Fourth Respondent
Paul Goldschmid
Statement No: 1
3 March 2015
No 7942 of 2008

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.À R.L
(3) HUTCHINSON INVESTORS LLC
(4) WENTWORTH SONS SUB-DEBT S.À R.L
(5) YORK GLOBAL FINANCE BDH, LLC

Respondents

FIRST WITNESS STATEMENT OF
PAUL GOLDSCHMID

I, Paul Goldschmid, of King Street Capital Management GP, L.L.C. ("**King Street**"), of 65 East 55th Street, 30th Floor, New York, NY 10022, state as follows:

Introduction

1. I am a Member at King Street and have held this role within King Street since 2012.

2. King Street is one of the parties to the Wentworth joint venture and I am authorised by Wentworth Sons Sub-Debt S.à r.l (the Fourth Respondent to these proceedings) to make this witness statement.

3. The purpose of this witness statement is to set out certain evidence relevant to some of the matters covered in the tenth witness statement of Anthony Victor Lomas ("**Lomas 10**"), the first witness statement of Mary Nell Browning ("**Browning 1**)", the first witness statement of Andrea Zambelli ("**Zambelli 1**"), the seventh witness statement of Steven Pearson ("**Pearson 7**"), the first witness statement of Paul Copley ("**Copley 1**") and to address certain matters which they do not cover.

4. In particular, in relation to the following, I wish to:

   (a) **CRA Trust CDDs, other CDDs and the Consensual Approach**: Summarise my recollection and understanding of the background to, the purpose and/or effect of certain provisions of the CRA Trust CDDs and other CDDs, and in so doing, address any suggestion (including at paragraph five of Browning 1 in relation to CRA Trust CDDs), that there was no intention on the part of signatories to release rights in the form of non-provable claims by executing a CDD.

   (b) **Currency Conversion Claims**: Supplement the evidence that has been filed in these proceedings (including Zambelli 1 and Copley 1) with respect to the existence of Currency Conversion Claims, the effect of CDDs on Currency Conversion Claims, and statements of the Joint Administrators with respect thereto.

   (c) **Preservation language**: Supplement the evidence that has been filed in these proceedings (including Lomas 10, Browning 1 and Copley 1) with respect to the Currency Conversion Claims preservation language developed for and included in CDDs.

5. Terms capitalised but not otherwise defined have the meaning given to them in the Application, Lomas 10, Browning 1, Pearson 7 or Copley 1 (as the context requires).

6. The information contained in this witness statement is either from my knowledge or from information supplied to me. Where the information is from my knowledge it is true and where it is from information supplied to me it is true to the best of my knowledge and belief.

Background

7. From the time of the launch of the Consensual Approach / development of the first CDDs around October 2010, I had responsibility for King Street's involvement as one of the largest unsecured creditors of LBIE, in considering and entering into CDDs.

8. During this time, I and other members of my team had numerous bi-lateral discussions with the Joint Administrators, on a regular basis, in person, by phone or by videoconference. Most of these discussions took place before the Wentworth transaction was announced on 1 October 2014. Until such date, King Street was a typical senior creditor.

CRA Trust CDDs

9. My team considered a number of CDDs of the type referred to as CRA Trust CDDs at paragraph [64] of Lomas 10. An example CRA Trust CDD was appended to Wentworth's position paper dated 19 September 2014 (the "**Example CRA Trust CDD**").

10. As explained at paragraph [64] of Lomas 10, CRA Trust CDDs were intended for the CRA Signatories. The claims agreement and release provisions in this type of CDD (see clause 2 of the Example CRA Trust CDD) related to the Net Financial Claims, i.e. the only claim in place after release by the CRA of all claims with respect to Financial Contracts[1] (as explained, in particular, at paragraphs [27], [35], [99], [118] and [121] of Pearson 7, which reflects my recollection and understanding of the effect of the CRA).

11. At the time, it was my general expectation and understanding of the claims agreement and release clauses in such CDDs, that a CRA Signatory to a CRA Trust CDD would be entitled to the "*Minimum Net Financial Claim*" (as defined in such CRA Trust CDDs) in the winding-up of LBIE or any distribution of LBIE's assets to unsecured creditors, and would have no further entitlements.

12. In other words, it was my general expectation and understanding that there was a release of all of the signatory creditor's rights against LBIE (whether known or unknown and for all purposes) in respect of Financial Contracts (as defined in the CRA), save for those expressly reserved, in exchange for a new Minimum Net Financial Claim that gave only the ability to receive dividends in the insolvent estate.

