

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane
NUMBER: 3383/2013

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

AFFIDAVIT

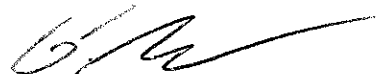
I, PAUL ALEXANDER RUSSELL of Forensic Advisory Services, Level 10, 45 Clarence Street, Sydney NSW 2000, say on oath:

1. I refer to my affidavit in these proceedings sworn 3 May 2013.
2. I have been asked to supplement my report dated 3 May 2013.
3. Exhibited to this affidavit and marked "PAR2" is a true copy of my report dated 5 July 2013.

Signed:



Taken by:



**AFFIDAVIT OF PAUL
ALEXANDER RUSSELL**

Piper Alderman
Level 23, Governor Macquarie Tower, 1 Farrer
Place, SYDNEY 2000

Filed on Behalf of the Applicants

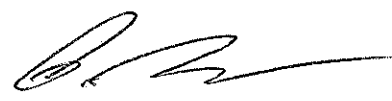
Ref: AB:SB:384396
Phone No: +61 2 9253 9999
Fax No: +61 2 9253 9900

4. All 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 PAUL ALEXANDER RUSSELL on 5 July 2013 in Sydney in the Presence of:



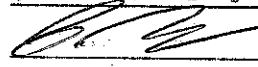
Deponent



Witness
Name: CARLA SLYNEY
Solicitor/Justice of the Peace

I, Carla Slyney, Solicitor, Prac Cert No 58074, certify the following matters concerning the making of this statutory declaration/ affidavit by the person who made it:

1. I saw the face of the person/ ~~I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification for not removing the covering.~~
2. ~~I have known the person for at least 12 months/ I have not known the person for at least 12 months, but I have confirmed the person's identity using an identification document and the document I relied on was:~~

DRIVER LICENCE NJW
 (sgd) Date: 5 / 7 / 20 13

SUPREME COURT OF QUEENSLAND

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**RAYMOND EDWARD BRUCE AND
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**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**

EXHIBIT CERTIFICATE

This is the Exhibit marked "**PAR2**" referred to in the affidavit of Paul Alexander Russell sworn 5 July 2013.

Before me:



.....
Solicitor/~~Justice of the Peace~~

CERTIFICATE OF EXHIBIT

Piper Alderman
Level 23, Governor Macquarie Tower, 1 Farrer Place,
SYDNEY 2000

Filed on Behalf of the Applicants

Ref: AB:LG:384396
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Facsimile +61 2 9251 1793
Website fas-au.com



Forensic
ADVISORY SERVICES

**In the Supreme Court of Queensland
Proceedings 3383 of 2013**

Between:

**RAYMOND EDWARD BRUCE & VICKI PATRICIA BRUCE AND LM INVESTMENT
MANAGEMENT LIMITED (ADMINISTRATORS APPOINTED)**

Applicants

v

THE MEMBERS OF THE LM FIRST MORTGAGE FUND

Respondents

**Expert Accountant's Report
of
Paul Russell**

Dated: 5 July 2013

Specialist Field	:	Forensic Accounting
On behalf of	:	Applicants
Prepared for	:	Supreme Court of Queensland
On instruction of	:	Piper Alderman

Forensic Advisory Services
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Paul Russell
Partner

RAYMOND EDWARD BRUCE & VICKI PATRICIA BRUCE AND LM
INVESTMENT MANAGEMENT LIMITED (ADMINISTRATORS APPOINTED)
v
THE MEMBERS OF THE LM FIRST MORTGAGE FUND

Report of: Paul Russell
Dated 5 July 2013
Specialist Field: Forensic Accounting
On behalf: Applicant

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1.00 SCOPE

- 1.01 I, Paul Russell, am instructed by Piper Alderman, Solicitors, to act as an expert witness in the matter of Raymond Edward Bruce & Vicki Patricia Bruce and L M Investment Management Limited (Administrators Appointed) ("LMIM") v The Members of the LM First Mortgage Fund. (Supreme Court of Queensland Proceedings No. 3383 of 2013).
- 1.02 This report is to be read in conjunction with my first report in this matter dated 3 May 2013 ("my first report"). I have been instructed to advise whether the views expressed in my first report would change if I assumed that the value of LMIM's interest in the property at 38 Cavill Avenue, Surfers Paradise is the value in its 2012 Financial Accounts. In considering this issue I have been instructed to ignore assumption 5 which was included in my original instructions and detailed in my first report.
- 1.03 I am a Chartered Accountant and an Associate Member of the Institute of Certified Fraud Examiners. I am a Registered Liquidator and an Official Liquidator. I am a Partner at Forensic Advisory Services Pty Limited which changed its name from RGL Forensics in March 2012.
- 1.04 Prior to joining RGL Forensics in April 2010, I was employed by PPB. I commenced with the predecessor of PPB in October 1999 and was admitted as a Partner to PPB in 2005. Over the past 10 years, I have provided expert opinions and have been subject to cross examination in legal forums in various jurisdictions in Australia. At **Appendix B** of my first report is a copy of my curriculum vitae.
- 1.05 Other staff members of Forensic Advisory Services have assisted me in relation to the preparation of this report. Where this has occurred, I have reviewed the results of their work and take responsibility for and adopt any conclusions reached.

