

SUPREME COURT OF QUEENSLAND

**Registry: Brisbane
Number: BS3383/2013**

Applicant: RAYMOND EDWARD BRUCE AND VICKI PATRICIA BRUCE

AND

First Respondent: LM INVESTMENT MANAGEMENT LIMITED (ADMINISTRATORS APPOINTED), 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

AFFIDAVIT


DERRICK CRAIG VICKERS of 123 Eagle Street, Brisbane, in the State of Queensland, Liquidator, states on oath:

1. Exhibited hereto and marked "DCV-1" are copies of the following documents:
 - (a) Curriculum vitae of Derrick Vickers;
 - (b) Curriculum vitae of Darryl Kirk;
 - (c) Curriculum vitae of Gregory Hall; and
 - (d) a list of countries in which PricewaterhouseCoopers has at least one office.



Deponent:

Page 1



Witness: SOLICITOR

AFFIDAVIT
Filed on behalf of the Australian Securities
and Investments Commission
Form 46, Version 1
Uniform Civil Procedure Rules 1999
Rule 431

Australian Securities and Investments
Commission
Level 20, 240 Queen Street
BRISBANE, QLD, 4000
Phone No: (07) 3867 4700
Fax No: (07) 3867 4790
Ref: 13-40003

2. All the facts and circumstances deposed to in this affidavit are within my own knowledge save and except those deposed to from information only and my means of knowledge and sources of information appear on the face of this my affidavit.

SWORN by DERRICK CRAIG VICKERS

on 07 June 2013

at Brisbane

in the presence of:



Derrick Craig Vickers



Witness

SOLICITOR

SUPREME COURT OF QUEENSLAND

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CERTIFICATE OF EXHIBIT

Exhibit "DCV-1" to the affidavit of **DERRICK CRAIG VICKERS** sworn ⁰⁷ June 2013:



Deponent



Witness SOLICITOR

Corporate Advisory & Restructuring

pwc

Derrick Vickers

Partner – Advisory, Brisbane

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E: derrick.vickers@au.pwc.com



Role/Specialty

Derrick works with financial institutions and underperforming corporates to help them manage insolvency issues, implement turnaround and restructuring strategies and assess credit risks from loan inception through to secondary exits (if required).

Derrick is a registered and official liquidator in all States and Territories of Australia and is appointed to failed corporates as voluntary administrator, liquidator or receiver and manager as appropriate.

Professional experience

Derrick has lead PwC's Corporate Advisory and Restructuring (CAR) Team in Western Australia since 2006 and has now relocated to Brisbane to also lead the Queensland CAR Team.

As well as being the CAR leader for both Queensland and Western Australia, Derrick is also the National Deals Agribusiness leader for PwC. In this role he co-ordinates 40 partners and staff across M&A, Transaction Services, CAR and Valuations as they provide services to businesses within the Agribusiness sector.

Derrick was formerly on the National Board and WA State Council of the Insolvency Practitioners' Association of Australia (IPA). He has contributed to and assisted in developing the code of professional conduct for insolvency practitioners as well as making submissions to government and regulatory bodies on various aspects of insolvency practice. He is also active in the education of the profession being on the education sub-committee of the IPA.

Derrick has 18 years experience in providing insolvency services and assisting businesses in distress. His clients include financial institutions, government departments, regulators and underperforming corporates to assist them with managing insolvency issues, implement turnaround and restructuring strategies and assess credit risks from loan inception through to secondary exits. He has been engaged in a large cross section of businesses from small individual businesses to multifaceted ASX listed entities in both formal insolvencies and corporate restructurings.

Areas of expertise

- Business recovery and insolvency
- Credit assessment and business reconstruction analysis
- Credit risk management
- Loan reviews and pre-lending reviews

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- Corporate reconstruction and business regeneration
 - Turnaround management
 - Corporate simplification advice and exit optimisation
 - Distressed managed investment schemes advice.
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Qualifications and memberships

- Bachelor of Business (Accounting/Business Law) – Queensland University of Technology
 - Institute of Chartered Accountants Australia
 - Insolvency Practitioners Association of Australia – formerly a board member
 - Registered Company Liquidator
 - Official Liquidator.
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Publications and presentations

- Distressed Companies – the warning signs, delivered to Griffith University MBA students 2002 – 2003
 - Challenging Times for Business presentation to NEDs 2009
 - Mining Sector Insolvent Trading considerations 2009.
-

