbane | GPO Box 245, Brisbane Qld 4001  
TCS Solicitors Pty Ltd | ACN 610 321 509

**We have moved**

You will now find us at our new location:  
Level 8, 300 George Street Brisbane Queensland 4000

**Tucker&CowenSolicitors.**

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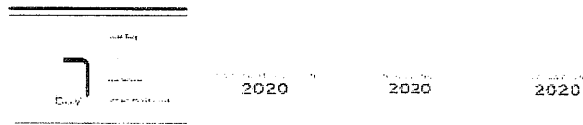
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Independent legal & accounting firms



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"MKR-03"

# Tucker & Cowen Solicitors.

TCS Solicitors Pty. Ltd. / ACN 610 321 509

Level 8, 300 George St. Brisbane. Qld. 4000 / GPO Box 345. Brisbane. Qld. 4001.  
Telephone. 07 300 300 00 / Facsimile. 07 300 300 33 / [www.tuckercowen.com.au](http://www.tuckercowen.com.au)

Our reference: Mr Schwarz / Mr Nase  
Your reference: SCR: MKR:20190205

19 April 2021

Principals.  
Richard Cowen.  
David Schwarz.  
Justin Marschke.

Consultant.  
David Tucker.

Special Counsel.  
Alex Nase.  
Ben Shaw.  
Rupert Copeman-Hill.

Senior Associates.  
Emily Anderson.

Associates.  
Paul Armit.

Russells Lawyers  
GPO Box 1402  
Brisbane Qld 4001

Email: [grussell@russellsllaw.com.au](mailto:grussell@russellsllaw.com.au)  
[mrussell@russellsllaw.com.au](mailto:mrussell@russellsllaw.com.au)

Dear Colleagues

**Re: LM Investment Management Limited (In Liquidation) (Receivers & Managers Appointed) ("LMIM");  
Park & Muller and LMIM as Responsible Entity of the LM First Mortgage Income Fund ("FMIF") v David Whyte  
Supreme Court of Queensland Proceeding No. 3508/2015**

1. We refer to your letter of 5 March 2021, responding to certain queries raised by our client in relation to your client's application for approval and payment of remuneration from the FMIF (and other funds) filed on 21 February 2021 ("the Application").
2. The Application seeks a total of \$260,633.12 (including GST) from the FMIF for the period 1 July 2018 to 31 October 2020, made up of Category 1 remuneration of \$182,661.60 including GST, and Category 2 remuneration of \$77,971.52 including GST.
3. You have previously asked that we let you know our client's position in relation to the Application; it was with that invitation in mind (so that our client might consider whether it would be appropriate to consent to, or at least not to oppose, your client's Application) that we wrote to you raising queries in our letters of 16 June 2020 and 22 July 2020. Those queries were entirely reasonable and relevant to your client's application; we do not think it could be suggested otherwise. To the extent to which your letter suggests that any of our prior correspondence was "an unnecessary cost to the FMIF", our client disagrees completely.
4. Thank you for confirming that that your client will reduce the amount of remuneration sought by \$375, with respect to the costs relating to Mr Peden QC's invoice, in accordance with your client's previous agreement not to claim such remuneration from the FMIF.
5. Now that we have received your client's substantive response to our client's queries (by your letter of 5 March 2021), our client has given further consideration to his position in relation to the Application.

## Preliminary matters

6. It is necessary for us to make a number of points, at the outset, in response to your letter.
7. *Firstly*, it is not accurate to say that there were "*no or only minor*" reductions made to the amount of remuneration sought, on your client's two previous remuneration applications.

8. A table summarising the amount sought by your clients to be paid from the FMIF, and the amount approved by the Court to be paid from the FMIF to your clients, as well as the amount of the reductions, on your client's previous remuneration applications<sup>1</sup>, is as follows:

Date of Application	Amount sought from FMIF (including GST)	Amount approved (including GST)	Amount of reduction (including GST)
16.12.2015	\$3,408,077.01	\$1,790,890.56	\$1,617,186.45
17.07.2018	\$743,889.89	\$393,043.89	\$348,692.87

