

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane  
NUMBER: 3383 of 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 OF ROGER SHOTTON**

I, **ROGER SHOTTON** of Phirom Gardens – Flat 9A, 11, Sukhumvit Road Soi 41, Wattana, Bangkok 10110, Thailand, being duly sworn make oath and say as follows:-

1. I am an investor in the LM First Mortgage Income Fund (“**LMFMIF**”).
2. In furtherance of my affidavit sworn 30 April 2013, I remain concerned about the appointment of a new responsible entity to LMFMIF because the purpose of this fund has failed and consequently it ought to be wound up to ensure that to the greatest extent possible the remaining funds under management are returned to investors like myself and not swallowed up by management fees or further bad loans.
3. It remains my preference that, for the best possible result for the members, LMFMIF be wound up:
  - (a) By a truly independent person;
  - (b) Without unnecessary costs; and
  - (c) On a timely basis.

Independence

4. I am concerned that FTI is not independent and may have a conflict of interest in acting as

administrator of LM Investment Management Limited ("LM") and in due course as liquidator for LMFMIIF.

5. I am further concerned that the person in charge of winding up LMFMIIF be free of even the perception of a conflict that may impede it from fully exploring any available legal challenge to:
  - (a) The bad loans LM may have made as responsible entity; and
  - (b) the poor loan management LM may have employed as responsible entity for LMFMIIF.
6. I am concerned that FTI may not investigate these issues properly given the inherent conflict with their role as administrators for LM.

Costs

7. I am concerned by the large claims for costs made by FTI to date in respect of LMFMIIF.
8. I am further concerned that if FTI are appointed to wind up LMFMIIF, it will only add to the cost of the management fees FTI, through their role as administrators for LM, may seek from LMFMIIF.
9. At paragraph 89 of Ms Muller's affidavit she states that FTI, for the period since their appointment as administrators of LM to 27 June 2013, intend to claim \$960,756.90 in respect of fees from LMFMIIF (this amount does not include a portion of the fee of \$1,174,399.15 they claim for work to date in respect of LM).
10. FTI were appointed administrators of LM on 19 March 2013.
11. FTI is seeking costs associated with its function as responsible entity in excess of \$960,756.90 for a period of 14 weeks. I am concerned by the extent of the fees FTI may charge as both responsible entity and liquidator of LMFMIIF over a 3 year period.

On a timely basis

12. Finally, I am concerned that LMFMIIF be wound up in as timely a manner as reasonably practicable.
13. I am concerned that FTI in their role as administrators for LM have sought to oppose and adjourn my application to wind up LMFMIIF on at least two occasions.

14. This delay and opposition have delayed the hearing of my application on whether LMFMIF should be wound up by 9 weeks. If the rate of charges sought by FTI from LMFMIF to date were applied pro-rata, this would be an additional cost to LMFMIF of roughly \$620,000 during this period of delay or correspond to roughly 64% of the charges FTI have sought to take out of LMFMIF for their services to date.
15. I remain of the view that the best possible outcome for the members would be achieved by appointing Mr Whyte as the independent person.
16. All the facts and circumstances above 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 **ROGER SHOTTON** on the 10 day of July 2013 in *Florence* in the presence of: //

Deponent

Solicitor/A Justice of the Peace

*PUBLIC NOTARY*  
*Giuseppe Coneri*

