

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
(ADMINISTRATORS APPOINTED)
ACN 077 208 461 IN ITS CAPACITY AS
RESPONSIBLE ENTITY OF THE LM FIRST
MORTGAGE INCOME FUND**

AND

Second Respondents: **THE MEMBERS OF THE LM FIRST
MORTGAGE INCOME FUND
ARSN 089 343 288**

AND

Third Respondent: **ROGER SHOTTON**

AND

Intervener: **AUSTRALIAN SECURITIES & INVESTMENTS
COMMISSION**

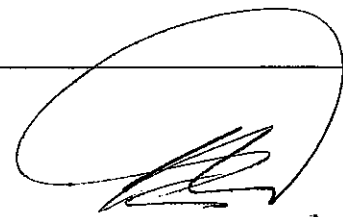
JOHN RICHARD PARK, Chartered Accountant and official liquidator, c/- 22 Market Street, Brisbane in the State of Queensland, official liquidator and chartered accountant, states on oath:

I. I am an official liquidator and chartered accountant. I am one of the administrators of the First Respondent ("LMIM").



Signed

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AFFIDAVIT OF JOHN RICHARD PARK

Filed on behalf of the First Respondent

Form 46 Rule 431.

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300 Queen Street
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2. I do not have primary carriage of the administration. My fellow Senior Managing Director, Ms Muller has had primary carriage of this administration. However, I am reasonably familiar with the broad issues in relation to the administration of the company and its associated responsibility for the LMFMI Fund. I am also broadly familiar with the matters in issue in these proceedings.

3. Yesterday evening, Ms Muller and I received notice for the first time, of some contentions to be made on behalf of Mr Shotton. These appear in the written submissions of Mr Shotton received yesterday evening (Sunday, 14 July, 2013).

4. Ms Muller is presently in court and it therefore falls to me to respond to the new issues raised by those written submissions. I will do so, by reference of the paragraph numbers and sub-headings used in those written submissions.

Paragraph 41 – Management Fee

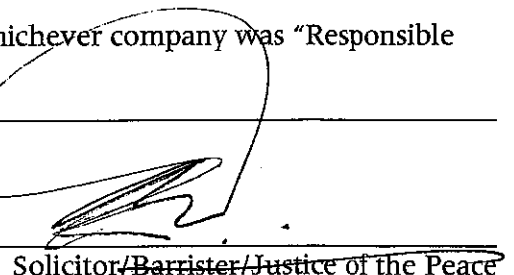
5. I emphatically reject Mr Tucker's repeated assertions that Ms Muller and I and our firm intended to charge a management fee of 1.5% of assets under the Constitution and also claim remuneration as administrators (and, if it comes to this, liquidators). I was not privy to the conversation with Mr Tucker on the evening of 30 April, 2013. I have, however, been consulted by our solicitors about this conversation and understand that Ms Muller has sworn an affidavit about the conversation.

6. I observe that in the document published on my company's letterhead (FTI Consulting), we did not say that we were charging these costs. Our circular said, correctly in my view, what was the "cost structure". This document was, I understand, to rebut a claim by Trilogy that its services would be cheaper. I believe that the point that we were making was that whichever company was "Responsible



Signed

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Entity" would inherit the cost structure in relation to management fees enshrined in the Constitution of this Fund.

7. I also reject the repeated complaint that our remuneration as administrators or as liquidators will be an impost on the Fund. As we instructed our Senior Counsel on 7 May, 2013, we had not made any decision about that and we proposed to take legal advice on it. I believe that it is very likely this issue will be referred to the Court.

Paragraph 45 – Alleged Feeder Fund Conflict

8. I have looked at the 2012 Financial Report of the LMI Fund (exhibited to Mr Bruce's first Affidavit). I have also spoken to Ms Francene Mulder, a director of LMIM and to Mr Grant Fischer, a recently retired director of the company who was Chief Financial Officer for a period of about four years.

9. I have also had involvement in the administration of LMIM and the Fund since appointment, but not by any means as extensive as Ms Muller.

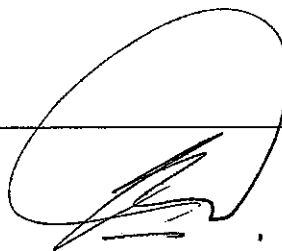
10. The dividend declared in favour of the holders of B Class units, recorded in Note 3(b) on page 21 of the accounts (page 173 of the exhibit) was not paid in full. I believe that rather, as appears from the Statement of Cashflows on page 11 of the Financial Statements, the total distributions paid that year was only about \$2.4 million.