9. As will be seen from the quantum of these reductions, our client considers that the positions taken by our client on those application, by opposing certain parts of those applications, was justified.
10. *Secondly*, the reasonableness and proportionality of the remuneration claimed by your client is a matter that must be assessed based on the evidence before the Court on each individual application.
11. The grounds upon which our client opposed your client's previous remunerations applications were different to the issues raised by our client, in relation to this Application. Accordingly, the judgments of Justice Jackson on your client's previous remunerations applications, do not assist your client to establish the reasonableness and proportionality of the remuneration claimed, for this application.
12. *Thirdly*, whilst our client acknowledges that your client's remuneration has reduced significantly, the reasonableness and proportionality of that amount must be assessed in light of the fact that almost all of the substantive functions in the winding up of the FMIF are being undertaken by our client.
13. We do not accept many of the other assertions in your letter; however, we do not propose to respond in detail to every assertion with which we (or our client) take issue.

#### Mr Whyte's Position in relation to the Application

14. Our client is not in a position to consent to the application, because he is uncertain as to whether or not the remuneration claimed is reasonable and proportionate - the affidavit in support of the application does not contain sufficient detail of the work that has been performed, why it was necessary and proper to perform the work or the benefits to FMIF members resulting from the performance of the work.
15. However, in light of the response provided in your letter of 5 March 2021 and having regard to the costs which would be incurred in appearing to oppose the application, our client has made a commercial decision in the interests of the members of the FMIF, not to appear.
16. It is appropriate, though, that we identify for your client's benefit, and for the benefit of the Court (as we ask that you put this letter before the Court), one remaining objection which our client wishes to press - your client may then consider whether it is appropriate to reduce or adjust the amount of remuneration claimed by the application, in light of this objection.

<sup>1</sup> *Park & Muller (Liquidators of LM Investment Management Ltd) v Whyte No 2* [2017] QSC 229 (the Liquidator's first remuneration application), and *LM Investment Management Limited & Anor v Whyte* [2019] QSC 245 (the Liquidator's second remuneration application).

17. The remaining objection is this - our client respectfully suggests that your client's remuneration in relation to the application filed by your client on 10 October 2018 in proceeding 3508/15 ("**Dual Appointment Application**"), is not properly payable from the FMIF.
18. While your client has not separately identified the amount of remuneration claimed which is referable to the Dual Appointment Application, our client calculates, based on the work in progress records exhibited to Ms Trenfield's Affidavit, that the remuneration relating to the Dual Appointment Application sought from the FMIF is \$17,021.21, including GST, summarised as follows:

Category of remuneration	Amount of remuneration for Dual Appointment Application (excluding GST)	Amount of remuneration for Dual Appointment Application sought from FMIF (excluding GST)	Amount of remuneration for Dual Appointment Application sought from FMIF (including GST)
Category 1 – FMIF	\$10,434.00	\$10,434.00	\$11,477.40
Category 2 - sought from FMIF, AIF & ASPF in equal shares	\$15,119.50	\$5,039.83	\$5,543.81
<b>TOTAL</b>	<b>\$25,553.50</b>	<b>\$15,473.83</b>	<b>\$17,021.21</b>

19. We now enclose a Schedule detailing the relevant amounts (excluding GST).
20. The Dual Appointment Application sought to reduce or limit the scope of our client's functions or powers in the winding up of the FMIF and was dismissed by Justice Jackson: *LM Investment Management Limited & Anor v Whyte* [2019] QSC 233.
21. The Dual Appointment Application came after your client had already unsuccessfully appealed to the Court of Appeal against the Orders of Justice Dalton on 21 August 2013 appointing our client<sup>2</sup> and was denied an indemnity from the FMIF for its costs of the appeal by Justice Jackson<sup>3</sup>.
22. In light of the findings made by Justice Jackson at paragraphs [9], [37], [39], [48], [54], [56] and [68] of His Honour's reasons for judgment with respect to the Dual Appointment Application<sup>4</sup>, our client respectfully suggests that such costs (that is, the amount of remuneration claimed by your client which is referable to that application, as well as your client's costs of the application, which were not awarded to your client) ought not be borne by FMIF members.
23. We note that your client did not seek an order from Justice Jackson that his legal costs of the Dual Appointment Application be paid from the FMIF, despite having the opportunity to do so.

