

Duplicate

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane
NUMBER: 5329/15

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

ORDER

Before: Daubney J

Date: 26 August 2015

Initiating document: Originating Application filed 29 May 2015

THE ORDER OF THE COURT IS THAT:

1. Subject to Order 2:
 - 1.1 Pursuant to section 96 of the *Trusts Act* 1973 (Qld) ("**Trusts Act**"), the Applicant is directed that it would be justified in prosecuting proceedings against the defendant, LM Investment Management Limited (Receivers and Managers Appointed) (In Liquidation) (ACN 077 208 461) ("**LMIM**") for the relief claimed in the Claim and Statement of Claim filed in Supreme Court of Queensland proceeding number 8032/14 ("**First Proceeding**").
 - 1.2 Pursuant to section 96 of the *Trusts Act*, the Applicant is directed that it would be justified in prosecuting proceedings against the defendant, LMIM for the relief



ORDER

Filed on behalf of the Applicant

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Form 59 Rule 661

claimed in the Claim and Statement of Claim filed in Supreme Court of Queensland proceeding number 8034/14 (“**Second Proceeding**”).

2. Each of Orders 1.1 and 1.2 is conditional upon there being filed in each of the First Proceeding and the Second Proceeding respectively a Deed Poll executed by IMF Bentham Limited ("IMF") by which IMF agrees to pay adverse costs orders made against the Applicant in each proceeding during the term of a litigation funding agreement made between the Applicant and IMF and to give the defendant(s) in each proceeding written notice of any termination of the litigation funding agreement within 7 days of such termination.
3. The Applicant serve the Claim and Statement of Claim in the First Proceeding within 14 days of this order.
4. The Applicant serve the Claim and Statement of Claim in the Second Proceeding within 14 days of this order.
5. The costs and expenses of and incidental to the application (including any reserved costs) of each of the Applicant, the Respondent Liquidators of LMIM and the Respondent David Whyte (receiver of the property of the LM First Mortgage Income Fund and the person appointed to take responsibility for the winding up of that fund) be paid on the indemnity basis out of the LM Managed Performance Fund.
6. The following documents handed up to the Court be placed in a sealed envelope marked "Not to be opened without an order of a Judge of this Court":
 - (a) the joint memorandum of advice of Counsel in the First Proceeding;
 - (b) the joint memorandum of advice of Counsel in the Second Proceeding;
 - (c) the confidential submissions on the merits;
 - (d) the confidential summary of the main commercial terms of the proposed funding agreement;
 - (e) the confidential draft of the proposed funding agreement.

7. The affidavit of Ashley John Tiplady sworn 23 July 2015 and filed by leave on 18 August 2015 be placed in a sealed envelope marked "Not to be opened without an order of a Judge of this Court".

AND IT IS FURTHER DIRECTED that the Applicant forthwith make application for each of the First Proceeding and the Second Proceeding to be placed on the Commercial List.

Signed:


Deputy Registrar

