



IN THE HIGH COURT OF JUSTICE

BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES

BUSINESS LIST (ChD)

Claim No. BL-2020-000856

IN THE MATTER OF LENDY LTD (IN ADMINISTRATION)

AND IN THE MATTER OF THE INSOLVENCY ACT 1986

B E T W E E N:

(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

DEFENCE OF THE SECOND AND FOURTH DEFENDANTS

1. In this Defence, unless otherwise stated:

- a. References to paragraph numbers are references to the paragraph numbers of the Particulars of Claim;
- b. Defined terms and headings used in the Particulars of Claim are adopted in this Defence without admission;
- c. The Second and Fourth Defendants are collectively referred to as “**the Defendants**”.



2. As noted at paragraph 7, the current director and shareholder of the Fourth Defendant is Mrs Sara Bryce-Gordon (“**Mrs Bryce-Gordon**”), the Second Defendant’s wife. At all material times, the Second Defendant was the sole director and shareholder of the Fourth Defendant. As such, this Defence is filed on behalf of the Defendants. However, for the avoidance of doubt, it is averred that the current controlling mind of the Fourth Defendant, being Mrs Bryce-Gordon, has no direct knowledge of material events prior to 4 July 2019, unless otherwise stated, and that the admissions and averments in this Defence made on behalf of the Fourth Defendant are done so having regard to the Fourth Defendant’s knowledge, acts and omissions whilst the Second Defendant was its controlling mind.

I. The Parties

3. Paragraphs 1 to 4 inclusive are admitted.
4. The first sentence of paragraph 5 is noted. As to the remainder of paragraph 5:
- a. Subparagraph 5.1 is admitted, save that Mr Gordon transferred 50 shares to Mr Brooke on 11 November 2014; and
 - b. Subparagraphs 5.2 to 5.4 inclusive are admitted.
5. Paragraph 6 is admitted insofar as the statements made therein are derived from publicly available information. Otherwise, the Defendants neither admit nor deny but require the Claimants to prove paragraph 6 in circumstances where the Defendants are not, and have never been involved in the management of, nor a shareholder of LP Alhambra or Enebral.
6. Paragraph 7 is admitted.

II. Background

The Company’s business

7. Paragraph 8 is admitted.
8. Paragraph 9 is admitted, save that it is denied that the Company “*purported*” to provide a platform for the provision of “peer-to-peer” lending services: the Company did so. The Company operated a website, “www.savingstream.co.uk”, which became operational in or around November 2013 (“**the Website**”). The Website, and therefore the Company’s business, operated as follows from that date to in or around late 2015:
- a. Persons who wished to borrow money (a “**Borrower**” or “**Borrowers**”), would provide details of the loan they sought on the Website;
 - b. Persons who wished to lend money would identify a Borrower or Borrowers on the Website, and would thereafter lend money to the Company in respect of that specific Borrower or Borrowers (a “**Lender**” or “**Lenders**”);



