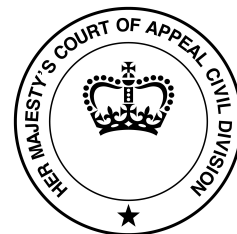




# IN THE COURT OF APPEAL, CIVIL DIVISION

REF: A3/2020/1811(Y)



DEUTSCHE BANK AG (LONDON BRANCH) –v– LEHMAN BROTHERS HOLDINGS INC & ORS

## ORDER made by the Rt. Hon. Lord Justice Newey

On consideration of the appellant's notice and accompanying documents, but without an oral hearing, in respect of an application for permission to appeal on grounds of appeal refused by the lower Court Judge

### **Decision: Permission to appeal granted on Ground 2 but refused on Grounds 1 and 4**

#### **Reasons**

##### *Ground 1: Release*

The Judge was plainly correct to reject Deutsche Bank's release argument. Despite the wide terms in which clause 8.02 of the settlement agreement was drawn, there can be no question of it operating to release the claims of LBHI under the PLC Sub-Debt. The Judge was right to distinguish between a right that does not at present exist at all and one which, although it might be enforceable only in the future, already has some basis.

##### *Ground 2: Partial release*

The arguments advanced in support of this ground of appeal have (just) sufficient substance for Deutsche Bank to have a real prospect of success on it.

##### *Ground 4: Discounting*

It is easy enough to see why Deutsche Bank is unhappy with the effect of the Judge's conclusions on discounting. Even so, this ground of appeal has no real prospect of success. The Judge was correct both to view the PLC Sub-Notes as future debts and to decide that Rule 14.23 of the Insolvency Rules had to be applied. Rule 14.23 is clear.

#### **Information for or directions to the parties**

#### **Mediation: Where permission has been granted or the application adjourned:**

Does the case fall within the Court of Appeal Mediation Scheme (CAMS) automatic pilot categories (see below)? No

##### Pilot categories:

- |   |   |
|---|---|
| <ul style="list-style-type: none"> <li>• All cases involving a litigant in person (other than immigration and family appeals)</li> <li>• Personal injury and clinical negligence cases;</li> <li>• All other professional negligence cases;</li> <li>• Small contract cases below £500,000 in judgment (or claim) value, but not where principal issue is non-contractual;</li> </ul> | <ul style="list-style-type: none"> <li>• Boundary disputes;</li> <li>• Inheritance disputes.</li> <li>• EAT Appeals</li> <li>• Residential landlord and tenant appeals</li> </ul> |
|---|---|

If yes, is there any reason not to refer to CAMS mediation under the pilot? N/A

If yes, please give reason: N/A

Non-pilot cases: Do you wish to make a recommendation for mediation? No

#### **Where permission has been granted, or the application adjourned**

- time estimate (excluding judgment) 5 days (with the linked appeals)
- any expedition No

Signed:  
Date: 14 December 2020

- (1) Rule 52.6(1) provides that permission to appeal may be given only where –
  - a) the Court considers that the appeal would have a real prospect of success; or
  - b) there is some other compelling reason why the appeal should be heard.
- (2) Where permission to appeal has been refused on the papers, that decision is final and cannot be further reviewed or appealed. See rule 52.5 and section 54(4) of the Access to Justice Act 1999.
- (3) Where permission to appeal has been granted you must serve the proposed bundle index on every respondent within 14 days of the date of the Listing Window Notification letter and seek to agree the bundle within 49 days of the date of the Listing Window Notification letter (see paragraph 21 of CPR PD 52C).

Case Number: **A3/2020/1811(Y)**