



IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

BUSINESS LIST (ChD)

**IN THE MATTER OF LENDY LTD (IN ADMINISTRATION)
AND IN THE MATTER OF THE INSOLVENCY ACT 1986**

BETWEEN:

(1) LENDY LTD (IN ADMINISTRATION)

-and-

(2) MARK JOHN WILSON

(3) PHILIP RODNEY SYKES

(4) DAMIAN WEBB

(IN THEIR CAPACITY AS JOINT ADMINISTRATORS OF LENDY LTD)

Claimants

-and-

(1) LIAM BROOKE

(2) TIM GORDON

(3) LP ALHAMBRA LIMITED

(4) RFP HOLDINGS LIMITED

Defendants

PARTICULARS OF CLAIM

I. The Parties

1. The First Claimant is a company incorporated in England and Wales on 9 October 2012 with registration number 08244913 (“the Company”). It entered administration on 24 May 2019.



2. The Second to Fourth Claimants are the Company's joint administrators ("the Administrators"). By order of District Judge Rich dated 3 April 2020, the Administrators' term of office was extended to midnight on 23 May 2023.
3. The First Defendant ("Mr Brooke") is a director of the Company, who was appointed on 12 January 2013.
4. The Second Defendant ("Mr Gordon") was a director of the Company from the date of its incorporation until 26 July 2018.
5. Hereafter, Mr Brooke and Mr Gordon are referred to as "the Directors". As regards the Directors:
 - 5.1. Mr Gordon was the sole shareholder of the Company until 12 January 2013, when he transferred 50% of his holding to Mr Brooke.
 - 5.2. On 1 March 2017, Mr Brooke and Mr Gordon transferred their shares in the Company to Lendy Group Limited ("Lendy Group"), an English company (registered number 10474112) that had been incorporated on 11 November 2016. Mr Brooke and Mr Gordon were appointed as directors of Lendy Group upon its incorporation.
 - 5.3. On 26 July 2018, Mr Gordon resigned as director of the Company and Lendy Group, and his shareholding in Lendy Group was acquired by Lendy Group itself.
 - 5.4. From this date onwards, Mr Brooke was the sole director of the Company, and also the sole director and shareholder of Lendy Group.
6. The Third Defendant ("LP Alhambra") is an English company (registered number 11395176) of which Mr Brooke is the sole director, and the (indirect) sole shareholder of which is Mr Brooke's wife, Mrs Carmen Pamela Guillamon Gonzalez. Mrs Gonzalez holds the entire shareholding in Enebral Holdings Limited ("Enebral"), which is the sole shareholder in LP Alhambra. The entire shareholding in Enebral was previously held by Lendy Group and was transferred to Mrs Gonzalez on 30 November 2018.



7. The Fourth Defendant (“**RFP Holdings**”) is an English company (registered number 09961273) of which Mr Gordon’s wife, Mrs Sara Bryce-Gordon, is the sole director and shareholder. Mr Gordon was previously the sole director and shareholder of RFP Holdings, but on 4 July 2019, he was replaced as director by Mrs Bryce-Gordon and transferred the entire shareholding in RFP Holdings to Mrs Bryce-Gordon.

II. Background

The Company’s business

8. The Company’s initial business after its incorporation in October 2012 was in the provision of lending in the marine sector.
9. In or around December 2013, the Company started to trade under the name “Saving Stream” and purported to provide, as its principal business, a platform for the provision of ‘peer-to-peer’ lending services, under which those wishing to lend money (“**Investors**”) were introduced to borrowers (“**Borrowers**”) through a website provided by the Company.
10. However, the contractual documentation initially used by the Company that regulated the contractual relationships between the Borrowers, the Investors, and the Company, did not in fact create a ‘peer-to-peer’ lending relationship. Rather, the documentation provided for Investors to make a loan to the Company, and for the Company to make a loan in an equivalent amount to the Borrower. The Investors had no contractual relationship with the Borrower, but only with the Company.
11. From in or about late 2015, following the production of new standard contractual documentation for the Company, the parties to each new loan contract were the relevant Investor(s) and Borrower, and the Company acted as agent for the Investors, rather than as a party to the contract.
12. The Company generated revenue and profits through the receipt of fees payable to it by the Borrower. Although the Company’s revenue increased until the end of 2016, in 2017 the number of non-performing loans steadily increased, and the volume of investments from Investors decreased significantly over the course of 2017.