RAYMOND EDWARD BRUCE & VICKI PATRICIA BRUCE AND LM
INVESTMENT MANAGEMENT LIMITED (ADMINISTRATORS APPOINTED)
v
THE MEMBERS OF THE LM FIRST MORTGAGE FUND

Report of: Paul Russell
Dated 5 July 2013
Specialist Field: Forensic Accounting
On behalf: Applicant

- 1.06 I have prepared this report on the basis of the documents provided to me by Piper Alderman Lawyers and listed at **Appendix C** of my first report. Should any additional material become available, I would like the opportunity to review it and, if necessary, amend this report.
- 1.07 I have conducted this engagement in accordance with the professional standards of the Institute of Chartered Accountants in Australia ('ICAA') and CPA Australia Limited ('CPA Australia') including Forensic Accounting Standard, APES 215 – Forensic Accounting Services.
- 1.08 I have read Chapter 11, Part 5 of the Uniform Civil Procedure Rules 1999 (QLD). I agree to be bound by the Rules.
- 1.09 I have not undertaken an audit or other independent examination of the documentation other than for the purpose of this report.
- 1.10 My review is confined to the financial aspects of the matter and is not concerned with liability.

RAYMOND EDWARD BRUCE & VICKI PATRICIA BRUCE AND LM
INVESTMENT MANAGEMENT LIMITED (ADMINISTRATORS APPOINTED)
v
THE MEMBERS OF THE LM FIRST MORTGAGE FUND

Report of: Paul Russell
Dated 5 July 2013
Specialist Field: Forensic Accounting
On behalf: Applicant

2.00 INSTRUCTIONS

2.01 I have been instructed to advise whether the views expressed in my first report would change if I assumed that the value of LMIM's interest in the property at 38 Cavill Avenue, Surfers Paradise is the value in its 2012 Financial Accounts. In considering this issue I have been instructed to ignore assumption 5 which was included in my instructions and detailed in my first report. Assumption 5 stated *"In working out the NTA, the Cavill Avenue property is not to be included"*.

3.00 FINDINGS

3.01 The views expressed in my first report would not change if I assumed that the value of LMIM's interest in the property at 38 Cavill Avenue, Surfers Paradise is the value in its 2012 Financial Accounts and ignored assumption 5 included in my previous instructions.

Reasons.

3.02 As detailed in my first report Assumption 8 indicates that according to the Statement of Financial Position of LMIM as at 30 June 2012 the following amount was included as an assets of LMIM:

Asset	Amount
	\$
Investments in associates	4,631,927

3.03 On the assumption that this balance remained in place and continued to be regarded as the same class of asset at the date of the appointment of the Administrator to LMIM, it is my opinion that this amount should be excluded as an asset from the calculation of the NTA as at the date of the administrator's appointment. My reasoning for this is as follows:

3.03.1 Note 10 to the 2012 Financial Report for LMIM indicates that "Investment in Associates" relates to a 66.67% interest in an asset described as "Cavill Avenue Joint Venture".

3.04 In determining the value of adjusted assets for the purposes of my calculations in my first report regard was had to ASIC Class Order (11/1140) which defines **adjusted assets** to mean:

“the value of total assets as they would appear on a balance sheet at the time of calculation made up for lodgment as part of a financial report under Chapter 2M if the licensee were a reporting entity:

*(a) minus the value of **excluded assets** that would be included in the calculation;
and*

(b) minus the value of any receivable that would be included in the calculation up to the amount that the licensee has excluded from adjusted liabilities on the basis that there is an enforceable right of set-off with that receivable; and

(c) minus the value of any assets that would be included in the calculation that are encumbered as a security against liability to a person that provides a security bond to ASIC up to the amount of the bond; and

(d) minus the value of any assets that would be included in the calculation that may be required to be applied to satisfy a liability under a credit facility that is made without recourse to the licensee up to the amount of that liability excluded from adjusted liabilities; and

(e) plus the amount of any eligible undertaking that is not an asset.”

3.05 The definition of **excluded assets** is detailed in ASIC Class Order (11/1140) and includes assets invested in an associate of the licensee.

3.06 Accordingly, the asset described as “Investment in Associates” is an excluded asset.

3.07 On this basis the Cavill Avenue property is not to be included in the calculation of NTA which is defined in ASIC Class Order (11/1140) as “*adjusted assets minus adjusted liabilities*”.

4.00 EXPERT'S CONFIRMATION

4.01 I, Paul Russell, confirm that:

- a) insofar as the facts stated in my report are within my own knowledge, I have made clear which they are and I believe them to be true;
- b) I have made all enquires that I consider appropriate;
- c) the opinions I have expressed represent my true and complete professional opinion;
- d) I have endeavored to include in my report all matters which I consider significant;
- e) I understand my duty to the Court and that this duty overrides any obligation to the party by which I am engaged. I confirm that I have complied and will continue to comply with my duty.



Paul Russell
Partner,
Forensic Advisory Services