- c. The Company then, by way of a back-to-back loan, would lend an equivalent sum to that lent by the Lender to the specific Borrower or Borrowers identified by the Lender. The loan would be secured over the assets of the Borrower or Borrowers. Borrowers were limited to borrowing 70% of the value of their secured property, as determined by a third-party professional valuer;
 - d. Neither Mr Brooke nor Mr Gordon intended to expose the Company to any credit risk. As such, it was a condition of all loans made by a Lender to the Company that the Company would only be liable to repay to the Lender such amount of the back-to-back loan recovered by the Company from the Borrower or Borrowers. The Company obtained advice from Counsel as to that condition;
 - e. Lenders typically received 12% per annum of the value of loans made to the Company by way of interest for the initial term of each loan, such interest rate reflecting the degree of risk inherent in “peer-to-peer” lending; and
 - f. The Company was remunerated for operating the Website, as further particularised below. The Company typically generated profit of approximately £5 for every £100 loaned by Lenders.
9. It is further denied, insofar as it is alleged in paragraph 8, that the Company used the term “investor” to describe those who wished to lend money using the platform provided by the Company. As set out above, such persons were referred to as “lenders”. The averments in this paragraph are repeated in respect of every use of the defined term “*Investors*” in the Particulars of Claim.
10. Paragraph 10 is admitted insofar as it is consistent with paragraph 8 above, but is otherwise denied.
11. Paragraph 11 is admitted. The Company changed its standard contractual documentation in accordance with legal advice given to the Company. However, the business model of the Company remained the same, or virtually the same, as that set out in paragraph 8 above, save that the Company acted as agent for the Lenders rather than making back-to-back loans.
12. The first sentence of paragraph 12 is denied, insofar as it is alleged that the Company only generated revenue and profits from fees paid by Borrowers. The Company generated fees and income from, *inter alia*, arrangement fees, receipt of a proportion of the interest paid by Borrowers, exit fees, and interest on secondary market trading.
13. As to the second sentence of paragraph 12, it is denied, insofar as it is alleged, that the Company’s revenue (by which the Defendants understand the Claimants to mean turnover) did not increase after 31 December 2016. The Company’s statutory accounts demonstrate that the Company’s revenue in the year ending 31 December 2016 was £29,199,126, increasing to £32,168,580 in the year ending 31 December 2017. It is admitted that the number of non-performing loans increased

in 2017, and is averred that this was a consequence of, *inter alia*, external market conditions and new regulatory restrictions. It is denied that there was a decrease in the volume of investments in 2017. Whilst it is admitted that the number of new Lenders decreased from 6,966 in 2016 to 6,115 in 2017, the number of total Lenders increased from 12,724 in 2016 to 18,839 in 2017, and the total volume of lending increased from £271.6m in 2016 to £382.2m in 2017.



The Offshore Payments

14. As to paragraph 13, the fact and quantum of the Offshore Payments is admitted. Insofar as it is alleged that the Offshore Payments were not made to discharge genuine liabilities of the Company, the same is denied for the reasons set out below.
15. In mid- to late 2010, Mr Brooke and Mr Gordon began developing a business idea founded upon the concept of a “peer-to-peer” lending platform.
16. In or around late 2010, Mr Brooke asked Mr Anthony Smith (“**Mr Smith**”) if he would be interested in joining with Mr Brooke and Mr Gordon to develop and realise their business idea. To the best of Mr Gordon’s knowledge and belief, Mr Smith is a Swiss national who, at the time, was Mr Brooke’s line manager. Mr Gordon understands that Mr Smith had, and continues to have, significant experience in the financial sector, an extensive network of contacts including high-net-worth individuals, financial advisers, and brokers, and a record of raising millions of pounds for investment funds. Mr Smith did not wish to be directly involved in Mr Brooke and Mr Gordon’s proposed business as a partner, but did state that he would be able to assist with generating growth, in return for appropriate remuneration.
17. Following Mr Brooke’s discussions with Mr Smith, in or around February 2011, Mr Brooke, Mr Gordon and Mr Smith entered into a written agreement (the “**Collaboration Agreement**”). Mr Gordon is no longer in possession of a copy of the Collaboration Agreement, which he believes was stored in the Company’s files, and this Defence has therefore been prepared without sight of the same. However, to the best of Mr Gordon’s recollection, the Collaboration Agreement provided as follows:
 - a. Mr Brooke and Mr Gordon would pursue their business idea, including building the mooted “peer-to-peer” lending platform;
 - b. Mr Brooke and Mr Gordon would raise, and thereafter pay to Mr Smith the sum of £400,000, as a payment on account of remuneration likely to be due to him in return for his services, and in order to evidence to Mr Smith that Mr Brooke and Mr Gordon were able to raise sufficient capital to fund the start-up costs of the business;
 - c. Upon payment of the sum of £400,000, Mr Smith would assist in generating business for the Company by introducing Lenders and Borrowers to the Website.

