

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
COMPANIES COURT

IN THE MATTER OF LEHMAN BROTHERS INTERNATIONAL (EUROPE) (IN
ADMINISTRATION)

AND IN THE MATTER OF THE INSOLVENCY ACT 1986

B E T W E E N:

- (1) ANTHONY VICTOR LOMAS
- (2) STEVEN ANTHONY PEARSON
- (3) PAUL DAVID COPLEY
- (4) RUSSELL DOWNS
- (5) JULIAN GUY PARR

(as joint administrators of the above named company)

Applicants

- and -

- (1) BURLINGTON LOAN MANAGEMENT LIMITED
- (2) CVI GVF (LUX) MASTER S.À.R.L
- (3) HUTCHINSON INVESTORS, LLC
- (4) WENTWORTH SONS SUB-DEBT S.À.R.L
- (5) YORK GLOBAL FINANCE BDH, LLC

Respondents

WENTWORTH'S SKELETON ARGUMENT
FOR PTR ON 21 APRIL 2015

INTRODUCTION

1. This skeleton argument sets out Wentworth's position on the PTR of Part B of the Waterfall 2 Application. It is Wentworth's understanding that, subject to any other matter being raised by the SCG or the Administrators, there are no outstanding issues requiring resolution by the Court at the PTR.

ISSUES 34 AND 35

2. The parties have been discussing two matters relating to Issues 34 and 35.
3. First, in relation to the CDDs, in the light of the various templates and their adaptation as described in Mr Lomas's tenth witness statement, there is a practical matter as to which documents are to be construed. This matter is in hand with the Administrators co-ordinating the input of the SCG and Wentworth to ensure that the parties' respective submissions marry up in relation to the same documents. At the time of writing, the Administrators' suggested list is awaited.
4. Secondly, the parties are in the process of seeking to agree a statement of facts ("SAF"). The Administrators, having produced an initial version of the SAF, have suggested that the parties do not submit comments on that draft and instead provide input on a further draft, which is currently awaited (and which is intended to inter-relate with the draft SAF for Issue 36A, referred to below). Wentworth is content with the Administrators' proposal and understands that the SCG is in agreement also.

ISSUE 36A

5. There has been a debate in correspondence between the SCG and Wentworth as to the content and purpose of the SAF for Issue 36A. Wentworth is content with the Administrators' proposed solution, as explained below. It understands that the SCG agrees.
6. The draft SAF circulated by the SCG on 6 April 2015 did not cross refer the statements made in that draft to the evidence. It was readily apparent to Wentworth from the content of a number of the statements made that some had no basis in the written evidence. It was

also apparent that a number of the statements were inaccurate paraphrases of the written evidence intended to gloss what the evidence in fact said.

7. Wentworth's solicitors accordingly wrote to the SCG's solicitors on 7 April 2015 to request that the SCG provide a revised draft SAF that cross referred to the underlying evidence in respect of each statement.
8. The revised draft of the SAF provided on 10 April 2015 confirmed Wentworth's concerns. It accordingly undertook the following approach in revising the draft:
 - (1) First, it struck through statements that had no support in the evidence and which, in many instances, were in the nature of submission (for example, that a given matter or effect was not "necessary" to a purpose of the Administrators).
 - (2) Secondly, it revised, or removed and replaced, inaccurate paraphrases of the written evidence which appeared crafted to advance the SCG's case rather than to state accurately the facts in the written evidence that the SCG would rely on in support of its case.
 - (3) Thirdly, it added facts from the written evidence, remaining faithful to the text of that evidence, which Wentworth considered (a) corrected a misleading impression created by the SCG's selective account of the facts; and (b) relevant to the case Wentworth has stated in its position paper in opposition to the SCG's case.
9. From paragraph 5 of the SCG's solicitors' letter dated 15 April 2015, it appears that the SCG views the SAF as a vehicle to explain its characterisation of the underlying factual evidence, or to set out parts of the written evidence which does something other than give direct evidence.
10. Wentworth does not agree that this is the purpose of the SAF. The purpose of the SAF is to state the evidence, agreed so far as possible, on the basis of which the Court is asked to reach a decision. The object is to assist the Court and to avoid an unnecessary (or unnecessarily involved) review of the now voluminous written evidence. This is why Wentworth has sought to re-align the draft SAF to reflect only the evidence of fact contained in the witness statements served to date.

11. In the light of the disagreement, Wentworth considers that the Administrators' proposal in their letter of 15 April 2015 provides a sensible resolution to the above dispute, specifically for the Administrators to set out in the SAF for Issues 34 and 35 all facts which are relevant both to construction and to Issue 36A, and then to produce a short SAF dealing with such additional facts for the purposes of Issue 36A alone. Wentworth understands that the Administrators will produce such a document having regard to the rival drafts of the SAF for Issue 36A already produced by the SCG and Wentworth, who will both have the opportunity to comment on it.

ANTONY ZACAROLI QC

ADAM AL ATTAR

SOUTH SQUARE

20 APRIL 2015