

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
BUSINESS LIST (ChD)



Claim No: BL-2020-000856

BETWEEN:

(1) LENDY LTD (IN ADMINISTRATION)
(2) MARK JOHN WILSON
(3) PHILLIP RODNEY SYKES
(4) DAMIAN WEBB
(IN THEIR CAPACITY AS JOINT ADMINISTRATORS OF LENDY LTD (IN ADMINISTRATION))

Claimants

-and-

(1) LIAM BROOKE
(2) TIM GORDON
(3) LP ALHAMBRA LIMITED
(4) RFP HOLDINGS LIMITED
(5) BRANKESMERE LIMITED

Defendants

REPLY TO DEFENCE OF THE FIFTH DEFENDANT

1. In this Reply:

- (1) References to “**Brankesmere**” are to be taken as references to the Fifth Defendant, and other defined terms are used consistently with those used in the Amended Particulars of Claim;
- (2) Unless otherwise indicated, references to paragraph numbers are to paragraphs in the Defence of the Fifth Defendant (“**the Defence**”);
- (3) Save where expressly stated otherwise, each and every allegation in the Defence is denied; and



- (4) The allegations and claims made in the Amended Particulars of Claim are maintained; the fact that any such allegation is not repeated in this Reply does not constitute an abandonment, in whole or part, of that allegation or claim.
2. As to paragraphs 5 and 8:
- 2.1. The Claimants are unable to admit or deny what Brankesmere “*understands*”, the pleading of which is not properly particularised.
- 2.2. It is not understood whether Brankesmere is alleging that the Offshore Payments were proper payments made in consideration of services provided to the First Claimant (“**the Company**”). For the avoidance of doubt, if that is alleged, it is denied. Mr Smith provided no, alternatively negligible, services to the Company.
3. Paragraph 21 is similarly denied so far as it is based on the (false) premise that the Company paid the Offshore Payments in return for services genuinely rendered to it.
4. Paragraph 26 is denied insofar as it is based on the false premise that the Offshore Payments were made in exchange for services genuinely rendered by Mr Smith.
5. As to paragraph 27:
- (1) The Claimants’ case is that Mr Brooke in fact knew all the relevant facts that rendered the Brankesmere Dividend unlawful. In particular, but without limitation:
- (i) Mr Brooke knew that Mr Smith provided no genuine, or at most negligible, services to the Company;
 - (ii) Mr Brooke therefore knew that the Offshore Payments were not properly to be treated as a business expense deductible from the Company’s taxable profits;
 - (iii) Mr Brooke knew that the sums provisioned in the Company’s accounts for the FAC remediation payments (£746,839) were less than the Company’s liability (of £1,576,507) in respect of such payment; and
 - (iv) Mr Brooke knew that the 23 July 2018 Dividend been paid in the sum of £226,000 on 23 July 2018, and the Teal Dividend had been paid in the sum of £860,000 on 25 July 2018.



(2) Alternatively, the Claimants allege that Mr Brooke reasonably ought to have known these facts, by reason of his association with Mr Smith, his position as director (in which capacity he owed fiduciary duties to the Company) and shareholder of the Company, and his close involvement with the Company's affairs.

6. As to paragraph 29:

(1) It is assumed that the words "*saves insofar as it is denied*" are intended to be read as "*save that it is denied*", and the Claimants proceed on that basis.

(2) It is averred that Brankesmere House is held on trust for the Company for the reasons set out in the Amended Particulars of Claim.

(3) As to paragraph 29.1:

- (i) The reference to the Second Defendant is not understood as the Claimants do not allege that the Second Defendant is liable for breach of duty in respect of the Brankesmere Dividend (he having ceased to be a director of the Company prior to its declaration and payment).
- (ii) In any case, it is denied that the extent of the First and Second Defendants' liability to the Company for equitable compensation or damages for breach of duty in connection with the Brankesmere Dividend is relevant to the extent of the Company's right to trace into Brankesmere House (which is based on a proprietary claim to the traceable proceeds of the unlawful dividend rather than being a claim for compensation for loss).
- (iii) Further still, and without prejudice to the foregoing, the Brankesmere Dividend was wholly unlawful and improper, as per paragraph 40H of the Amended Particulars of Claim.

7. As to paragraph 30:

(1) It is admitted that Brankesmere received the funds pursuant to what purported to be an agreement for a loan granted by Enebral. However, the funds were in fact paid by Lendy Group direct to Brankesmere.

(2) It is denied that Brankesmere was a *bona fide* purchaser for value without notice:



- (i) Value in this context must comprise executed consideration rather than an unfulfilled promise. It is not admitted, and Brankesmere is required to prove, that it has fulfilled its promise under the alleged loan to repay sums and thereby is a purchaser 'for value'.
- (ii) In any event, Brankesmere did not act 'without notice' for the reasons given in paragraph 8 below.

8. As to paragraph 32:

- (1) Mr Brooke's knowledge falls to be attributed to Brankesmere by reason of his status as its director and/or its directing mind and will (as the person who managed and controlled its actions) at the time it received the Brankesmere Dividend, or its traceable proceeds.
- (2) Mr Brooke had actual knowledge of the facts pleaded at paragraph 5(1) above.
- (3) It is denied that only Mr Brooke's actual knowledge can be attributed to Brankesmere. Constructive knowledge can, and in this case would, also fall to be attributed.

9. It follows that paragraph 33 is denied. The receipt by Brankesmere was unconscionable in view of Mr Brooke's knowledge that is attributed to it.

10. It follows that paragraph 34 is denied.

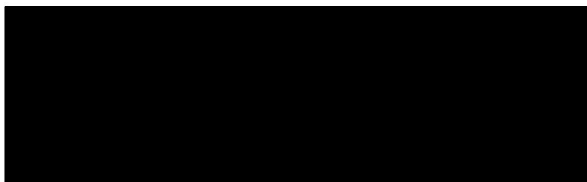
11. Paragraph 35 is denied. The receipt was unjust in circumstances where the Brankesmere Dividend was paid unlawfully, in breach of fiduciary duty, and where Brankesmere was not a *bona fide* purchaser for value without notice.

TONY BESWETHERICK

PATRICK DUNN-WALSH

Statement of truth

The Claimants believe that the facts stated in this Reply 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

MARU JOHN WILSON

Full name

JOINT ADMINISTRATOR

Position

27 - 1 - 22

Date