13. This expectation and understanding was based upon the information which was available to me and considered at that time, including various preliminary documents relating to the CRA (including the slides from the update meetings with the MFA and AIMA on 8 (New York) / 9 (London) October 2009 (see the Exhibit MNB1 to Browning 1 at pp.342-375), and the 'Circular in relation to a proposed Claim Resolution Agreement' dated 24 November 2009 (see the Exhibit SAP7 to Pearson 7 at pp.4-289) comprising: (i) the Letter as Part I, (ii) the Reader's Guide as Schedule 2 to Part I, and (iii) the Summary of the principal provisions and effect of the CRA prepared by Linklaters LLP as Part II, each referred to at paragraph [35] of Browning 1, which was sent to creditors together with the CRA itself as Part III) and the terms of the CRA and CRA Trust CDDs, as well as the prior background of the Scheme. It was also consistent with the messaging coming from the Joint Administrators in relation to the Consensual Approach (as set out below).

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[1] Save for Client Money Claims.

Other CDDs

14. My team also considered a number of CDDs other than CRA Trust CDDs. An example sterling CDD was appended to Wentworth's position paper dated 19 September 2014 (the "**Example Sterling CDD**").

15. As explained and set out at paragraphs [59] to [65] of Lomas 10, substantially the same broad Release Clause was included in CDDs. CDDs were generally intended for those who had not signed the CRA. The release provisions (see clause 2 of the Example Sterling CDD, which is in materially the same terms as the Release Clause cited in the Application) were in the broadest possible terms, releasing "*Claims*" (as set out at paragraph [60] of Lomas 10, which included "*any and all claims...*").

16. At the time, it was my general expectation and understanding of such CDDs and the Release Clauses in such CDDs, that a signatory creditor would only be entitled to the amount expressly reserved in the release clause (for example, the Admitted Claim in the Example Sterling CDD, or the Agreed Claim in Agreed Claims CDDs), which would be admitted for unsecured dividends (immediately upon execution by an Admitted Claims CDD or at a later date by an Agreed Claims CDD with an uncertain client money component, as explained at paragraphs [49] to [54] of Lomas 10).

17. In other words, it was my general expectation and understanding that there was to be a release of all of a signatory creditor's rights against LBIE (whether known or unknown and for all purposes), save for the amount expressly reserved.

18. This expectation and understanding was based upon the information which was available to me and considered at that time, including the terms of the CDDs, as well as the prior background of the Scheme and CRA. It was also consistent with the messaging coming from the Joint Administrators in relation to the Consensual Approach (as set out below).

Consensual Approach

19. To the best of my recollection, before the possibility of Currency Conversion Claims was first mentioned to me by the Joint Administrators, the message communicated by the Joint Administrators in our bilateral discussions in relation to the Consensual Approach was that, in particular:

    (a) The aim was to crystallize or determine the creditor's unsecured entitlement (for all purposes) and release all other rights against the LBIE estate.

    (b) Continuity from the Scheme and CRA and finality were stressed as benefits of the Consensual Approach.

20. I note it is consistent with the purpose highlighted at paragraph [48] of Lomas 10 (my emphasis added).

> "*The purpose of the CDDs was to provide an efficient process for agreeing the amount of a creditor's claim. The Joint Administrators also wanted to ensure that, once a claim amount had been agreed, it could not subsequently be reopened by the creditor. From a creditor's perspective, entering into a CDD*

gave it certainty as to the amount of its claim and, upon the claim becoming an Admitted Claim pursuant to the terms of the CDD, an entitlement to participate in such dividends as would be paid in the Administration."

21. To the best of my knowledge the Joint Administrators did not at any time before the possibility of Currency Conversion Claims was known indicate to me or anyone else at King Street that the CDDs were aimed only at releasing known or provable claims.

Currency Conversion Claims and CDDs

22. To the best of my recollection, the first time I ever heard of the potential existence of Currency Conversion Claims was when Lydian Overseas Partners Master Fund Limited joined the Waterfall I proceedings.

23. Over the course of 2013, to the best of my recollection, I briefly discussed the topic of Currency Conversion Claims with Mr Copley on several occasions. On 30 September 2013, I met with Mr Copley at King Street's New York office, during which he stated that the prospect of the Currency Conversion Claim existing was not as hopeless as he once thought it was.