Engagement experience

Agriculture

- Elderstone Pty Ltd
 - Liquidation of an Abattoir.
 - Lobster Harvest Ltd
 - Liquidator of an Aquaculture start-up company.
 - Austfish Group
 - Business review, monitoring and subsequent receivership of a prawn fishing fleet on behalf of an Australian Bank.
 - Global Seafood Ltd
 - Business review, monitoring and subsequent receivership of an ASX listed seafood processing operation and international seafood wholesaler.
 - United Farmers Co-op
 - Turnaround of WA 3rd largest fertiliser business and sale to a New Zealand co-op.
 - Fishing fleet
 - Business review on behalf of Australian Bank.
-

Finance

ASX listed debt collector

Business review.

Health

Queensland Teachers Union Health Fund

Financial turnaround and change management of a Health Insurance corporate. Prior to appointment losses were in the order of \$2 million pa, after 12 months of being engaged profits of \$750,000 pa were achieved.

Hospital

Business review of a major hospital in WA for an Australian Bank.

Hospitality

Westralia Ltd

Business review and receivership of the Busselton Broadwater Resort MIS.

Resort in Margaret River

Business review on behalf of an Australian Bank.

Clayton Enterprises Pty Ltd

Business reviews and receiverships of 3 Hotels.

Ochea Pty Ltd

Business review and receivership of a major regional Caravan Park and Resort.

Manufacturing and Industrial Products

Pinetec Ltd

Business review, monitoring and receivership of WA largest pallet manufacturer (with sawmill).

QFS Pty Ltd

Voluntary administration of a labour hire company.

ASX listed labour hire company

Business review and appointed agent on behalf of an Australian bank.

Mining and Services to Mining

Mining Services Company

Business review on behalf of an Australian Bank.

ASX Listed Mining Company

Business review of Iron Ore Mine.

Bulong Nickel Ltd & Bulong Operations Pty Ltd

Liquidation of a Nickel mine in WA.

Property and Construction

Juniper Group of Companies - Soul Complex

Receivership of a number of the Juniper Group of companies that built and manage the Soul residential tower and retail complex based on the Gold Coast.

Westpoint Mezzanine Companies

Liquidation.

ASX listed Construction company

Business review on behalf of an Australian Bank.

Large plant hire company

Business review on behalf of an Australian Bank.

Property Developer

Business review to assist the client in negotiations with its bankers on facility limits and terms.

Westralia Ltd

Busselton Broadwater Resort Managed Investment Scheme – business review and receivership.

Retail

Retravisio Northern Ltd and Retravisio Western Ltd

Derrick was engaged by both companies following the collapse of Retravisio Southern Ltd into Voluntary Administration. The engagement was to restructure and turnaround the companies.

Both companies had in excess of \$20m in bank borrowings and more than \$10m each in other creditors.

The stakeholders were:

- 200+ Retravisio franchisee stores
- Every major electrical supplier in Australia (Fisher & Paykel, Electrolux, Sharp etc)
- Several large insurance companies - debtor insurance of the suppliers
- The banks

PwC assisted in planning the negotiation for limited supply of stock to allow for trading on a limited capacity, discussions with banks to maintain funding for working capital and mapping out the restructuring strategy.

The outcome was the merger of RVN and RVW with a competitor electrical retailer which saved 170+ stores, paying out both banks in full as well as all other creditors.

Wine

WA winery

Turnaround including operational assistance.

WA winery

Restructuring advice.

Corporate Advisory & Restructuring



Darryl Kirk

Managing Director - Advisory, Brisbane

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Role/Specialty

Darryl specialises in managed solutions for impaired and distressed assets principally for major banks including insolvency and turnaround solutions.

Darryl is a Registered and Official Liquidator and is appointed to failed corporate as voluntary administrator, liquidator or receiver and manager as appropriate.

Darryl is also a current member of the Turnaround Management Association and current Queensland committee member.

Professional experience

Darryl's career has spanned 26 years, with 14 years in Chartered Practice, principally in the fields of Corporate Restructuring, Financial Risk Management and Insolvency. Darryl has also spent 12 years in Banking and Finance where for six of those years between 2000 – 2006 the focus was on Credit Risk Management and Impaired Asset Management for a major Australian Banking Institution.