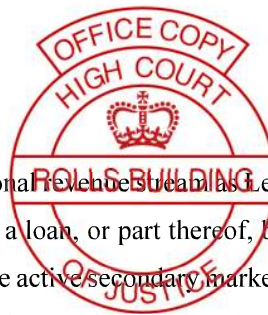


18. Mr Brooke and Mr Gordon raised the sum of £400,000 in the period from June 2011 to in or around December 2012. In accordance with Mr Smith's instructions, and pursuant to the terms of the Collaboration Agreement, that sum was paid to a bank account which was understood by Mr Gordon to be controlled by Mr Smith and/or by corporate offshore vehicles believed by Mr Gordon to be owned, controlled and/or otherwise operated by Mr Smith. Those corporate offshore vehicles are the entities listed in paragraph 14 of the Particulars of Claim and referred to as "*the Offshore Companies*". The Defendants do not know exactly who owned and controlled the Offshore Companies, but avers, for the avoidance of doubt, that they:
- a. Have never been a director or shareholder (whether directly or indirectly) of the Offshore Companies, nor the companies referred to in paragraphs 15 and 21.3 of the Particulars of Claim;
 - b. Have never had any interest (whether legal, equitable or otherwise) in the Offshore Companies, nor the companies referred to in paragraphs 15 and 21.3 of the Particulars of Claim, or their assets; and
 - c. Have never had access to, and have never been a signatory on the bank account(s) of the Offshore Companies, nor the companies referred to in paragraphs 15 and 21.3 of the Particulars of Claim, and have not otherwise ever had control of the assets, including monies held in the bank account(s), of the Offshore Companies, nor the companies referred to in paragraphs 15 and 21.3 of the Particulars of Claim.
19. Save that the Defendants neither admit nor deny the fact and date of Laurus and/or Delplane and/or Emporis being annulled, the same being outside of the Defendants' knowledge, paragraph 14 of the Particulars of Claim is admitted.
20. Following incorporation of the Company, Mr Smith agreed to advance to the Company some of the £400,000 previously paid to him, to assist with the Company's working capital requirements. Also, further discussions took place between Mr Smith, Mr Brooke and Mr Gordon in respect of Mr Smith's assistance in generating business for the Company. To the best of Mr Gordon's recollection, in consequence of those discussions, the Collaboration Agreement was varied to add the Company as a party to the same, and to provide that Mr Smith would be remunerated for introducing prospective Lenders and Borrowers in an amount to be calculated by reference to the amount of business he generated for the Company. Alternatively, an oral contract in like terms was entered into, or a contract in like terms arose by virtue of the conduct of Mr Smith, Mr Brooke, Mr Gordon and the Company.
21. Largely as a consequence of Mr Smith's activities, provided by him in accordance with the Collaboration Agreement, the Company achieved significant growth and financial performance in its early years of operating the Website. Year-on-year from 2013 to 2016, the number of new



Lenders introduced to the Website increased (from 94 in 2013 to 6,966 in 2016). Less than a million pounds was lent by Lenders using the Website in 2013, but total lending increased each year of the Company's operation, peaking at £426.3m in 2018. It is averred that the Company's financial performance was remarkable, given that the Company's business solely relied upon a new "peer-to-peer" lending platform launched in an undeveloped market, and that the Company would not have achieved such success without Mr Smith's services.