24. After this, I and members of my team discussed the impact and effect of CDDs on Currency Conversion Claims with Mr Copley on a number of occasions and recall that he expressed a view consistent with his recollection at paragraph [23] of Copley 1:

> "*I remember informing creditors that I did not know whether or not Currency Conversion Claims existed and, if they did exist (which I initially doubted), whether they were waived by virtue of the Release Clause contained in the CDD (not at that stage having taken legal advice on this issue) and that no changes would be made to the CDDs in this regard so as to avoid creating different classes of CDDs.*"

25. I note that Mr Copley (at paragraphs [25-26] of Copley 1) recalls mentioning to various creditors that ("*subject to obtaining legal advice that supported this course of action*") his preference was to make a public statement on the Joint Administrators' website that CDDs did not have the effect of releasing Currency Conversion Claims and that it had not been the intention of the Joint Administrators that creditors waive their right to Currency Conversion Claims. In all of the various occasions on which I, or to the best of my knowledge members of my team, spoke with Mr Copley, he did not mention that this was his preference or that he had any intention to make such a statement.

26. As regards the assertion at paragraph [27] of Copley 1, namely that the Joint Administrators did not specifically indicate that the CDDs were intended to release "*non-provable claims*". This is not inconsistent with my recollection of our team's conversations with the Joint Administrators and their staff insofar as I recall no specific indication in relation to "*non-provable claims*" before the possibility of Currency Conversion Claims and a notion of "*non-provable claims*" were known about, albeit it was my understanding that *all* claims, save for the amounts expressly reserved therein were released by CDDs.

27. As regards the second assertion at paragraph [27] of Mr Copley's statement that he clearly recalls "*informing creditors (once the issue had been raised, as explained above) that it was not clear whether or not such claims were released by virtue of the Release Clause in the CDDs.*" I recall Mr Copley making a similar assertion to me when we spoke in November 2013, save I recall he mentioned that a waiver may have indeed occurred.

28. Further, as regards the assertion in the second sentence of the Senior Creditor Group's Position Paper at paragraph [34(2)(d)] and Mr Copley's statement that he does not recall having specifically made an assertion that it was the Joint Administrators' intention to release "*non-provable claims in general (i.e. other than Currency Conversion Claims)*", to the best of my recollection, Mr Copley and the other Joint Administrators never acknowledged to me or, as far as I am aware, any member of my team, that they did not intend to release non-provable claims (Currency Conversion Claims or otherwise).

29. I refer to Mr Copley's statement at paragraph [28] of his witness statement that from mid-2013 onwards he told creditors that had he known about the existence of Currency Conversion Claims at the time the Release Clause was drafted to be included in the CDDs in 2010 (which he did not), he would have sought to have them carved out from the effect of the Release Clause.

30. Again, in all of the various occasions on which I, or members of my team, spoke with Mr Copley, he did not mention that this would have been his preference. Nor did the other Joint Administrators deliver a similar message. Nor was any such carve out made from the Release Clause at this time.

31. I refer to Mr Copley's statements at paragraph [32] of his witness statement responding to Zambelli 1, that he [(i)] did not intend to compromise Currency Conversion Claims, and [(iii)] was willing to give evidence in court proceedings to ensure that the CDD provisions were correctly interpreted.

32. As far as I am aware, on all of the various occasions on which I, or members of my team, spoke with Mr Copley, he did not make any such statements. Nor did any of the other Joint Administrators.

Preservation Language

33. I recall members of my team had told me that, in late 2013, they had discussed the scope of preservation language regarding Currency Conversion Claims with LBIE. They had asked LBIE to carve out all "*non-provable claims*" from the release language in the CDDs, but that language was rejected by LBIE in favour of carve out language which applied in respect of Currency Conversion Claims only, see the Interim CCC language and CCC Language referred to at paragraphs [77] and [78] of Lomas 10.

34. As regards the statement at paragraph [55] of Browning 1 that:

> "*I understood that this language [CCC Language] had been included in the CDDs [certain CRA Trust CDDs] for the avoidance of any doubt... and I did not consider this language was necessary (or that without it, the Currency*

Conversion Claim might be waived or released) and no statements were made to me by by LBIE or the Administrators to this effect."

Not only is this inconsistent with my understanding at the time, but I also note that there is no "*for the avoidance of doubt*" type wording in the Interim CCC Language or CCC Language, in contrast to the Statutory Interest Language referred to at paragraph [70] of Lomas 10 which begins "*For the avoidance of doubt...*".

Statement of Truth

35. I believe that the facts stated in this witness statement are true.

Paul Goldschmid

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