The Offshore Payments

13. In the period from 19 August 2014 to 3 July 2017, the Company made a total of 73 payments out of its bank account totalling £6.849m (“**the Offshore Payments**”) purportedly in discharge of sums owed to three companies incorporated in the Marshall Islands (together, “**the Offshore Companies**”).
14. The Offshore Companies comprised the following entities:
 - 14.1. Laurus Holdings Limited (“**Laurus**”), a company registered in the Marshall Islands with the address Ajeltake Road, Ajeltake Island, Majuro MH96960, Marshall Islands. Laurus also used an address at 'c/o IRI Corporate & Maritime services (Switzerland) SA, 7 Rue De Le Croix d'Or'. Laurus was annulled under Marshall Islands law on 18 December 2018.
 - 14.2. Delplane Limited (“**Delplane**”), a company registered in the Marshall Islands with the address Ajeltake Road, Ajeltake Islands, Majuro, MH96960, Marshall Islands. Delplane was annulled on 11 July 2019.
 - 14.3. Emporis Ltd (“**Emporis**”), a company registered in the Marshall Islands, which was annulled on 11 July 2019. The Administrators do not know Emporis’ registered address.
15. To the best of the Administrators’ belief:
 - 15.1. Conduit Asset Management Limited (“**CAM**”) was a corporate director of each of the Offshore Companies. CAM is a company registered in New Zealand with company number 383277 and with the address Level 10, 21 Queen Street, Auckland 1010 New Zealand.
 - 15.2. CAM was the sole shareholder in a further company, Conduit Nominees Limited (“**Conduit Nominees**”), another company registered in New Zealand with company number 3343670. Conduit Nominees has now been struck off the New Zealand companies register.
 - 15.3. Mr Anthony Smith was at all material times a director of CAM. Mr Smith is a former business associate of Mr Brooke.



16. The Offshore Payments were made either directly to the Offshore Companies or into an account held by Conduit Nominees or another Conduit entity. Particulars of the Offshore Payments, identifying (so far as the Administrators have been able to ascertain) the entity to which each payment was made, are set out in the schedule annexed hereto.
17. At the Directors' direction and/or with their knowledge the Offshore Payments were recorded by the Company in its books and records (including in particular on its electronic accounting system after January 2015) as payments made in respect of services provided by the relevant Offshore Company relating to marketing and/or the introduction of Investors to the Company (and were recorded as such on its accounting system after January 2015).
18. However, as the Directors knew (or ought to have known) the Offshore Companies provided no (or negligible) services to the Company, and the Offshore Payments were not made in discharge of liabilities genuinely owed to them.
19. Notwithstanding the foregoing, the Directors caused and/or allowed the Company to make the Offshore Payments and to treat the Offshore Payments as expenses properly incurred in the course of its business and as an allowable loss against corporation tax in its corporation tax returns for the years 2014, 2015, 2016, and 2017, with the consequence that: (1) the Company's overall annual profit stated in its corporation tax returns was reduced; and (2) the Company paid corporation tax calculated by reference to that (lower) profit figure.
20. The Company's treatment of the Offshore Payments as an allowable loss was unlawful, in that the Offshore Payments were not genuine allowable expenses and were not properly deductible from the Company's profits in assessing the Company's liability to corporation tax in the years 2014 to 2017. The Directors thereby caused or allowed the Company to declare a liability for, and to pay, less corporation tax than it in fact ought to have declared and paid in respect of the years 2014 to 2017.



The benefits received by the Directors

21. In addition, the Offshore Payments were made for the purposes and/or with the effect of benefiting the Directors personally. In that regard, the Claimants rely, amongst others, upon the following facts and matters:

21.1. In an email dated 13 December 2016 sent by Mr Brooke to Philip Mettam of Meridian Corporate Finance, Mr Brooke stated “*we both have a trust offshore which we pay £100k per month into in the form of invoices*”. In circumstances where the Offshore Payments included regular payments of £100,000 to or for the benefit of Offshore Companies (namely, Delplane and Laurus), the Claimants contend that the Offshore Payments were, in fact, payments for the benefit of the Directors.

21.2. The Administrators have discovered documents that suggest that substantial sums were transferred from accounts held by Conduit Nominees and CAM to accounts held by each of the Directors. These are:

- (1) Bank statements evidencing payments from CAM totalling £195,000 to account number [REDACTED] (an account of Mr Brooke) in the period February to March 2016 and £200,000 to account number [REDACTED] (an account of Mr Gordon) in the period March to May 2016;
- (2) Bank statements evidencing payments from Conduit Nominees totalling £237,500 to account number [REDACTED] (an account of Mr Brooke) in the period February to July 2015 and a payment of £125,000 to account number [REDACTED] (an account of Mr Gordon) on 9 October 2015.