Darryl's experience between 1998 and 2000 in the UK was principally conducting Independent Business Reviews for the major UK Banking Institutions

Recent financial industry experience gave exposure to a wide range of industries including domestic and commercial building and construction, managed funds, property and land development, pharmaceutical industry, retail organisations, civil construction, real estate, manufacturing, hotels and tourism.

Areas of expertise

- Insolvency administration
- Impaired asset management
- Credit risk assessment and management
- Corporate reconstruction
- Turnaround management strategy and solutions

Qualifications and memberships

- Registered and Official Liquidator
- Associate of The Institute of Chartered Accountants
- Associate Insolvency Practitioners Association of Australia
- Qld Committee member of The Turnaround Management Association
- Graduate diploma in Advanced Accounting – Queensland University of Technology
- Bachelor of Business (Accounting) – Queensland University of Technology

**Engagement
experience**

Hotels/Hospitality

Pointon Group of Companies

Receivership of the Grand Hotel in Gladstone and Australian and Metropole Hotels in Townsville. Assets sold also included the shareholding in the public listed Oaks Hotels Group of entities.

Clayton Enterprises Pty Ltd

Receivership of the Bayswater Hotel, Hervey Bay and the Post Office and Criterion Hotels in Maryborough.

Icon Hotels & Resorts

Receivership of a resort in Hamilton Island.

Manufacturing

Fagaleo Pty Ltd

Voluntary administration and liquidation of furniture manufacturing business in Brisbane.

Property

West Wales Pty Ltd (Receivers and Managers Appointed)

Realisation of residential and commercial properties on the Gold Coast.

Residential Investments (No. 1) Pty Ltd (Receivers and Managers Appointed)

Realisation of portfolio of development residential properties on the Gold Coast.

McGrath Corporation Pty Ltd (Receivers and Managers Appointed)

Receivership of high end Kangaroo Point units.

Setlow Group

Realisation of a number of industrial englobo sites.

Boon Eaton Projects Pty Ltd (Receivers and Managers Appointed)

Current receivership of residential unit block in Townsville.

Retail

Gold Tip News Pty Ltd

Voluntary administration and Deed of Company Arrangement for Queensland largest Gold Lotto Newsagency.

Tourism

H2O Sportz Pty Ltd

Current voluntary administration of dive boat charter and property investment business based on Hamilton Island.

Airlie Cove Resort and Van Park

Current receivership of Big 4 resort at Airlie Beach Queensland.

Corporate Advisory & Restructuring



Greg Hall

Partner – Advisory, Sydney

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Role/Speciality

National Practice Leader of the PwC Corporate Advisory and Restructuring group in Australia.

Advisor to financial institutions and corporations dealing with underperforming businesses or insolvency. Accepting appointments as liquidator, receiver and voluntary administrator when appropriate.

Professional experience

Greg has been engaged in turnaround and insolvency work since 1982. Prior to that time he was involved in audit, taxation and the computer industry.

Experience has involved a wide variety of appointments including advisory, workout and turnaround assignments across a wide range of industries

Areas of expertise

In-depth asset and debt recovery knowledge and understanding of lender requirements/objectives.

Project management skills required to manage cross border assignments.

Experience in identification and assessment of key issues, risks and implementation of mitigation measures.

Building relationships with key stakeholders and making commercial decisions.

Qualifications and memberships

Bachelor of Economics

Fellow of the Institute of Chartered Accountants in Australia

Official Liquidator

Director of the Insolvency Practitioners Association of Australia 2001 – 2006.