<sup>2</sup> *LM Investment Management Limited (in liq) v Bruce & ors* [2014] QCA 136

<sup>3</sup> *Park & Muller (Liquidators of LM Investment Management Ltd) v Whyte No 3* [2017] QSC 230, at [86], [87]

<sup>4</sup> *LM Investment Management Limited & Anor v Whyte* [2019] QSC 233

Russells Lawyers  
Brisbane, Qld

- 4 -

19 April 2021

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24. Would you please let us know whether your client will reduce the amount claimed, to take out the costs relating to the Dual Appointment Application, as detailed above?
25. Finally, we note that, as a significant portion of your client's remuneration relates to his applications for remuneration or expenses from the FMIF, in light of our client's decision not to appear in response to this application, our client is hopeful that your client's remuneration will continue to reduce.
26. We ask that you bring this letter to His Honour's attention, on the hearing of the Application.
27. Would you please confirm that you (or your Counsel) will bring this letter to the attention of the Court, on the hearing of the application?
28. If you have any queries, please do not hesitate to contact us.

Yours faithfully



Alex Nase  
Tucker & Cowen

Direct Email: anase@tuckercowen.com.au  
Direct Line: (07) 3210 3503

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"MKR-03"

Narrations relating to the Dual appointment application		Hours	Amount (\$)
FMIF		16.8	10,434.00
General (Category 2)		24.6	15,119.50
TOTAL		41.4	25,553.50

# "MKR-03"

Name	Position	Date	Hours	Charge out rate	Charge Task Desc	Narrative	Activity	Page of KAT Affidavit
Kelly-Anne Trenfield	Senior Managing Director	10-Sep-18	0.4	625	250.00 Administration	Call in from AJTAT re meeting with T&C/Whyteemails in/out with Russells re options for resolution of dual appointment and meeting between the parties; discuss with JRP emails in/out with Russells re options for resolution of dual appointment and meeting between the parties; discuss with JRP	Receivership	130
Kelly-Anne Trenfield	Senior Managing Director	11-Sep-18	0.2	625	125.00 Administration	Review issues list and provide response re planned meeting with Whyte/T&C/Counsel/Russells	Receivership	130
Kelly-Anne Trenfield	Senior Managing Director	11-Sep-18	2.4	625	1,500.00 Administration	Meeting at Russells with Whyte, T&C & Counsel re options	Receivership	130
Kelly-Anne Trenfield	Senior Managing Director	18-Sep-18	4.9	625	3,062.50 Administration	Meeting with Russells/Counsel re interaction to expedite interaction with FMIF re Receiver; meeting with Whyte/T&C to explore options; update to JRP/RCL	Receivership	130
Kelly-Anne Trenfield	Senior Managing Director	27-Sep-18	2.8	625	1,750.00 Administration	Teleconference with Russells and Counsel re response via submissions to Tucker & Cowen correspondence; discussions re applications for directions; review letter in and strategy for strategy regarding finalisation of liquidation; review J-peden submissions and review calculations and time entries to provide additional information; draft response	Receivership	131
Kelly-Anne Trenfield	Senior Managing Director	2-Oct-18	2.1	625	1,312.50 Administration	Review and reconcile amounts in Whyte submissions; email from and response to JW(Russells) re queries from J Peden; review Russells letter to T&C re directions application to see conclusion of liquidation; update to JRP re court appearance; confirm logistics for court appearance; emails to/from Russells re correspondence to T&C call with Ashley Tiplady re format of letter to T&C	Receivership	131
Kelly-Anne Trenfield	Senior Managing Director	3-Oct-18	0.2	625	125.00 Administration	Review marked-up letter to T&C re finalisation of FMIF	Legal	131
Kelly-Anne Trenfield	Senior Managing Director	5-Oct-18	0.1	625	62.50 Administration	Review correspondence in and update to do list re direction on conclusion	Administration	132
Kelly-Anne Trenfield	Senior Managing Director	10-Oct-18	0.7	625	437.50 Administration	Teleconference with John Peden and Julian Whyte re directions application re resolution re FMIF	Receivership	132
Kelly-Anne Trenfield	Senior Managing Director	10-Oct-18	0.6	625	375.00 Administration	Review of directions application re final conclusion to the Funds/FMIF; raise concerns over claiming greater than expended	Legal	132
Kelly-Anne Trenfield	Senior Managing Director	22-Oct-18	0.2	625	125.00 Administration	Emails in re progress of directions application - Kat affidavit outline. JRP	Legal	133
Kelly-Anne Trenfield	Senior Managing Director	3-Dec-18	0.2	625	125.00 Investigations	Email in from Russells containing emails/letters with T&C & McGrath Nicol re directions re resolution/review affidavit of David Whyte	Receivership	135
Renee Lobb	Senior Director	3-Dec-18	1.2	570	684.00 Investigations	Reviewing emails with correspondence and updates on First Mortgage Income Fund indemnity application, general liquidation issues including controllership fees, PTAL etc, directions hearing. Review and save David Whyte's affidavit regarding 19/11/18 directions hearing. Remuneration application. Action plans across all Russells open files.	Receivership	135
Kelly-Anne Trenfield	Senior Managing Director	27-Feb-19	0.8	625	500.00 Investigations	Meeting with Ashley Tiplady re legal issues - pods, costs, conclusion, indemnity claims and outstanding legal costs	Legal	142
TOTAL			16.8		10,434.00			