21.3. After the date of the first of the Offshore Payments, one or more of the Offshore Companies transferred monies to a further Marshall Islands company, Argo Private Finance Limited (“Argo”) (of which CAM was also a corporate director). As to this:

- (1) Conduit Nominees and/or CAM maintained sub-accounts for (at least) Emporis and Laurus (and the Administrators believe that this was also the case for Deplane). The ledger seen by the Administrators relating to what



appears to be the Laurus sub-account (“**The Laurus Ledger**”) shows payments received from the Company and payments made to Argo out of that account. In the premises, monies transferred to Argo derived from the Company.

- (2) The Administrators have seen copies of dated but unsigned loan agreements under which Argo was to advance sums of money to the Directors purportedly by way of loan. These comprise:
 - (a) A loan document dated 9 February 2016 under which Argo was to transfer £1.2m to Mr Gordon. The borrower’s reference in the document was stated to be “*Ryefield Park*”, a property in the UK that the Administrators believe Mr Gordon purchased with the traceable proceeds of the Offshore Payments (see paragraph 35.2 below);
 - (b) A loan document dated 15 July 2016 under which Argo was to transfer £500,000 to Mr Gordon;
 - (c) A loan document dated 15 July 2016 under which Argo was to transfer £500,000 to Mr Brooke.
- (3) It is to be inferred that these sums were in fact transferred. Further, it is to be inferred that a substantially higher proportion of the Offshore Payments was received by the Directors via Argo or otherwise. In this regard:
 - (a) The Laurus Ledger shows that sums were withdrawn from the Laurus sub-account and transferred onto a pre-paid payment card or cards. It is to be inferred that such transfers were made at the direction of one or both of the Directors and that the said payment cards were held and used by one or both of the Directors;
 - (b) Consistent with this, in an email to Barclays Wealth (his bank) dated 15 June 2016, Mr Brooke referred to a payment of £773,000 which would be sent “*over*” for the purposes of providing a deposit for the acquisition by Mr Brooke of the property known as 2 Brankesmere House, Queens Crescent, Southsea POS 3HT, Southsea PO4 0RL, with title number PM11977 (“**2 Brankesmere House**”), and which would



come from Argo which he described as ~~a subsidiary co~~ of the trust structure”;

- (c) In an email dated 19 July 2017 to Zowie Sellen of The Mortgage Advice Bureau, Mr Brooke described Conduit Nominees “as my offshore trust manager”; and
- (d) In a further email to Ms Sellen sent that day, Mr Brooke referred to both Argo and Laurus as part of his “trust”.

22. In the premises:

- 22.1. It is to be inferred that the original source of the funds paid to the Directors by Argo were the Offshore Payments, and that there were in fact further payments made from the Offshore Companies to Argo;
- 22.2. The Claimants contend that the Offshore Payments were, in fact, payments for the benefit of the Directors and/or that CAM and Conduit Nominees habitually obeyed the Directors’ instructions as to the governance of the Offshore Companies and Argo, and exercised control over them in accordance with the Directors’ wishes.

The Company’s entry into administration

- 23. On 22 May 2019, the Financial Conduct Authority presented a petition seeking the winding-up of the Company on the just and equitable basis, after having concluded that the Company was unable or unwilling to meet its regulatory obligations. The petition was withdrawn by an order dated 24 May 2019, the same day that the Administrators were appointed by way of an out-of-court appointment.
- 24. The Company entered administration with significant debts. The Administrators currently anticipate that there will be a significant shortfall between the sums owed to creditors and the amounts available for distribution to them.

III. The duties owed by the Directors

- 25. At all material times, in their capacity as directors of the Company, the Directors owed (and Mr Brooke continues to owe) duties to the Company which included:



- 25.1. A fiduciary duty to act in accordance with the Company's constitution and only to exercise their powers for the purposes for which they were conferred (s.171 of the Companies Act 2006 ("CA 2006"));
- 25.2. A fiduciary duty to act in the way each considered, in good faith, would be most likely to promote the success of the Company for the benefit of its members as a whole (s.172 of CA 2006);
- 25.3. A fiduciary duty to avoid a situation in which they had, or could have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the Company (s.175 of CA 2006); and
- 25.4. A duty to exercise reasonable skill, care and diligence (s.174 of CA 2006).

26. Further, in consenting to become directors of the Company, the Directors undertook duties to it analogous to those of a trustee, such that a misapplication of the Company's property in breach of the Directors' fiduciary duties would be, and is to be, treated as a breach of trust.