22. Mr Smith and/or the Offshore Companies continued to provide services to the Company until mid-2017. At that time, the Collaboration Agreement was terminated, as Mr Brooke and Mr Gordon decided to re-allocate the Company's marketing budget in order to sponsor Lendy Cowes Week. Mr Brooke and Mr Gordon considered that it was an appropriate time to decrease the Company's reliance on a third-party, i.e. Mr Smith, and to attempt to generate business internally.
23. The Defendants are hindered by not being able to access the Company's database, and by the Claimants having rejected Mr Brooke and/or Mr Gordon's offers of assistance in respect of accessing the same. The Defendants reserve the right to amend this Defence following disclosure, and put the Claimants on notice that the Defendants expect the Company's database, and the information contained therein, to be disclosed in these proceedings. Absent disclosure of the Company's database, and the information contained therein, the Defendants reserve the right to apply for specific disclosure of the same. In any event, to the best of Mr Gordon's knowledge and belief, the majority of the Company's revenue for the years ending 31 December 2014 to 31 December 2017 was attributable to the services provided to the Company by Mr Smith and/or the Offshore Companies. In particular, it is averred that:
 - a. Lenders were introduced to the Website using a number of marketing channels. Internally, the Company managed four marketing channel. These were referred to by the Company as "*Paid Search*", "*Affiliate*", "*money.co.uk*", and "*Proboards*". Lenders introduced to the Website/the Company by any other marketing channel, including but not limited to those referred to by the Company as "*Organic Search*", "*Referral*", "*Social*", and "*Direct*", were introduced as a consequence of the marketing activities of Mr Smith and/or the Offshore Companies, in accordance with the Collaboration Agreement. The Company's database contains information as to the marketing channels by which Lenders were introduced to the Website/the Company. The Company's Google Analytics account contains information as to the traffic sources for the Website, and the sign-up numbers by marketing channel;
 - b. Mr Smith and/or the Offshore Companies provided to the Company contact details of over 400,000 brokers and potential Borrowers in the three-year period referred to above; and
 - c. The Company benefitted from part-purchases of loans made in the sum of over £800m, comprising over £400m of primary loan funding and over £400m of secondary market



trading. This provided the Company with an additional revenue stream as Lenders forfeited interest on loans during the period of time prior to a loan, or part thereof, being sold. The majority of the investment liquidity derived from the active/secondary market was provided by Lenders introduced by Mr Smith and/or the Offshore Companies, and was fundamental to the continued growth of the Website and the Company.

24. The Offshore Payments referred to in paragraph 13 were either:
- a. Payment of Mr Smith's remuneration pursuant to the Collaboration Agreement, which was paid to bank accounts controlled by Mr Smith on the instructions of Mr Smith; or
 - b. Payment in respect of services provided by the Offshore Companies to the Company. Insofar as the Offshore Companies, rather than Mr Smith personally, provided services to the Company, the sums paid by the Company were due pursuant to an express or implied contractual obligation, whether under the terms of the Collaboration Agreement (as amended) or otherwise.
25. Save that paragraph 16 above is repeated in relation to subparagraph 15.3, the Defendants neither admit nor deny but require the Claimants to prove paragraph 15, the same being outside of the Defendants' knowledge.
26. The first sentence of paragraph 16 is admitted, insofar as the same is demonstrated by documentary evidence. Paragraph 24.a) above is repeated. The second sentence of paragraph 16 is noted.
27. Paragraph 17 is admitted, save that the Offshore Payments were recorded in the Company's books and records from 19 August 2014, being the date of the first payment made by the Company in respect of services provided by Mr Smith and/or the Offshore Companies. The Company's financial statements were audited by Moore Stephens LLP in the years ending 31 December 2016 and 31 December 2017. During the audit, the Offshore Payments were queried by Moore Stephens LLP. Mr Brooke and Mr Gordon provided sufficient evidence to Moore Stephens LLP for them to conclude that the Offshore Payments were not for the benefit of Mr Brooke and/or Mr Gordon, but were genuine payments made in respect of services provided to the Company. Consequently, the independent auditor's reports given in the Company's statutory accounts for the years ending 31 December 2016 and 31 December 2017 record Moore Stephens LLP's view that the financial statements gave a true and fair view of the Company's affairs, and were properly prepared in accordance with United Kingdom GAAP and the Companies Act 2006.
28. Paragraph 18 is denied. Paragraphs 14 to 23.c inclusive above are repeated, and it is further averred that:
- a. At all material times, Mr Smith provided Mr Brooke and Mr Gordon with access to online marketing reports. The marketing reports set out the number and details of Lenders and



Borrowers introduced by Mr Smith and the marketing channel by which they had been introduced;

