



Neutral Citation Number: [2010] EWHC 47 (Ch)

Case No: 7942 of 2008

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
COMPANIES COURT

IN THE MATTER OF LEHMAN BROTHERS INTERNATIONAL (EUROPE) (in administration)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20/01/2010

Before :

MR JUSTICE BRIGGS

Between :

**(1) LEHMAN BROTHERS INTERNATIONAL (EUROPE)
IN ADMINISTRATION**

Applicant

- and -

- (1) CRC CREDIT FUND LIMITED**
**(2) CLAREN ROAD CREDIT MASTER FUND
LIMITED**
(3) LEHMAN BROTHERS INC.
(4) LEHMAN BROTHERS FINANCE AG
**(5) GLG INVESTMENTS PLC SUB-FUND:
EUROPEAN EQUITY FUND**
**(6) GOLDMAN SACHS GSIP MASTER COMPANY
(IRELAND) LIMITED**
**(7) PARAGON CAPITAL MANAGEMENT FUND
LIMITED**
(8) HONG LEONG BANK BERHAD
(9) LEHMAN BROTHERS HOLDINGS INC.

Respondents

**APPROVED SUPPLEMENTARY JUDGMENT
ON WRITTEN SUBMISSIONS**

I direct that pursuant to CPR PD 39A paragraph 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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Mr Justice Briggs :

INTRODUCTION

1. This judgment is supplementary to the judgment which I handed down on 15th December 2009 in relation to the Client Money Application, in response to additional questions raised by the Administrators in the light of that judgment (“the Main Judgment”). I directed that interested parties should provide further written submissions in relation to these additional questions, and I have received such submissions from the Administrators, GLG, Paragon and HLBB.

Question

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- i) Where LBIE had, at the PPE, segregated client money in its segregated client money accounts in respect of a Depot Break or Depot Breaks on a stock line basis and it is possible to identify from LBIE’s books and records (and/or from information provided by the relevant client(s)) client(s) whom LBIE intended to protect by segregating that client money, is the client money entitlement of those clients calculated by reference to an appropriate portion of the amount segregated, even though LBIE had not at the time of segregation specifically identified the particular clients for whom that client money was held?
- (ii) If so, is the relevant client’s client money entitlement reduced or extinguished upon the securities in question (or part thereof) being delivered to the client?

Answer

2. Both these questions should be answered in the affirmative.

Reasons

3. The background to these questions is to be found in paragraphs 320 to 322 of the Main Judgment, and in paragraphs 398 and 417. An amount segregated on a stock line basis in respect of Depot Breaks is in my judgment segregated for a class of clients albeit that, at the moment of segregation, LBIE may not have known precisely which clients would suffer from a perceived Depot Break. The class consists of those clients with an entitlement to stock of the relevant type. It is nonetheless an amount set aside to be held on trust for, and for the protection of, such clients as were at that moment potentially affected by the relevant Depot Break. If, as the Administrators invite me to assume, it is now possible by reference to LBIE’s books and records, and to information received from clients, to ascertain precisely which clients were in fact adversely affected by the Depot Breaks, there seems to me to be no good reason to deny a client money entitlement for those clients in respect of the amount which it can now be seen that LBIE segregated for them. In that respect, Depot Breaks constitute a limited further exception to the proposition in paragraph 398 of the Main Judgment that the client money entitlement of each client will generally be apparent from LBIE’s last internal client money reconciliation carried out as at the PLS.

4. The position in relation to money segregated in respect of Depot Breaks is not in my judgment analogous to that of un-segregated clients, in respect of whom LBIE had no intention to segregate money. I see no good reason why effect should not be given to LBIE's intention to protect the proprietary rights of such clients as might be shown thereafter to have been adversely affected by Depot Breaks, even if the precise identity of those clients (rather than their identity as members of a class) could not be ascertained as at the PLS.
5. The reasons for my affirmative answer to part (ii) of this question sufficiently appear from paragraph 317 of the Main Judgment.

Question

28 Do clients for whom client money was paid to LBIE (whether by the clients themselves or by a third party on their behalf):

- i) In the three business days ending at the PLS on 11.09.08, which client money was not specifically segregated by LBIE, have client money entitlements to the extent that LBIE is able to allocate to those clients an appropriate portion of the amount which LBIE had segregated as at the PPE by way of buffer in respect of unapplied credits?
- ii) More than three business days prior to the PLS on 11.09.08, which client money was segregated by LBIE as an unapplied credit, have client money entitlements to the extent that LBIE is able now to identify the clients to whom those credits relate?

Answer

6. Again, both parts of this question should be answered in the affirmative.

Reasons

7. The analysis of client money entitlement in relation to amounts segregated by way of buffer in respect of unapplied credits is substantially the same as that in relation to Depot Breaks, with this difference. In relation to an unapplied credit, it cannot be supposed that LBIE would have any idea at all of the identity of the client or clients to which the credits related. By contrast, in relation to Depot Breaks, LBIE would at least know the identity of the class of clients within which those adversely affected by the Depot Break would fall, being those clients with entitlements in relation to the relevant stock line.
8. Nonetheless it seems to me that, again, effect should be given if at all possible to an intentional setting aside by LBIE of a sum of money on trust for persons from whom, upon subsequent inquiry, it should turn out that LBIE had in fact received credits which, had they been identified when received, would have been segregated. Again, the clients identified as the beneficiaries of the relevant credits ought to obtain a client money entitlement in respect of the buffer amount segregated in respect of those credits, even though, necessarily, the identity of those clients would not be apparent from the client money reconciliation account carried out as at the PLS.

9. In that respect I have not been persuaded by the written submissions to the contrary submitted by Mr Hubbard on behalf of Paragon. There is in my judgment no persuasive analogy between the misuse of hindsight for the purpose of valuing open positions as at the Time of Appointment, and the use of the subsequent investigatory work of the Administrators to ascertain precisely for which clients the unapplied credits buffer had already been put in place.
10. In relation to part (i) of this question, the consequential client money entitlement is of course only to an appropriate share in the buffer. If the amount originally segregated by way of buffer proves to be insufficient, then each client with an additional entitlement based upon the subsequent identification of him as the beneficiary of the previously unapplied credit will have that share abated on the basis of a rateable application of any original shortfall in the amount of the buffer among the clients adversely affected by it. This is not a departure from the general pooling required by CASS 7.9. It is simply a way of identifying the precise amount originally segregated for the relevant clients. By contrast, if the buffer is attenuated by being paid to a bank which subsequently becomes insolvent (like Bankhaus) then the general pooling provisions will apply to that shortfall.
11. No such problem of insufficiency arises in relation to part (ii) of this question since, as I understand it, the whole of the relevant unapplied credit is actually segregated.