

SUPREME COURT OF QUEENSLAND

**REGISTRY: Brisbane
NUMBER: 8792 of 2013**

Plaintiff: **KORDAMENTHA PTY LTD
(ACN 100 169 391) AS TRUSTEE FOR THE
LM MANAGED PERFORMANCE FUND**

AND

First Defendant: **LM INVESTMENT MANAGEMENT
LIMITED (RECEIVERS AND MANAGERS
APPOINTED) (IN LIQUIDATION)
ACN 077 208 461**

AND

Second Defendant: **TRUST COMPANY (PTAL) LIMITED
ACN 008 412 913**

APPLICATION

The First Defendant is applying to the Court for the following Orders:-

BY WAY OF INTERLOCUTORY RELIEF:

1. That service of these proceedings under s.96 of the *Trusts Act 1973* (Qld) be effected on the members of the LM Australian Income Fund ("AIF") as follows:-
 - (a) by the First Defendant uploading to the website www.lminvestmentadministration.com copies of this application, the statement of facts to be filed, the Notice to Members of the AIF (being exhibit AJT-1 to the affidavit of Ashley Tiplady sworn 5 November, 2015) ("the Notice to Members"), any order made as to service and the substantive affidavits (including all the exhibits) that the First Defendant intends to rely upon in support of the Application;
 - (b) by sending by email to those members of the AIF, for whom an email address is recorded, the Notice to Members informing them that the

~~ORIGINATING APPLICATION~~

Filed on behalf of the First Defendant

Form 5 Rule 26

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applicants have applied to this Honourable Court for directions under s.96 of the *Trusts Act 1973* (Qld) to enter into a proposed Deed of Settlement to resolve Supreme Court Proceedings S8792/13 ("s.96 Application") and that they may view all substantive Court documents upon which the First Defendant intends to rely in support of the s.96 Application on the website www.lminvestmentadministration.com; and

- (c) where the First Defendant receives a response to an email that indicates the email was not received, or if the First Defendant does not hold an email address for any member, and the First Defendant has a postal address for those members, the First Defendant is to post the Notice to Members to the postal address of those members;
2. That service of this application in accordance with any orders made be deemed to be effective on each of the members of the AIF.
 3. That, where the First Defendant proposes to rely on further material in support of the s.96 Application, it may serve that material by uploading the material to the website and sending notice by email or, where the First Defendant does not hold a valid email address, by post to those members, with such notice to direct the members to the further material which has been uploaded at the website www.lminvestmentadministration.com.
 4. That the First Defendant not be required to take further steps to serve the members of the AIF whose email addresses return permanent undeliverable receipts and for whom the applicants do not have a postal address.
 5. The application for final relief be adjourned for hearing until 9:30am on Tuesday, 24 November, 2015.
 6. The costs of the interlocutory application be reserved.
 7. Such further or other orders or directions as this Honourable Court may deem appropriate.

BY WAY OF FINAL RELIEF

8. Pursuant to section 96 of the *Trusts Act 1973* (Qld), a direction that the First Defendant is justified in entering into the proposed Deed of Settlement, which is a confidential exhibit to the affidavit of Kelly-Anne Lavina Trenfield to be filed, to resolve Supreme Court of Queensland Proceeding number 8792/2013.
9. The First Defendant's costs and expenses of this application be paid on the indemnity basis out of the LM Australian Income Fund.
10. Such further or other orders or directions as this Honourable Court may deem appropriate.

The Interlocutory Application will be heard by the Court at QEII Courts of Law Complex, 415 George Street, Brisbane at 9:30am on 5 November, 2015 for interlocutory relief and directions.

This Application for substantive directions will be heard by the Court at QEII Courts of Law Complex, 415 George Street, Brisbane at 10:00am on 24 November, 2015.

Filed by leave on 5 November, 2015.

Registrar: _____

If you wish to oppose this Application or to argue that any different order should be made, you must appear before the Court in person or by your lawyer and you shall be heard. If you do not appear at the hearing the Orders sought may be made without further notice to you. In addition you may before the day for hearing file a Notice of Address for Service in this Registry. The Notice should be in Form 8 to the Uniform Civil Procedure Rules. You must serve a copy of it at the Applicants' address for service shown in this Application as soon as possible.

On the hearing of the Application the Applicants intend to rely on the following Affidavits and material:-

1. Affidavit of Ashley John Tiplady sworn 5 November 2015;
2. Statement of Facts to be filed; and
3. Affidavit of Kelly-Anne Lavina Trenfield to be filed.

If you intend on the hearing to rely on any Affidavits they must be filed and served at the Applicants' address for service prior to the hearing date.

**THE APPLICANTS ESTIMATE THE HEARING SHOULD BE ALLOCATED
45 MINUTES**

PARTICULARS OF THE APPLICANT

Name:	LM INVESTMENT MANAGEMENT LIMITED (RECEIVERS AND MANAGERS APPOINTED) (IN LIQUIDATION) ACN 077 208 461
Applicants' residential or business addresses:	c/- FTI Consulting, 22 Market Street, Brisbane, Queensland
Applicants' Solicitor's name and firm name:	Ashley John Tiplady Russells
Solicitor's business address:	GPO Box 1402, Brisbane, Queensland, 4001
Address for service:	Level 21, 300 Queen Street, Brisbane, Queensland, 4000
Telephone:	07 3004 8833
Fax:	07 3004 8899
Email:	ATiplady@russellslaw.com.au Mail@russellslaw.com.au

Signed: *Russells.*
Russells

Description: Solicitors for the Applicants

Dated: 5th day of November, 2015

This Application is to be served on:

1. The members of the LM Australian Income Fund;
2. the Plaintiff KordaMentha Pty Ltd as trustee for the LM Managed Performance Fund c/- Minter Ellison, Waterfront Place, 1 Eagle Street, Brisbane QLD 4000; and
3. the Second Defendant Trust Company (PTAL) Limited ACN 008 412 913 c/- Mills Oakley Lawyers, Level 12, 400 George Street, Sydney NSW 2000