

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  
Third Respondent: ROGER SHOTTON  
Intervener: AUSTRALIAN SECURITIES & INVESTMENTS  
COMMISSION

STEPHEN CHARLES RUSSELL of Level 21, 300 Queen Street, Brisbane in the State of Queensland, solicitor, states on oath:


1. I am a solicitor of this Honourable Court and Managing Partner of Russells, the Solicitors for the First Respondent ("LMIM").
  
2. On 23 April, 2013, I attended a meeting at the Brisbane offices of ASIC. The meeting was also attended by:-
  - (a) Ms Ilenna Copley, a solicitor in my firm's employ;
  - (b) Ms Ginette Muller, one of the administrators of LMIM and Ms Joann Dunn, of FTI;

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Signed



Solicitor/Barrister/Justice of the Peace

AFFIDAVIT OF STEPHEN CHARLES RUSSELL

Filed on behalf of the First Respondent

Form 46 Rule 431

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- (c) Ms Georgina Hayden, a senior lawyer in the employ of ASIC;
  - (d) Ms Anne Gubbins, a senior lawyer in the employ of ASIC; and
  - (e) Mr Anthony Ham, an officer of ASIC.

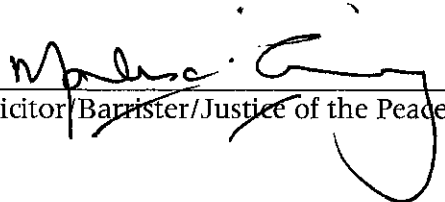
3. At the meeting on 23 April, 2013:-

- (a) At the outset of the meeting, I outlined my instructions as to the current position of the administrations, and I said that this was in the context of the receipt from Piper Alderman of the proceedings instituted in the names of Mr and Mrs Bruce. The proceedings were then listed for hearing on 29 April, 2013;
- (b) I said words to the effect that the administrators intended to call a meeting of members of the FMI Fund, to consider the appointment of a new Responsible Entity; and that they wished to consult the members;
- (c) I said that our present intention was "to have the notice in the streets this week", and that we were aiming for a meeting on 30 May, 2013;
- (d) Ms Hayden said words to the effect that this was fine;
- (e) Ms Hayden then said words to the effect that ASIC was anxious that the administrators to decide whether the fund should be wound up, and she referred to the terms of the AFSL issued to LMIM after the administrators were appointed;
- (f) Ms Hayden said that ASIC intended to invite LMIM and the administrators to enter into an Enforceable Undertaking ("EU");
- (g) Ms Hayden said that one of the objectives of the EU was to have the administrators decide whether to appoint a new Responsible Entity, or whether the Funds should be wound up; and that meetings of members then be held;

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Signed 

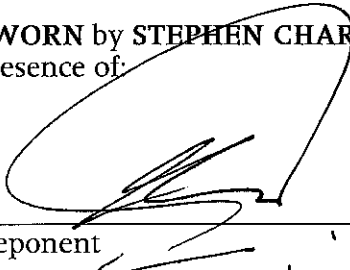
  
Solicitor/Barrister/Justice of the Peace

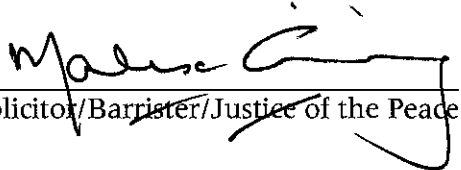
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- (h) Ms Hayden said words to the effect that ASIC did not want the matter to go on for a long time, because that allowed more of an opportunity for more complex issues to arise;
  - (i) Ms Hayden said ASIC wished to keep the process moving and it was not presuming anyone had done anything wrong;
  - (j) There was then discussion about these matters;
  - (k) Ms Hayden said words to the effect that ASIC suggested that these decisions should be made within two weeks and that provision to that effect would be included in the draft EU, which ASIC would prepare;
  - (l) Ms Muller said words to the effect that these matters were not simple, there was a lot involved in such a decision; and that the administrators would do their best;
  - (m) Ms Muller said words to the effect that the administrators would focus first on the FMI Fund, and, when they had decided whether to wind up the Fund (or appoint another RE), they would then move to the other Funds.

4. The meeting closed on the basis that each would consider what had been said, that communications would remain open, and that ASIC would prepare and send a draft EU.

5. 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 **STEPHEN CHARLES RUSSELL** on 27 June, 2013 at Brisbane in the presence of:

  
Deponent

  
Solicitor/Barrister/Justice of the Peace