



COURT 74
Appeal No.

A3/2020/1787
AND
A3/2020/1810
AND
A3/2020/1811

THURSDAY 21ST OCTOBER 2021

IN THE COURT OF APPEAL

ON APPEAL FROM THE HIGH COURT OF JUSTICE BUSINESS AND PROPERTY
COURTS OF ENGLAND AND WALES (COMPANIES COURT) (ChD)

(MR JUSTICE MARCUS SMITH)

CR-2009-000052
CR-2008-000026

BEFORE LORD JUSTICE LEWISON
LORD JUSTICE HENDERSON
And LADY JUSTICE ASPLIN

**IN THE MATTER OF LB HOLDINGS INTERMEDIATE 2 LIMITED (IN
ADMINISTRATION)
AND IN THE MATTER OF THE INSOLVENCY ACT 1986**

B E T W E E N:

CR-2009-000052

**IN THE MATTER OF LB HOLDINGS INTERMEDIATE 2 LIMITED (IN
ADMINISTRATION)
AND IN THE MATTER OF THE INSOLVENCY ACT 1986**

B E T W E E N:

LEHMAN BROTHERS HOLDINGS SCOTTISH LP 3

Appellant

-and-

**(1) LEHMAN BROTHERS HOLDINGS PLC (IN ADMINISTRATION)
(2) DEUTSCHE BANK A.G. (LONDON BRANCH)
(3) THE JOINT ADMINISTRATORS OF LB HOLDINGS INTERMEDIATE 2 LIMITED
(IN ADMINISTRATION)**

Respondents

-AND-

CR-2008-000026

**IN THE MATTER OF LEHMAN BROTHERS HOLDINGS PLC (IN
ADMINISTRATION)
AND IN THE MATTER OF THE INSOLVENCY ACT 1986**

B E T W E E N:

**(1) THE JOINT LIQUIDATORS OF LB GP NO 1 LIMITED (IN LIQUIDATION)
(2) DEUTSCHE BANK A.G. (LONDON BRANCH)**

Appellants

-and-

**(1) THE JOINT ADMINISTRATORS OF LEHMAN BROTHERS HOLDINGS PLC
(IN ADMINISTRATION)
(2) LEHMAN BROTHERS HOLDINGS INC.**

Respondents

UPON the appeals against the declarations at numbered paragraphs 1, 6, and 7 of

the Orders of Mr Justice Marcus Smith dated 24 July 2020 in cases CR-2008-000026 and CR-2009-000052 (the “**Orders**”) brought variously by:

- (a) Lehman Brothers Holdings Scottish LP 3 (“**SLP3**”) by Appellant’s Notice dated 26 October 2020 (Case No. A3/2020/1787) (the “**LBHI2 Appeal**”), with respect to which Mr Justice Marcus Smith granted permission to appeal save with regards to rectification and Lord Justice Newey, by his order dated 14 December 2020, granted permission to appeal rectification;
- (b) The Joint Liquidators of LB GP No 1 Limited (in liquidation) (“**GPI**”) by Appellant’s Notice dated 26 October 2020 (Case No. A3/2020/1810); and
- (c) Deutsche Bank A.G. (London Branch) (“**Deutsche Bank**”) by Appellant’s Notice dated 26 October 2020 (Case No. A3/2020/1811) (together with A3/2020/1810, the “**PLC Appeals**”), with respect to which Mr Justice Marcus Smith granted permission to appeal paragraph 7 of the Orders but refused permission in relation to the “Dividend Stopper” argument and Lord Justice Newey, by his order dated 14 December 2020, granted permission to appeal paragraph 6 of the Orders but refused Deutsche Bank permission to appeal paragraphs 5, 8 and 9 of the Orders.

AND UPON the Respondent's Notices lodged by the Joint Administrators of Lehman Brothers Holdings plc (in administration) (“**PLC**”) and Deutsche Bank in the LBHI2 Appeal on 23 November 2020 (as later amended by Order dated 26 August 2021) and 29 December 2020 and by Lehman Brothers Holdings Inc. (“**LBHI**”) in the PLC Appeals on 23 November 2020 and 30 December 2020.

