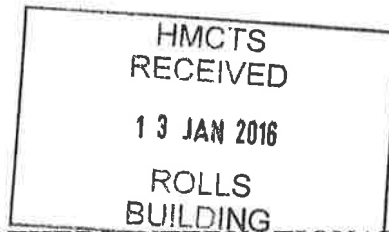


IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
COMPANIES COURT



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

AND IN THE MATTER OF THE INSOLVENCY ACT 1986

(1) ANTHONY VICTOR LOMAS

(2) STEVEN ANTHONY PEARSON

(3) PAUL DAVID COPLEY

(4) RUSSELL DOWNS

(5) GUY JULIAN PARR

(as the joint administrators of the above named company)

Applicants

- AND -

(1) BURLINGTON LOAN MANAGEMENT LIMITED

(2) CVI GVF (LUX) MASTER S.A.R.L

(3) HUTCHINSON INVESTORS LLC

(4) WENTWORTH SONS SUB-DEBT S.A.R.L

(5) YORK GLOBAL FINANCE BDH, LLC

Respondents

**WRITTEN SUBMISSIONS ON BEHALF OF
WENTWORTH ON SUPPLEMENTAL ISSUE 1(B)**

Capitalised terms used but not otherwise defined herein are defined in the amended application dated 9 March 2015 (the “Application”), unless the context requires otherwise.

ISSUE 1(B)

How is an independent right to interest that ‘arises outside or other than from the administration’ to be determined when calculating interest on a non-provable Currency Conversion Claim if such rate would only accrue on a debt that was contingent or future at the Date of Administration if some action was taken after the Date of Administration? How are such rights to be assessed if the creditor did not in fact exercise such rights?

1. The background to this issue is as follows:

- (1) According to Declaration (vi) of the Part IIA Order, a creditor is able to make a non-provable claim to interest on a Currency Conversion Claim:

“If and to the extent that a creditor has a non-provable claim (including but not limited to a Currency Conversion Claim) in respect of a sum on which interest is payable apart from the administration at any time during the period after the Date of Administration (as defined in the Application Notice), the creditor has a non-provable claim in respect of such interest (if any) as may have accrued on that non-provable claim in that period.”

- (2) David Richards J considered the issue at [169] of the Part IIA Judgment:

“There is no provision in the legislation for the payment of interest on such non-provable claims. Rule 2.88 applies to the payment of interest on proved, not non-provable, debts. If the contract between the company and the creditor provides for interest on any unpaid part of the debt, the creditor is in my judgment entitled to include such interest as part of his non-provable claim. The position of rule 2.88 as a complete code relating to the payment of post-administration interest does not, in my judgment, interfere with the enforcement of this contractual right as part of a non-provable claim. Neither explicitly nor implicitly does it interfere with a creditor's contractual right to interest on a non-provable debt. This entitlement to interest is dependent on a remission to contractual or other rights existing apart from the administration and it follows that no interest is payable on a currency conversion claim where the underlying foreign currency obligation is not itself interest-bearing.”

(3) Wentworth, the SCG¹ and the Joint Administrators² consider that effect of the judgment is clear, namely that the existence and quantum of any non-provable claim for interest on a non-provable Currency Conversion Claim is to be determined by reference to the contractual rights to interest (if any) of the creditor. Wentworth, the SCG and the Joint Administrators agree that this requires one to look at what the creditor in fact did following the commencement of the administration to bring a contractual right of interest into effect and allow interest from the date on which such contractual interest was in fact applicable to the claim.

(4) York now seeks to advance two arguments that were not advanced at trial:

(a) First, York contends that if a particular rate of interest would only apply to the relevant debt if some action was taken by the creditor after the Date of Administration, then such interest is not interest that “*may have accrued*” for the purposes of Declaration (vi) of the Part IIA Order: see York’s Written Submissions, at [35]-[37].

(b) Alternatively, York contends that if the words “*such interest...as may have accrued*” do not exclude rates which are contingent on a creditor taking some step after the Date of Administration, then those words should also include any situation where a creditor can take some step after the Date of Administration to gain a higher rate of interest on its debt. York gives the example of a case where a creditor had a contractual right to bring proceedings in New York in order to obtain a judgment debt which would carry interest at the New York Judgments Rate: see York’s Written Submissions, at [38]-[42].

(5) It is in these circumstances that Issue 1(b) arises for determination by the Court.

2. Wentworth understands that the Joint Administrators will be filing detailed submissions on Issue 1(b) in support of the position outlined at paragraph 1(3) above. The Joint

¹ By Freshfields’ letters dated 11 and 21 December 2015 and email dated 16 December 2015.

² By Linklaters’ letters dated 15 and 17 December 2015.

Administrators have said that they do not believe that the position of York is properly arguable and, in these circumstances, Wentworth is content for the Joint Administrators to take the lead on Issue 1(b). Wentworth therefore restricts these written submissions to a summary of its position and the key reasons why the alternative case of York is wrong. Wentworth reserves the right to file submissions in reply to those of the Joint Administrators and the SCG should this prove to be necessary.

3. As identified at paragraph 1(3) above, Wentworth considers that the effect of the judgment is clear. In summary:

(1) A non-provable claim for interest on a non-provable Currency Conversion Claim will only arise in circumstances where the creditor has a contractual entitlement to interest.

(2) There will be no such claim unless and until interest becomes due under the terms of the contract. In other words, one looks at what the creditor in fact did following the commencement of the administration to bring a contractual right of interest into effect and allow interest from the date on which such contractual interest was in fact applicable to the claim.

(3) Accordingly, where a contractual right to interest is dependent upon the occurrence of a contingency, there will be no non-provable claim to interest on a non-provable Currency Conversion Claim for any period prior to the occurrence of the contingency.

4. The alternative case pursued by York, as identified at paragraph 1(4)(b) above, is wrong. In summary:

(1) The conclusion of the Judge is based on a remission of the creditor to its contractual rights apart from the administration.

(2) The reasoning at [169] of the Part IIA Judgment is limited to contractual rights to interest. It cannot sensibly be read as including the possibility of obtaining a foreign judgment which, if entered, would attract interest.

- (3) Moreover, the reasoning at [169] of the Part IIA Judgment leads to the conclusion that interest is not payable unless and until it is due under the terms of the contract. There is no contractual right to interest unless and until the contingency giving rise to such a right occurs.

ANTONY ZACAROLI QC
DAVID ALLISON QC
ADAM AL-ATTAR

South Square
3-4 South Square
Gray's Inn

13 January 2016