11. My enquiries also reveal that these transactions were the subject of independent advice from WMS chartered accountants; and also the subject of legal advice from an independent law firm, Allens.



Signed

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12. I do not, of course, seek to justify – or, for that matter impune – the transactions one way or another. Rather, it does appear that the actual net cost to the Fund, was a maximum of about \$900,000.00 which was used by the feeder funds to pay for audit fees, hedging losses and the like. That is the difference between the dividend declared of \$16.9 million and the units credited on reinvestment of \$15.9 million (referred to in Notes 3 and 6). I say a maximum of about \$900,000.00, because the auditors note on page 201 of the exhibits is to the effect that the distributions “have been fully reinvested back into the Scheme by the Feeder Funds during the period”. That being the case, since the Fund has a capital of several hundred million dollars, these book entries will be relatively easy to reverse, should an investigation show that they were improper; and an overpayment of \$900,000.00 to the three Feeder Funds will easily be able to be offset, as the assets are converted to cash and appropriate distributions made.

13. This is another example of a transaction that, I agree, should be investigated now that it has been (very belatedly) drawn to our attention. As with all other controversial transactions, should a conflict emerge, then we will take appropriate action – independent legal advice and, if the conflict is sufficiently acute, we will approach the Court.

Paragraph 48 – LM Administration Limited

14. I understand that this has been dealt with in full in Ms Muller’s affidavit; but as is clear therefrom, the accounts of LM Administration show a liability for management fees paid in advance. Practically none of these were, as at the date of our appointment, due by LM Administration to the Fund. Rather, by 31 March, there was a small balance owing by the Fund to LM Administration. I see no cause for concern here.



Signed

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Paragraph 51 – Loan Management Services and Receivership Services

15. In the limited time available, I have not been able to gain anything approaching a full understanding of these transactions. I understand, however, that the Board and Management of LMIM took the view that, in order to save external costs paid or payable to third party receivers or agents for a mortgagee in possession, default work was done inhouse.

16. I also understand from my very brief discussions today that detailed advice was taken from independent solicitors – Allens about these arrangements. They are of course a very reputable firm.

17. The managements fees for 2012 were not \$20 million but \$9.1 million, according to the accounts.

18. However, I am not defending the transactions; nor am I impugning them.

19. I do believe, however, that, as with the distributions of income that were declared but not paid, the same applies to these fees. Accordingly, should it transpire that these fees were not properly charged, it will be a relatively simple matter of righting the situation. Again, we will obtain legal advice, now that the matter has been raised. If a conflict develops, appropriate action will be taken.

Paragraph 57 – Fee Claims by the Administrators on the Fund

20. The written submissions mistake FTI's position. We were merely seeking to illustrate how much work has been done. We have made no claim for this amount, or any other amount for remuneration. We have taken legal advice about these issues from the very outset of the administration.



Signed

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Stage of the Administration

21. I emphasise that the company is merely in voluntary administration. I do not perceive that it is Ms Muller's and my task as administrators to undertake detailed investigations of the kind that have been mentioned in the various submissions in these proceedings. Rather, our principal task at the moment is to undertake investigations necessary for the purpose of an administration and for recommending what, in our opinion, the creditors ought to do. If a proposal for a Deed of Company Arrangement is received, we would also examine that and make our recommendation. No such proposal has been received.

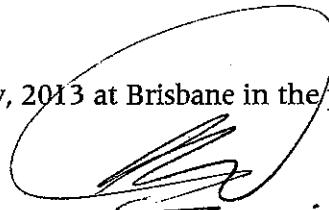
22. Accordingly, the fact that we have not undertaken detailed or concluded investigations in relation to these various issues is not through a lack of commitment or diligence on our part; rather at this stage of a voluntary administration, it is neither possible nor practical to undertake detailed and conclusive investigations.

23. All the facts and circumstances 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 on the face of this my Affidavit.

SWORN by JOHN RICHARD PARK on 15 July, 2013 at Brisbane in the presence of:



Deponent



Solicitor/Barrister/Justice of the Peace