**Engagement
experience**

Aboriginal Associations	<p>Joint liquidator and deed administrator of Arrernte Council in Alice Springs, appointed by the Australian Government Department of Employment and Workplace Relations.</p> <p>Liquidator of the Aboriginal Legal Services Limited.</p> <p>Liquidator of NSW Women’s Aboriginal Corporation.</p> <p>Receiver and Manager of Kestral Properties Pty Ltd that involved a substantial property with a mortgage to an Aboriginal entity.</p>
Aged Care	<p>Receiver and manager of 3 retirement villages each sold as a going concern. One required a creative solution that required rezoning and subdivision of a large parcel of land to improve realisation.</p>
Agriculture	<p>Independent Business Reviews (“IBRs”) and advisory work for businesses in the wine industry.</p> <p>Receiver of a farm. Liquidator of a farm.</p> <p>Receiver & manager of a wine producer including 2 premium vineyards in the Barossa Valley and McLaren Vale. The receivership involved the sale of fruit from the vineyards, the bottling of premium wine for confirmed orders plus the engagement of a specialist wine consultant to manage and develop strategies for the business/assets.</p>
Communications and Technology	<p>Including acting as receiver of One.Tel Networks Group, acting as administrator then liquidator of New Tel Limited. Acting as administrator and then liquidator of Digicall Group Limited and First Direct Holdings Limited. Liquidator of Newtel Limited.</p>
Computer Industry	<p>Appointment as receiver of Genasys II Pty Limited, turnover of c\$30m.</p> <p>Appointed as administrator of Future Technologies Pty Limited, turnover c\$24m.</p> <p>Acted as receiver and manager or administrator of companies known as Intelligence, Telecomputing and Distribution Technologies. Also conducted an IBR of Hisoft for second mortgagee just prior to it being placed into receivership.</p> <p>Conducted several other IBRs for technology businesses.</p>
Finance and Banking	<p>Voluntary administrator and subsequently liquidator of Australia Capital Reserve Limited (“ACR”) the fund raising arm of a property development group. ACR provided loans with gearing of up to 85% of property values (relying on generally ‘as if complete’ valuations) and involved a \$520m portfolio of residential property in various stages of completion, that included CBD high rise developments. All property was sold in one line, involving tax effective structures and the use of Deed of Company Arrangements.</p> <p>Receiver and manager of Donovan Oates Hannaford Mortgage Corporation Limited, a \$210m debenture fund with a \$150m portfolio of c330 residential and industrial property assets, some under construction, mainly situated in Sydney and surrounding areas.</p> <p>Receiver and manager of Cymbis Finance Australia Limited, a Brisbane based property finance company with a loan book of property developers of c\$70m funded by 2,200 debenture holders.</p> <p>Receiver and manager of Elderslie Finance Corporation limited, a debenture issuer with 4000 investors. Elderslie’s business activities included a finance business, venture capital investments and a variety of property assets.</p>

	<p>Receiver and manager of Diverseport Fixed Income Limited, with around 800 debenture holders providing around \$110m in funds. The fund invested in a wide range of fixed income securities from various cash options and bonds through to a wide variety of more exotic CDOs.</p>
Manufacturing and Industrial Products	<p>Receiver and manager of HP Industries Group, appointed 6 December 2011. The business involved 8 manufacturing locations and c300 employees. The entire business was been sold as a going concern and c230 employees gained ongoing employment with the new owners.</p>
	<p>Administrator and Deed Administrator of Global Food Equipment a manufacturer and installer of equipment for retailers, predominately for Coles and Woolworths that was restructured via a DOCA and sold to new owners. Operated from 2 sites in Sydney and Melbourne with approximately 150 employees.</p>
	<p>Acted as Receiver and Manager of STP Group engaged in steel & fibreglass tank manufacturing with operations in Brisbane, Newcastle, Sydney, Melbourne, Adelaide and Perth with c200 employees.</p>
	<p>Acted as agent for the Commonwealth Bank as mortgagee in possession of the assets of Carrington Slipways Pty Limited, a major shipbuilder located near Newcastle.</p> <p>Acted as receiver and manager in respect to manufacturing businesses associated with textiles and processing of timber products.</p>
Mining	<p>Administrator, subsequently liquidator and then deed administrator of Cobar Mines Pty Limited a copper mine located in Cobar, central NSW. The company had 260 employees with creditors totalling c\$60 million, including the secured creditor owed c\$20 million. The mine was sold as a going concern.</p>
	<p>Administrator of Metropolitan Collieries Limited which became subject to a Deed of Company Arrangement. This Deed allowed for a mining contractor to operate the mine utilising most of the work force and producing a cash flow to meet pre-appointment employee entitlements while allowing a sale of the mine as a going concern.</p>
	<p>Administrator and subsequently liquidator of Bulk Materials (Coal Handling) Pty Limited, a Sydney based mining & heavy engineering company and also BMCH Constructions Pty Limited a Maitland based engineering company.</p>
	<p>Administrator of Pioneer Park Pty Limited (formerly known as Domino Mining Equipment Pty Limited).</p> <p>IBRs of several businesses which support or supply the mining industry</p>
Property and Construction	<p>IBRs for lenders to property groups. Advisory work for corporations with issues with their lenders. Acting as receiver of a wide variety of properties, some of the more complex appointments have involved the completion of construction, changing the principal use of the property, rezoning or subdividing of the land. Some specific appointments include:</p>
	<p>Receiver & manager of Crighton Properties which includes c180 hectares of developed and englobo land at Tea Gardens in NSW.</p>
	<p>Receiver & manager of the Soul Property on the Gold Coast.</p>
	<p>Receiver & manger of Petrac Lennox Head Pty Limited - property development company with a 80 hectares of englobo land on the north coast of NSW with concept and project approval. Sold as a going concern with significant GST benefits.</p> <p>Project Dragon; a review for an ASX listed global property investment and development conglomerate. Provision of advice to the board on potential estimated outcomes in the event of an external administration. This involved detailed analysis of complex property group structures and assessing the reliability of management's</p>