Name	Position	Date	Hours	Charge out rate	Charge	Task Desc	Narrative	Category	Activity	Page of (KAT Affidavit)
Renee Lobb	Senior Director	19-Sep-18	0.9	570	513.00	Administration	Discussion with Kelly-Anne Trenfield regarding expenses application; overview of yesterday's meeting with David Whyte and his counsel regarding remuneration application and how to resolve matters in a more commercial manner to ensure timely wind up and cessation of our involvement	Category 2	Remuneration	81
Kelly-Anne Trenfield	Senior Managing Director	4-Oct-18	0.2	625	125.00	Investigations	Review orders re directions application re winding up resolution; review affidavits and orders re directions applications	Category 2	Legals	83
Renee Lobb	Senior Director	4-Oct-18	0.2	570	114.00	Investigations	Reviewing draft orders for directions hearing	Category 2	Legals	83
Kelly-Anne Trenfield	Senior Managing Director	9-Oct-18	0.3	625	187.50	Investigations	Emails in application for directions and legal review; AJT re legal costs	Category 2	Legals	84
Renee Lobb	Senior Director	11-Oct-18	0.2	570	114.00	Investigations	Review and save to file application for directions	Category 2	Legals	84
Kelly-Anne Trenfield	Senior Managing Director	12-Nov-18	0.7	625	437.50	Investigations	Review version 13 of JPP's affidavit re application for directions; review emails in re status of affidavits	Category 2	Legals	88
Kelly-Anne Trenfield	Senior Managing Director	13-Nov-18	0.1	625	62.50	Investigations	RCL update re application re finalisation/directions	Category 2	Legals	88
Kelly-Anne Trenfield	Senior Managing Director	16-Nov-18	0.5	625	312.50	Investigations	Email in from resells re outstanding costs and action plan re BTR application email in from asci via resells; review email and resells commentary/review action plan re directions for finalisation; request TK arrange signing email in from resells re outstanding costs and action plan re WPF residual indemnity/review resells responses to two letters from T&C on 15 November 2018	Category 2	Legals	88
Kelly-Anne Trenfield	Senior Managing Director	19-Nov-18	1.4	625	875.00	Investigations	Attend supreme court re directions for application to finalise Estate; provide update to JRP at conclusion/discuss next steps with JW	Category 2	Legals	89
Kelly-Anne Trenfield	Senior Managing Director	21-Nov-18	1	625	625.00	Investigations	Teleconference with Peden/Russells (JW) re application for directions	Category 2	Legals	89
Kelly-Anne Trenfield	Senior Managing Director	22-Nov-18	0.9	625	562.50	Investigations	Prepare draft budgets for affidavits re application for directions	Category 2	Legals	89
Kelly-Anne Trenfield	Senior Managing Director	26-Nov-18	0.2	625	125.00	Investigations	Email/phone message from and response to JW; call in from Julian Walsh re 10 December hearing re directions	Category 2	Legals	89
Kelly-Anne Trenfield	Senior Managing Director	26-Nov-18	0.8	625	500.00	Investigations	Review draft affidavit re budget for 10 Dec application; send update budget and amended draft affidavit to resells; email in and instructions to ND re affidavit	Category 2	Legals	89
Kelly-Anne Trenfield	Senior Managing Director	27-Nov-18	1.1	625	687.50	Investigations	Review and amend affidavit re 10 Dec directions hearing/amend exhibits; discuss with JW(Russells)	Category 2	Legals	89
Kelly-Anne Trenfield	Senior Managing Director	27-Nov-18	3.8	625	2,375.00	Investigations	Meeting with Counsel re affidavit for hearing on 10 Dec	Category 2	Legals	89
Kelly-Anne Trenfield	Senior Managing Director	27-Nov-18	0.5	625	312.50	Investigations	Review updated affidavit re directions for conclusion/budget	Category 2	Legals	89
Kelly-Anne Trenfield	Senior Managing Director	27-Nov-18	0.2	625	125.00	Investigations	Email in and forward advice to resells re David Whyte affidavit emails in/out re budget affidavit	Category 2	Legals	89
Kelly-Anne Trenfield	Senior Managing Director	28-Nov-18	0.2	625	125.00	Investigations	Review and swear affidavit re directions for conclusion of LM estate	Category 2	Legals	89
Kelly-Anne Trenfield	Senior Managing Director	28-Nov-18	0.8	625	500.00	Investigations	Email in/out to Russells re finalise affidavit; review amended affidavit and swear; review status of orders and other docs re requires	Category 2	Legals	89
Kelly-Anne Trenfield	Senior Managing Director	4-Dec-18	0.1	625	62.50	Investigations	Call with Russel (AJT/JW) re preparation for directions hearing	Category 2	Legals	90
Kelly-Anne Trenfield	Senior Managing Director	7-Dec-18	0.8	625	500.00	Investigations	JRP update re hearing 10/12/18; emails to Russells (JW) re HWL/GT actions for Monday's hearing and feeder fund settlement email from/to resells re correspondence with HWL and response to T&C queries re GT joinder application; review drafted response to T&C re pod process and amend; Review incoming documentation, consider and send to filing; call in from Julian Walsh re preparation for direction hearing 10 Dec; emails in re affidavit and correspondence updates	Category 2	Legals	90
Renee Lobb	Senior Director	10-Dec-18	2.9	570	1,653.00	Investigations	Attendance at court hearing for directions on the orderly wind up of the funds and LM Investment Management Ltd.	Category 2	Legals	90
Kelly-Anne Trenfield	Senior Managing Director	10-Dec-18	5.2	625	3,250.00	Investigations	Attend Supreme Court re directions for conclusion of LM estate including pre-hearing conference and post hearing debriefing	Category 2	Legals	91
Renee Lobb	Senior Director	11-Dec-18	0.6	570	342.00	Investigations	Catch up with Kelly-Anne Trenfield regarding remainder of directions hearing outcomes yesterday and next steps. Review Deed of settlement correspondence and save also	Category 2	Legals	91
Kelly-Anne Trenfield	Senior Managing Director	11-Dec-18	0.1	625	62.50	Investigations	RCL Update re directions re conclusion	Category 2	Legals	92
Renee Lobb	Senior Director	16-Jan-19	0.1	570	57.00	Investigations	Review update on directions hearing. Review update also on feeder fund settlement proposal being on hold.	Category 2	Legals	107
Renee Lobb	Senior Director	11-Oct-19	0.6	625	375.00	Investigations	Reviewing orders and email with detail from resells on directions hearing, distribution to feeder funds hearing, audit proceedings joinder, and remuneration application. Save all documents. Send correspondence to David Whyte.	Category 2	Remuneration	107
Kelly-Anne Trenfield	Senior Managing Director	15-Oct-19	0.2	695	139.00	Administration	Review costs argument submissions re remuneration hearing, directions re conclusion and interim distribution	Category 2	Remuneration	107
TOTAL					15,119.50					

