

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

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.
2. I refer to my earlier affidavit prepared for the purposes of this proceeding, sworn on 1 May, 2013.
3. On the evening of Wednesday, 1 May, 2013, I telephoned Mr Michael Welter on a telephone number provided to me by Ms Ginette Muller.

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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

RUSSELLS
Level 21
300 Queen Street
BRISBANE 4000
Phone: 07 3004 8888
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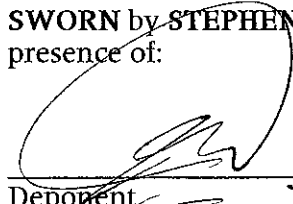
4. Prior to the telephone conversation I emailed to Mr Welter a copy of a 4 page, unsigned statement he had prepared and provided to Ms Muller.

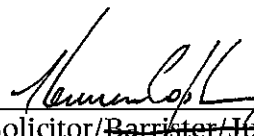
5. Now produced and shown to me and marked "SCR14" is a copy of Mr Welter's 4 page, unsigned statement.

6. During my telephone conversation with Mr Welter I asked him whether the contents of his statement were true and correct and he replied that they were. I believe, therefore, that the matters in that statement are true.

7. 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 1 May, 2013 at Brisbane in the presence of:



Deponent

Solicitor/~~Bar~~ister/Justice of the Peace

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**

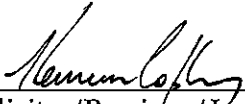
AND

Second Respondent:

**THE MEMBERS OF THE
LM MANAGED INVESTMENT FUND
ARSN 089 343 288**

Exhibit "SCR14" to the Affidavit of **STEPHEN CHARLES RUSSELL** sworn
1 May, 2013:



Deponent

Solicitor/Barrister/Justice of the Peace

CERTIFICATE OF EXHIBIT

Filed on behalf of the First Respondent

Form 47 Rule 435

Russells
Level 21
300 Queen Street
BRISBANE 4000
Phone: 07 3004 8888
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STATEMENT OF MICHAEL WELTER

I, **MICHAEL WELTER** of c/- Topnotch Group, Level 18, Park Ventures Ecoplex, 57 Wireless Road, Lumpini, Patumwan, Bangkok 10330, Thailand, Discretionary Portfolio Manager, do solemnly and sincerely state that:-

1. I am a Discretionary Portfolio Manager for Topnotch Group and have been doing business with LM Investment Management Limited ("LMIM") for a number of years.

Email from Joe Christie dated 23 November 2012

2. On 23 November 2012 I received an email from Joe Christie (Head of Distribution – NSW & ACT for Trilogy Funds Management Limited "Trilogy") attaching a welcome letter from Trilogy in regards to the LM Wholesale First Mortgage Income Fund ("the Wholesale Fund"). Annexed hereto and marked "A" is a copy of the email dated 23 November 2012.
3. I was unaware as to how Joe Christie got my details as I received the email on an email address I had not registered with LMIM and do not (and have not) acted for any investors in the Wholesale Fund.

First telephone conversation with Joe Christie on 26 November 2012

4. On 26 November 2012 I received a telephone call from Joe Christie and had a discussion with him to the following effect:-

"Joe Christie ("JC"): JC introduced himself and began asking questions about whether or not Michael Welter ("MW") is a financial planner or an investor.

MW: I am sorry JC before we start any conversation I would like to know how you got my details.

JC: I am working in Australia and all the units are registered, therefore it is open to the public so you can get a list of the details of the clients who have invested in this Fund. Did you invest in this Fund?

MW: Yes I invested in LM.

JC: What we have done is taken over the Wholesale Fund and people are very happy with it because LM was charging too much and raising the management fees. If Trilogy took over then people would be saving millions of dollars.

MW: So what are you guys doing?

JC: We are operating a lot with ASIC. We do things for ASIC as ASIC does not have the capacity to do these things. For example, we can take over a Fund.

Maybe it's good we meet up to discuss these matters.

MW: When I look on your website you are based in Sydney.

JC: Yes, but I know next week you are in Australia so we can meet up.

MW: Next week I am in Australia? Next week I am not coming to Australia.

JC: So you are not coming to the LM training for advisors?

MW: No, I am not going there.

JC: *LM has a lot of problems with ASIC and Trilogy have had meetings with ASIC to discuss the ongoing breaches by LM in respect of the late accounts and failure to lodge an RG45 since August 2011.*

Trilogy's Funds have also had some problems in the past especially because of the Global Finance Crisis but Trilogy is very open and transparent with their whole operation.