IV. The Directors' breaches of duty

27. By procuring and/or allowing the Offshore Payments to be made in return for no (or negligible) services and for no corresponding benefit to the Company, the Directors:
 - 27.1. Failed to act in the way they considered, in good faith, would be most likely to promote the success of the Company for the benefit of its members as a whole (alternatively, failed to have regard to the interests of the Company, and acted in a way that was contrary to those interests);
 - 27.2. Failed to exercise their powers only for proper purposes;
 - 27.3. Failed to exercise reasonable skill, care and diligence; and/or
 - 27.4. Acted in breach of trust.
28. Further, by procuring and/or allowing the Company to make payments to the Offshore Companies (being companies over which the Directors exercised effective control) and/or for the Directors' benefit, the Directors:



- 28.1. Failed to act only in the way they considered, in good faith, would be most likely to promote the success of the Company for the benefit of its members as a whole (alternatively, failed to have regard to the interests of the Company, and acted in a way that was contrary to those interests);
- 28.2. Failed to exercise their powers only for proper purposes;
- 28.3. Failed to avoid a situation in which they have, or can have, a direct or indirect interest that conflicts, or possibly may conflict, with the interests of the Company;
- 28.4. Failed to exercise reasonable skill, care and diligence; and/or
- 28.5. Acted in breach of trust.

29. But for the aforesaid breaches of duty and/or trust, the Company would not have made the Offshore Payments. In the premises, as a result of the Directors' breaches of duty and/or trust, the Directors are liable to account to the Company and/or are liable to pay equitable compensation to the Company in respect of the losses suffered in the amount of £6.849m (being the total of the Offshore Payments). Further, insofar as the Offshore Payments triggered a liability to pay PAYE tax and/or National Insurance contributions, the Company is entitled to equitable compensation for the same.
30. Further or alternatively, by procuring and/or allowing the Company falsely to treat the Offshore Payments as genuine expenses and/or as a deductible loss in its corporation tax returns in 2014, 2015, 2016, and 2017, the Directors:
 - 30.1. Failed to act only in the way they considered, in good faith, would be most likely to promote the success of the Company for the benefit of its members as a whole (alternatively, failed to have regard to the interests of the Company, and acted in a way that was contrary to those interests);
 - 30.2. Failed to exercise reasonable skill, care and diligence; and/or
 - 30.3. Failed to exercise their powers only for proper purposes.
31. But for the aforesaid breaches of duty and/or trust, the Company would have properly accounted for the Offshore Payments as gifts, would not have falsely underdeclared its



corporation tax liabilities, and would have paid the same. Consequently, as a result of the Directors' breaches of duty, the Company has potentially incurred additional liabilities for penalties and interest payable to HMRC, in respect of which the Company is entitled to equitable compensation.

V. The Company's proprietary claims

32. The Offshore Payments were made in breach of the Directors' fiduciary duties to the Company, such that the sums that comprised the Offshore Payments belonged to the Company in equity from the moment they were paid.
33. The Company is consequently entitled to an equitable proprietary interest in property that represents, in part or in whole, the traceable proceeds of the Offshore Payments.
34. The Company's proprietary claims, pending disclosure, are necessarily inferential, and the Company provides below the best particulars it can on the information presently available to it. The Company reserves the right to amend or supplement these particulars on receipt of further information, whether by way of disclosure or otherwise.
35. The Company infers that at least the following properties were purchased with the traceable proceeds of the Offshore Payments, as a consequence of which the Company is entitled to assert a proprietary interest in the same:
 - 35.1. 2 Brankesmere House, which is registered at HM Land Registry to Mr Brooke.
 - 35.2. A property at 10 Alhambra Road, Southsea PO4 0RL, with title number HP112750 ("10 Alhambra Road"), which is registered at HM Land Registry to LP Alhambra.
 - 35.3. A property at Ryefields Park, Oakwood, Chichester PO18 9AL, with title number WSX137103 ("Ryefields Park"), which is registered at HM Land Registry to RFP Holdings (of which Mr Gordon previously owned the entire share capital, and Mrs Bryce-Gordon currently owns the entire share capital), and which was specifically referred to in the unsigned loan agreement between Argo and Mr Gordon dated February 2016.



36. In the premises, Mr Brooke, LP Alhambra, and RFP Holdings hold 7 Brankesmere House, 10 Alhambra Road, and Ryefields Park respectively on constructive trust for the Company.