**Sarsha McKendrick**

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**From:** Sarsha McKendrick on behalf of Millie Russell  
**Sent:** Monday, 24 May 2021 4:25 PM  
**To:** Alex Nase; David Schwarz  
**Cc:** Sophia Herd  
**Subject:** LM Investment Management Limited & Anor v Whyte & Anor Supreme Court of Queensland Proceeding No. 3508/2015 - Matter: 20190205  
**Attachments:** 2858448 Letter to Tucker & Cowen dated 24.05.2021.pdf; Dual Appointment Narrations (Russells mark up).pdf

Dear Colleagues

Please see the attached correspondence.

Yours faithfully

**Millie Russell**  
Partner

**RUSSELLS**  
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100 Market Street, Suite 1000, Brisbane, QLD 4000  
D: 07 3221 1111 M: 07 3221 1111 E: [MRussell@RussellsLaw.com.au](mailto:MRussell@RussellsLaw.com.au)



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## RUSSELLS

24 May 2021

Our Ref: SCR:MKR:20190205

Tucker & Cowen  
Level 15, 15 Adelaide Street  
BRISBANE QLD 4001

By Email: [dschwarz@tuckercowen.com.au](mailto:dschwarz@tuckercowen.com.au)  
[anase@tuckercowen.com.au](mailto:anase@tuckercowen.com.au)

Dear Colleagues

**LM Investment Management Limited & Anor v Whyte & Anor**  
**Supreme Court of Queensland Proceeding No. 3508/2015**

We refer to your letter dated 19 April 2021 and Mr Nase's email dated 19 May 2021.

In respect of your letter dated 19 April 2021, it seems to us there are two matters to address:-

1. your request that we (or our client's counsel) bring your letter of 19 April 2021 to the attention of the Court at the hearing of the application next week; and
2. whether our client agrees to reduce his claim for remuneration in respect of work done for what your client calls the "Dual Appointment Application".

*Your letter dated 19 April 2021*

We confirm that our client will put your letter before the Court at the application. We propose to exhibit the letter (and this correspondence) to an affidavit of the writer so that it forms part of the Court's record.

*Remuneration in respect of the "Dual Appointment Application"*

We and our client have considered your client's request that he reduce his remuneration claimed for work done in respect of the "Dual Appointment Application".

As your client is aware, our client brought the "Dual Appointment Application" in an attempt to streamline and facilitate the expedited finalisation of the winding up of the FMIF (and other LM funds).

It is right to say that his Honour Justice Jackson ordered that our client's costs of that application ought not be borne by the FMIF – to be clear, that order related to our client's *inter partes* legal costs.

There has not been any suggestion that our client acted improperly or did not act in a genuine attempt to further the interests of the members of the funds, including members of the FMIF, in bringing the application.

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In the circumstances, there is no reason why our client should not recover his remuneration for work done as liquidator in respect of the "Dual Appointment Application". Our client does not see any basis on which he would agree to reduce the amount of his claimed remuneration for such work.

*Schedule to your letter dated 19 April 2021*

If, despite the matters set out above, our client is required to reduce his remuneration for work done in respect of the "Dual Appointment Application", we advise that our client does not agree that the amount set out in the schedule attached to your letter dated 19 April 2021 are related to (or solely related to) that application.

Much of the work set out in your schedule is not related to the application and is remuneration properly recoverable from the FMIF or other funds.

Attached, for convenience, is a marked-up version of your schedule with the costs our client says are appropriately related to the "Dual Appointment Application". As you will see, if (which is denied) our client is not entitled to recover his remuneration in respect of the "Dual Appointment Application", the appropriate amount to reduce the claim by is \$15,571.50.

We will include this letter in the writer's affidavit.

Yours faithfully



**Millie Russell**

*Partner*

Direct 07 3004 8832  
Mobile 0409 153 692  
[MRussell@RussellsLaw.com.au](mailto:MRussell@RussellsLaw.com.au)  
20190205/2858448

"MKR-03"

Amended Schedule (Russells)  
at 24.05.2021

Narrations relating to the Dual appointment application			Hours	Amount (\$)
FMIF			16.8	40,434.00
General (Category 2)			24.6	15,119.50
TOTAL			41.4	25,553.50