- b. Approximately once a month, Mr Brooke and/or Mr Gordon would discuss with Mr Smith the number of Lender, Borrower and broker leads provided to the Company by Mr Smith and/or the Offshore Companies, and the consequential quantum of deposits made by Lenders. Mr Brooke and/or Mr Gordon and Mr Smith would then agree the quantum of Mr Smith and/or the Offshore Companies' remuneration for their services, having regard to the value of such services to the Company;
- c. It was agreed between Mr Brooke and Mr Gordon, and Mr Smith, that, from early 2015, Mr Smith's and/or the Offshore Companies' remuneration would be fixed at a rate of £100,000 per month for services relating to the introduction of Lenders and £100,000 a month for services relating to the introduction of Borrowers. It was considered by Mr Brooke and Mr Gordon that those sums represented a reasonable and proportionate level of remuneration for Mr Smith and/or the Offshore Companies, having regard to the value of their services to the Company;
- d. Nevertheless, Mr Brooke and/or Mr Gordon continued to have regular conversations with Mr Smith, approximately once a month, to confirm that the agreed fixed fees continued to represent a reasonable and proportionate level of remuneration; and
- e. The Company agreed to pay to Emporis £1,000 for each Lender domiciled outside of the United Kingdom introduced to the Company.

29. Paragraph 19 is admitted, save that in respect of "*notwithstanding the foregoing*" paragraphs 27 and 28 above are repeated.

30. Paragraph 20 is denied. Paragraphs 27 to 29 above are repeated.

The benefits received by the Directors

31. The first sentence of paragraph 21 is denied for the reasons set out above. The second sentence of paragraph 21 is noted. As to the subparagraphs:

- a. The fact and contents of Mr Brooke's email of 13 December 2016 are admitted. It is denied that the Offshore Payments were for the benefit of Mr Brooke and/or Mr Gordon for the reasons set out above;
- b. Save that it is admitted that payments of £200,000 in the period from March to May 2016, and £125,000 on 9 October 2015 were made to Mr Gordon by way of loans by companies controlled by Mr Smith, the Defendants are unable to admit or deny subparagraph 21.2, the same being outside of the Defendants' knowledge. In or around March 2013, Mr Smith



agreed to provide a credit line to Mr Brooke and Mr Gordon, to enable Mr Brooke and Mr Gordon to purchase property in the United Kingdom and other assets;

- c. The Defendants are unable to admit nor deny but require the Claimants to prove subparagraph 21.3, and sub-subparagraphs 21.3(1) and 21.3(2), the same being outside of the Defendants' knowledge and/or a statement by the Claimants as to documents they have seen or beliefs that they hold. As to sub-subparagraph 21.3(3), it is admitted that Argo loaned sums to Mr Brooke, Mr Gordon, and the Fourth Defendant in the sums stated in sub-subparagraph 21.3(2). As to sub-sub-subparagraph 21.3(3)(a), it is admitted that Mr Brooke and Mr Gordon were each provided with a pre-paid card by Mr Smith in or around March 2011, which they were permitted to use in order to access and utilise the monies paid on account to Mr Smith to cover the start-up costs of the Company and, to a limited extent, Mr Brooke and Mr Gordon's living expenses. Following the provision of the credit line, Mr Gordon was permitted to use the pre-paid card to fund his living expenses, and/or purchases of assets and/or property. It is averred that all sums expended by Mr Gordon on the pre-paid card were deemed to be monies loaned to Mr Gordon by Mr Smith, which Mr Gordon was and is liable to repay, insofar as they remain outstanding; and
- d. The fact of and contents of the emails referred to in sub-sub-subparagraphs 21.3(3)(b) to (d) inclusive are admitted.

32. As to paragraph 22:

- a. The Defendants are unable to admit nor deny but require the Claimants to prove subparagraph 22.1. The source of monies loaned by Mr Smith to Mr Gordon is outside of the Defendants' knowledge;
- b. Sub-paragraph 22.2 is denied for the reasons set out above.

