

SUPREME COURT OF QUEENSLAND

CITATION: *LM Investment Management Ltd (receivers and managers appointed)(in liquidation) v Drake & Ors* [2020] QSC 19

PARTIES: **LM INVESTMENT MANAGEMENT LIMITED
(RECEIVERS AND MANAGERS APPOINTED) (IN
LIQUIDATION) ACN 077 208 461 AS RESPONSIBLE
ENTITY OF THE LM FIRST MORTGAGE INCOME
FUND ARSN 089 343 288**

(plaintiff)

v

PETER CHARLES DRAKE

(first defendant)

and

LISA MAREE DARCY

(second defendant)

and

EGHARD VAN DER HOVEN

(third defendant)

and

FRANCENE MAREE MULDER

(fourth defendant)

and

JOHN FRANCIS O'SULLIVAN

(fifth defendant)

and

SIMON JEREMY TICKNER

(sixth defendant)

and

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

(seventh defendant)

and

KORDA MENTHA PTY LTD ACN 100 169 391 IN ITS

**CAPACITY AS TRUSTEE OF THE LM MANAGED
PERFORMANCE FUND**

(eighth defendant)

FILE NO/S: BS12317/14
 DIVISION: Trial Division
 PROCEEDING: Application for costs
 ORIGINATING COURT: Supreme Court at Brisbane
 DELIVERED ON: 28 February 2020
 DELIVERED AT: Brisbane
 HEARING DATE: Written submission provided 29 November 2019
 JUDGE: Jackson J
 ORDER: **The order of the Court is that:**

1. The plaintiff pay the seventh defendant's cost of the proceeding.

CATCHWORDS: PROCEDURE– CIVIL PROCEEDINGS IN STATE AND TERRITORY COURTS– COSTS– GENERAL RULE: COSTS FOLLOW EVENT– where the seventh defendant applied (informally) for an order that the plaintiff pay the seventh defendant's costs of the proceeding– where the seventh defendant contends that the costs were properly incurred in defending the proceeding– where the plaintiff made no submissions as to the costs of the seventh defendant– where the court ordered that the costs of the proceeding should follow the event.

Uniform Civil Procedure Rules 1999 (Qld), r 681

LM Investment Management Ltd (receiver appointed) (in liquidation) v Drake & Ors [2019] QSC 281

SOLICITORS: Gadens for the plaintiff
 Russells Law for the seventh defendant

Jackson J:

- [1] On 22 November 2019, the court gave judgment in the proceeding dismissing the plaintiff's claim against the defendants.¹ The trial had proceeded against the first to fourth and sixth defendants. It did not proceed against the fifth defendant because he was not served. It did not proceed against the seventh defendant either, because the claim against the seventh defendant was deleted from the statement of claim.
- [2] As to the seventh defendant, LMIM by the liquidators was involved in the proceeding until 28 April 2016. On that date, the court ordered that the liquidators and the solicitors for the seventh defendant be excused from further appearances.
- [3] Prior then, the seventh defendant had been involved in a number of steps, including filing a defence. However, by April 2016, it appeared that LMIM was not insured and the proceeding against it did not continue.
- [4] On 29 November 2019, the seventh defendant applied (informally) for an order that the plaintiff pay the seventh defendant's costs of the proceeding. By written submission, the seventh defendant contends that it remains a party to the proceeding and that it had, by the liquidators, properly incurred costs in defending the proceeding.
- [5] The seventh defendant submits that in circumstances where the plaintiff's claim was dismissed, including for reasons pleaded in the seventh defendant's defence as appropriate, the plaintiff should be ordered to pay the seventh defendant's costs.
- [6] Following receipt of the seventh defendant's application, the court enquired whether the plaintiff intended to make any submissions as to costs of the seventh defendant. The plaintiff replied that it did not.
- [7] In my view, in those circumstances, r 681 of the *Uniform Civil Procedure Rules 1999 (Qld)* ("UCPR") applies. The costs of the proceeding should follow the event. No reason to make another order has been advanced by the seventh defendant or the plaintiff.

¹ *LM Investment Management Ltd (receiver appointed)(in liquidation) v Drake & Ors* [2019] QSC 281.