\$2,551.50

\$13,020

\$15,571.50

Name	Position	Date	Hours	Charge out rate	Charge Task Desc	Narrative	Activity	Page of KAT Affidavit
Kelly Anne Trenfield	Senior Managing Director	10-Sep-18	0.4	625	250.00 Administration	Call in from AJTAT re meeting with T&C/Whyte emails in/out with Russells re options for resolution of dual appointment and meeting between the parties; discuss with JRP emails in/out with Russells re options for resolution of dual appointment and meeting between the parties; discuss with JRP	Receivership	130
Kelly Anne Trenfield	Senior Managing Director	11-Sep-18	0.2	625	125.00 Administration	Review issues list and provide response re planned meeting with Whyte/T&C/Counsel/Russells	Receivership	130
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Kelly Anne Trenfield	Senior Managing Director	22-Oct-18	0.2	625	125.00 Administration	Emails in re progress of directions application - Kat affidavit outline. JRP affidavit outline; correspondence in from T&C	Legal	133
Kelly Anne Trenfield	Senior Managing Director	3-Dec-18	0.2	625	125.00 Investigations	Email in from Russells containing emails/letters with T&C & McGrath Nicol re directions re resolution/review affidavit of David Whyte	Receivership	135
Renee Lobb	Senior Director	3-Dec-18	1.2	570	684.00 Investigations	Reviewing emails with correspondence and updates on First Mortgage Income Fund indemnity application; general liquidation issues including controllership fees, PTAL etc. directions hearing. Review and save David Whyte's affidavit regarding 19/11/18 directions hearing, Remuneration application. Action plans across all Russells open files.	Receivership	135
Kelly Anne Trenfield	Senior Managing Director	27-Feb-19	0.8	625	500.00 Investigations	Meeting with Ashley Tiplady re legal issues - pods, costs, conclusion, indemnity claims and outstanding legal costs	Legal	142
TOTAL			16.8		10,434.00			