The Company's entry into administration

- 33. Paragraph 23 is admitted, save that it is to be noted that the events referred to therein occurred after Mr Gordon retired as a director of the Company and ceased to be an indirect shareholder of the Company.
- 34. The Defendants neither admit nor deny but require the Claimants to prove the first sentence of paragraph 24, the same being outside of the Defendants' knowledge in circumstances where Mr Gordon was no longer involved in the management of the Company. The second sentence of paragraph 24 is noted, albeit with some surprise, given that the Second Claimant swore an Affidavit on 28 May 2020 which states, at paragraph 209, his belief that "*the Company has substantial assets*".



III. The duties owed by the Directors

35. Paragraphs 25 and 26 are admitted insofar as they are a summary of the currently applicable law.

IV. The Directors' breaches of duty

36. The factual premise of paragraphs 27 and 28 is denied for the reasons set out above. The allegations of breach of duty in paragraphs 27 and 28 are therefore denied.

37. Paragraph 29 is denied for the reasons set out above.

38. The factual premise of paragraph 30 is denied for the reasons set out above. The allegations of breach of duty in paragraph 30 are therefore denied.

39. Paragraph 31 is denied for the reasons set out above.

40. Alternatively, insofar as the Court finds any of the allegations in paragraphs 27 to 31 inclusive, which are denied, to be made out as against Mr Gordon, the Defendants will aver as follows:

- a. At all material times, Mr Brooke and Mr Gordon were the sole shareholders (whether directly or indirectly) of the Company;
- b. At all material times, as evidenced by the Company's statutory accounts, the Company was solvent;
- c. The acts and/or omissions of Mr Brooke and Mr Gordon as directors of the Company were agreed to or ratified by, and/or any breaches of duty were waived as a consequence of the unanimous agreement of the Company's shareholder(s) i.e. the *Duomatic* principle applies; and
- d. If, and insofar as the Court finds that the payments to the Offshore Companies were for the benefit of Mr Brooke and/or Mr Gordon, which is denied, Mr Brooke and/or Mr Gordon could have caused the Company to make equivalent payments to them lawfully, either by way of dividends, or remuneration, or otherwise.

V. The Company's proprietary claims

41. Paragraphs 32 and 33 are denied for the reasons set out above.

42. Paragraph 34 is noted.

43. Paragraphs 35 and 36 are denied for the reasons set out above.

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

44. As to paragraph 37:

- a. Subparagraph 37.1 is denied, except insofar as the same is admitted above in respect of payments being made to Mr Smith and/or the Offshore Companies pursuant to the terms of



the Collaboration Agreement or another contractual obligation owed by the Company to Mr Smith and/or the Offshore Companies;

- b. Subparagraph 37.2 is denied for the reasons set out above.
- c. Subparagraph 37.3 is denied for the reasons set out above. Mr Gordon, and to the best of Mr Gordon's knowledge and belief, Mr Brooke had no intention to prejudice the interests of Her Majesty's Revenue and Customs as alleged or at all.

45. Paragraph 38 is denied. Paragraph 44 above is repeated.

46. Save that it is denied that the Company's creditors are "*victims*" of any of the transactions referred to in the Particulars of Claim, and in particular the Offshore Payments, the Defendants neither admit nor deny but require the Claimants to prove paragraph 39.

47. Save that the Defendants deny that the Claimants are entitled to the relief sought in paragraph 40 for the reasons set out above, paragraph 40 is noted.

VII. Interest

48. Paragraphs 41 and 42 are noted.

49. For the reasons set out above, it is denied that the Claimants are entitled to the relief claimed, or any relief.

JESSICA POWERS

STATEMENT OF TRUTH

By the Second Defendant:

I believe that the facts stated in this defence are true.

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.

[Redacted signature]

Tim Gordon

Dated this 30 day of November 2020



By the Fourth Defendant:

The Fourth Defendant believes that the facts stated in this defence are true.

I am duly authorised by the Fourth Defendant to sign this statement of truth.

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.

A black rectangular redaction box covering the signature area.

Sara Bryce-Gordon

Dated this 30th day of November 2020



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Defendants

**DEFENCE OF THE SECOND AND FOURTH
DEFENDANTS**

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