VI. The Administrators' claim under s.423 of the Insolvency Act 1986

37. Further:

- 37.1. Each of the Offshore Payments was or was the product of a transaction entered into by the Company with the relevant Offshore Company and/or with the Directors and/or Conduit Nominees and/or CAM, pursuant to which the Company made the Offshore Payment;
- 37.2. Each of the said transactions was entered into by the Company at an undervalue within the meaning of s.423(1) of the Insolvency Act 1986 (“IA 1986”), in that the transactions were gifts or else the Company received no consideration in return for the consideration given by it, or received consideration that was significantly less than the value, in money or money’s worth, of the consideration given by the Company; and
- 37.3. In respect of each of the said transactions, the purpose (or, alternatively, a significant purpose) of the Company was to prejudice the interests of Her Majesty’s Revenue and Customs within the meaning of s.423(3)(b) of IA 1986 (in that the Directors intended that the Company would wrongly treat the Offshore Payments as an allowable business loss in its corporation tax returns, and their intention is attributed to the Company).

38. In the premises, each of the Offshore Payments was a transaction in respect of which the Court has jurisdiction to make an order under s.423(2) of IA 1986 upon the application of the Administrators.
39. As set out in paragraph 24 above, there is an anticipated significant shortfall between the sums owed to creditors of the Company and the sums available for distribution thereto, which is likely to exceed the total amount of the Offshore Payments meaning that the Company’s creditors as a whole are victims of the said transactions.
40. The Administrators accordingly seek:



- 40.1. An order that the Directors repay the entirety of the Offshore Payments, totalling £6.849m;
- 40.2. Orders that, insofar as RFP or LP Alhambra received sums derived from the Offshore Payments and/or acquired property bought with the same (as to which the Claimants plead further in paragraph 35 above), orders that RFP and LP Alhambra shall pay these sums to the Administrators;
- 40.3. Orders pursuant to s.425(1)(f) of IA 1986 imposing a charge upon the property of the Directors (including 2 Brankesmere House and [REDACTED] Landport Terrace, Portsmouth, PO1 2RG (“Landport Terrace”), both of which are registered to Mr Brooke), LP Alhambra (10 Alhambra Road), and/or RFP (Ryefields Park) as security for the discharge of such sums as the Directors are ordered to pay; and/or
- 40.4. Such further or other order(s) that the court thinks fit for restoring the position to what it would have been if each of the transactions had not been entered into and protecting the interests of the persons who are victims of the transactions.

VII. Interest

41. The Company claims compound interest at such rate and for such period and with such rests as the Court thinks fit pursuant to its equitable jurisdiction in respect of any sums found due to it in respect of the Directors’ breaches of duty and/or trust.
42. Further or alternatively, the Claimants claim interest on all sums found to be due at such rate and for such period as the Court thinks fit under section 35A of the Senior Courts Act 1981.

AND THE CLAIMANTS CLAIM:

- (1) An order that the Directors account to the Company in respect of the Offshore Payments and/or pay equitable compensation to the Company;
- (2) Further or alternatively, a declaration that the Offshore Payments and their traceable proceeds held in the name of the Defendants are the property of the



Company in equity and are held for the Company on constructive trust, including in particular 2 Brankesmere House, 10 Alhambra Road and Ryefields Park;

- (3) If and to the extent that it may be necessary, an equitable charge over the assets of the Defendants to give effect to the Company's claim;
- (4) Further or alternatively, a declaration that Offshore Payments constituted transactions in respect of which the Court may grant relief pursuant to s.423 of IA 1986;
- (5) Consequential upon the aforesaid declaration:
 - (i) An order that the Directors repay the entirety of the Offshore Payments, totalling £6.849m;
 - (ii) An order pursuant to s.425(1)(f) of IA 1986 imposing a charge upon the property of the Directors (including 2 Brankesmere House and Landport Terrace), LP Alhambra (10 Alhambra Road), and RFP (Ryefields Park) as security for the discharge of such sums as the Directors are ordered to pay; and/or
 - (iii) Such further or other order(s) that the court thinks fit for restoring the position to what it would have been if each of the transactions had not been entered into and protecting the interests of the persons who are victims of the transactions;
- (6) Such further declarations, directions, accounts and enquiries as shall be appropriate;
- (7) Interest as set out in paragraphs 41-42 above;
- (8) Such further or other relief as the Court thinks fit.

TONY BESWETHERICK

PATRICK DUNN-WALSH



Statement of truth

The Claimants believe that the facts stated in these Particulars of Claim are true. I am authorised to make this statement on the Claimants' behalf. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.



Signature

Gemma Lee Kaplan....

Full name

Partner, Pinsent Masons LLP

Position

30 September 2020

Date