\$2,551.50

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Name	Position	Date	Hours	Charge out rate	Charge	Task Desc	Narrative	Category	Activity	Page of KAT Affidavit
Renee Lobb	Senior Director	19-Sep-18	0.9	570	513.00	Administration	Discussion with Kelly-Anne Trenfield regarding expenses application, overview of yesterday's meeting with David Whyte and his counsel regarding remuneration application and how to resolve matters in a more commercial manner to ensure timely wind up and cessation of our involvement	Category 2	Remuneration	81
Kelly-Anne Trenfield	Senior Managing Director	4-Oct-18	0.2	625	125.00	Investigations	Review orders re directions application re winding up resolution; review affidavits and orders re directions applications	Category 2	Legals	83
Renee Lobb	Senior Director	4-Oct-18	0.2	570	114.00	Investigations	Reviewing draft orders for directions hearing	Category 2	Legals	83
Kelly-Anne Trenfield	Senior Managing Director	9-Oct-18	0.3	625	187.50	Investigations	Emails in application for directions and legal review; AJT re legal costs	Category 2	Legals	84
Renee Lobb	Senior Director	11-Oct-18	0.2	570	114.00	Investigations	Review and save to file application for directions	Category 2	Legals	84
Kelly-Anne Trenfield	Senior Managing Director	12-Nov-18	0.7	625	437.50	Investigations	Review version 13 of JRP's affidavit re application for directions; review emails in re status of affidavits	Category 2	Legals	88
Kelly-Anne Trenfield	Senior Managing Director	13-Nov-18	0.1	625	62.50	Investigations	RCL update re application re finalisation/directions	Category 2	Legals	88
Kelly-Anne Trenfield	Senior Managing Director	16-Nov-18	0.5	625	312.50	Investigations	Email in from resells re outstanding costs and action plan re B&R application email in from asci via resells; review email and resells commentary review action plan re directions for finalisation; request TK arrange signing email in from resells re outstanding costs and action plan re MPF residual indemnity review resells responses to two letters from T&C on 15 November 2018	Category 2	Legals	88
Kelly-Anne Trenfield	Senior Managing Director	19-Nov-18	1.4	625	875.00	Investigations	Attend supreme court re directions for application to finalise Estate; provide update to JRP at conclusion/discuss next steps with JW	Category 2	Legals	89
Kelly-Anne Trenfield	Senior Managing Director	21-Nov-18	1	625	625.00	Investigations	Teleconference with Peden/Russells (JW) re application for directions	Category 2	Legals	89
Kelly-Anne Trenfield	Senior Managing Director	22-Nov-18	0.9	625	562.50	Investigations	Prepare draft budgets for affidavits re application for directions	Category 2	Legals	89
Kelly-Anne Trenfield	Senior Managing Director	26-Nov-18	0.2	625	125.00	Investigations	Email/phone message from and response to JW; call in from Julian Walsh re 10 December hearing re directions	Category 2	Legals	89
Kelly-Anne Trenfield	Senior Managing Director	26-Nov-18	0.8	625	500.00	Investigations	Review draft affidavit re budget for 10 Dec application; send update budget and amended draft affidavit to resells; email in and instructions to ND re affidavit	Category 2	Legals	89
Kelly-Anne Trenfield	Senior Managing Director	27-Nov-18	1.1	625	687.50	Investigations	Review and amend affidavit re 10 Dec directions hearing/amend exhibits; discuss with JW/Russells	Category 2	Legals	89
