

**SUPREME COURT OF QUEENSLAND**

**REGISTRY** Brisbane  
**NUMBER** 8792<sup>2013</sup>

Applicants

**KORDAMENTHA PTY LTD (ACN 100 169 391) AND  
CALIBRE CAPITAL LTD (ACN 108 318 985) IN THEIR  
CAPACITY AS TRUSTEES FOR THE LM MANAGED  
PERFORMANCE FUND**

AND

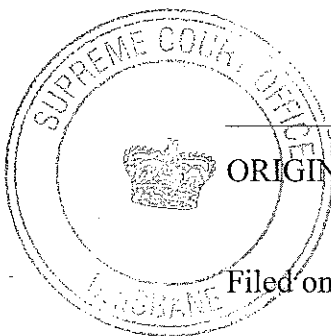
Respondent

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

**ORIGINATING APPLICATION**

To the respondent: TAKE NOTICE that the applicants are applying to the Court for the following orders and directions:

1. A direction pursuant to section 96 of the *Trusts Act* 1973 (Qld), as to whether the applicants would be justified in prosecuting proceedings against the respondent for the relief set out in the draft statement of claim exhibited to the affidavit of Simon Michael Vertullo sworn on 19 September 2013, and filed herein.
2. In the event that a direction that it would be appropriate for the applicants to commence the said proceedings is made:
  - (a) an order pursuant to section 471B of the *Corporations Act* 2001 (Cth) that the applicants have leave to proceed against the respondent in liquidation;
  - (b) a direction that the applicants file in this proceeding a statement of claim against the respondent in the form referred to in paragraph 1 above; and



ORIGINATING APPLICATION

Filed on behalf of the Applicants

MINTER ELLISON  
Lawyers  
Waterfront Place  
1 Eagle Street  
BRISBANE QLD 4000  
DX 102 BRISBANE  
Telephone (07) 3119 6000  
Facsimile (07) 3119 1000  
Reference MJV DOB 40-7744031

- (c) a direction that thereafter this proceeding continue against the respondent as if started by claim.
3. A further direction pursuant to section 96 of the *Trusts Act* 1973 (Qld) that the costs and expenses of and incidental to bringing this application and, in the event that a direction to prosecute the said proceedings is made, the costs and expenses of and incidental to prosecuting those proceedings be costs and expenses of the LM Managed Performance Fund.
4. Such further or other orders or directions as to this Honourable Court may seem appropriate.

This application will be heard by the Court at Brisbane

on: 19 November 2013 at 10am

Filed in the Brisbane Registry on: 19 September 2013

Registrar



If you wish to oppose this application or to argue that any different order or direction 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 and directions 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:

1. Affidavit of Simon Michael Vertullo sworn on 19 September 2013.
2. Affidavit of Simon Michael Vertullo to be sworn.
3. Affidavit of David Thomas O'Brien to be sworn.

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 are suing in a representative capacity namely in their capacity as trustees for the LM Managed Performance Fund.

THE APPLICANTS ESTIMATE THE HEARING SHOULD BE ALLOCATED 2 HOURS.

PARTICULARS OF THE APPLICANTS:

Name: KordaMentha Pty Ltd (ACN 100 169 391) and Calibre Capital Ltd (ACN 108 318 985) in their capacity as trustees for the LM Managed Performance Fund

Applicants' residential or business address: Care of KordaMentha Pty Ltd  
Level 14  
12 Creek Street  
BRISBANE Queensland 4000

Applicants' solicitor's name: David O'Brien

and firm name: Minter Ellison

Solicitor's business address: Waterfront Place  
Address for Service 1 Eagle Street  
BRISBANE QLD 4000

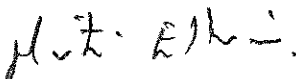
DX: 102 BRISBANE

Telephone: (07) 3119 6000

Fax: (07) 3119 1000

Email address: david.obrien@minterellison.com

Law firm email address: qlit@minterellison.com

Signed: 

Description: MINTER ELLISON  
Solicitors for the applicants

Dated: 19 September 2013

This application is to be served on: LM Investment Management Limited (Receivers and Managers Appointed) (in Liquidation) ACN 077 208 461

of: FTI Consulting, 'Corporate Centre One'  
Level 9  
2 Corporate Court  
Bundall QLD 4217