Trilogy will also question LM's disposal of a holding fund asset that was last purchased for \$10 million but recently sold for as little as \$3.85 million.

MW: *These things happened in Holland. Is what you are saying that the situation is that you buy something for \$10 million, you sell it to a partner in this case for \$3.85 million, in the books you write it off as a loss but you pay an offshore account the other money and then after 2 or 3 years you buy it back for \$10 million so that everybody makes a big profit on the private side?*

JC: *Yes, we think that Peter Drake is committing corporate fraud.*

MW: *You know you are accusing a person of a very serious offence here, can you prove that?*

JC: *No, we are investigating a lot and also investigating the Maddison Project. Do you know the Maddison Project?*

MW: *Yes, I know the Maddison Project.*

JC: *You know how the financial situation is in relation to the Maddison Project?*

MW: *I know the MPF is doing well.*

JC: *Yes, but they had a lot of problems.*

MW: *I know they had some problems with redemption fee but you know the Fund is going well.*

JC: *Do you know how much money is spent in the Maddison Project?*

MW: *No I don't.*

JC: *It's about \$25 million mortgage from Suncorp and \$220 million from the MPF. Have you seen the Project?*

MW: *No I haven't seen the Project.*

JC: *There is nothing there.*

MW: *Okay but you know I have seen the brochure from LM and I saw Kelly Slater and the Olympic swimmers and Jamie Durie.*

JC: *Yes, but these people take money for just giving their name to a project.*

MW: *Yes, but I know that these people have the risk of losing their reputation.*

JC: *Yeh but they don't care because they probably had enough money from LM to justify this.*

MW: Okay but what happened then with the money in your thinking?

JC: We don't know, we are investigating that because we are also trying to take over the MPF. If we take over the MPF we have full control over that Fund and we can see and investigate what is happening there.

*MW: Okay can you send me the pictures."
(End of conversation)*

Second Telephone Conversation with Joe Christie on 26 November 2012

5. On 26 November 2012 Joe Christie called me back and we had a discussion to the following effect:-

"JC: Maybe it's better to meet instead of send the pictures.

MW: You know where I am, I am located in Bangkok, for me it's too far. I am not coming to Australia.

JC: Okay but you know I don't know if I can send you the pictures. (talking in the background between JC and someone else).... Michael, John Barry, an Executive Director of Trilogy will contact you with more details.

MW: Okay that's fine, when will he call me.

*JC: He will probably call you at the end of this week."
(End of conversation)*

Email from Joe Christie dated 26 November 2012

6. On 26 November 2012 I received an email from Joe Christie attaching pictures of the Maddison project. A copy of which is annexed hereto and marked "B".

Meeting with Philip Ryan & Justin Smart on 30 November 2012

7. On 30 November 2012 I met with Philip Ryan (the Managing Director of Trilogy) and Justin Smart (Head of Finance for Trilogy) in the executive lounge at the Hilton Hotel on the Gold Coast and we had a discussion to the following effect:-

"Philip Ryan ("PR"): Trilogy has gained control of the Wholesale Fund because of the Institutions and Trilogy would review the accounts when they are released and will review the situation with a view of commencing a campaign to take over those Funds next year.

MW: Why is ASIC not doing anything?

PR: They are just not publicly, the problem ASIC have is the Managed Performance Fund is not a registered Fund. Trilogy's aim over time is to build up relationships and Trilogy would like to build trust with people all around the world who have put funds in LM.

MW: Trilogy would have to reach the people.

PR: Once they take over they will have access to all that information.

MW: The LM Fund that Trilogy has taken over is a closed Fund. Is it possible for Trilogy to take over the open Funds?

PR: Ultimately over time, yes this is possible, however Trilogy would need to meet the investors and gain their support. The critical thing for LM is how strong the inflows

are. The moment investors stop supporting the MPF in terms of inflows, will be the day of reckoning.

Amanda Banton from Piper Alderman (a law firm in Sydney who act on behalf of Trilogy) would like for Trilogy to take over the Funds.

MW: *Is this all of LM's Funds?*

PR: *Yes. The reason for this is because for a class action to occur they need to gain access to the inside information and Trilogy will be able to gain access to this information once they take over the Funds."*
(End of conversation)

Michael Welter

Dated: _____