AND UPON hearing from Mr Arden QC, Leading Counsel for the Joint

Administrators of LB Holdings Intermediate 2 Limited (in administration) (“LBHI2”), Mr Beltrami QC, Leading Counsel for the Joint Administrators of PLC, Mr Phillips QC, Leading Counsel for LBHI and SLP3, Ms Tolaney QC and Mr Fisher QC, Leading Counsel for Deutsche Bank ,and Ms Hilliard QC, Leading Counsel for GP1, in person on 4, 5, 6, 7 and 8 October 2021.

AND UPON the judgment of Lord Justices Lewison and Henderson and Lady Justice Asplin on the LBHI2 Appeal and the PLC Appeals handed down on 20 October 2021 at a hearing without the attendance of the parties or Counsel.

IT IS ORDERED THAT:

1. The LBHI2 Appeal against paragraph 1 of the Orders be dismissed.
2. The PLC Appeals against paragraphs 6 and 7 of the Orders be allowed.
3. Paragraph 6 of the Orders be varied to read:

“The liability of PLC under the PLC Sub-Debt has been reduced, including for the purposes of proof, by the amount of any payments made by LBHI as surety for PLC’s liability in respect of such claims.”

4. Paragraph 7 of the Orders be varied to read:

“The claims of LB GP No 1 Limited (in liquidation) (as General Partner of, respectively, Lehman Brothers UK Capital Funding LP, Lehman Brothers UK Capital Funding II LP and Lehman Brothers UK Capital Funding III LP) (“GPI”) under Fixed Rate Subordinated Notes issued by PLC pursuant to offering circulars dated 29 March 2005, 19 September 2005, 26 October 2005 and 20 February 2006 (together the “PLC Sub-Notes”) rank for distribution in priority to the claims of LBHI under the PLC Sub-

Debt”.

Costs

LBHI2 Costs

5. SLP3 shall pay the costs of the Joint Administrators of LBHI2 in respect of the LBHI2 Appeal and PLC Appeals, to be determined by detailed assessment on the standard basis if not agreed.
6. Without prejudice to the order as to costs in favour of the Joint Administrators of LBHI2 in paragraph 5 above, the Joint Administrators of LBHI2's costs of the LBHI2 Appeal and the PLC Appeals be payable as an expense of LBHI2's administration.

PLC Costs

7. SLP3 shall pay the costs of the Joint Administrators of PLC in respect of the LBHI2 Appeal, to be determined by detailed assessment on the standard basis if not agreed.
8. Without prejudice to the orders as to costs in favour of the Joint Administrators of PLC in paragraph 7 above and paragraph 9 below, the Joint Administrators of PLC's costs of the LBHI2 Appeal and the PLC Appeals be payable as an expense of PLC's administration
9. LBHI shall pay the costs of the Joint Administrators of PLC in respect of the PLC Appeals, to be determined by detailed assessment on the standard basis if not agreed.

GPI Costs

10. LBHI shall pay GPI's costs of the PLC Appeals to be determined by

detailed assessment on the standard basis if not agreed.

Deutsche Bank Costs

11. LBHI shall pay Deutsche Bank's costs of the PLC Appeals, such costs to be: (a) determined as being 50% of Deutsche Bank's overall costs of the LBHI2 Appeal and the PLC Appeals; and (b) subject to detailed assessment on the standard basis if not agreed.

Permission

12. Permission to appeal to the Supreme Court be refused.

BY THE COURT

THURSDAY 21ST OCTOBER 2021
IN THE COURT OF APPEAL

ON APPEAL FROM
THE HIGH COURT OF JUSTICE
CHANCERY DIVISION

LEHMAN BROTHERS HOLDINGS SCOTTISH LP 3

- and -

LEHMAN BROTHERS HOLDING PLC (IN
ADMINISTRATION)

- and -

THE JOINT ADMINISTRATORS OF LB HOLDING
INTERMEDIAT

- and -

DEUTSCHE BANK A.G (LONDON BRANCH)

- and -

THE JOINT ADMINISTRATORS OF LEHMAN
BROTHERS HOLDIN

- and -

LEHMAN BROTHERS HOLDINGS INC

- and -

THE JOINT LIQUIDATORS OF LB GP NO 1 LIMITED (IN
LI

ORDER

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* This order was drawn by Mr I Norrish (Associate) to whom all enquiries regarding this order should be made. When communicating with the Court please address correspondence to Mr I Norrish, Civil Appeals Office, Room E307, Royal Courts of Justice, Strand, London WC2A 2LL (DX 44450 Strand) and quote the Court of Appeal reference number. The Associate's telephone number is 020 7947 7856