

IN THE COURT OF APPEAL
ON APPEAL FROM THE HIGH COURT OF JUSTICE
IN THE MATTER OF LEHMAN BROTHERS HOLDINGS PLC (IN ADMINISTRATION)
AND IN THE MATTER OF THE INSOLVENCY ACT 1986
BETWEEN:

(1) THE JOINT LIQUIDATORS OF LB GP NO 1 LIMITED (IN LIQUIDATION)

(2) DEUTSCHE BANK AG (LONDON BRANCH)

Appellants

and

(1) THE JOINT ADMINISTRATORS OF LEHMAN BROTHERS HOLDINGS PLC (IN
ADMINISTRATION)

(2) LEHMAN BROTHERS HOLDINGS INC

Respondents

REPLACEMENT SKELETON ARGUMENT OF
THE JOINT ADMINISTRATORS OF LEHMAN BROTHERS HOLDINGS PLC (“PLC”)
in the PLC Proceedings

1. This is the skeleton argument of the Joint Administrators of PLC as respondents to the appeals of GP1 and Deutsche Bank against paragraphs 6 and 7 of the Order of Marcus Smith J dated 24 July 2020 (the **Order**¹). By those paragraphs, it was declared that, in relation to the PLC Application, the claims of LBHI under the PLC Sub-Debt (**Claim C**)² ranked for distribution *pari passu* with the claims of the noteholders, represented by GP1, under the PLC Sub-Notes (**Claim D**)³ and that Claim C has not been partially released as a result of certain payments made. PLC adopts the abbreviations employed by the Judge in the **Judgment**⁴ dated 3 July 2020.
2. This dispute arises under the PLC Application⁵ issued by the Joint Administrators of PLC in relation to the proper distribution that should be made to creditors under Claims C and D. Although a respondent to this appeal, PLC adopts a neutral stance, as at all times previously. The substantive response to the appeal will be advanced by LBHI, the creditor under the PLC Sub-Debt.
3. Accordingly, and given the lengthy submissions that the Court has received and will receive in relation to the appeal from GP1, Deutsche Bank and LBHI, PLC does not rehearse those issues in any detail here, but instead merely provides a brief list of the issues that PLC understands remain to be determined:
 - a. The **ranking issue** as between Claims C and D. This is an issue of contractual interpretation and was considered at Judgment [322]-[361] and embodied in paragraph 7 of the Order. The Judge found that Claims C and D rank *pari passu*. The Judge granted permission to GP1 and Deutsche Bank to appeal on this issue.⁶ GP1 and Deutsche Bank contend on appeal that Claim D ranks ahead of Claim C.⁷ LBHI defends the Judge's findings, including for the additional reasons advanced in a Respondent's Notice.⁸
 - b. The **Claim C partial release issue** as to whether Claim C has been reduced, discharged or diminished in part by virtue of payments made by LBHI as surety to LBUKH as creditor (pre-assignment to LBHI) in relation to Claim C. The Judge rejected this argument at

¹ [CB2/24].

² [CB3/43 - 45].

³ [CB3/46 - 52]. The appeal is also, consequentially, against the costs orders made by the Judge.

⁴ [CB2/22].

⁵ [CB2/31].

⁶ [CB2/24].

⁷ GP1 Grounds 1-2 [CB1/12/181], Deutsche Bank grounds 3-3A [CB1/14/195].

⁸ Respondent's Notice dated 23 November 2020 [CB1/15].

Judgment [288]-[304] and made the declaration in paragraph 6 of the Order. Newey LJ granted permission to Deutsche Bank to appeal on this issue.⁹ This is Deutsche Bank's Ground 2.¹⁰ LBHI defends the Judge's findings, including for the additional reasons advanced in a Respondent's Notice.¹¹

4. For completeness, it should be noted that the following issues in the PLC Application that were determined at trial are not the subject of appeal:
- a. The **Claim C release issue** by which Deutsche Bank had contended that the Settlement Agreement released Claim C. This was rejected at Judgment [270]-[287] and embodied in paragraph 5 of the Order. Permission to appeal on this issue was refused.¹²
 - b. The **Claim D reduction/discounting issue** as to whether IR Rule 14.23 applied to Claim D as a future debt. The argument that it did not was rejected at Judgment [305]-[321] and embodied in paragraphs 8 and 9 of the Order. Permission to appeal on this issue was refused.¹³

1 March 2021 (replacement skeleton 29 March 2021)

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⁹ [CB2/28].

¹⁰ [CB1/14].

¹¹ Respondent's Notice dated 30 December 2020 [CB1/16].

¹² [CB2/28]. This is Deutsche Bank Ground 1 [CB1/14/194].

¹³ [CB2/28]. This is Deutsche Bank Ground 4 [CB1/14/195].