

IN THE HIGH COURT OF JUSTICE
CHANCERY DIVISION
COMPANIES COURT

No. 7942 of 2008

Before Lord Justice David Richards

17 October 2016



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

AND IN THE MATTER OF THE INSOLVENCY ACT 1986

BETWEEN

**(1) ANTHONY VICTOR LOMAS
(2) STEVEN ANTHONY PEARSON
(3) PAUL DAVID COPLEY
(4) RUSSELL DOWNS
(5) JULIAN GUY PARR
(THE JOINT ADMINISTRATORS OF LEHMAN BROTHERS
INTERNATIONAL (EUROPE) (IN ADMINISTRATION))**

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

ORDER

UPON THE APPLICATION of Anthony Victor Lomas, Steven Anthony Pearson, Paul David Copley, Russell Downs and Julian Guy Parr of PricewaterhouseCoopers LLP, 7 More London Riverside, London SE1 2RT, the administrators of Lehman

Brothers International (Europe) (“**LBIE**”) (the “**Administrators**”), dated 12 June 2014 (the “**Application**”)

AND UPON CERTAIN SUPPLEMENTAL ISSUES arising from two judgments handed down in respect of the Application, namely *In re Lehman Brothers International (Europe) (No 5)* [2015] EWHC 2269 (Ch); [2016] Bus LR 17 (“**Waterfall IIA**”) and *In re Lehman Brothers International (Europe)* [2015] EWHC 2270 (Ch) (“**Waterfall IIB**”) (together, the “**Judgments**”)

AND UPON READING the written submissions filed on behalf of the Administrators, the First to Third Respondents (the “**Senior Creditor Group**”), the Fourth Respondent (“**Wentworth**”) and the Fifth Respondent (“**York**”)

IT IS HEREBY DECLARED that:

Supplemental Issue 1b

1. Where contractual interest on a debt that was future or contingent at the date on which LBIE entered administration (the “**Date of Administration**”) is payable only upon an event or contingency occurring after the Date of Administration, such interest is payable on a Currency Conversion Claim (as defined in the Orders dated 9th October 2015 giving effect to the first instance judgments in Waterfall IIA and Waterfall IIB) arising from such a debt if, but only if, such event or contingency occurs and only in accordance with the terms of the contract.

Supplemental Issue 1c

2. In a case where contractual interest first starts to run on a proved debt at some point after the Date of Administration, the “*rate applicable to the debt apart from the administration*” for the purposes of Rule 2.88(9) of the Insolvency Rules 1986 (the “**Rules**”) is zero for the period from the Date of Administration to the date when the contractual interest first starts to run. In

determining under Rule 2.88(9) of the Rules the greater of the rate specified in section 17 of the Judgments Act 1838 and the rate applicable to the debt apart from the administration, the periods before and after the date on which contractual interest starts to run should be taken together, not separately.

Supplemental Issue 2

3. A Currency Conversion Claim cannot arise from the discharge of a debt by way of set-off under Rule 2.85(3) of the Rules.

Supplemental Issue 3

4. A non-provable claim to interest on a Currency Conversion Claim is not to be reduced by statutory interest paid to the creditor under Rule 2.88(7) of the Rules.

Supplemental Issue 4

5. If, contrary to the decision at first instance in Waterfall IIA, a creditor is entitled to make a claim for non-provable interest on a proved debt to the extent that its full entitlement to contractual interest in the absence of the administration has not been satisfied, any such claim would fall within the release provided by the Claims Resolution Agreement (the “CRA”) and the Claims Determination Deeds (the “CDDs”), and the Administrators would not be directed to pay such a claim.

Supplemental Issue 5

6. If a creditor is entitled to claim non-provable interest on a Currency Conversion Claim, any such claim falls within the release provided by the CRA but not within the release provided by the CDDs. In the case of a claim released by the CRA, the Administrators would not be directed to pay the claim. If, on their true construction, the CDDs of a creditor not party to the CRA released such a claim, the Administrators would be directed to pay it.

AND IT IS HEREBY ORDERED that:

Costs

1. The Administrators' costs of and occasioned by Supplemental Issues 1b, 1c and 2 to 5 be paid as an expense of the administration.
2. The Senior Creditor Group's costs of and occasioned by Supplemental Issues 1b, 1c and 2 to 5 be paid as an expense of the administration, such costs to be limited, with respect to solicitors, to such costs as would have been incurred had the Senior Creditor Group retained one firm of solicitors only.
3. Wentworth's costs of and occasioned by Supplemental Issues 1b, 1c and 2 to 5 be paid as an expense of the administration
4. York's costs of and occasioned by Supplemental Issues 1b, 1c and 2 to 5 be paid as an expense of the administration.

Permission to appeal

5. The Senior Creditor Group has permission to appeal against paragraph 5 and (insofar as it relates to the CRA) paragraph 6 of the declarations above.
6. Wentworth has permission to appeal against paragraph 4 and (insofar as it relates to the CDDs) paragraph 6 of the declarations above.
7. York has permission to appeal against paragraph 3 of the declarations above.
8. The parties are to file their appellant's notices in respect of any appeals for which permission has been given by 4pm on 10 November 2016.

Service of the order

The court has provided a sealed copy of the order to the serving party:
Linklaters LLP, One Silk Street, London EC2Y 8HQ (ref: Euan Clarke)