Kelly-Anne Trenfield	Senior Managing Director	27-Nov-18	3.8	625	2,375.00	Investigations	Meeting with Counsel re affidavit for hearing on 10 Dec	Category 2	Legals	89
Kelly-Anne Trenfield	Senior Managing Director	27-Nov-18	0.5	625	312.50	Investigations	Review updated affidavit re directions for conclusion/budget	Category 2	Legals	89
Kelly-Anne Trenfield	Senior Managing Director	27-Nov-18	0.2	625	125.00	Investigations	Email in and forward advice to resells re David Whyte affidavit emails in/out re budget affidavit	Category 2	Legals	89
Kelly-Anne Trenfield	Senior Managing Director	28-Nov-18	0.2	625	125.00	Investigations	Review and swear affidavit re directions for conclusion of LM estate	Category 2	Legals	89
Kelly-Anne Trenfield	Senior Managing Director	28-Nov-18	0.8	625	500.00	Investigations	Email in/out to Russells re finalise affidavit; review amended affidavit and swear; review status of orders and other docs re requires	Category 2	Legals	89
Kelly-Anne Trenfield	Senior Managing Director	4-Dec-18	0.1	625	62.50	Investigations	Call with Russel (AJT/JW) re preparation for directions hearing	Category 2	Legals	90
Kelly-Anne Trenfield	Senior Managing Director	7-Dec-18	0.8	625	500.00	Investigations	JRP update re hearing 10/12/18; emails to Russells (JW) re HML/GT actions for Monday's hearing and feeder fund settlement email from/to resells re correspondence with HML and response to T&C queries re GT joinder application; review drafted response to T&C re pad process and amend; Review incoming documentation, consider and send to filing; call in from Julian Walsh re preparation for direction hearing 10 Dec emails in re affidavit and correspondence updates	Category 2	Legals	90
Renee Lobb	Senior Director	10-Dec-18	2.9	570	1,653.00	Investigations	Attendance at court hearing for directions on the orderly wind up of the funds and LM Investment Management Ltd.	Category 2	Legals	90
Kelly-Anne Trenfield	Senior Managing Director	10-Dec-18	5.2	625	3,250.00	Investigations	Attend Supreme Court re directions for conclusion of LM estate including pre-hearing conference and post hearing debriefing	Category 2	Legals	91
Renee Lobb	Senior Director	11-Dec-18	0.6	570	342.00	Investigations	Catch up with Kelly-Anne Trenfield regarding remainder of directions hearing outcomes yesterday and next steps. Review Deed of settlement correspondence and save also	Category 2	Legals	91
Kelly-Anne Trenfield	Senior Managing Director	11-Dec-18	0.1	625	62.50	Investigations	RCL Update re directions re conclusion	Category 2	Legals	92
Renee Lobb	Senior Director	16-Jan-19	0.1	570	57.00	Investigations	Review update on directions hearing. Review update also on feeder fund settlement proposal being on hold.	Category 2	Legals	107
Renee Lobb	Senior Director	11-Oct-19	0.6	625	375.00	Investigations	Reviewing orders and email with detail from resells on directions hearing, distribution to feeder funds hearing, audit proceedings joinder, and remuneration application. Save all documents. Send correspondence to David Whyte.	Category 2	Legals	107
Kelly-Anne Trenfield	Senior Managing Director	15-Oct-19	0.2	695	139.00	Administration	Review costs argument submissions re remuneration hearing, directions re conclusion and interim distribution	Category 2	Remuneration	
TOTAL			24.6		15,419.50					

\$13,020

21.1