

Duplicate

SUPREME COURT OF QUEENSLAND

REGISTRY: Brisbane
NUMBER: 3691/2013
2869/2013

Applicants: KORDAMENTHA PTY LTD (ACN 100 169 391)

AND

CALIBRE CAPITAL LTD (ABN 66 108 318 985)

IN THEIR CAPACITY AS TRUSTEES FOR THE LM MANAGED
PERFORMANCE FUND

AND

First Respondents: THE MEMBERS OF THE LM MANAGED PERFORMANCE FUND

AND

Second Respondents: JOHN RICHARD PARK AND GINETTE MULLER IN THEIR CAPACITY AS
JOINT AND SEVERAL ADMINISTRATORS OF LM INVESTMENT
MANAGEMENT LIMITED (ADMINISTRATORS APPOINTED) ACN 077 208
461

Third Respondent: TRUST COMPANY (PTAL) LIMITED ACN 008 412 913

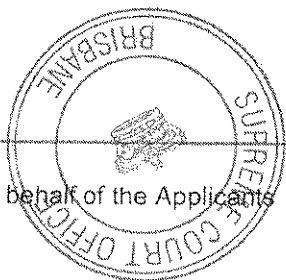
ORDER

Judge: Chief Justice de Jersey

Date: 23 May 2013

Initiating document: Originating Application dated 23 April 2013 and Amended Originating
Application dated 28 April 2013

ORDER
Filed on behalf of the Applicants



Piper Alderman
Level 23, Governor Macquarie Tower
1 Farrer Place
SYDNEY NSW 2000
Tel: +61 2 9253 9999
Fax: +61 2 9253 9900
Ref: AKB.WN.384483

In relation the applicants' application in 3691/2013:

1. Upon the applicants undertaking, by their counsel, that until further order of the Court, or without first giving the Second Respondents by their solicitors seven days' written notice they will not:

- (a) deal with the assets of the LM Managed Performance Fund (**Trust**), or increase the liabilities of the Trust, other than carrying on the ordinary business of the Trust (except insofar as they consider it necessary to make any applications to the Court in respect of the fund or their appointment as Trustees; and for the avoidance of any doubt, carrying on the ordinary course of business of the Trust includes any action to enforce and recover any loan, guarantee or security); or
- (b) make any distribution to unit holders of the Trust or any payment by way of redemption of units;

the order of the court is that, without prejudicing any lien or charge or any right of indemnity that:

- (1) LM Investment Management Limited, as former trustee; or
- (2) the second respondents

may have against the assets of the Trust:

- (i) pursuant to sections 82 and 90 of the Trusts Act 1973 (Qld), the choses in action, in Schedule 1 to these orders, of LM Investment Management Limited ACN 077 208 461 (Administrators Appointed) (**LMIM**) in its former capacity as trustee of the Trust, vest in the Applicants in their capacity as joint and several trustees of the Trust.
- (ii) For the avoidance of doubt, order 1 does not operate to vest in the Applicants any of the Trust property held by the Third Respondent in its capacity as custodian trustee of the Trust.
- (iii) Within 14 days of the date of these orders, LMIM and the Administrators of LMIM shall provide the Applicants with a written breakdown of the fees, costs, expenses and other liabilities that are known to them and that are the subject of any lien, charge or right of indemnity claimed by LMIM or the Administrators of LMIM over the Trust's assets.

3.

- (iv) Upon the books and records of the Trust and written details of any such lien, charge or right of indemnity being provided to the Applicants, the Applicants and the Second Respondents shall work co-operatively with each other to agree a process that allows the Applicants and the Second Respondents to determine any quantum and any priority with respect to any such lien, charge or right of indemnity.
 - (v) The Applicants will hold the amount of \$1,364,299 from the balance of the Trust's assets on account of the liens claimed by LMIM and the Administrators of LMIM but on a without prejudice basis to the quantum and priority of those liens, which shall be resolved pursuant to orders (iii) and (iv) or by the Court. The amount of \$1,364,299 will not be applied by the Applicants until resolution of the Second Respondent's lien.
- 2. that the applicants recover their costs of and incidental to the application, assessed as necessary on the indemnity basis, from LM Managed Performance Fund;
 - 3. that the applicants pay the second respondents' costs of and incidental to the application, assessed as necessary on the indemnity basis, and that the amount of those costs form part of the costs for which the applicants may reimburse themselves from LM Managed Performance Fund;
 - 4. that the costs of two of the respondent unit holders represented by Mr Tucker, namely Frazer Scott Kennedy and Georgina Simons Kennedy, of and incidental to the application, assessed as necessary on the indemnity basis, be paid from LM Managed Performance Fund.

Schedule 1

Those choses in action vested in LMIM pursuant to:

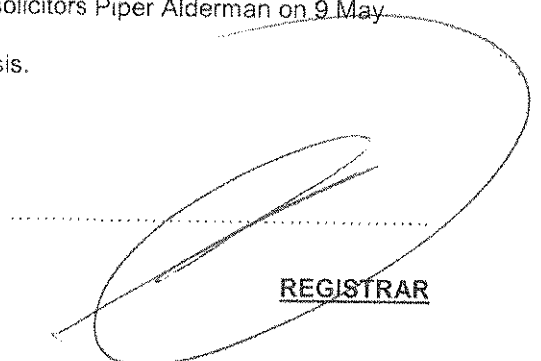
- 1. Any loan agreements and any deeds of variation to those agreements executed by or on behalf of LMIM as Trustee or Manager of the Trust.
- 2. Any charges or mortgages or other security interests granted to LMIM as Trustee or Manager of the Trust.
- 3. Any deeds or contracts of guarantee and indemnity entered into in favour of LMIM as Trustee or Manager of the Trust.

4.

4. Any agreements which confer on LMIM any rights or entitlements in respect of the Trust, or any powers of management in respect of the above documents in respect of the Trust, but without vesting any of the obligations or liabilities under those agreements in the Applicants.

In relation to the second respondents' application in 2869/2013:

5. that the second respondents pay the costs of and incidental to the application, to be assessed as necessary on the indemnity basis, of the applicants and of the respondent unit holders represented by Mr Morrison QC and Ms Ahern, namely, the unit holders with the surnames Appleby, Boutell, Farrimond, Hoolahan, Lewis, Nicoll and Oxley;
6. that the second respondents may not recover the costs so payable from the LM Managed Performance Fund;
7. That the second respondents pay the costs of and incidental to the application, to be assessed as necessary on the indemnity basis, of the respondent unit holders represented by Dr Derrington, namely Fraser William Boyd Jamieson, Constance Louise Van de Schatte Olivier, Andrew Schreiber, Simon Lister, Alison Pockett, Magellan Tressider Tuohy Ltd, Financial Partners Ltd, Mondial (Dubai) LLC, Imperium Capital Group, Wealth Management Group and Intertrust Private Partners KK;
8. That the second respondents pay the costs of and incidental to the application, to be assessed as necessary on the indemnity basis, of two of the respondent unit holders represented by Mr Tucker, namely Frazer Scott Kennedy and Georgina Symons Kennedy;
9. That the second respondents pay the applicants' costs of and incidental to the subpoenas served on the applicant Korda Mentha Pty Ltd and the solicitors Piper Alderman on 9 May 2013, to be assessed as necessary on the standard basis.



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