projected forecasts.

Retail

Voluntary administrator of Furniture and Bedding Concepts Limited and four other associated entities. These entities traded under the names of Sleep City and Everyday Living. The group had a network of 67 stores across Australia, and three distribution centres, with c430 employees and specialised in furniture, mattresses and other bedroom furnishings.

Administrator of TGW Pty Ltd (trading as GAME). The group had a network of 91 stores across Australia and a distribution centre in NSW, with c500 employees. The company was a retailer of video games, games consoles and PC software and accessories.

Appointed provisional liquidator by the Federal Court of Keith Lord Wholesale Pty Limited which involved the realisation of \$3m from the retail sale of furniture and household items.

Acted as receiver and manager of a variety of retail businesses including some operating as franchisees.

Acted as receiver and manager of specialised retail businesses such as newsagencies and pharmacies.

Acted as administrator of an import/export wholesaling business.

Acting as receiver and manager to a seafood retailing and wholesaling business with several outlets.

Offices Worldwide

Afghanistan	Georgia	Nigeria
Albania	Germany	Norway
Algeria	Ghana	Oman
Angola	Gibraltar	Pakistan
Antigua & Barbuda	Greece	Panama
Argentina	Guatemala	Papua New Guinea
Armenia	Guinea	Paraguay
Aruba	Honduras	Peru
Australia	Hong Kong	Philippines
Austria	Hungary	Poland
Azerbaijan	Iceland	Portugal
Bahamas	India	Puerto Rico
Bahrain	Indonesia	Qatar
Barbados	Iraq	Romania
Belarus	Ireland	Russia
Belgium	Isle of Man	Rwanda
Bermuda	Israel	Saudi Arabia
Bolivia	Italy	Senegal
Bonaire	Jamaica	Serbia
Bosnia and Herzegovina	Japan	Singapore
Botswana	Jordan	Slovak Republic
Brazil	Kazakhstan	Slovenia
British Virgin Islands	Kenya	South Africa
Bulgaria	Kosovo	South Korea
Cambodia	Kuwait	Spain
Cameroon (Republic of)	Kyrgyzstan	Sri Lanka
Canada	Laos	St Kitts & Nevis
Cape Verde	Latvia	St Lucia
Cayman Islands	Lebanon	St Maarten
Chad	Libya	Swaziland
Channel Islands	Lithuania	Sweden
Chile	Luxembourg	Switzerland
China	Macau	Tahiti

Colombia	Macedonia	Taiwan
Congo (Democratic Republic of)	Madagascar	Tanzania
Congo (Republic of)	Malawi	Thailand
Costa Rica	Malaysia	Timor Leste
Cote d'Ivoire (Ivory Coast)	Maldives	Trinidad & Tobago
Croatia	Malta	Tunisia
Curacao	Mauritius	Turkey
Cyprus	Mexico	Turkmenistan
Czech Republic	Moldova	Turks & Caicos Islands
Denmark	Monaco (Principality of)	Uganda
Dominican Republic	Mongolia	Ukraine
Ecuador	Montenegro	United Arab Emirates
Egypt	Morocco	United Kingdom
El Salvador	Mozambique	United States
Equatorial Guinea	Namibia	Uruguay
Estonia	Netherlands	Uzbekistan
Fiji	New Caledonia	Venezuela
Finland	New Zealand	Vietnam
France	Nicaragua	West Bank & Gaza
Gabon (Republic of)		Zambia
		Zimbabwe